STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2018-12

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.: 14-T-0084**
	:	**public service corporation**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Hearing and Appointment of Hearing Officer dated November 19, 2014 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division"). The parties agreed that a decision could be made based on an agreed statement of facts and briefs. The parties filed an agreed statement of facts and all briefs were timely filed by August 20, 2018. The Division and Taxpayer were represented by counsel.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-13-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, 280-RICR-20-00-2, Division of Taxation's *Administrative Hearing Procedures Regulation*, and 220-RICR-50-10-2, Department of Administration's *Rules of Procedure for Administrative Hearings*.

III. ISSUE

The parties agreed that the only issue is that of law concerning what is the proper method of determining Accumulated Depreciation under the Personal Property Tax imposed on telecommunications companies?

IV. MATERIAL FACTS

The parties agreed in part as follows:[1]

1. At all pertinent times, the Taxpayer was a foreign corporation chartered in another state and qualified to do business in Rhode Island. Exhibit One (1).

2. At all pertinent times, the Taxpayer was engaged in the business of providing telecommunications services and products in Rhode Island and was subject to the Tangible Personal Property Tax imposed upon telegraph, cable, telecommunications and express companies pursuant to R.I. Gen. Laws § 44-13-13.

3. At all pertinent times, the Tangible Personal Property Tax was administered, assessed and collected jointly by the Division of Municipal Finance ("Municipal Finance") and the Division, two (2) state agencies within the Rhode Island Department of Revenue. Municipal Finance and the Division will be collectively referred to hereafter as DOR.

4. This case involves the Tangible Personal Property Tax due from the Taxpayer for calendar (tax) years ending ("CYE") December 31, 2009, December 31, 2010, December 31, 2011, December 31, 2012, December 31, 2013 and December 31, 2014 (hereafter all tax years will be collectively referred to as "CYE 2009 to CYE 2014" and each tax year separately referred to as "CYE 20XX").

5. The Taxpayer is challenging the amounts of accumulated depreciation used by DOR under R.I. Gen. Laws § 44-13-13 for CYE 2009 to CYE 2014. As a result thereof, Taxpayer asserts that the Tangible Personal Property Tax assessments for CYE 2009 to CYE 2014 are excessive and has requested a partial refund for each of those tax years.

6. A table summarizing the PSCT 2 filings, the Tangible Personal Property Tax assessments and the amount of refunds claimed by the Taxpayer for CYE 2009 to CYE 2014 is set forth as Exhibit Two (2).

7. Between CYE 2009 and CYE 2014, Municipal Finance annually issued Form PSCT 2 under which companies subject to the Tangible Personal Property Tax reported the value of their tangible personal property in Rhode Island for that CYE. Exhibit Three (3) (blank Form PSCT 2 issued for CYE 2013). Municipal Finance also annually issued a cover letter and filing instructions for Form PSCT 2. Exhibit Four (4) (sample cover letter and filing instructions issued by Municipal Finance for CYE 2013).

8. For CYE 2009 to CYE 2014, the parties agreed that the Taxpayer filed two (2) PSCT 2 forms for each CYE showing the original cost, the accumulated depreciation, and net book values of all assets with one (1) form calculated using the Taxpayer's position based on its statutory interpretation and the other being based on the Taxpayer's financial accounting reports subject to the statutory depreciation cap of 75% (Division's position). The original

[1] See the parties' agreed statement of facts.

cost was the same for the two (2) PSCT 2 forms for each CYE, but the accumulated depreciation varied depending on the method used. It was agreed that Municipal Finance forwarded all information for each CYE to the Division and an assessment – based on the Division's position - was issued for each CYE by the Division which the Taxpayer paid. It was agreed that the Taxpayer submitted refund requests disputing the TPP assessed for each CYE. It was agreed that all refund requests were denied by the Division and the Taxpayer timely requested a hearing for each denial. The parties agreed to the amount paid for each assessment and the amount of each refund request. The parties further agreed to various exhibits detailing the various filings, assessments, and refund requests.[2]

9. The net revenues received under the Tangible Personal Property Tax are not deposited in the General Fund but are annually distributed among the 39 cities and towns on the basis of population.[3] Distributions encompassing the calendar years at issue are set forth in Exhibit 51.

10. In support of the Taxpayer's declared Accumulated Depreciation for its assets is an Appraisal Report of American Appraisal (the "AA Report") providing a fair market value appraisal of the telecommunications network assets of Taxpayer situated in Rhode Island as of December 31, 2009. Exhibit 52.

11. A table summarizing the parties' respective claims regarding Total Accumulated Depreciation, Total Net Book Value, and Tangible Personal Property Tax for CYE 2009 to CYE 2014 is set forth as Exhibit 53.

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

[2] This paragraph summarizes the parties' agreement regarding the various filings, assessments, and refund requests for CYE 2009 through CYE 2014.

[3] To cover "reasonable administrative expenses incurred" while assessing and collecting the tax on behalf of the municipalities, the DOR is entitled to payment of three quarters of one percent (0.75%) of the tax proceeds. R.I. Gen. Laws § 44-13-13(6)(i).

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 to *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

R.I. Gen. Laws § 44-13-13 states in part as follows:

> **Taxation of certain tangible personal property**. The lines, cables, conduits, ducts, pipes, machines and machinery, equipment, and other tangible personal property within this state of telegraph, cable, and telecommunications corporations and express corporations, used exclusively in the carrying on of the business of the corporation shall be exempt from local taxation; provided, that nothing in this section shall be construed to exempt any "community antenna television system company" (CATV) from local taxation; and provided, that the tangible personal property of companies exempted from local taxation by the provisions of this section shall be subject to taxation in the following manner:
>
> (1) Definitions. Whenever used in this section and in §§ 44-13-13.1 and 44-13-13.2, unless the context otherwise requires:
>
> (i) "Average assessment ratio" means the total assessed valuation as certified on tax rolls for the reference year divided by the full market value of the valuation as computed by the Rhode Island department of revenue in accordance with § 16-7-21;
>
> (ii) "Average property tax rate" means the statewide total property levy divided by the statewide total assessed valuation as certified on tax rolls for the most recent tax year;
>
> (iii) "Company" means any telegraph, cable, telecommunications, or express company doing business within the state of Rhode Island;
>
> (iv) "Department" means the department of revenue;
>
> (v) "Population" shall mean the population as determined by the most recent census;

(vi) "Reference year" means the calendar year two (2) years prior to the calendar year preceding that in which the tax payment provided for by this section is levied;

(vii) "Value of tangible personal property" of companies means the net book value of tangible personal property of each company doing business in this state as computed by the department of revenue. "Net book value" means the original cost less accumulated depreciation; provided, that no tangible personal property shall be depreciated more than seventy-five (75%) of its original cost.

(2) On or before March 1 of each year, each company shall declare to the department, on forms provided by the department, the value of its tangible personal property in the state of Rhode Island on the preceding December 31.

(3) On or before April 1, 1982 and each April 1 thereafter of each year, the division of property valuation shall certify to the tax administrator the average property tax rate, the average assessment ratio, and the value of tangible personal property of each company.

(4) The tax administrator shall apply the average assessment ratio and the average tax rate to the value of tangible personal property of each company and, by April 15 of each year, shall notify the companies of the amount of tax due. For each filing relating to tangible personal property as of December 31, 2008 and thereafter the tax rate applied by the tax administrator shall be not less than the rate applied in the prior year.

***

(6) The proceeds from the tax shall be allocated in the following manner:

(i) Payment of reasonable administrative expenses incurred by the department of revenue, not to exceed three quarters of one percent (.75%), the payment to be identified as general revenue and appropriated directly to the department;

(ii) The remainder of the proceeds shall be deposited in a restricted revenue account and shall be apportioned to the cities and towns within this state on the basis of the ratio of the city or town population to the population of the state as a whole. Estimated revenues shall be distributed to cities and towns by July 30 and may be recorded as a receivable by each city and town for the prior fiscal year.

C. Arguments

The parties also agreed that their positions were as follows:

Taxpayer contends that Accumulated Depreciation of its assessed tangible personal property should take into account all forms of depreciation, including physical deterioration, functional obsolescence and economic obsolescence. Accordingly, Taxpayer contends that the "Asset Values Based on Taxpayer's Position on Allowable Accumulated Depreciation" set forth

in Exhibit 53 should have been applied under R.I. Gen. Laws § 44-13-13 to determine the tax due. If Taxpayer's legal position prevails, Taxpayer's refund claims should be granted.

The Division contends that there is no statutory basis for the legal interpretation advanced by Taxpayer and that Taxpayer's position contravenes the legislative intent behind the statute. Accordingly, the Division contends that the "Asset Values Based on Financial Accounting Reports as Calculated by Municipal Finance" set forth in Exhibit 53 that were employed under R.I. Gen. Laws § 44-13-13 to determine the tax due are correct. If the Division's legal position prevails, Taxpayer's refund claims should be denied.

The various specific legal arguments put forth by the parties will be addressed below.

D. Tangible Personal Property Tax

i. History of Tax

In 1981, the General Assembly imposed a personal property tax on certain companies otherwise exempt by local taxation. P.L. 1981, ch. 200. Pursuant to R.I. Gen. Laws § 44-13-13, the tangible personal property tax on public service corporations is a local property tax administered, assessed, and collected by the Division and then distributed back to local municipalities. It is the definition of deprecation within this statute that is at issue in this matter.

ii. The Statute

As stated above, if a statute is clear and unambiguous, the words of the statute are to be given their plain and ordinary meanings. 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.

The Division argued that the statute - R.I. Gen. Laws § 44-13-13(1)(vii) - does not define depreciation so that the plain or commonly understood meaning is to be applied and that relying on the dictionary definition at the time of enactment, depreciation means "[a]n act or process of depreciating" with depreciating being defined as "to lower the price or estimated value of." See 1967 *Webster's Seventh New Collegiate Dictionary* (G&C Merriam Co. 1967). More recent definitions of depreciation include "1. decrease in value due to wear and tear, decay, decline in price, etc. 2. Such a decrease as allowed in computing the value of property for tax purposes." *Random House Webster's Unabridged Dictionary* (2nd Ed. 2001). Another definition is a "reduction in a value of an asset over time, due in particular to wear and tear."[4] Another source gives these four (4) definitions:[5]

1. A decrease or loss in value, as because of age, wear, or market conditions.
2. *Accounting* An allowance made for a loss in value of property.
3. Reduction in the purchasing value of money.
4. An instance of disparaging or belittlement.

The Division argued that whether the definition is then or now, the term connotes loss of value due to age, wear and tear, and exposure to elements. The Division argued that economic obsolescence or functional obsolescence as proposed by the Taxpayer were not included in the definition at the time in a recognized dictionary. The Division argued that the simple definition is the reasonable, plain, and ordinary meaning and that the Taxpayer's position seeks to expand the statutory language of R.I. Gen. Laws § 44-13-13.

The Taxpayer argued that its argument is based on the statute since the statute is a value-based tax that incorporates full market values. R.I. Gen. Laws § 44-13-13(1)(i), (ii) and (4) provides that the TPP tax is calculated by applying the average assessment ratio and the average

---

[4] https://en.oxforddictionaries.com/definition/depreciation.
[5] https://www.thefreedictionary.com/depreciation.

property tax rate to the value of tangible personal property. The "average assessment ratio" is based on the "full market value." R.I. Gen. Laws § 44-13-13(1)(i). The Taxpayer argued the use of the term, full market value, demonstrates that the TPP tax is a value-based tax incorporating full market value principles. The use of "full market value" explains that the value when calculating the average assessment ratio is to be based on the full market value rather than a percentage of the market value. However, the use of the term "full market value" when used as part of the definition of "average assessment ratio" does not mean that the term is also to modify the word depreciation when used later in the statute. To pick terms from one definition and apply them to other definitions without reason or context acts to undermine basic statutory construction of using the plain and ordinary meaning of a word.

The Taxpayer also argued that R.I. Gen. Laws § 44-13-13(i)(vii) refers to "net book value" rather than "net book cost," and since "net book cost" connotes a simple accounting function of recording the acquisition cost followed by financial accounting depreciation reductions as opposed to "net book value," the usage of "net book value" continues the focus on value rather than cost. Thus, it argued this difference implies a concept of the current value of property to the business and the market rather than financial accounting cost-focused entries and that supports its argument that the TPP tax is a value-based tax. The Taxpayer argued that the use of "value" rather than "cost" for net book value signified that depreciation was to be for a full market value.

R.I. Gen. Laws § 44-13-13(1)(vii) defines "net book value" to be "the original cost less accumulated depreciation: provided, that no tangible personal property shall be depreciated more than seventy-five (75%) of its original cost." The definition of net book value itself speaks of original cost and depreciation from the original cost. The fact that the statute used the term net

book value – defined as original cost minus depreciation – does not make the term depreciation itself based on full market value.

In this statute, depreciation is to be taken from the original cost and shall not be more than 75% of the original cost. The Taxpayer argued that the statute explicitly allows full market value depreciation, but there is nothing in the statute that supports that interpretation. Rather the term is to be given its simple definition of loss of value due to age and wear and tear as argued by the Division.

iii. <u>Other Taxing Statutes</u>

The Taxpayer argued that in addition to the use of the term, net book value, the fact that local property taxes are based on market value principles and are the basis for the average assessment ratio and average property tax demonstrate that the TPP tax is a value-based tax incorporating full market value principles.

The Division argued that the Taxpayer's reliance on the idea that all local property taxes are based on the full market value is misplaced. The Division argued that R.I. Gen. Laws § 44-5-12(a) (real property to be assessed as full and fair market value or percentage thereof with certain limitations on type of property) and R.I. Gen. Laws § 44-5-12.1 (depreciation table to be used for tangible personal property) demonstrates that the Taxpayer is wrong to argue that the assessment ratios and tax rates that are applied across Rhode Island under the local property tax are fully based on market value principles.

In 2006, the statute regarding the levy and assessment of local taxes was amended so that only real property was subject to taxation on the basis of fair market value (full and fair cash value). R.I. Gen. Laws § 44-5-12(a). Meanwhile, an amendment for tangible personal property makes tangible personal property assessed according to its original purchase price minus depreciation as

provided by a statutory table. R.I. Gen. Laws § 44-5-12.1. See administrative notice items C and D (2006 amendments).

Both parties see these amendments as supporting their positions. The Taxpayer argued that the statutory provisions delineating an asset classification table for the purposes of depreciation for tangible personal property show that such type of depreciation was not to be used in the 1981 statute; otherwise, there would be no need to provide such specificity. In contrast, the Division argued that the specificity was needed to show that only real property was subject to fair market value and the depreciation tables were consistent with the methodology of depreciation for the TPP.

The argument that local property taxes are based on full market value so that the term depreciation in the 1981 statute must also be based on a full market value is not persuasive since local property taxes are not all based on full market value and represent a different taxing statute.

iv. <u>In Pari Materia</u>

The Division argued that the doctrine of *in pari materia* supports it argument. The doctrine of *in pari materia* holds that two statutes on the same subject matter shall be considered together and harmonize with each other. The Court's method is to construe apparently inconsistent statutory provisions in such a matter as to avoid the inconsistency. *Such v. State*, 950 A.2d 1150 (R.I. 2008) (internal citations omitted). The Taxpayer argued that the statutes operate harmoniously when applied in accordance with their differing wording. In this matter, there are taxing provisions related to real property, tangible personal property, and tangible personal property of public service corporations. The fact that there are different methods used for depreciation for different types of taxes does not make the statutes inconsistent.

v. Other Cases

The Taxpayer asserted that since a full market approach is to be taken for depreciation that all factors impacting the value of its tangible personal property should be taken into consideration such as deterioration and obsolescence. The Taxpayer cited to cases using or discussing its method in an eminent domain matter, local property tax matter, and rate setting matters. None of these cases relate to actual statute at issue and indeed all pre-date the actual statute at issue. See *Providence Gas Company v. Burke*, 419 A.2d 263 (R.I. 1980) (*dicta* discussion regarding what is depreciation); *Narragansett Electric Co. v. Harsch*, 368 A.2d 1194 (R.I. 1977) (*dicta* discussion regarding what is depreciation and Internal Revenue Service rules); *Kargman v. Jacobs*, 325 A.2d 543 (R.I. 1974) (challenge to real property valuation by a city); and *Travellers Building Association*, 256 A.2d 6 (R.I. 1969) (valuation for eminent domain). The cases cited by the Taxpayer serve to demonstrate what is not in dispute: depreciation can be calculated differently. What is in dispute is what methodology is found in the pertinent statute. These cases do not support the Taxpayer's position.

vi. Proposed Amendments

The tax statute at issue dates back to 1981 and has not been significantly amended since then. An agency's acquiescence to a continued practice is entitled to great weight in determining legislative intent. It is a well-recognized principle that a longstanding, practical and plausible interpretation given a statute of doubtful meaning by those responsible for its implementation without any interference by the Legislature should be accepted as evidence that such a construction conforms to the legislative intent. Thus, if it was found that the statute was unclear, the Division's long standing interpretation is entitled to deference. *Trice v. City of Cranston*, 297 A.2d 649 (R.I. 1972).

In 2006 and 2007, legislation was proposed in both the House and Senate that would have amended R.I. Gen. Laws § 44-13-13(i)(vii) to provide that accumulated depreciation reductions shall take into account physical deterioration, functional obsolescence, and economic obsolescence. The explanation given for each proposed amendment was that it would clarify depreciation by providing that accumulated depreciation would take into account physical deterioration, functional obsolescence, and economic obsolescence. In 2006, both proposed bills were introduced in the relevant committee and no further action taken. In 2007, the relevant House and Senate committees recommended that the bill be held for further study. See administrative notice items E, F, G, H, I, J, K, and L.

The Taxpayer argued that these attempts to clarify the statute supports its reading of the statute as a value-based tax. The Division argued that these proposed amendments were never passed and are of no consequence and any credence given them supports its argument as there would be no reason to "clarify" the statute if the Division was not correct in its position.

It is presumed that the General Assembly knows how to enact and amend legislation. *Brennan v. Kirby*, 529 A.2d 633 (R.I. 1987). The legislature could have amended the statute in 2016 and 2017 to include the Taxpayer's proposed methodology but chose not to. The fact that there were proposed amendments to specifically include the Taxpayer's methodology does not support the Taxpayer's position, but rather undercuts the Taxpayer's position since the statute has been interpreted otherwise for years.

vii. <u>Legislative Intent</u>

The Division argued that the TPP tax is intended to be an integrated property tax so that it is valued objectively and uniformly throughout the state. Therefore, the Division argued that the word depreciation referenced in the statute means a straight-line loss in value due to deterioration

and age claimed over a service life that is in accord with statutory depreciation charts. The Division argued that the Taxpayer's position goes against the legislative intent for there to be one system to administer an objective and simple system of levying a property tax that is applicable to all assets throughout the state. The Division argued that the Taxpayer's position would undermine that one system by interjecting variables into a process that the Legislature sought to avoid because under the Taxpayer's methodology identical assets held by different telecommunication companies would be assigned different evaluations depending on the market conditions.

The Taxpayer disagreed that accumulated depreciation is limited to financial accounting depreciation. The Taxpayer argued that financial accounting depreciation is inapplicable under the TPP statute since the TPP tax is value based and the average assessment ratio is explicitly based on full market value. The Taxpayer argued that financial accounting depreciation is not value based but rather is a static system of cost recovery depreciation used for federal income and financial accounting purposes that steadily accounts for the initial purchase price over time in a more conservative way than value based depreciation and cannot be adjusted for obsolescence. The Taxpayer argued that once the value of tangible personal property is declared based on statewide factors, the Taxpayer will be taxed based on the average property tax rate and average assessment rate like all other similar taxpayers so that there is a uniform tax rate and everyone is taxed the same.

A statute is not to be construed in such a way to render it nugatory or produce unreasonable results. The Division is to centrally administer a taxing system for the towns and cities of Rhode Island. The issue is not just a uniform tax rate for all taxpayers, but also the uniform implementation of the statute so that the tax is determined the same way for all municipalities and taxpayers.

viii. Deference

In determining an ambiguous term in a taxing statute, the Rhode Island Supreme Court has followed constructional aids that say property is not to be taxed unless clearly the subject of a taxing statute and that doubts as to the scope and meaning of a tax law are to be resolved in favor of the taxpayer and taxing legislation will not be extended by implication or conjecture to cover subjects not expressly included within their plain meaning. *Newport Gas Light Co. v. Norberg*, 338 A.2d 536 (R.I. 1975). In *Newport*, there was an issue of whether the proceeds from an eminent domain seizure was to be considered part of "gross earnings" and therefore, taxed. In other words, was the condemnation award to be taxed. Here, there is no doubt that tangible personal property is to be taxed. There is no issue as to the scope of the tax. The Taxpayer also relied on *Weybosset Hill Invs., LLC v. Rossi*, 857 A.2d 231 (R.I. 2004). In that matter, the Court was looking at the scope of the tax appeal statute and whether that taxpayer had standing to pursue an appeal that had initially been filed by the prior owner of the property at issue. The Court found that the appeal statute was a remedial statute and should be liberally construed in favor of the taxpayer.

While the Division argued that the statutory meaning is unambiguous, it argued that if the term was deemed ambiguous, deference should be given to an agency's interpretation, even when it is not the only permissible interpretation. *Unistrut Corp. v. State DOL and Training*, 922 A.2d 93 (R.I. 2007).

The definition at issue does not relate to the scope of the tax and whether a taxpayer falls under the taxing statute so that it does not need to be construed in favor of a taxpayer. Rather the issue relates to how a value is to be calculated as part of taxing statute. If the statute was ambiguous, deference would be given to the Division's interpretation unless its interpretation was clearly erroneous or unauthorized.

ix. No Regulations

The Taxpayer argued that the Division never promulgated a regulation over the meaning of depreciation and has been able to since 1981. However, the lack of a regulation is irrelevant. A regulation is not needed to administer the statute.

E. Conclusion

Based on the foregoing, the term depreciation is to be given its plain and ordinary meaning as used by Division. However, any questions of interpreting the statute if it was found to be ambiguous would be resolved in favor of the Division due to the following: 1) long term plausible interpretation by the Division; 2) deference to agency interpretation when statute is ambiguous; and 3) legislative intent.

VI. FINDINGS OF FACT

1. On or about November 19, 2014, the Division issued a Notice of Hearing and Appointment of Hearing Officer.

2. The parties agreed that a decision could be made based on the agreed statement of facts and written briefs.

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 § 44-1-1 *et seq*. and R.I. Gen. Laws § 44-13-1 *et seq*.

2. Pursuant to R.I. Gen. Laws § R.I. Gen. Laws § 44-13-1 *et seq*., the Division's assessments for CYE 2009 to 2014 are upheld.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows:

Pursuant to R.I. Gen. Laws § 44-13-1 *et seq.*, the Division's assessments for CYE 2009 to 2014 are upheld and the Taxpayer's refund requests for those years are denied.

Date: October 19, 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: 11/23/19

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:

> **§ 44-13-32. Appeals.** Appeals from administrative orders or decisions made pursuant to any provisions of this chapter shall be to the sixth (6th) division district court pursuant to chapter 8 of title 8. Taxpayer's right to appeal under this section shall be expressly made conditional upon prepayment of all taxes, interest, and penalties unless Taxpayer moves for and is granted an exemption from the prepayment requirement pursuant to § 8-8-26. If the court, after appeal, holds that Taxpayer is entitled to a refund, Taxpayer shall also be paid interest on the amount at the rate provided in § 44-1-7.1.

CERTIFICATION

I hereby certify that on the 23rd day of Nov., 2018 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid to Taxpayer's attorneys' addresses on file with the Division of Taxation and by hand delivery to Bernard Lemos, Esquire, Department of Administration, One Capitol Hill, Providence, RI 02908.

Gail Belasco