STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2018-09

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

IN THE MATTER OF:	:	
	:	**Case No.: 18-T-009**
	:	**sales**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Pre-Hearing Conference and Appointment of Hearing Officer dated January 31, 2018 and issued to the above captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing. A hearing was held on July 13, 2018 with the parties resting on the record.[1] The Division was represented by counsel and the Taxpayer was *pro se*.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-30-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, 280-RICR-20-00-2, *Division of Taxation Administrative Hearing Procedures Regulation*, and 220-RICR-50-10-2, *Department of Administration Legal Services Rules of Procedure for Administrative Hearings.*

III. ISSUE

Whether the Taxpayer's request for a refund of payment of sales tax for returned property is allowable under R.I. Gen. Laws § 44-18-30(58).

[1] At hearing, the Division submitted a summary of the case law on which it relied.

IV. MATERIAL FACTS AND TESTIMONY

Revenue Agent, testified on behalf of the Division. He testified that the Taxpayer purchased a car ("Car") on January 5, 2017 and the total amount paid was $. See Division's Exhibit A (Car purchase contract). He testified that the date of purchase is based on the contract date and not on the delivery date. He testified that the Taxpayer bought the car in Massachusetts, but registered and paid tax on it in Rhode Island. See Division's Exhibit B (use tax return showing $ payment to Rhode Island). He testified that the Taxpayer tried to return the Car to the dealer and initially filed a consumer complaint with Massachusetts Attorney General, and then sent a demand letter to the dealer in June, 2017. He testified that the Taxpayer returned the Car to the dealer in June, 2017 and received a refund of $ See Division's Exhibits D (consumer claim); E (demand letter); F (settlement offer), G and H (payoff figure); I (dealer check for refund); and K (letter confirming Car loan paid off). On cross-examination, he testified that the Taxpayer did not receive any profit from the Car return and the Car purchase price was $. See Division's Exhibits A and F.

The Taxpayer testified on his behalf. He provided a chronology of his purchase of the Car and the return of the Car. See Taxpayer's Exhibit One (1). He testified that he initiated the return of the Car by filing a consumer complaint on March 29, 2017 with the Massachusetts' Attorney General's office and a month later, someone from the office called him, and suggested he send a 30 day demand letter to the dealer. He testified that he sent a demand letter to the dealer in June, 2017. See Division's Exhibit E. On cross-examination, the Taxpayer did not deny that the return of the Car was over 120 days from its purchase, but testified he initiated the return of the Car within 120 days of purchase.

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). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). 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) (citing *Cocchini v. City of Providence*, 479 A.2d 108 (R.I. 1984)). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. Relevant Statute and Regulation

R.I. Gen. Laws § 44-18-30 states in part as follows:

> Gross receipts exempt from sales and use taxes. – There are exempted from the taxes imposed by this chapter the following gross receipts:
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> ***
>
> *(58) Returned property*. The amount charged for property returned by customers upon rescission of the contract of sale when the entire amount exclusive of handling charges paid for the property is refunded in either cash or credit, and where the property is returned within one hundred twenty (120) days from the date of delivery.

The Division's Sales and Use Regulation 87-96 ("SU 87-96") states as follows:

> Returned Merchandise
>
> The amount upon which tax is computed does not include the amount charged for merchandise returned by customers upon rescission of the contract of sale if the full sale price, exclusive of handling charges paid therefore, is refunded either in cash or credit and the property is returned within 120 days from the date of sale or purchase. A deduction may, accordingly, be taken for returned merchandise, if the following conditions are fulfilled:
>
> (1) The sale is rescinded under the terms of the sale agreement, as in the case of a sale on trial, on satisfaction, on sale or return, or similar terms or pursuant to the election of the customer as in the case of a breach of warranty, and
>
> (2) The full sale price, including that portion designated to be on account of "sales tax," exclusive of handling charges paid therefore, is refunded or credited to the customer, and
>
> (3) The merchandise is returned within 120 days from the date of sale or purchase.
>
> The term "returned merchandise" does not include repossession or recapture of merchandise by legal process, abandonment of contract, voluntary surrender of goods without entire refund or full credit for amount paid, or goods accepted in trade or barter.

C. Arguments

The Division argued that the Taxpayer did not receive the full amount of the contract minus handling charges and the Car was not returned within 120 days so the Taxpayer did not meet the statutory requirements for a refund.

The Taxpayer admitted that the Car was returned after 120 days, but he argued that he initiated the return process within the 120 days.

D. Whether the Taxpayer Can Receive the Sales Tax Refund Pursuant to R.I. Gen. Laws § 44-18-30

There are three (3) criteria that must be met for the Taxpayer to be able to receive a refund under R.I. Gen. Laws § 44-18-30(58): 1) rescission of contract; 2) entire contract amount exclusive of handling charges is refunded; and 3) the property is returned within 120 days of purchase.

a. Rescission of Contract

SU 87-96 addresses what constitutes a rescission of contract.[2] As *Black's Law Dictionary* Eighth Edition (West 2004) states about rescission, it restores the parties to their precontractual conditions. Rescission of contract can be by an agreement by the parties or by law, but this statute speaks of merchandise being returned by a customer. In other words, the seller accepts the return of the merchandise from the buyer and refunds the entire amount paid for the property (minus handling charges) to the customer within 120 days of purchase. Since the statute envisions this process to be voluntarily, said regulation defines "returned merchandise" as excluding involuntary returns of merchandise and refunds. Involuntary returns of merchandise include those executed by legal process. E.g. repossession. See *Administrative Tax Decision* 2010-04 (5/20/10); and *Administrative Tax Decision* 2010-2 (3/24/10).

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[2] 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.

Black's Law Dictionary, Eighth Edition (West 2004) defined recession as follows:

> 1. A party's unilateral unmaking of a contract for a legally sufficient reason, such as the other party's material breach, or a judgment rescinding the contract; . . . Rescission is generally available as a remedy or defense for a nondefaulting party and is accompanied by restitution of any partial performance, thus restoring the parties to their precontractual positions. . . . 2. An agreement by contracting parties to discharge all remaining duties of performance and terminate the contract . . .
>
> *equitable rescission.* Rescission that is decreed by a court of equity. . .
>
> *legal rescission.* 1. Rescission that is effected by the agreement of the parties. . . . 2. Rescission that is decreed by a court of law, as opposed to a court of equity.
>
> "The modern tendency is to treat rescission as equitable, but rescission was often available at law. If plaintiff had paid money, or had delivered goods, he could rescind by tendering whatever he had received from defendant and suing at law to recover his money or replevy his goods. But if he had delivered a promissory note or securities, or conveyed real estate, rescission required the court to cancel the instruments or compel defendant to reconvey. This relief was available only in equity. Many modern courts ignore the distinction. . . . But versions of the distinction are codified in some states." Douglas Laycock, *Modern American Remedies* 627–28 (3d ed. 2002).

Based on the foregoing, there was a rescission of contract as required by statute since the return of the Car was voluntary and not due to legal process.

b. The Entire Amount Exclusive of Handling Charges Was Not Refunded

The purchase price of the Car was $ with document preparation fees being $ and title fee $ and service contract $. and GAP contract $ and new plates $. The total price including the estimated sales tax was $. The statute envisions that the parties are returned to their precontractual condition so that all money (except for handling charges) paid by a purchaser is returned to a purchaser. The Taxpayer received a refund of $. The regulation does not define what constitutes handling charges; however, the statute and regulation speak of a refund of the full contract amount and not the purchase price of the vehicle so it envisions a refund for the total contract amount rather than the purchase price of the vehicle. Thus, there is an expectation that some of the total contract price would fall under handling charges and some would not. For example, while the regulation does not delineate if a service contract is a handling charge, a service contract is presumably related to covering car repairs after the purchase of a car so it would not be a handling charge related to the actual purchase of this Car. Furthermore, the GAP contract is related to insurance coverage and not the purchase of the Car. Certainly, document preparation fees, a title fee, and a license plate fee could all be considered part of handling charges for the purchase of a vehicle. The regulation includes the sales tax in the full sale price.

Based on the foregoing, the Taxpayer did not receive a full refund of the entire amount exclusive of handling charges (full contract amount minus document preparation, title, and license plate fees).

c. Return of Property was not Within 120 days of Purchase

The Taxpayer admitted he returned the Car after 120 days, but argued that he initiated the return by filing a consumer complaint within 120 days. However, the statute and regulation do not require the return to be initiated in 120 days, but rather the return is to be completed in 120 days. Thus, the return was not completed in 120 days.

VI. FINDINGS OF FACT

1. On or about January 31, 2018, the Division issued a Notice of Pre-Hearing Conference and Appointment of Hearing Officer to the Taxpayer

2. A hearing in this matter was held on July 13, 2018.

3. The facts as detailed in Section V are incorporated herein by reference.

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 § 44-30-1 *et seq.*, and R.I. Gen. Laws § 44-1-1 *et seq.*

2. Pursuant to R.I. Gen. Laws § 44-18-30(58), the Taxpayer is not entitled to the claimed refund of sales tax.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows: Pursuant to R.I. Gen. Laws § 44-18-30(58), the Taxpayer is not entitled to the claimed sales tax payment refund and the Division properly denied Taxpayer's claim for a refund.

Date: August 6, 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: 8/10/18

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 10th day of August, 2018, a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and return receipt requested to the Taxpayer's address on file with the Division of Taxation and by hand delivery to Matthew Cate, Esquire, Department of Administration, One Capitol Hill, Providence, RI 02908.

Gail Belasco