STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2020-02

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.: 19-T-108**
	:	**Sales Tax**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Pre-hearing Conference and Appointment of Hearing Officer ("Notice") dated November 8, 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 scheduled for February 20, 2020 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing,[1] a hearing was held before the undersigned on February 20, 2020. Pursuant to Section 2.7(G)(3) of the 280-RICR-20-00-2 *Administrative Hearing Procedures* ("Hearing Regulation"), a default judgment may be entered against the party not appearing at hearing.[2] The Division was represented by counsel who rested on the record.

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[1] The Notice scheduled a prehearing conference for December 9, 2019 at which time the Taxpayer did not appear. See Department's Exhibit One (1) (Notice). A letter was sent December 10, 2019 to the Taxpayer scheduling the hearing for January 16, 2020. The December 10, 2019 letter was delivered to the Taxpayer. See Division's Exhibit Two (2) (December 10, 2019 letter with United States tracking sheet showing certified mail was delivered). The Taxpayer contacted the Division to reschedule the hearing. A letter dated December 22, 2019 was sent to Taxpayer scheduling the hearing for February 20, 2020. The December 22, 2019 letter was delivered to the Taxpayer. See Division's Exhibit Three (3) (December 22, 2019 letter with United States tracking sheet showing delivery).

[2] The Notice, the December 10, 2019, and December 22, 2019 letter all informed the Taxpayer that failure to appear at hearing could lead to a default being entered. The Hearing Regulation provides that a defaulted

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, the Hearing Regulation, and 220-RICR-50-10-2, Department of Administration's *Rules of Procedure for Administrative Hearings.*

III. ISSUE

Whether the Taxpayer's request for a refund from its sales and use taxes in 2017 should be denied.

IV. MATERIAL FACTS AND TESTIMONY

Based on the Notice, the Taxpayer filed a sales and use tax refund claim with the Division claiming an overpayment of its 2017 sales and use taxes. On February 27, 2019, March 2, 2019, and March 8, 2019, the Division requested information to substantiate the request for a refund. No response was received. On May 8, 2019, the Division denied the refund request. See Department's Exhibit Four (4) (May 8, 2019 denial letter of the 2017 sales and tax refund request). By letter dated June 4, 2019, the Taxpayer requested a hearing.

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. Whether the Refund Should be Granted

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 § 44-1-11 provide for the refund of any overpayments of taxes.

The Taxpayer requested a refund of sales and use taxes for 2017. It was undisputed at hearing that the Division properly denied the refund request. See Division's Exhibit Four (4) (denial letter).

VI. FINDINGS OF FACT

1. On or about November 8, 2019, the Division issued a Notice of Pre-Hearing Conference and Appointment of Hearing Officer. Subsequent letters dated December 10 and December 22, 2019 scheduling the hearing were forwarded to and received by the Taxpayer.

2. A hearing in this matter was held on February 20, 2020. The Taxpayer received notice of hearing but did not appear at hearing.

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

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 § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, and R.I. Gen. Laws § 44-1-1 *et seq.*

2. There are no statutory grounds to allow the refund request.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows: The Taxpayer is not entitled to the claimed refund and the Division properly denied Taxpayer's claim for a refund.

Date: March 16, 2020

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: 3/19/2020

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 § 44-30-90 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 19th day of March, 2020 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 Michael Brady, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

Gail Bilasco