STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2019-06

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-007**
	:	**sales**
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 January 23, 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. A hearing was held on May 7, 2019. The parties were represented by counsel. The parties timely submitted briefs by July 26, 2019.

II. JURISDICTION

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.*, R.I. Gen. Laws § 44-19-1 *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.*

III. ISSUE

The parties agreed the issue was as follows: whether the Taxpayer owes the sales and use tax assessed on the tangible personal property that the Taxpayer invoiced to ("Company").

IV. MATERIAL FACTS AND TESTIMONY

The parties entered in a partial stipulation of facts and exhibits. Some of the agreed to facts and exhibits are as follows:

1. The Taxpayer is a domestic corporation chartered under the laws of Rhode Island and qualified to do business in this state as of March 8, 1985. Its principal place of business is in Rhode Island. It engages in the business of repairing, leasing, and selling large construction equipment and accessories, primarily used for drilling, pile driving, and ground improvement. The Taxpayer has held a Rhode Island permit to make sales at retail since May of 1985. The Taxpayer is treated as an S-corporation for tax purposes. Exhibits Five (5) to Eight (8). (Taxpayer's 2012-2015 Federal and Rhode Island Corporate Income Tax Returns).

2. The Company is a domestic limited liability company organized under Rhode Island law and qualified to do business with this state on December 23, 2010. Its principal place of business is in Rhode Island. The Company is treated as a partnership for tax purposes. Exhibits 11-16 (Company's 2012-2015 Federal and Rhode Island Corporate Income Tax Returns).

3. Both the Taxpayer and the Company report income under the accrual method of accounting and on a calendar year basis.

4. The owners and the shareholders of the Taxpayer during tax year 2012 were all of Rhode Island. The owners and shareholders of the Taxpayer during tax years 2013 through 2014 were of Rhode Island. The owners and shareholders of the Taxpayer during tax year 2015 were all of Rhode Island. Exhibits Five (5) through Eight (8).

5. The owners and members of the Company during tax years 2012 through 2014 were of Rhode Island. The owners and members of the Company in calendar 2015 were of Rhode Island. Exhibits 11-13, and 15.

6. In June of 2015, a routine Sales and Use Tax field re-audit of the Taxpayer was commenced by the Division for the period of August 1, 2012 through July 31, 2015 ("Audit Period"). Exhibit 17 (Initial contact letter dated June 29, 2015).

7. The Taxpayer had a history of routinely filing and remitting sales tax to the Division during the Audit Period. Exhibit Four (4).

8. During the course of the audit, the Division's auditor reviewed the following records: general ledgers, corporate returns, sales and use tax returns, payroll documents, sales invoices, bank deposits, asset additions, and expenses.

9. Due to the volume of records, portions of the disputed audit were performed on the basis of test sampling using a test period of calendar year 2014. Exhibit 25. The Taxpayer declined to sign a test period agreement. Exhibit 29.

10. As a result of this exam, the Division's auditor, *inter alia*, determined there was an additional taxable measures subject to the sales and use tax. Exhibit 28.

11. On February 5, 2016, the auditor provided the Taxpayer with disagreed audit work papers. The Taxpayer disagreed with the portion of the assessment related to the Company. Exhibits 26 and 28.

12. As a result, on February 23, 2016, a Disagreed Deficiency Notice issued against the Taxpayer seeking additional tax and statutory interest. Exhibit 30 (Disagreed Deficiency Notice).

13. On March 24, 2016, the Taxpayer filed a request with the Division for administrative review with regard to the Disagreed Deficiency Notice.

14. The Taxpayer filed all of its Rhode Island and federal corporate tax returns for the calendar tax years during the Audit Period (2012-2015).

15. The Company filed its 2012, 2014, and 2015 Rhode Island and federal corporate tax returns for the calendar tax years during the Audit Period. Upon information and belief, Company has not yet filed its 2013 Rhode Island corporate return with the Tax Division.

16. During the Audit Period, the Taxpayer generally issued resale certificates for equipment that it acquired *extax* and anticipated it would hold for resale or lease to its customers.

17. The disputed deficiency arose out of calendar year 2014 sales invoices issued by the Taxpayer with "bill to" and "ship to" addresses of the Company ("2014 Invoices"). Exhibit 20.

18. The Company did not hold a Rhode Island sales tax permit and/or resale certificate during the Audit Period. The Company has no history of filing Rhode Island use tax returns with the Division or remitting Rhode Island use tax.

19. The Company did not issue a resale certificate to the Taxpayer during the Audit Period for the tangible personal property that was invoiced on the 2014 Invoices in Exhibit 20.

20. The Taxpayer did not charge Rhode Island sales or use tax to Company on the 2014 Invoices. Exhibit 20.

21. The total of the sales prices on the 2014 Invoices was included in the Taxpayer's gross receipts for tax year 2014 which are reflected on the Taxpayer's 2014 federal and Rhode Island corporate income tax returns. Exhibits 22 at 2, and Seven (7).

22. The Taxpayer did not claim depreciation for any of the tangible personal property listed on the 2014 Invoices that were invoiced to the Company.

23. The Company's 2014 and 2015 federal corporate tax returns, under each Form 4562 "Depreciation and Amortization Report," show amortization and depreciation for most of the equipment listed on the 2014 Invoices. The 2014 Invoices from Exhibit 20 that are included on Company's 2014 and 2015 federal corporate tax returns are PSI10940, PSI10946, PSI11004, PSI11190, PSI11362, PSI11396, PSI11522, PSI11889, PSI12434, PSI12868, and PSI12869.

24. During the Audit Period, for municipal tax purposes, the Company was assessed for the tangible personal property listed on the 2014 Invoices. The Taxpayer did not declare the equipment listed on the 2014 Invoices for municipal tax purposes.

("Auditor"), Principal Revenue Agent, testified on behalf of the Division. She testified that Exhibit 20 shows sales invoices for tangible property from the Taxpayer to the Company. She testified that the shipping name on the invoices were all for the Company except one that had a different name but used the Company's address. She testified that the sales were of tangible property, but no sales tax was collected. She testified the Taxpayer could not show a resale certificate or any reason not to pay sales tax, and the Taxpayer had purchased this equipment *extax* from vendors. She testified that reverse invoices that would show the equipment went back from the Company to the Taxpayer were requested during the audit, but none were produced. Exhibit 18. She testified that the Company would not be able to get a resale certificate because it does not have a permit to make sales at retail.

The Auditor testified that the amount of the Taxpayer's sale invoices was included in its gross receipts which meant the Taxpayer received income from the sale of said equipment. She testified that Exhibit 14 shows the Company's depreciation for 2014 that was included in its federal tax return and showed most of the equipment that the Company purchased from the Taxpayer. She testified that Exhibit 16 was the Company's depreciation for 2015 and it included the same equipment purchased from the Taxpayer that was also on the 2014 depreciation schedule. She

testified that for example, the first invoice in Exhibit 20 is for a casing rotator and it can be tracked to 2014 depreciation schedule as being placed in service on the date of sale and for the price paid.[1]

The Auditor testified that the Company was a partnership and depreciating assets lowers income reported on the partners' personal tax returns. She testified that the Taxpayer and Company apportioned 100% income to Rhode Island which signified all assets were located in Rhode Island. She testified that in her experience, it is not appropriate to depreciate assets that one does not own. She testified that schedule 4797 – sale of assets on the 2015 return - showed the Company sold five (5) items included in the Exhibit 20 Invoices and recorded losses for them. She testified that the equipment in question was also included on the Company's municipal returns. Exhibits 23 and 24. She testified in her experience, companies with no assets would not declare property on federal, state, or municipal returns.

The Auditor testified the bases for the tax assessment included the 2014 Invoices for taxable items that were billed and shipped to Rhode Island with no tax paid and were sold to the Company, a separate entity with no sales permit, and the Company depreciated some of the items and sold five (5) of the items.

On cross-examination, the Auditor testified there are no bills of sale for the Exhibit 20 assets. She testified that for the Taxpayer and Company any loss and receipts would flow to the individual members and she did not find any payments from the Company to municipalities.

, Chief Financial Officer and Treasurer,[2] testified on the Taxpayer's behalf. He testified he is responsible for the Taxpayer's internal finances and does not hold a position with the Company. He testified the Company has no physical presence at the Taxpayer's location and only has a couple manila folders there and uses that address for its place

[1] The parties agreed that the 2014 Invoices show up on the 2014 and 2015 depreciation schedule. *Supra.*
[2] The parties agreed that was Division's point of contact with the Taxpayer during the audit.

of business for the Rhode Island Secretary of State's office. He testified the Company does not have business activity with a third party and has not earned income, and he believes the equipment transfer was an attempt at asset protection. He testified that the monthly management fee from the Taxpayer to the Company was never paid so the Company did not receive income and the management fee was a receivable for the Company and a payable for Taxpayer.

testified the 2014 Invoices were billed to the Company and shipped to the Company at the dollar amount indicated, but that the Company never paid the Taxpayer those sums of money on the invoices. He testified that the Taxpayer still owed money to the vendors on that equipment in Exhibit 20 except for one, and the vendors either had a payment agreement or a lien on the equipment. He testified that the invoices were created for asset protection and possession of equipment was not transferred to Company. He testified that this equipment was never removed from the Taxpayer's accounting system which tracks equipment available to rent and the equipment stayed in the Taxpayer's system during the Audit Period.

testified that sale of equipment like those in Exhibit 20 are usually sold by a bill of sale or invoice which would indicate payment in full and that payment would be necessary for transfer and with third party sales, it would be paid for before delivery. He testified that the Taxpayer never issued a bill of sale for the Exhibit 20 equipment and did not receive payment when the invoices were created. He testified that all the equipment has now been sold by the Taxpayer and the Taxpayer maintained said equipment, and the Company had no employees and no way to maintain the equipment, and the Taxpayer continued to insure the equipment. He testified that there was no rental agreement between the Taxpayer and the Company for the Taxpayer to rent the equipment. He testified that the Taxpayer paid the municipal taxes for said equipment either directly or via deposits to the Company so that the Company could pay said tax.

He testified the Taxpayer paid the tax because the Company had no money. He testified that the Company never had a taxable sale to a third party and never received income from a third party. He testified that while Exhibit 15 (Company's 2015 federal and state tax returns) included gross receipts, he figured those were accounting entries that were never paid. He testified that the prices listed on the 2014 Invoices were the same prices that the Taxpayer paid vendors for the equipment and the Taxpayer usually does not sell equipment at cost. He testified that the creation of the Company was before his time but he looks at it as an attempt for asset protection and the decision to file that way with both entities floating through the same owners does not really make a difference. He testified for equipment rented or sold in Rhode Island, tax was paid to Rhode Island.

On cross-examination, testified that he signed as the Company's authorized representative with the Secretary of State's office in 2016 and 2018. He testified that he keeps the Company's manila folders at the Taxpayer's location and the Company has a checking account and he is an authorized writer of checks. He testified that asset protection would be to protect against a lawsuit but he did not think the Company was properly set up and would not stand up against a lawsuit. He testified that an outside accounting firm is responsible for the Company's accounting but that he, , produced the 2014 Invoices to that accounting firm. When asked why the 2014 Invoices were put on Company's amortization and depreciation schedule and not the Taxpayer's amortization and depreciation, if Taxpayer owned the equipment, testified "asset protection attempt." Transcript of May 7, 2019 hearing, page 94 ("Tr."). He testified that as a chief financial officer and treasurer, it is the generally accepted principle in accountancy that the owner of a piece of property is the one that depreciates it and that it is depreciated by the owner and that one would not file a misleading state, federal, or municipal tax return.

testified that the Taxpayer and Company have two (2) distinct federal tax identification numbers and file separate state and federal and municipal tax returns and are separate and distinct legal companies. He testified that any transfer of money, equipment, property from the Taxpayer to the Company is a transfer from one legal entity to another legal entity. He testified that the gross receipts for the Company on its tax returns came from the management fees from the Taxpayer and when the Taxpayer sold said equipment, the Company would invoice the equipment back to Taxpayer at the sale price (that the Taxpayer sold the equipment at). He testified that the gross receipts listed on the Company's tax returns include the difference between the two (2) invoices (invoice from Taxpayer to Company and vice versa less any depreciation). He testified that the Company invoices looked like the invoices in Exhibit 20 and were from the Company to the Taxpayer (and not a third party) for the sold equipment and contained the sales price of the equipment (what the equipment was sold for by the Taxpayer).[3]

The Taxpayer represented that the Company's invoices were how the gross receipts got onto Company's returns. Tr. at 109.

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." *Balmouth v. Dolce for Town of Portsmouth*, 794 A.3d 576, 580 (R.I. 2018) (citation

[3] Five (5) pieces of equipment were sold during the Audit Period. It was agreed that the other equipment was sold after the Audit Period. No invoices from the Company to the Taxpayer during the Audit Period for this equipment were produced by the Taxpayer. The Division represented it requested such items, but the Taxpayer disputed this.

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) (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.

R.I. Gen. Laws § 44-18-8 provides in part as follows:

> Retail sale or sale at retail defined. A "retail sale" or "sale at retail" means any sale, lease, or rentals of tangible personal property, prewritten computer software delivered electronically or by load and leave, vendor-hosted prewritten computer software, or services as defined in § 44-18-7.3 for any purpose other than resale, sublease, or subrent in the regular course of business. The sale of tangible personal property to be used for purposes of rental in the regular course of business is considered to be a sale for resale. ***

R.I. Gen. Laws § 44-18-7(1) provides as follows:

> "Sales" means and includes: (1) Any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means of tangible personal property for a consideration. "Transfer of possession", (sic) "lease", (sic) or "rental" includes transactions found by the tax administrator to be in lieu of a transfer of title, exchange, or barter.

R.I. Gen. Laws § 44-18-25 provides as follows:

> Presumption that sale is for storage, use, or consumption – Resale certificate. It is presumed that all gross receipts are subject to the sales tax, and that the use of all tangible personal property, or prewritten computer software delivered electronically or by load and leave, or vendor-hosted prewritten computer software, or services as defined in § 44-18-7.3, are subject to the use tax, and that all tangible personal property, or prewritten computer software delivered electronically or by load and leave, or

vendor-hosted prewritten computer software, or services as defined in § 44-18-7.3, sold or in processing or intended for delivery or delivered in this state is sold or delivered for storage, use, or other consumption in this state, until the contrary is established to the satisfaction of the tax administrator. The burden of proving the contrary is upon the person who makes the sale and the purchaser, unless the person who makes the sale takes from the purchaser a certificate to the effect that the purchase was for resale. The certificate shall contain any information and be in the form that the tax administrator may require.

C. Whether the Taxpayer Owes the Assessment

It was agreed that certain equipment – tangible personal property - was invoiced from the Taxpayer to the Company during the Audit Period and the Company did not issue a resale certificate to the Taxpayer for said equipment. The Taxpayer did not charge sales or use tax to the Company for said equipment. The total sales price for the equipment was included in the Taxpayer's 2014 gross receipts on its 2014 federal and Rhode Island corporate income tax returns. The Taxpayer did not claim any depreciation for said equipment. The Company depreciated said equipment on its 2014 and 2015 federal corporate returns and was assessed for municipal taxes on said equipment. The Taxpayer did not declare said equipment for municipal tax purposes.

i. Arguments

The Taxpayer argued that the equipment was not sold by the Taxpayer to the Company so was not taxable. The Taxpayer argued there was no sale because: 1) there was no transfer of title, exchange or barter; 2) no transfer of possession, rental or lease in lieu thereof; and 3) no consideration provided by either party. The Taxpayer argued that taxing the invoicing transaction subverts the doctrine of substance over form and that taxing the invoicing between the companies was inconsistent with other jurisdictions that exempt transactions among related parties.

The Division argued that there was a transfer of title, exchange, or barter of said equipment from the Taxpayer to the Company and there is evidence – invoices, depreciation, gross receipts, no resale certificate, apportionment, municipal tax, form 4797 (sales back), consideration – to

support such a finding. The Division also argued that those same factors support a finding that there was a transfer of possession, lease, or rental in lieu of transfer of title, exchange, or barter.

ii. The Statute

There is a statutory presumption that all gross receipts are subject to the sales tax. It is a taxpayer's burden to overcome that presumption unless the seller takes from the purchaser a resale certification showing the purchase was for resale so not subject to tax. No such resale certificate was provided to the Taxpayer by the Company. Thus, the Taxpayer has the burden to prove that the Taxpayer's gross receipts – from the 2014 Invoices - were not subject to sales tax.

R.I. Gen. Laws § 44-18-7(1) provides two (2) parts for the definition of sales: the first and second sentence. See *Sportfisherman Charter v. Norberg*, 340 A.2d 143 (R.I. 1975). The first sentence defines sales as "[a]ny transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means of tangible personal property for a consideration." Both parties relied on *Black's Law Dictionary* to define terms within this definition.[4] Transfer is defined as "[t]o convey or remove from one place or one person to another; to pass or hand over from one to another, esp. to change over the possession or control of" and "[t]o sell or give." Barter is defined as "[t]he exchange of one commodity for another without the use of money." Title is defined as "[t]he union of all elements of ownership, possession, and custody constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself." Exchange is defined as "[t]he act of transferring interests, each in consideration of the other."[5]

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[4] 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.

[5] See *Black's Law Dictionary*, 9th Ed. (2009) for these definitions.

The Rhode Island Supreme Court held in *Mossberg-Hubbard v. Norberg*, 432 A.2d 1176, 1178 (R.I. 1981) as follows:

> In construing this section, we have held that a mere transfer of possession, which does not have the economic effect of a transfer of title, will not be treated as a sale. See Sportfisherman Charter, Inc. v. Norberg, 115 R.I. 68, 73, 340 A.2d 143, 146 (1975). However, when "a transaction [is] set up to be ostensibly a mere transfer of possession, lease or rental, while in actual economic fact it was in lieu of a transfer of title, exchange, or barter, the tax administrator might in his discretion treat [the transaction] as a sale." Id. at 73-74, 340 A.2d at 146. In determining what constitutes a transaction in lieu of a transfer of title, the tax administrator is afforded broad discretion; his determination need only be reasonable. Id. at 74, 340 A.2d at 147.

Rice Mach. v. Norberg, 391 A.2d 66 (R.I. 1978) used the Uniform Commercial Code ("UCC"), R.I. Gen. Laws § 6A-1-101 *et seq.*, as an aid in interpreting the Division's delivery charges' regulation[6] which was intended to identify when a "sale" in a delivery situation was complete for the purposes of the State sales tax act. The Court found no reason not to use the UCC as a frame a reference for determining when under said regulation such a sale was complete. However, later in the same decision, the Court found that the Division's regulations on transfer of title (as specific to deliveries of the purchased item) did not necessarily comport with the UCC but since the administrative agency had interpreted the parameters of particular statutory terms in a field over which it has been given authority, it was not bound by the meaning ascribed to similar concepts in the Code.[7] Three (3) years later, the Court rejected another taxpayer's use of the UCC

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[6] The regulation under discussion was promulgated pursuant to R.I. Gen. Laws 44-18-12(E) which was by deleted by a 2006 statutory amended. P.L. 2006, ch. 246 Art. 30 § 9 (The Court refers to the provision as subsection E; the P.L. refers to it as subsection roman numeral V.).

[7] *Rice* at 74, footnote 12 states as follows:

> We would note that the rules relating to the transfer of title under the regulations do not necessarily comport with § 6A-2-401 of the Uniform Commercial Code on the same subject. Earlier we referred to the Code when a matter of contract interpretation was in issue because the regulations directed us to substantive contract law. However, when an administrative agency has interpreted the parameters of particular statutory terms in a field over which it has been given authority, it is not bound by the meaning ascribed to similar concepts in the Code. *See* § 6A-2-401, Comment 2. As long as the agency's regulation is in line with the statute, as we have found it to be in this case, the agency is free to delineate specific areas of the statute's application.

to argue as to whether the transfer of goods out of state was a transfer of title or of possession. *Mossberg-Hubbard v. Norberg*, 432 A.2d 1176 (R.I. 1981) citing to *Rice*.

The Taxpayer cited to a UCC provision regarding when title passes when the delivery of goods is made without moving the goods and cited to a UCC provision regarding what is necessary to enforce a contract. The Taxpayer's reliance on the UCC in terms of the definition of a sale within the context of the tax statute is misplaced. Not only has the Division been given authority over the field of sales tax, there are numerous cases on these statutory provisions.

iii. <u>Any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means of tangible personal property for a consideration.</u>

The Taxpayer dismissed the invoices as evidence of sales.[8] The Taxpayer argued that the invoices were prepared for the Taxpayer's convenience for the purpose of accountability in an attempt at asset protection.[9] The Taxpayer relied on testimony that the invoices did not memorialize what actually occurred: specifically no transfer or title or ownership existed with the creation of the 2014 Invoices. In other words, the Taxpayer's argument is while it was trying to protect assets, it did not really sell the equipment to the Company.

Each invoice stated that it is a sales invoice and contains an invoice number, date, and contact information for the Taxpayer. All but one of the invoices indicated that it was to be shipped to the Company's address. Exhibit 20. The Taxpayer argued that the Division cannot rely on the invoices to argue that the equipment was sold. The Taxpayer argued that the Division had no evidence showing that the Taxpayer delivered the equipment to the Company or that the equipment

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[8] As an aside, it should be noted that testified that sale of equipment like those in Exhibit 20 are usually sold by a bill of sale or invoice which would indicate payment in full and that payment would be necessary for transfer and with third party sales, it would be paid for before delivery.

[9] The Taxpayer's attorney represented that a lawsuit had been filed in Texas. There apparently was no testimony about the actual filing of a lawsuit. However, testified that the invoices were created for asset protection and that the original intent was for protection in case of a lawsuit. Tr. at 65, 88.

was removed to a place specifically designated for the Company. However, the Company's address is the same as the Taxpayer. There is no requirement that a sale must be made from one location to a different location. Since the Company and the Taxpayer have the same physical location, there is no reason to think that no delivery was made to the Company.

However, along with the evidence of the invoices, there is other evidence regarding the transfer of the equipment. The Taxpayer did not depreciate any of the equipment on its tax returns. Instead, the amount of the total sales prices on the invoices was included in the Taxpayer's gross receipts for tax year 2014 which was reflected in the 2014 Taxpayer's federal and state corporate income tax returns. Meanwhile, the Company on its 2014 and 2015 federal tax returns depreciated the equipment referenced in 11 of the 13 invoices in Exhibit 20. Both the Taxpayer's witness, , and the Auditor testified that owners of assets are the ones to depreciate their property.

In this case, the Company depreciated the assets and the Taxpayer recorded as part of its gross receipts the amount charged the Company on the invoices. At the same time, the Company paid municipal taxes on the equipment. If one entity records as part of its gross receipts the amount of money that another entity was invoiced and that other entity then depreciates those items on its tax returns and declares them for municipal tax purposes, it follows that the items were sold. The seller – the Taxpayer - did not depreciate the items because the buyer – the Company - owned the items to depreciate. The seller – the Taxpayer - increased its gross receipts via the sale and the buyer – the Company - owned the items so was able to depreciate those items.[10]

[10] The Division pointed to IRS Publication 946 (How to Depreciate Property) that states to depreciate property, it must be property that "you own." The publication gives example of ownership including that one can depreciate leased property only if one retains the incidents of ownership in the property. The Taxpayer argued that ownership is not always required to depreciate property and relied on *Frank Lyon Co. v. U.S.*, 435 U.S. 561 (1978). That case involved three (3) parties in a sale-and-leaseback as the usual simple two (2) party arrangement was legally unavailable. The Court found that it was clear from the facts that none of the parties in the "sale-and-leaseback" was the owner of the property in any simple sense. *Id.* at 581. Therefore, the Court found that the taxpayer that committed the capital to the building was entitled to claim depreciation. The type of facts found in *Lyon* are not found in this matter.

Now the Taxpayer dismissed this evidence on the basis that this set-up was an example of circular cashflow that lacked economic substance as no money other than the Taxpayer's ever changed hands. However, the statute does not require that money change hands. It requires that there be a transfer of title, possession, barter, or exchange or otherwise in any manner by any means for a consideration.

The Taxpayer argued that no consideration was paid. In discussing consideration, *Andoscia v. Town of N. Smithfield*, 159 A.3d 79, 82 (R.I. 2017) found as follows:

> "It is a well-established principle that a valid contract requires 'competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.'" Voccola v. Forte, 139 A.3d 404, 414 (R.I. 2016) (quoting DeLuca v. City of Cranston, 22 A.3d 382, 384 (R.I. 2011) (mem.)). "[C]onsideration 'consists of some legal right acquired by the promisor in consideration of his promise, or forborne by the promisee in consideration of such promise.'" DeLuca, 22 A.3d at 384 (quoting DeAngelis v. DeAngelis, 923 A.2d 1274, 1279 (R.I. 2007)). "When evaluating the sufficiency of contractual consideration, we employ 'the bargained-for exchange test.'" Id. (quoting DeAngelis, 923 A.2d at 1279). That test "provides that something is bargained for, * * * if it is sought by the promisor [**7] in exchange for his [or her] promise and is given by the promisee in exchange for that promise." Id. (quoting DeAngelis, 923 A.2d at 1279).

Consideration does not need to be money but rather is a bargained for exchange or legal right acquired or forborne by a promisee in consideration of such promise. The Taxpayer included its invoice amounts in its gross receipts in its 2014 federal and State corporate income tax returns. The Company depreciated the same equipment on its 2014 and 2015 partnership returns and passed along income deductions to its partners allowing the partners to lower their reported income. Tr. at 31. The Taxpayer also paid the Company a monthly management fee (to manage the equipment) which were receivables and gross receipts for the Company according to testimony. Exhibit 22 and Tr. at 101. Increasing gross receipts and depreciating assets are legal benefits that would not exist without the movement of the equipment.

The Taxpayer argued there was no market transaction at arms-length between the entities so that there could be no consideration. The Taxpayer argued that since the 2014 Invoices were at cost to the Taxpayer rather than with a mark-up which it would usually do for a sale to a third-party customer,[11] it shows the invoices were issued for convenience rather than in exchange for payment and there was no actual sale. While an entity may usually mark-up an item when it is sold, the fact that an entity does not is not evidence that the parties did not make an arms-length transaction. The statute requires "a consideration." An entity may choose to contract items at different prices for different reasons (e.g. take a loss to get a sale in hopes of getting future profitable sales) so that the fact an invoice is at one price rather than another does not show there was no arms-length transaction and certainly does not show there was not "a consideration" for the purposes of the tax statute.

Nonetheless, the Taxpayer argued that the Company had no business purpose and was just a manila folder so it could not have purchased the equipment. The Taxpayer relied on other jurisdictions that have expressly provided for exemption from taxation on transactions between entities under common ownership. However, exemption from taxation is not determined by the laws of other states but rather by the constitution and laws of Rhode Island. *Delta Airlines, Inc. v. Neary*, 785 A.2d 1123 (R.I. 2001). The Taxpayer argued that while Rhode Island has no law providing for such exemptions, there is no Rhode Island legislative history showing an intent to impose a tax on entities under common ownership. However, the issue is whether the Taxpayer should have collected sales tax on the equipment invoiced to the Company. The Division is not taking the position whether entities under common ownership should be taxed but rather argued that under the tax law, a taxable sale occurred between these two (2) separate legal entities.

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[11] testified that the Taxpayer would not typically sell its equipment at cost. Tr. at 77-78.

The Taxpayer dismissed the relevance of the Division's argument about the companies having separate legal existences by arguing that the Taxpayer was in charge of the office space, finances, equipment, and employees for the Company.[12] The Taxpayer argued that the reverse invoicing[13] was done for the same reason that the initial invoices were created (convenience for accounting, asset protection). The Taxpayer argued that the Taxpayer's invoices and the Company's reverse invoices had no tax benefits or economic significance. The Taxpayer argued that since both entities report under the accrual method, the invoices represented accounting entries and not actual financial transactions.

The statutory definition of sales is not concerned with whether a buyer and seller have common ownership.[14] It is not concerned with how the entities report income. However, the Taxpayer's argument that there was no economic significance is not borne about by the facts. As a result of the "invoicing" of the equipment, the Taxpayer recorded higher income in the amount of those sales price and the Company depreciated that equipment on its tax returns. The Taxpayer argued that it did not matter because all owners were the same (though they were not all the same), but that is not a test nor a statutory provision. Maybe the owners wanted to lower the Company's income (as a result of the depreciation) reported on the partners' personal tax return for some reason or maybe not, but the fact remains that based on the invoices, gross receipts were recorded and depreciation taken. And after that transaction, the Company declared the equipment to the municipality for tax purposes and paid the taxes on the equipment (even if paid via the Taxpayer).

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[12] There was testimony about the equipment remaining in the Taxpayer's computer system but no documentary evidence of this "control." The Taxpayer argued that the Company had no office space at its place of business in that it was just a couple of manila folders at the Taxpayer's location. However, the Company filed with the Secretary of State's office as a limited liability company with the purpose of foundation equipment rental with the same location as the Taxpayer. Exhibit Nine (9). The control of the Company is not relevant to the fact that there are two (2) separate and distinct legal companies as agreed to by the parties and testified to by

[13] There was testimony about reverse invoicing but no such invoices were put in evidence. See footnote three (3).

[14] It should be noted that based on the agreed facts that the entities did not have common ownership throughout the Audit Period (only in 2013 and 2014).

Indeed, the evidence was that the equipment was then transferred back from the Company to Taxpayer for a different amount (sales price).[15] Both entities also apportioned all their income and assets to Rhode Island. Exhibits Seven (7), Eight (8), 14, and 15. This indicates that the sales were made in state.

The transfer of the equipment back from the Company to the Taxpayer was included in the Company's federal income tax return. The five (5) pieces of equipment transferred back to the Taxpayer in 2015 were included in form 4797 showing the date acquired (matching the dates of the 2014 Invoices for those pieces of equipment) and the date sold and the amount of depreciation for each item. Said equipment was also listed as sold in the Company's form 4562, depreciation and amortization report. Exhibits 15 and 16 (the Company's 2015 federal and state tax returns and the Company's 2015 form 4562 respectively).[16] Clearly, the movement of the equipment had economic significance because the entities included gross receipts and deprecation of the tangible personal property and indicated the equipment was sold on their tax returns.

The Taxpayer argued that both entities were pass-through entities so their tax consequences flowed through the same individuals under common ownership so that there was no tax benefit that had any economic significance in reporting activity under either entity. Besides the fact that the entities did not have common ownership throughout the Audit Period (only in 2013 and 2014),[17] the issue is the statutory definition of sale and whether the transactions between these two (2) separate and legal entities constituted a sale.

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[15] For example, if the Company bought a piece of equipment at cost for $50,000 from the Taxpayer and if Taxpayer sold it for $100,000, then the Company provided an invoice to the Taxpayer for that sales price and the Company's gross receipts on its tax return would be for $50,000 less any depreciation. Tr. at 107.

[16] In its reply brief, the Taxpayer noted that it did not produce the version of the 2014 form 1065 (Company's partnership income) which is Exhibit 13 and that it did not produce the 2015 form 1065 for the Company which is Exhibit 15. While the Taxpayer referred to those two (2) exhibits as the Division's exhibits, the parties filed a partial stipulation of facts and exhibits that included all exhibits including Exhibits 13 and 15.

[17] The Company claimed depreciation for said equipment in 2014 and 2015 and included that equipment which was sold in 2015 as part of its gross receipts.

The Taxpayer's arguments ignored both companies' federal and state returns. The Taxpayer's and Company's federal and state returns for 2012, 2013, 2014, and 2015 are all signed "under the penalties of perjury."[18] Exhibits 11, 12, 13, and 15 (2012, 2013, 2014, 2014 federal and state returns). Presumably, the information regarding gross receipts and depreciation for each company is not false. Indeed, a taxpayer must accept the tax consequences of its choices and what actually occurred and cannot rely on alternative scenarios that did not occur. *Commissioner of Internal Revenue v. National Alfalfa Dehydrating & Milling Co.*, 417 U.S. 134 (1974). The Taxpayer made a choice to try to protect its assets and while it may believe that such a choice failed, the transactions that it entered in were sales under the tax statute.

The Taxpayer argued that the Division was looking to form rather than the substance of the transactions and the inquiry should not be about title but the actual command of the property. *Frank Lyon.*[19] The Taxpayer argued that its transactions did not have economic substance so were not sales. However, there were many factors showing the transactions were sales so that conclusion does not rely on "form." As discussed above, these facts demonstrate the transfer of possession, barter, or exchange in any manner (such as invoicing of equipment, depreciation, gross receipts, sale back, local taxes) of the equipment (tangible person property) for a consideration (such as gross receipts, depreciation).

These transactions are judged by what occurred in context of the statutory requirements. There is a statutory presumption that all gross receipts are subject to sales tax. The Taxpayer did not prove the contrary based on the evidence at hearing. What occurred included that the Taxpayer provided invoices for the equipment to the Company and included those invoice prices as part of its gross receipts. The Company did not provide a resale certificate and depreciated the equipment

[18] All the returns provided for signature of an authorized officer signing under the penalties of perjury.
[19] The Division agreed that the substance over form doctrine was applicable to this matter.

in 2014 and 2014. The Company invoiced the equipment back to the Taxpayer in 2015. The Company paid local taxes on the equipment. The Taxpayer did not depreciate the income.

Thus, the evidence showed that under the statutory definition of "sales," these transactions were a transfer of possession, barter, or exchange in any manner by any means of tangible personal property for a consideration. Based on foregoing, tax is owed by the Taxpayer on sale of the tangible personal property (said equipment) recorded on the 2014 Invoices.

iv. <u>"Transfer of possession", (sic) "lease", (sic) or "rental" includes transactions found by the tax administrator to be in lieu of a transfer of title, exchange, or barter.</u>

While the facts show that this was a transfer of possession or exchange or otherwise by any manner of tangible personal property so falls under the first sentence definition of sale, the Division argued that in the alternative, the "transfer of possession," could be found to be a transaction by the Tax Administrator in lieu of a transfer of title, exchange, or barter. The Division relied on all the facts discussed above to support the finding of a transfer of possession. *Sportfisherman* found that the Tax Administrator may treat a transaction as in lieu of a transfer of title, exchange, or barter in his or her discretion. Such discretion is broad but must be reasonable. *Mossberg-Hubbard v. Norberg*; and *Sportfisherman*.

In *Sportfisherman*, the taxpayer was chartering its boat for periodic fishing trips to different customers so it was not reasonable to treat those transactions in lieu of a transfer of title. The Taxpayer cited to a Division administrative decision, 1985 WL 48731 (R.I.Div.Tax.), where it was found sales tax did not apply to a sale leaseback of retailer's furniture and fixtures. In the administrative decision, the taxpayer took advantage of a change in the Federal tax code to enter in a leaseback provision for the specific purpose of taking advantage of the change in said code and the administrative decision found that lease was for tax purposes and not an instrument through

which tangible property was sold and leased back. The facts here are very different than a charter fishing boat. Nor was this a matter where the property was sold and leased back.

Based on the evidence of the invoices, the depreciation, the gross receipts, the state and federal income tax returns, the payment of local taxes by the Company, it would be reasonable and within the Tax Administrator's discretion to treat these transactions as a transfer of possession (sale) if it was found that they did not fall under the statutory definition of a sale (which they do as discussed above). Based on foregoing, tax is owed by the Taxpayer on sale of tangible personal property (said equipment) recorded on the invoices at issue.

v. Equitable Argument

The Taxpayer argued that the Division's position results in an unfair windfall due to double taxation on transactions that had no economic benefit or tax benefit to either entity. The evidence shows that the transactions were sales and should have been taxed. Nonetheless, equitable principles are not applicable to an administrative procedure. See *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004) (Supreme Court vacated a Superior Court order that had vacated an agency sanction on so-called "inherent equitable powers").

E. Interest

The Division properly imposed interest on the sales tax assessment pursuant to R.I. Gen. Laws § 44-19-11 which provides as follows:

> Deficiency determinations – Interest. – If the tax administrator is not satisfied with the return or returns or the amount of tax paid to the tax administrator by any person, the administrator may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one or for more than one month. The amount of the determination, exclusive of penalties, bears interest at the annual rate provided by § 44-1-7 from the fifteenth day (15th) after the close of the month for which the amount, or any portion of it, should have been paid until the date of payment.

F. Penalties

The Division did not impose a penalty as the Taxpayer was a regular filer, albeit late at times.[20] The relevant statute regarding the imposition of penalties is R.I. Gen. Laws § 44-19-12 which states as follows:

> § 44-19-12 Pecuniary penalties for deficiencies. – If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of the provisions of this chapter and chapter 18 of this title, a penalty of ten percent (10%) of the amount of the determination is added to it. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade the provisions of this chapter or chapter 18 of this title, a penalty of fifty percent (50%) of the amount of the determination is added to it.

The statute clearly provides that if a taxpayer does not pay a tax because of negligence or does not pay, a 10% penalty is imposed. If a taxpayer purposely avoids paying a tax through fraud (e.g. false records) or has an actual intent to evade tax (e.g. knowing that a tax is owed and taking steps to avoid paying), then the penalty is 50%. In other words, if a taxpayer negligently (e.g. doesn't pay tax because records are poorly maintained) or just does not pays a tax, a 10% penalty is added. That penalty is not discretionary because the statute provides that the penalty "is" to be added rather than "may be added."

A taxpayer who intentionally does not pay tax is distinguishable from a taxpayer who intentionally evades (avoids) the payment of tax. The latter incurs a 50% penalty and the former a 10% penalty. The higher penalty reflects the fact that a taxpayer has purposely taken steps to avoid paying a tax that the taxpayer knows is owed. In contrast, the 10% penalty is for those taxpayers who do not pay tax either by negligence (poor records) or those taxpayers who do not believe that they owe the tax. In those instances, the taxpayer does not take specific steps to

[20] See agreed to facts. Exhibit 28 at 3 (disagreed audit report).

intentionally evade a known tax liability or commit fraud in avoidance of tax but either negligently does not pay a tax or just does not pay a tax.

This interpretation of the two (2) different standards for the imposition of a penalty for the non-payment of tax is consistent with the Rhode Island Supreme Court's ruling in *Brier Mfg. Co. v. Norberg*, 377 A.2d 345 (R.I. 1977). *Brier* found that R.I. Gen. Laws § 44-19-12 does not provide any authority to waive a penalty even when the taxpayer has a good-faith, though erroneous, belief that certain property is not subject to tax. *Brier* held as follows:

> The statute identifies no exception to its provisions in circumstances where the taxpayer has a good-faith, albeit erroneous, belief that certain property is not subject to tax liability. The operative language of s (sic) 44-19-12 is clear and unambiguous and imposes a penalty upon an intentional but nonfraudulent avoidance of the tax. Western Elec. v. Weed, supra. [185 Colo. 340, 524 P.2d 1369 (1974)] The taxpayer's remedy in the event that he disputes a portion of his liability is to pay the tax and then seek a refund pursuant to the appropriate statute. *Id.*, at 350.

The 10% penalty is for intentional but non-fraudulent disregard of the law requiring the payment of a tax.[21] This interpretation is consistent with R.I. Gen. Laws § 44-1-10[22] which grants the Tax Administrator the authority to settle and compromise tax, excise, fee, penalties, or interest. The penalty is to be assessed and is only waived as part of a compromise between a taxpayer and the Tax Administrator.

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[21] Thus the 10% penalty is for the intent to do an act: the nonpayment of tax. There is no requirement that the taxpayer purposely avoided a tax that the taxpayer knew he/she/it owed. The distinction between the types of intent is analogous to the definition of "willfully" in the context of another Rhode Island licensing statute, the Rhode Island Securities Act, R.I. Gen. Laws § 7-11-101(25), which defines "willfully" as "intentionally committing the act which constitutes a violation: there being no requirement that the actor also be aware that he or she is violating any provision of this chapter or any rule or order under this chapter." Thus, the act just needs to be completed rather than the intent to violate the statute. Similarly, in this situation the intent to purposely avoid the tax and violate the law results in a 50% penalty. The intent to just not pay a tax – even based on good faith belief – results in a 10% penalty. See definition of "willful" in *Black's Law Dictionary* (9th Ed. 2009).

[22] R.I. Gen. Laws § 44-1-10 states as follows:

> Compromise or abatement of uncollectible or excessive taxes. –Whenever the tax administrator determines that any tax, excise, fee, penalty, interest, or other charge payable to the tax administrator is un-collectible, illegal, or excessive, in whole or in part, the tax administrator may, with the approval of the director of revenue, compromise, abate, or cancel the charge, as the circumstances may warrant.

Therefore, the statutory scheme is that a notice of deficiency is issued with interest calculated on the deficiency amount exclusive of penalties. See R.I. Gen. Laws § 44-19-11. A penalty is added to the deficiency based on whether the taxpayer has negligently or intentionally not paid the tax *or* whether the taxpayer committed fraud or intentionally evaded the tax. A penalty "is" to be assessed on the basis of either scenario.

Once a taxpayer receives a notice of deficiency and chooses to contest the deficiency, the taxpayer may enter into a settlement with the Tax Administrator and the Tax Administrator may settle and compromise the tax, penalties, or interest prior to an administrative hearing. However, based on R.I. Gen. Laws § 44-19-12 and *Brier*, the undersigned does not have the authority to waive a penalty.[23] [24]

In this matter, the Division issued the Disagreed Deficiency Notice without any assessed penalty and the Taxpayer requested a hearing. R.I. Gen. Laws § 44-19-17 states as follows:

> Hearing by administrator on application. – Any person aggrieved by any assessment, deficiency, or otherwise, shall notify the tax administrator, in writing, within thirty (30) days from the date of mailing by the tax administrator of the notice of the assessment and request a hearing relative to the assessment; and the tax administrator shall, as soon as practicable, fix a time and place for a hearing and shall, after the hearing, determine the correct amount of the tax, interest, and penalties. When a jeopardy assessment or determination is made, the hearing is not had unless the jeopardy assessment with penalties and interest has been paid.

The undersigned has the authority to determine the correct amount of tax, interest, and penalties in the course of an administrative hearing on the appeal of a tax assessment. Thus, the

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[23] The undersigned is aware of an administrative decision where when finding a taxpayer liable for the assessed tax, the penalty was abated because a taxpayer merely misconstrued the tax law. 2007 WL 3353049 (R.I.Div.Tax.). That finding is contrary to R.I. Gen. Laws § 44-19-12 and *Brier*. A subsequent administrative decision, 2008 WL 5582995 (R.I.Div.Tax.), discussed the mandates of *Brier* and why a penalty cannot be abated at hearing.

[24] If a taxpayer goes to hearing and the notice of deficiency is upheld, the taxpayer may choose to appeal the administrative decision to District Court pursuant to R.I. Gen. Laws § 44-19-18. At that time, the Tax Administrator and a taxpayer could choose to settle the matter rather than continue the litigation and in the course of settlement the penalty and/or interest may be waived.

undersigned has the authority to increase or decrease an assessment, if appropriate. *Sportfisherman.* This statutory provision does not allow the undersigned to waive the penalty. See *Brier*. It does allow the amount of a tax assessment to be adjusted which would result in adjusting the interest and penalty.

At hearing, the evidence was the Division waived the penalty because the Taxpayer regularly filed its taxes. That cannot be a basis for the waiver of a penalty. There is no evidence that the Taxpayer and the Division have entered into any type of settlement pursuant to R.I. Gen. Laws § 44-1-10.[25] Therefore, based on the foregoing, pursuant to R.I. Gen. Laws § 44-19-12, a 10% penalty is to be added to the sales tax owed.

VI. FINDINGS OF FACT

1. On or about January 23, 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 May 7, 2019. The parties were represented by counsel who timely submitted briefs by July 26, 2019.

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 owes the tax on the sale of the tangible personal property and the assessed interest. In addition, a 10% penalty shall be assessed on the tax owed.

[25] Presumably the Tax Administrator may consider various reasons to waive a penalty under R.I. Gen. Laws § 44-1-10. However, a penalty cannot be waived at hearing.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows: Pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-18-18, and R.I. Gen. Laws § 44-19-11, the Taxpayer owes the tax on the sale of the tangible personal property (said equipment) and the assessed interest. See Exhibit 30. In addition, pursuant to R.I. Gen. Laws § 44-19-12, a 10% penalty is to be added to the tax owed.

Date: September 19, 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

Date: 9/24/19

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:

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 25th day of September, 2019 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 Matthew Cate, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02908.

Gail Belasco