STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2019-03

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

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| **IN THE MATTER OF:** | : | |
| | : | **Case No.: 19-T-023** |
| | : | **corporate franchise tax** |
| **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 ("Notice") dated March 26, 2019 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 May 3, 2019 at which time the Taxpayer did not appear. The Taxpayer was notified of the hearing.[1] As the Taxpayer was adequately notified of the hearing, the undersigned held the hearing. The Division was represented by counsel who rested on the record.

## 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's *Administrative Hearing Procedures*, and 220-RICR-50-10-2, Department of Administration's *Rules of Procedure for Administrative Hearings.*

[1] The Notice was sent by first class and certified mail to the most recent address for the Taxpayer on record with the Division. The address used was the address from the Taxpayer's Secretary of State's office records and was the address used for the Notices of Deficiency sent to the Taxpayer. The Taxpayer received the Notices of Deficiency and requested a hearing using the same address. See Division's Exhibits A (Notices of Deficiency); B (Taxpayer's request for hearing in 2015); and C (Secretary of State's record for Taxpayer). The Division indicated that the Notice was returned as undelivered by the United States Post Office to the Division. The Taxpayer's certificate of organization was revoked by the Rhode Island Secretary of State's office in 2017. Division's Exhibit C.

## III. ISSUE

Whether the Taxpayer owes the minimum corporate tax for the calendar years 2000, 2001, 2003, and 2004 pursuant to R.I. Gen. Laws § 44-11-2(e).

## IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. He testified that the minimum corporate tax was $250 annually in 2000 and then changed to $500 annually in 2004. He testified that Notices of Deficiency for the minimum corporate tax were issued to the Taxpayer were for the years 2000, 2001, 2003, and 2004. Division's Exhibits A and B.

## 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 (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 Statutes

R.I. Gen. Laws § 44-11-2 provides in part as follows:

> Imposition of tax. (a) Each corporation shall annually pay to the state a tax equal to nine percent (9%) of net income, as defined in § 44-11-11, qualified in § 44-11-12, and apportioned to this state as provided in §§ 44-11-13 – 44-11-15, for the taxable year. For tax years beginning on or after January 1, 2015, each corporation shall annually pay to the state a tax equal to seven percent (7.0%) of net income, as defined in § 44-11-13 – 44-11-15, for the taxable year.
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> (e) *Minimum tax.* The tax imposed upon any corporation under this section, including a small business corporation having an election in effect under subchapter S, 26 U.S.C. § 1361 et seq., shall not be less than four hundred fifty dollars ($450). For tax years beginning on or after January 1, 2017, the tax imposed shall not be less than four hundred dollars ($400).

In 2000, the minimum corporate tax provided for in R.I. Gen. Laws § 44-11-2(e) was $250 annually. See P.L. 1992 ch. 15, Art. 4 § 1. In 2004, the minimum corporate tax provided for in R.I. Gen. Laws § 44-11-2(e) was changed to $500 annually. See P.L. 2004 ch. 595, Art. 17 § 6; and P.L. 2004 ch. 595, Art. 29 § 1. The current statute was amended in 2016 to be $400 annually effective in 2017. P.L. 2016 ch. 142, Art 13 § 9. The penalty for late filing of the annual corporate tax is $100 as provided for in R.I. Gen. Laws § 7-16-67.[2]

## C. Whether the Taxpayer owes the Minimum Corporate Tax

The Taxpayer was organized in 2000. See Division's Exhibit C. It was undisputed that the Taxpayer had not filed any returns and had not paid the minimum corporate tax provided for in R.I. Gen. Laws § 44-11-2(e) for the calendar years 2000, 2001, 2003, and 2004.[3] The Division

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[2] R.I. Gen. Laws § 7-16-67(e) provides that the "annual charge is delinquent if not paid by the due date for the filing of the return and an addition of one hundred dollars ($100) to the charge is then due."

[3] Pursuant to R.I. Gen. Laws § 44-11-7.1(b)(i), the business corporation tax can be assessed at any time if no return was filed by a taxpayer.

issued Notices of Deficiency for the minimum tax owed for calendar years 2000, 2001, 2003, and 2004 including the $100 penalty for each year.[4]

Based on the foregoing, pursuant to R.I. Gen. Laws § 44-11-2(e) and R.I. Gen. Laws § 7-16-67(e), the Taxpayer owes the tax and penalty as assessed by the Division.

## VI. FINDINGS OF FACT

1. On or about March 26, 2019, the Division issued the Notice to the Taxpayer.

2. A hearing in this matter was held on May 3, 2019. The Taxpayer was adequately notified of the hearing but did not appear at hearing.

3. The Taxpayer is in default for not appearing at the hearing.

4. The Taxpayer did not file and did not pay any minimum corporate tax for the calendar years 2000, 2001, 2003, and 2004 as provided for in the relevant statutory provisions of R.I. Gen. Laws § 44-11-2(e).

## 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 § 44-11-1 *et seq*. and R.I. Gen. Laws § 44-1-1 *et seq*.

2. Pursuant to R.I. Gen. Laws § 44-11-2(e) and R.I. Gen. Laws § 7-16-67(e), the Taxpayer owes the tax and penalty as assessed by the Division.

## VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-11-2(e) and R.I. Gen. Laws § 7-16-67(e), the Taxpayer owes the tax and penalty as assessed by the Division. See Division's Exhibit A.

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[4] The tax owed is $1,650 which represents $250 a year for the years 2000, 2001, and 2003 and $500 a year for the year 2004 as well as a penalty of $400 ($100 for each year of the assessment).

Date: May 30, 2019

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

Dated: 5/31/19

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 R.I. Gen. Laws § 44-11-35 WHICH STATES AS FOLLOWS:**

**§ 44-11-35. 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. The taxpayer's right to appeal shall be 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. If the court, after appeal, holds that the taxpayer is entitled to a refund, the 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 3rd day of ~~May,~~ 2019 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail, return receipt requested to the Taxpayer's address on file with the Division and by hand delivery to Bernard Lemos, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903