STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2018-02

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF REVENUE
DVISION OF TAXATION
ONE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908

IN THE MATTER OF:	:	**Case No. 17-T-037**
	:	**sales and use**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as a result of a Notice of Hearing and Appointment of Hearing Officer ("Notice") dated July 18, 2017 and issued to the above captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to the Taxpayer's request for hearing filed with the Division. The hearing was held on September 8, 2017. The parties were represented by counsel. The parties timely submitted briefs by November 27, 2017.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings.*

III. ISSUE

Whether the Taxpayer owes the sales tax assessment on the 15% markup/fee.[1]

[1] The parties agreed that this was the sole issue at hearing. See emails of November 30, 2017.

IV. MATERIAL FACTS AND TESTIMONY

("Auditor"), Revenue Agent I, testified on behalf of the Division. He testified that the Taxpayer does not hold a permit to make sales at retail and did not have a history of regularly filing and paying sales and use tax during the audit period. He testified that the audit period covered July, 2010 to June, 2016. He testified that there was no written test period agreement, but there was an oral agreement with the Taxpayer's certified public accountant to use 2014 as a test year. He testified that he reviewed the Taxpayer's invoices and broke them down into six (6) different types of purchases: 1) Taxpayer purchased from a Rhode Island vendor so tax was assessed on the 15% markup/fee as tax would have been paid by the Taxpayer upon purchase of materials.; 2) Taxpayer purchased materials from out of state vendor so tax was assessed on purchase price of materials since no proof of tax paid and on the 15% markup/fee; 3) Invoices that could not be found so tax was assessed on the materials and the 15% markup/fee; 4) Taxpayer purchased from subcontractor who broke down materials and labor so tax was only assessed on the 15% markup/fee as subcontractor would be responsible for tax on the materials; 5) Taxpayer purchased from a subcontractor who billed in a lump sum so that bill was divided in half to split between materials and labor and then tax was only assessed on the 15% markup/fee; and 6) Taxpayer purchased from an out-of-state subcontractor so tax was assessed on the materials and 15% markup/fee as the out-of-state subcontractor would not have been collecting Rhode Island sales tax. See Division's Exhibit Eight (8) (schedule 1).[2] He testified that because the Taxpayer's invoices broke down labor and materials, the Taxpayer was acting as a retailer under Regulation C so there is a sales and use liability on the 15% markup/fee. He testified that there was no formal closing as the Taxpayer requested to be billed directly.

[2] In his testimony, provided examples of each kind of invoice covered in Schedule 1 for each category. The parties resolved all other assessments except for the assessment on the 15% markup/fee.

On cross-examination, the Auditor testified that he did not see any invoices showing the Taxpayer was just selling supplies and he did not ask the Taxpayer if it sold materials to the general public. He testified that the first invoice in Division's Exhibit 15 broke out labor and materials and the invoice was for the cost plus 15%. He testified that the Division's interpretation is that the 15% is a markup. On re-direct examination, he testified that he only picked up the 15% of the materials. On re-cross, he testified that did not request information on what the 15% represented.

a customer of the Taxpayer, testified on behalf of the Taxpayer. He testified that he knows the Taxpayer is a construction company and does not provide sales at retail. He testified that he has not had written contracts with the Taxpayer. He testified that the Taxpayer will charge for materials and labor and he (customer) will agree to 15% on top of the labor. He testified that Division's Exhibit 15 included his invoices and he provided an affidavit indicating this information. See Taxpayer's Exhibit Five (5).[3] He testified that he was not charged any other amount for project management.

The Taxpayer's owner testified on its behalf. He testified that he has been in business for 43 years and provides restoration, renovation, and remodeling and has a staff of nine (9) people. He testified that when a client comes in, he looks at the proposed project and assesses the costs and time and materials is a fair cost. He testified that the purchase price includes the actual hours of labor and he applies the 15% to the materials and the subcontractor. He testified that the 15% pays for his time in the office. See Taxpayer's Exhibit (3) (Taxpayer's payroll expenses). He testified that he will have some jobs that are small and he doesn't include the 15% because he can just include the profit, but for the larger ones he will include the 15%. He testified that he buys materials for the job and he passes on the exact amount to the customer. He testified that if the

[3] Two (2) other similar affidavits were entered in exhibit; though, those homeowners did not testify. However, the Taxpayer's owner testified to the agreements with those homeowners. See Taxpayer's Exhibits Six (6) and Seven (7).

15% was for the cost of materials, then that would be making it more expensive for the customer who could buy materials cheaper directly from a vendor. He testified that he has no over the counter sales. On cross-examination, he testified that the 15% on materials and subcontractors covers overhead, and the easiest and most transparent method is to include it on the invoices.

V. DISCUSSION

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management,* 553 A.2d 541 (R.I. 1989) (internal citation omitted). In cases where a statute may contain ambiguous language, the Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998).

B. Relevant Statutes

Pursuant to R.I. Gen. Laws § 44-18-18, Rhode Island imposes a sales tax of 7% on gross receipts of a retailer. R.I. Gen. Laws § 44-18-20 imposes the corresponding use tax. Pursuant to R.I. Gen. Laws § 44-18-19, the retailer is responsible for the collection of sales tax. The relevant regulation in this matter is Sales and Use Tax Regulation SU 91-27 *Contractors and Subcontractors - "Regulation C"* ("SU 91-27").

ARTICLE I. Contractors and Subcontractors – In General

The term "contractor" as used herein includes both contractors and subcontractors and including but not limited to building, electrical, plumbing, heating, painting, decorating, paper hanging, air conditioning, ventilating, insulating, sheet metal, steel, masonry, carpentry, plastering, cement, road, bridge, landscape and roofing contractors or subcontractors.

The term "construction contract" as used herein means a contract for the repair, alteration, improvement, remodeling or construction of real property.

(1) Taxability of Sales to or by Construction Contractors

A contractor shall pay the tax as a consumer on the purchase of all materials, supplies, tools and equipment, including rentals thereof and all replacement parts used by him in fulfilling either a lump-sum contract, a cost-plus contract, a time and material contract with an upset or guaranteed price which may not be exceeded, or any other kind of construction contract except:

(a) where the contractor contracts to sell materials or supplies at an agreed price and to render service in connection therewith, either for an additional agreed price or on the basis of time consumed, or:

(b) where such contractor is engaged in the business of selling such materials or supplies at retail.

In the case of either (a) or (b), the contractor is a RETAILER and must have a permit to make sales at retail and the contractor shall give the person selling such materials or supplies a resale certificate bearing his/her permit number and collect the tax from the person to whom he/she sells the same. When such use is made of a resale certificate by a contractor, it shall be limited to the exceptions included in (a) or (b) above and the contractor shall be held strictly and solely accountable for the collection of the sales tax involved and the payment to the state of all taxes due thereon based upon gross receipts from such retail sales and such contractor shall further be held strictly accountable for the payment of the use tax to this state in the event he/she shall make any use of such property other than retention, demonstration or display while holding it for resale or in the event the contractor shall make out-of-state purchases subject to the use tax.

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(3) Contractors Who sell Complete Units of Standard Equipment at Retail and Install Same

This regulation is not applicable to contracts whereby the contractor or subcontractor acts as a retailer selling tangible personal property in the same manner as other retailers and is required to install a complete unit of standard equipment, requiring no further fabrication but simply installation, assembling, applying or connecting services. In such instances the contract will not be regarded as one for improving, altering or repairing real property. For example, the retailer of an awning or blind agrees not only to sell it but to hang it; an electrical shop sells electrical fixtures and agrees to install them. A person performing such contracts is primarily a RETAILER of tangible personal property and must have a permit to make sales at retail and should segregate the full retail selling price of such property from the charge for installation, as the tax applies only to the retail price of the property.

D. Arguments

The Division argued that pursuant to SU 91-27 the Taxpayer is a retailer and owes tax. The Taxpayer argued that it uses a cost-plus contract and the 15% is a fee that covers its overhead and does not fall under the regulation's exceptions.

E. Whether the Taxpayer Owes the Assessment

The undisputed evidence was that 15% of the charge for materials and subcontractors was included on a separate line by the Taxpayer on its invoices.[4]

SU 91-27 requires all contractors that enter into certain contracts pay tax as a consumer on the purchase of all materials, supplies, tools and equipment, including rentals. The type of contracts specified are lump-sum, cost-plus, time and material with an upset or guaranteed price not to be exceeded, or any other type of construction contract. These types of contracts are not defined within the regulation.[5] The parties do not dispute that the Taxpayer is a contractor; however, the Division argued that it is also acting as a retailer under said regulation.

The Taxpayer argued that its contracts are cost-plus contracts (cost incurred and agreed percentage). The Taxpayer's contracts could also be time and materials (actual direct cost of labor,

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[4] The Division represented that it only assessed the 15% added for materials and not for subcontractors.

[5] "Lump sum contract" is defined as "[a] contract under which a principal (customer or owner) agrees to pay a contractor a specified amount for completing work without requiring a cost breakdown."
See http://www.businessdictionary.com/definition/lump-sum-contract.html.

"Cost plus contract" is defined as a "[c]ontract under which a contractor is reimbursed for the costs incurred, and is paid an agreed upon percentage of such costs as contractor's profit."
See http://www.businessdictionary.com/definition/cost-plus-contract.html.

"Time and material contract" is defined as "[a]n arrangement under which a contractor is paid on the basis of (1) actual cost of direct labor, usually at specified hourly rates, (2) actual cost of materials and equipment usage, and (3) agreed upon fixed add-on to cover the contractor's overheads and profit."
See http://www.businessdictionary.com/definition/time-and-materials-T-M-contract.html.

In *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673 (R.I. 1980), the Court relied on a dictionary definition in applying the "ordinary meaning" of "must." *Id.*, at 674. As the Court has found, "[i]n a situation in which a statute does not define a word, courts often apply the common meaning given, as given by a recognized dictionary." *Defenders of Animals, Inc.*, at 543.

direct cost of materials, and fixed add-on for profit). The Taxpayer argued that since its contracts fall under the type specified in § 1 of SU 91-27, the exceptions in § 1(a) and § 1(b) do not apply. The Division disagreed with the Taxpayer's position and argued that the exceptions applied to any type of contract. However, the Taxpayer also argued that even accepting the Division's position, it does not fall under either exception. Certainly it would be illogical for § 1(a) or § 1(b) to be as broad as § 1; otherwise, § 1(a) and § 1(b) could not be exceptions. An exception must be narrower than the thing it is being excepted from; otherwise, there would no reason for the exception.

The Division argued that the Taxpayer fell under both § 1(a) and § 1(b), but argued the Taxpayer's invoices made it more closely aligned with § 1(a). Section 1(b) speaks of a contractor being engaged in the business of selling such materials or supplies at retail. Thus, § 1(b) envisions a contractor who sells materials to customers such as at its place of business making over the counter sales. For example, a contractor purchases materials in bulk in anticipation of being hired for jobs, but also sells some of that material separately at retail. In § 1(b), no service is being rendered in conjunction with the sale of the materials. Section 1(a) includes that a service is being rendered, and § 1(b) does not. If § 1(b) included a service being rendered that would make it like § 1(a). Thus, the distinction between the two (2) sections is premised on whether a service in rendered as part of the sale of the materials or supplies.

The Taxpayer is not in the business of selling materials. There was no evidence that the Taxpayer just sells materials or made over the counter sales. The Taxpayer is a contractor and does not also offer materials for sale at retail without any services. Section 1(a) includes materials and services. Section 1(b) envisions sales more in line with shop sales e.g. at retail.

The Division represented that it has for many years interpreted § 1(a) as holding contractors to be retailers where they separately state labor and materials at an agreed price and provide a service

in connection with the materials. However, no administrative decisions were provided nor found on this actual interpretation. The only case that discussed this actual provision within the regulation is a district court case, *Eagle Cornice Co., Inc. v R. Gary Clark, Tax Administrator*, A.A. No. 90-123 (R.I. Dist. Ct. 6th Div. 1995). *Eagle Cornice* addressed the 1987 version of 91 SU-27; however, the 1987 version is the same as the 1991 version for the relevant § 1 and § 3. Said case held as follows:

> Preliminary, it should be noted that the appellant's position that the nature of its contracts exempts it from the sales and use tax makes little sense. The characterization of the contracts by the appellant on its own tax returns as "lump sum" or "time and material" contracts is sufficient admission concerning the nature of these contracts to render further discussion of its position now asserted that they are "agreed price" contracts. The appellant clearly misconstrues the meaning of the Division of Taxation Regulation SU87-27I,(1), which does not exempt all agreed price contracts, but instead distinguishes situations where a contractor sells goods at an agreed price, and also agrees to perform a service in connection therewith. In those cases, the contractor is a retailer, and holds the goods for taxation at the time of transfer to the ultimate customer. But if the contractor agrees to perform a job, and acquires materials to complete that job, the tax is payable at the time the contractor acquires the goods, not when they are delivered to the ultimate customer. By way of example, contrast the situation where a person purchases cabinets from Sears, and then enters into an agreement with Sears to install the cabinets. This is a case covered by this section, and the sale of cabinets is taxable as a retail sale. In the alternative, if a person hired a contractor to build a deck for his or her house, the contractor would acquire materials, pay tax on them at the time of acquisition, and install them in the form of a deck through the provision of services. In this case the contractor is not acting as a retailer, and the taxable event occurs when the contractor acquires the goods. This would be true even if the contractor acquired goods in bulk quantity in anticipation of contracts to be entered into. In fact, this second case is precisely the situation in which the appellant finds itself, with the consequence of that the tax liability is incurred when the contractor acquires the goods.

The case references Article I and Section 1 by reference to "SU87-27,I,(1)." The Roman numeral "I" refers to Article I which is how it was delineated in 1987 and 1991 and with "(1)" being § 1 within Article I. Section 3 provides for contractors who sell complete units of standard equipment at retail and install the same. For § 3, the regulation gives the example of a retailer of awning or blinds agreeing to sell them and install them so that tax would be collected on the retail price of the awning or blinds but not on the installation. When distinguishing between § 1 and § 1(a), the Court indicated

that if a customer purchased cabinets and the installation of the cabinets from Sears, the cabinets would be taxable. The Division argued that the Court confused § 1(a) with § 3 in that the latter is applicable to the example given by the Court of the Sears' cabinets. The Division argued that § 1(a) and § 3 cannot mean the same as that would make § 3 a superfluous provision.

The Division argued that a better case to rely on is *Johnson Controls, Inc. v. R. Gary Clark*, A.A. 91-95 (R.I. Dist. Ct. 6th Div. 1994) which indicated that a contractor can have construction contracts with its clients and still be deemed a retailer under § 1(a) or § 1(b). In that matter, the taxpayer upgraded a computer control system for a fixed price for engineering, materials, installation, software, and maintenance with the contract not identifying prices for specific items *Johnson Controls* found as follows:

> Finally, the taxing authority contends that the Johnson Controls Contract with Allendale is not a construction contract because it comes within the exception created by ARTICLE I., Section (1)(a). The Tax Administrator argues that Johnson Controls acted as a retailer in selling a computer and electrical system to Allendale, and then performed services by installing the system. The state also contends, in an alternative argument, that Johnson Controls was both a retailer and a contractor, with the cost of the computer, CRT and key board being subject to sales tax. The programming and installation work would then be treated as a separate transaction.
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> In order to come under the exception, the evidence must show that the company contracted "to sell materials or supplies at an agreed price and to render service . . . either for an additional agreed price or on the basis of time consumed." Regulation C, Article I, Section (1)(a). Here, the contract does not fit that pattern. The agreement identifies a single amount which includes the cost of all materials as well as for programming and installation of the necessary wires, sensors and switches. The contract in no way suggests separate amounts for various portions of the upgrade.

The invoice listed $5,329.17 as the total amount owed with labor listed as $591.00 and $1,344.00 and subcontractor at $2,432.89 and Taxpayer's name and 15% was listed at $364.93 (which is 15% of the subcontractor amount)[6] and materials were listed at $596.35. Those lesser amounts add

[6] The subcontractor amount included $26.89 for materials and $2,406.00 for the subcontractor. Since the Division only assessed the 15% of materials, the taxable amount for this invoice was $4.03 (15% of the $26.89 for materials). See Division's Exhibit Eight (8) (Schedule 1 of taxable sales).

up to the total amount. Unlike the *Johnson Controls* contract, this invoice lists labor, materials, and subcontractor separately as well as 15% of the subcontractor fee.

Eagle Cornice held that § 1(a) and § 1(b) provide exceptions to all agreed price contracts. So even if the Taxpayer has a contract defined in § 1, it still could be excepted under § 1(a) and § 1(b). However, the Court went on to distinguish the retailer and contractor scenarios in the regulation as being the difference between selling goods and performing a job. When a contractor agrees to perform a job and acquires materials to perform the job, the tax is due when the materials are acquired and not when delivered to the customer. In other words, if a contractor agrees to build a deck (perform a job) then the contractor purchases materials for that job and pays tax on them at the time of acquisition and installs those materials in the form of a deck through the provision of services. That is § 1. The Court contrasted the performance of a job with the selling of goods. The Court's example for the selling of goods (materials) was a Sears cabinet. That is § 1(a).

Eagle Cornice distinguished § 1 and § 1(a) by the concept of the sale of goods or performing a job. The fact that its example of what could be a sale of good could also fall under § 3 does not mean that the Court confused the two (2) sections as argued by the Division. Section 3 requires the installation of a complete unit of a standard good. However, under the *Eagle Cornice* distinction, a good could be purchased under § 1(a) that was not a complete unit or did not require the installation of the good. Instead of a Sears' cabinet, it could be that the good purchased was only materials and the service was the delivery of the materials. The Division argued that § 1(a) must be broader than § 3 or there would be no reason for § 1(a). Certainly § 1(a) could include materials that were not complete units for installation.

If we apply *Eagle Cornice*'s distinction between a sale of a good and performing a job, the Taxpayer clearly is performing a job. For example, in the invoice, the Taxpayer is

sanding/installing flooring and staining and painting trim, baseboard, and vents. However, the Division argued that regardless of the Taxpayer's projects with its customers, materials were sold and invoiced and were purchased for an agreed price and service was provided in connection with labor charges. There was no dispute that the Taxpayer only charges its customers the cost of materials to itself plus the 15% fee.[7]

During the hearing, the Division implied that if the Taxpayer had a contract for each client rather than an invoice and the contract set out terms such as the 15% being a professional fee, then there most likely would not have been a hearing. Transcript, pp. 84-87. Apparently if the Taxpayer had ascertained the cost of the 15% of materials and/or subcontractor and included that amount on a contract as the figure for consulting or professional fees, the outcome would have been different.

Now if the Taxpayer had purchased materials and then re-sold them to a customer at a higher price, the argument could be made that the Taxpayer was making sales at retail under § 1(b). Thus, if the Taxpayer bought lumber for $100, but invoiced its customer for $150 for that lumber with or without a service rendered, the argument would be that the contractor was making a sale at retail and should charge the customer tax. The evidence would be that the contractor re-sold the materials at a higher price than paid by the contractor by making a profit on the re-sale of the materials.

In contrast, the evidence here is the 15% of the cost of the materials is assigned its own line on the invoice next to the Taxpayer's name and the phrase, 15%. It most likely would behoove the Taxpayer to enter into contracts with the 15% fee marked and explained as a professional

[7] The evidence showed that the Taxpayer charged its customers what it paid for materials. E.g. the purchase invoices for the Taxpayer's purchases as compared to the Taxpayer's invoices for the job performed. See Division's Exhibits 15 (Taxpayer invoice) and 16 (purchase invoice) (invoice #1675).

fee/consultation cost.[8] At the same time, the Taxpayer is also performing jobs as discussed in *Eagle Cornice*.

The Division argued that in the "[t]axpayer's case, since the Division's assessment of Taxpayer's 15% markup is only associated with the material charges on Taxpayer's sales invoices, and separately stated material charges are indicative of retail sales under the Division's interpretation of Section 1(a) of Regulation C, the 15% fee is taxable under the regulation." Division brief, p. 12. Separately stated material charges might be indicative of retail sales, but they are not conclusive. Instead, separately stated material charges such as a percentage markup can serve a "red flag" and provide a further reason to analyze the invoices. Though, it should be noted that in this matter, the Taxpayer also charged the 15% on the subcontractor fees.

In order to analyze these invoices, there must be an understanding of SU 91-27. Based on *Eagle Cornice* and *Johnson Controls*, it is clear that the § 1(a) and § 1(b) exceptions may apply to the contracts listed in § 1. At the same time, the exceptions of § 1(a) and § 1(b) are not as broad as those contracts in § 1. *Eagle Cornice* found that § 1(a) is for sale of a good for an agreed price and a service for that good as opposed to the sale of a job. Nonetheless, § 1(a) is an exception within § 1 and is not the same as § 3 which refers to contractors who sell complete units of standard equipment at retail and install the same. Section 1(a) could refer to a good that is not a complete unit and is not being installed, but another service is being rendered. Section 1(b) speaks of a contractor selling materials or supplies at retail, but no service is rendered. As found above, in this situation, the Taxpayer is not selling goods or materials as in § 1(b).

In reading a statute, a court will apply the plain meaning of the language. At the same time, the plain meaning "approach is not the equivalent of myopic literalism. When we determine the true

[8] R.I. Gen. Laws § 5-65-3 also requires a contractor to enter into a written contract for any work over $1,000.

import of statutory language, it is entirely proper for us to look to the 'sense and meaning fairly deducible from the context.'" *In Re Brown*, 903 A.2d 147 (R.I. 2006) (citation omitted).

Thus, while an invoice with the materials separately stated may raise questions of whether a contractor is also acting as a retailer, the fact that such charges were imposed is not conclusive. The evidence at hearing included that the Taxpayer's invoices charged 15% on materials and subcontractors on a separate line that included the Taxpayer's owner's name and 15%. A review of the evidence and a reading of the regulation and cases demonstrate that the Taxpayer is providing a job and not a good and the 15% markup/fee[9] is not a charge for materials.[10]

VI. FINDINGS OF FACT

1. On or about July 18, 2017, the Division issued a Notice in response to the Taxpayer's request for hearing filed with the Division.

2. A hearing in this matter was held on September 8, 2017. The parties were represented by counsel who timely submitted briefs by November 27, 2017.

3. The facts contained in Sections IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-18-1 *et seq.*, and R.I. Gen. Laws § 44-19-1 *et seq.*

2. The Taxpayer does not owe the assessed tax.

[9] Certainly the 15% charge could have been marked and explained better on the invoices (and by contract) and presumably will be in future.

[10] Since there is no tax liability, the legal issues regarding the six (6) year audit period, the use test, and statute of limitations are moot.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows: The Taxpayer does not owe the assessment on the 15% markup/fee.

Date: January 12, 2018

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

__✓__ ADOPT
_____ REJECT
_____ MODIFY

Date: 1/23/18

Neena S. Savage
Tax Administrator

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:

R.I. Gen. Laws § 44-19-18 Appeals
Appeals from administrative orders or decisions made pursuant to any provisions of this chapter are to the sixth (6th) division district court pursuant to chapter 8 of title 8. The taxpayer's right to appeal under this chapter is expressly made conditional upon prepayment of all taxes, interest, and penalties, unless the taxpayer moves for and is granted an exemption from the prepayment requirement pursuant to § 8-8-26.

CERTIFICATION

I hereby certify that on the 24th day of January, 2018 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid to the Taxpayer's attorney's address on file with the Division of Taxation and by hand delivery to Bernard Lemos, Esquire, and Matthew Cate, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02908.

Gail Belasco