STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2020-05

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-117**
	:	**prepaid wireless E911 charge,**
	:	**sales, meals and beverage,**
Taxpayer.	:	**withholding**
	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Prehearing Conference and Appointment of Hearing Officer ("Notice") dated December 12, 2019 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing. An amended Notice ("Second Notice") was issued on January 7, 2020 to the Taxpayer. 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 and Second Notice scheduled a prehearing conference for January 15, 2020 at which time the Taxpayer did not appear. Division's Exhibits One (1) (Notice) and Two (2) (Second Notice). A letter was sent January 17, 2020 to the Taxpayer and to the Taxpayer's Enrolled Agent scheduling the hearing for February 20, 2020. Each letter was delivered. Division's Exhibits Three (3) (January 17, 2020 letter to Taxpayer's Enrolled Agent with United States Post Office tracking sheet showing certified mail was delivered) and Four (4) (January 17, 2020 letter to Taxpayer with United States Post Office tracking sheet showing certified mail was delivered).

[2] The Notice, the Second Notice, and January 17, 2020 letters all informed the Taxpayer that failure to appear at hearing could lead to a default being entered. The Hearing Regulation provides that a defaulted party be given notice of the default by mail and said party may request reinstatement of the matter pursuant to a motion for reconsideration as set forth in the Hearing Regulation.

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 § 44-30-1 *et seq.*, R.I. Gen. Laws § 39-21.2-1 *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 owes the taxes assessed by the Division for sales and use, meals and beverage, prepaid wireless, and withholding.

IV. MATERIAL FACTS

The following was uncontested at hearing: Based on the Notice and Second Notice, the Division conducted an audit of the Taxpayer for the period July 1, 2015 to July 31, 2018 and issued Notices of Deficiency to the Taxpayer for sales and use tax owed, prepaid wireless E911 charges owed, meals and beverage tax owed, and withholding tax owed. Division's Exhibit Five (5) (summary of Taxpayer's account of taxes owed)

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).

B. Whether the Taxes are Owed

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. Pursuant to R.I. Gen. Laws § 39-21.2-1 *et seq.*, a prepaid wireless E-911 charge is levied at 2.5% on retail transactions with the seller being responsible to remit said charges to the Division. R.I. Gen. Laws § 44-18-18.1 imposes a 1% meals and beverage tax. Pursuant to R.I. Gen. Laws § 44-30-1 *et seq.*, an employer is required to withhold certain taxes from employees and remit those to the Division.

At hearing, it was undisputed that the Taxpayer owed sales and use tax, meals and beverage tax, prepaid wireless charges, and withholding tax as assessed after an audit.

C. Interest and Penalties

R.I. Gen. Laws § 44-1-7, R.I. Gen. Laws § 44-19-11, and R.I. Gen. Laws § 44-19-12 provide for interest and penalties to be imposed for sales and use tax and meals and beverage tax deficiencies. R.I. Gen. Laws § 44-1-7, R.I. Gen. Laws § 44-30-84, and R.I. Gen. Laws § 44-30-85 allow for the imposition of interest and penalties for the nonpayment of withholding tax. The statutory imposition of penalties for sales and use tax and meals and beverage tax deficiencies is mandatory. *Brier Mfg. Co. v. Norberg*, 377 A.2d 345 (R.I. 1977). The Notice and Second Notice indicated that statutory interest and penalties were imposed on the sales and use tax, meals and beverage tax, and withholding tax assessments.

R.I. Gen. Laws § 44-1-7 provides that interest shall be imposed on tax deficiencies so that interest was imposed on the unpaid prepaid wireless E911 charges. The Notice and Second Notice also indicated a statutory negligence penalty was imposed on the unpaid prepaid wireless charges. The Notice and Second Notice referenced various applicable statutes to this matter including R.I Gen. Laws § 39-21.2-3, R.I Gen. Laws § 39-21.2-4, and R.I Gen. Laws § 39-21.2-5 of the Prepaid Wireless Charge Act. R.I. Gen. Laws § 39-21.2-5 provides in part as follows:

> Administration of E-911 charge. (a) *Time and manner of payment.* Prepaid wireless E-911 charges collected by sellers shall be remitted to the division at the times and in the manner provided by the streamlined sales and use tax as described in § 44-18.1-34. The division shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to the streamlined sales and use tax.
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> (c) *Audit and appeal procedures.* The audit and appeal procedures applicable to sales and use tax under § 44-19-18 of the general laws shall apply to prepaid wireless E-911 charges.
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R.I. Gen. Laws § 39-21.2-5(c) references R.I. Gen. Laws 44-19-18 which is the statutory provision for an appeal of an administrative order against a taxpayer. R.I. Gen. Laws § 39-21.2-5(a) references R.I. Gen. Laws § 44-18.1-34 which provides for a method of remittance of taxes collected. R.I Gen. Laws § 39-21.2-2 provides the definitions for the statute. R.I Gen. Laws § 39-21.2-4 explains the surcharge to be collected by the seller and remitted to the Division. It is unclear to the undersigned the basis for the claimed statutory authority for such a penalty to be assessed on the prepaid wireless charges.[3]

[3] Any sales tax owed for sales of prepaid wireless purchases would fall under R.I. Gen. Laws § 44-18-1 *et seq.* and would be subject to the provisions of the sales tax statute. The prepaid charge is authorized by a separate statute and it does not contain a reference to the sales statute in terms of penalties. The interest provision applicable to the prepaid wireless charges is R.I. Gen. Laws § 44-1-7 which is applicable to all tax deficiencies. It may be there is statutory authority to impose a penalty, but since the grounds were not clear in the Notice or Second Notice or at hearing, the undersigned declines to uphold the imposition of such a penalty.

VI. FINDINGS OF FACT

1. The Division issued the Notice on December 12, 2019 and the Second Notice on January 7, 2020 to the Taxpayer scheduling a prehearing conference. Letters dated January 17, 2020 were sent to the Taxpayer and its Enrolled Agent scheduling the hearing.

2. A hearing in this matter was held on February 20, 2020. The Taxpayer received notice of hearing (by January 17, 2020 letter) 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.*, R.I. Gen. Laws § 44-30-1 *et seq.*, R.I. Gen. Laws § 39-21.2-1 *et seq.*, and R.I. Gen. Laws § 44-1-1 *et seq.*

2. The Taxpayer owes the sales and use, meals and beverage, and withholding tax as assessed and the assessed interest and penalties. The Taxpayer owes the assessed prepaid wireless charges and the assessed interest but not the assessed penalty.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows: Pursuant to R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, R.I. Gen. Laws § 44-30-1 *et seq.*, R.I. Gen. Laws § 39-21.2-1 *et seq.*, R.I. Gen. Laws § 44-1-7, and R.I. Gen. Laws § 44-1-1 *et seq.*, the Taxpayer owes the sales and use, meals and beverage, and withholding tax as assessed and the assessed interest and penalty for the sales and use, meals and beverage, and withholding tax, and the Taxpayer owes the assessed prepaid wireless charges and assessed interest, but not the assessed penalty. See Division's Exhibit Five (5).

/s/ *Catherine R. Warren*

Date: April 20, 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: 4/27/2020

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.

R.I. Gen. Laws § 44-20-48 Appeal to district court.

Any person aggrieved by any decision of the tax administrator under the provisions of this chapter may appeal the decision within thirty (30) days thereafter to the sixth (6th) division of the district court. The appellant shall at the time of taking an appeal file with the court a bond of recognizance to the state, with surety to prosecute the appeal to effect and to comply with the orders and decrees of the court in the premises. These appeals are preferred cases, to be heard, unless cause appears to the contrary, in priority to other cases. The court may grant relief as may be equitable. If the court determines that the

appeal was taken without probable cause, the court may tax double or triple costs, as the case demands; and, upon all those appeals, which may be denied, costs may be taxed against the appellant at the discretion of the court. In no case shall costs be taxed against the state, its officers, or agents. A party aggrieved by a final order of the court may seek review of the order in the supreme court by writ of certiorari in accordance with the procedures contained in § 42-35-16.

R.I. Gen. Laws § 44-30-90. Review of tax administrator's decision.

(a) *General.* Any taxpayer aggrieved by the decision of the tax administrator or his or her designated hearing officer as to his or her Rhode Island personal income tax may within thirty (30) days after notice of the decision is sent to the taxpayer by certified or registered mail, directed to his or her last known address, petition the sixth division of the district court pursuant to chapter 8 of title 8 setting forth the reasons why the decision is alleged to be erroneous and praying relief therefrom. Upon the filing of any complaint, the clerk of the court shall issue a citation, substantially in the form provided in § 44-5-26 to summon the tax administrator to answer the complaint, and the court shall proceed to hear the complaint and to determine the correct amount of the liability as in any other action for money, but the burden of proof shall be as specified in § 8-8-28.

(b) *Judicial review sole remedy of taxpayer.* The review of a decision of the tax administrator provided by this section shall be the exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for Rhode Island personal income tax.

(c) *Date of finality of tax administrator's decision.* A decision of the tax administrator shall become final upon the expiration of the time allowed for petitioning the district court if no timely petition is filed, or upon the final expiration of the time for further judicial review of the case.

R.I. Gen. Laws § 39-21.2-5 provides in part as follows:

Administration of E-911 charge.

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(c) *Audit and appeal procedures.* The audit and appeal procedures applicable to sales and use tax under § 44-19-18 of the general laws shall apply to prepaid wireless E-911 charges.

CERTIFICATION

I hereby certify that on the 27th day of April, 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 electronic delivery to Michael Brady, Esquire, Department of Revenue, One Capitol Hill, Providence, R.I. 02903.

Gail Belasco