STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2013-05

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.: 13-T-0158**
	:	**sales and use**
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 August 8, 2013 and issued to ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing filed with the Division. A hearing was held on October 28, 2013. The Division was represented by counsel. The Taxpayer's husband appeared on her behalf. The parties 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.*, the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings.*

III. ISSUE

Whether the Taxpayer owes use tax on a car purchased by the Taxpayer.

IV. MATERIAL FACTS AND TESTIMONY

Senior Revenue Agent, testified on behalf of the Division. He testified that car dealers are required to file a T-336 form for all motor vehicles sold. He testified that the Taxpayer bought a 2006 Cadillac ("Car") from ("Seller"). He testified that the T-336 form filed with the Division stated that the sale of the Car was a trade-in for a 2005 Mercedes Benz ("Previous Car") and listed the make, year, and VIN number; though, the form did not show a trade-in allowance but stated a taxable sales price of $ but also stated that no tax was owed. He testified that the form was signed by the Seller and purchaser (Taxpayer). He testified that the date of purchase was listed as March 2, 2012. See Department's Exhibit B (Division's copy of T-336).

testified that he checked the Car's sale on the Department of Motor Vehicle ("DMV") computer system and found the Car had been registered on March 9, 2012 and that the Previous Car with the same license plate as the Car had been previously registered to the Taxpayer. He testified that the T-336 form has four (4) copies and all copies should be the same. He testified that he retrieved the paperwork for the Car that had been turned into the DMV and scanned into the DMV computer. See Division's Exhibit C (pp. 1 to 8). He testified that the T-336 form submitted to the DMV listed a date of purchase as February 26, 2012 and a trade-in allowance of $ and lists the trade-in as the Previous Car by make, year, and VIN number. See Division's Exhibit C. He testified that the Previous Car was actually a 2004 model though it was listed as a 2005 on the T-336 form. He testified that the Previous Car's history in Carfax was that it was deemed a total loss vehicle and given a salvage title on October 31, 2011. See

Division's Exhibit D (Carfax of Previous Car showing salvage title). He testified that the Taxpayer did not have title to the Previous Car to trade it in on March 2, 2012.

testified that because of discrepancies, he requested information about the Previous Car and Car from the Seller. He testified the Seller replied by letter stating that the Previous Car had not been traded in for the Car as the Previous Car was a total loss. Said letter directed the Division to the bill of sale which listed no trade and the original purchase and sales agreement dated October 12, 2011 as well as the letter from the insurance company stating the insurance proceeds for the Previous Car were $[redacted]. See Division's Exhibit F (Seller's reply letter), H (Bill of Sale from dealer), and J (insurance proceeds letter). He testified that the Bill of Sale for the Car lists no trade-in. See Division's Exhibit H.

testified that tax is due on the Car's full purchase price because there was no trade-in and the law changed on October 1, 2011 so that credit for insurance proceeds is no longer allowed. He testified that in order to obtain credit for insurance proceeds, the Car had to be purchased by October 1, 2011 before the law changed. He testified that notice of this change was sent to all dealers and the Taxpayer's husband owns the Seller (dealer) so he would have received said notice. He testified that the documentation showed the purchase of the Car was in February or March of 2012. He testified that pursuant to law, interest was imposed from date of purchase. He testified that pursuant to statute, since tax was not paid when the Car was registered, a 10% neglect penalty was assessed. He testified that the Taxpayer initially claimed that no tax was owed because it was a trade-in and then the Taxpayer changed her argument to insurance proceeds and relied on forms different from the forms submitted to the DMV. He testified that a 50%

fraud penalty was assessed because the Division found that the Taxpayer was attempting to evade tax because the bill of sale given to DMV and prepared by the Seller listed the sale as a trade-in of the Previous Car and the DMV would have had in its records as registered to the Taxpayer so would not have assessed the tax. He testified that the Bill of Sale given to the DMV has a different invoice number (10042) than the original T-336 form given to DMV (10040) and the mileage on the two (2) forms is different. He testified that the Taxpayer's husband owns the Seller (the dealer).

The Taxpayer's husband testified on the Taxpayer's behalf. He testified that the insurance proceeds were from prior to October 1, 2011 and that the Previous Car's Purchase and Sales Agreement is dated September 29, 2011 and the purchase was made on September 30, 2011 when the insurance binder became effective. See Taxpayer's Exhibit Two (2) (binder). He testified that the Car needed to be inspected before it was registered so it was not able to be registered until March 5, 2012 after it was inspected but it was really purchased prior to October 1, 2011. He testified that the Car was sold to the Seller (dealer) on September 20, 2011 (page 6 of 8 in the DMV scan in Division's Exhibit C). He testified that the Taxpayer purchased the Car from the Seller (dealer) on September 29, 2011. See Taxpayer's Exhibit Four (4) (dealer form dated September 29, 2011 with price of car, signature of Taxpayer, and indicating a deposit was taken on the full purchase price). On cross-examination, he testified that title passed on September 30, 2011 and not February, 2012 (transfer of ownership, p. 3 of 8 of DMV scan in Division's Exhibit C). He testified that title might have been in assigned in February, 2012 but title passed on September 30, 2011 when the lienholder was listed for the Car.

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, 1049 (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, 457 (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) (internal 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). 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 and Regulations

Pursuant to R.I. Gen. Laws § 44-18-20, an use tax is imposed on motor vehicles. Pursuant to R.I. Gen. Laws § 44-18-30, there are certain exemptions to this tax. Prior to October 1, 2011, R.I. Gen. Laws § 44-30-30(23) exempted insurance proceeds but P.L. 2011 ch. 151, art. 19, § 27 amended said provision effective October 1, 2011. Thus, the old provision read as follows:

§ 44-18-30 Gross receipts exempt from sales and use taxes. – There are exempted from the taxes imposed by this chapter the following gross receipts:

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(23) *Trade-in value of motor vehicles.* From the sale and from the storage, use, or other consumption in this state of so much of the purchase price paid for a new or used automobile as is allocated for a trade-in allowance on the automobile of the buyer given in trade to the seller or of the proceeds applicable only to the motor vehicle as are received from an insurance claim as a result of a stolen or damaged motor vehicle, or of the proceeds applicable only to the automobile as are received from the manufacturer of automobiles for the repurchase of the automobile whether the repurchase was voluntary or not towards the purchase of a new or used automobile by the buyer; provided, that the proceeds from an insurance claim or repurchase is in lieu of the benefit prescribed in § 44-18-21 for the total loss or destruction of the automobile; and provided, further, that the tax has not been reimbursed as part of the insurance claim or repurchase. For the purpose of this subdivision, the word "automobile" means a private passenger automobile not used for hire and does not refer to any other type of motor vehicle.

The new R.I. Gen. Laws § 44-18-30(23) states as follows:

(23) *Trade-in value of motor vehicles.* From the sale and from the storage, use, or other consumption in this state of so much of the purchase price paid for a new or used automobile as is allocated for a trade-in allowance on the automobile of the buyer given in trade to the seller, or of the proceeds applicable only to the automobile as are received from the manufacturer of automobiles for the repurchase of the automobile whether the repurchase was voluntary or not towards the purchase of a new or used automobile by the buyer. For the purpose of this subdivision, the word "automobile" means a private passenger automobile not used for hire and does not refer to any other type of motor vehicle.

R.I. Gen. Laws § 44-19-33 states as follows:

Rules and regulations – Forms. – The tax administrator may prescribe rules and regulations, not inconsistent with law, to carry into effect the provisions of chapters 18 and 19 of this title, which rules and regulations, when reasonably designed to carry out the intent and purpose of those chapters, are prima facie evidence of their proper interpretation. Those rules and regulations may from time to time be amended, suspended, or revoked, in whole or in part, by the tax administrator. The tax administrator may prescribe, and may furnish, any forms necessary or proper for the administration of those chapters.

The Division's Sales and Use Tax Regulation SU 03-69 ("SU 03-769") states in part as follows:

> Motor Vehicles - Payment of Tax as Prerequisite to Registration
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> Each person before obtaining an original or transfer registration for any article or commodity in this state, which article or commodity is required to be licensed or registered in the state, shall furnish evidence satisfactory to the Tax Administrator that any tax due has been paid. The sales or use tax on any motor vehicle and/or recreational vehicle requiring registration by the Registry of Motor Vehicles shall not be added by the retailer to the sale price or charge but shall be paid directly by the purchaser to the Tax Administrator.
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> B. Sales made by Rhode Island Motor Vehicle Dealers
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> 1. Each dealer at the time a motor vehicle is sold prepares the details of the sales transaction on such form as the Tax Administrator may prescribe. The presently prescribed multiple four-part form is entitled "Dealer's Statement of Sale-Motor Vehicle, Purchaser's Tax Return (T-336-1)." The Tax Administrator requires the signatures of the purchaser and the dealer or his or her authorized agent.
>
> 2. The first two copies are given to the purchaser by the dealer for presentation with motor vehicle registration forms at the Registry of Motor Vehicles.
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> ***

C. Arguments

The Taxpayer's position was that the bill of sale was wrong when it stated trade-in and the bill of sale should have said insurance proceeds.[1] The Taxpayer disputed the Division's contention of when the Car was purchased. The Taxpayer's position was that the insurance proceeds were received prior to September 30, 2011, that the Car was purchased on September 29, 2011 when the sale was written up, and the Car was put on the insurance on September 30, 2011 since without insurance, the bank will not close the

[1] At approximately 52 minutes of hearing recording.

loan. Thus, the Taxpayer argued the car was purchased prior to October 1, 2011 since the funds were in-house (proceeds received, insurance binder received, Car financed).[2]

The Division's position was that the purchase of the Car was either in February or March, 2012 according to the Seller's (dealer) own documents and documents received by DMV and the Division. Thus, based on either date, the purchase was after October 1, 2011 so that the insurance proceeds exemption was no longer available.

D. Chronology of Events

The Previous Car was involved in an accident on August 28, 2011. The Previous Car was declared a total loss on September 14, 2011. See Division's Exhibit J.

An insurance binder was issued for the effective dates of September 30, 2011 to October 5, 2011 for the Car. See Taxpayer's Exhibit Two (2).

The Taxpayer put a deposit on the Car on September 29, 2011. See Taxpayer's Exhibit Four (4).

A Loan and Security Agreement was issued to the Taxpayer by her bank for the Car and was dated October 5, 2011. See Taxpayer's Exhibit One (1).

A Certificate of Title was issued by Rhode Island in the name of the Taxpayer for the Car on May 5, 2012. Said title indicated that the date of the lien on the Car was October 5, 2011. See Division's Exhibit I.

The Dealer's Statement of Sale (T-336) given to the DMV has "trade-in" written in. See Division's Exhibit C. The T-336 sent to the Division by the Seller (dealer) does not have trade-in written in. See Division's Exhibit B. The testimony was that the DMV clerk would have written in "trade-in" based on the documents given at registration.

[2] At approximately 58 minutes of hearing recording.

The purchaser's (Taxpayer) and Seller's signatures on both copies of the T-336 form are dated March 2, 2012. Both reference invoice number 10040. See Division's Exhibit B and C.

The T-336 form given the Division lists the date of purchase as March 2, 2012. See Division's Exhibit B.

The T-336 form given the DMV lists a date of purchase as February 26, 2012. See Division's Exhibit C.

The Bill of Sale for the Car contained in DMV's records indicates the date of sale as March 2, 2012 and invoice number 10042. It indicates a trade-in value equal to the purchase price. See Division's Exhibit C (p. 1 of 8 of DMV scan).

The Seller's Bill of Sale for the Car indicates the date of sale as March 2, 2102 and February 26, 2012 (signature of Taxpayer as buyer dated February 26, 2012; printed name of Taxpayer as buyer dated March 2, 2012). This Bill of Sale indicated no "trade in" by a slash mark in the trade-in "box" on the form. See Division's Exhibit H.

The transfer of ownership or reassignment by licensing dealer for the Car was dated by the Seller (dealer) and Taxpayer on February 2, 2012. See Division's Exhibit C (p. 3 of 8 of DMV scan).

The Application for Registration and Title Certificate for the Car was signed by the Taxpayer on March 8, 2012. Said document indicates insurance was effective for the Car on November 5, 2011. See Division's Exhibit C (p. 8 of 8 of DMV scan).

The Seller's letter to the Division indicated that there was an initial purchase and sales agreement dated for the Car dated October 12, 2011. See Division's Exhibit F.

E. The Taxpayer Owes Tax on the Car

Originally, the Taxpayer presented documents to DMV that no taxes were owed on the Car because there had been a trade-in of the Previous Car for the Car. Both copies of the T-336 form list a trade-in of the Previous Car by its make, year, and VIN number. The bill of sale given to the DMV stated that there was a trade-in. See Division's Exhibit C. After the Division questioned the trade-in claim, the Taxpayer acknowledged that there was no trade-in as the Previous Car was salvaged and tried to claim a tax exemption because of insurance proceeds.

The documents demonstrate that there are many dates on which the sale of this Car could be dated from. The Taxpayer tries to establish that the date is prior to October 1, 2011 based on the issuance of the insurance binder or when a deposit was given for the sale of the Car. However, an insurance binder does not demonstrate that the Car had actually been sold and a deposit given does not show that there had been an actual sale since the sale might end up not being consummated even with a deposit being given.

SU 03-69 requires the payment of taxes as a condition to registering a vehicle. The regulation requires that every time a motor vehicle is sold the dealer must prepare the details of the sales transaction on the T-336 form and the signatures of the purchaser and the dealer are also required on this form. The first two (2) copies are given to the purchaser by the dealer for presentation for motor vehicle registration at the DMV. In this matter, this form's signatures – both the copy given to DMV and to Taxation - were dated March 2, 2012. However, one copy of the T-336 lists the date of purchase as March 2, 2012 and the other lists it as February 26, 2012. Meanwhile the conflicting bills of sale either date the sale on February 26, 2012 or March 2, 2012.

The Taxpayer tried to use personal documents to show the sale was prior to October 1, 2011. However, the Division cannot rely on insurance binders or deposits given to find the purchase was prior to October 1, 2011. As discussed above, neither document is evidence of a sale. But regardless of whether those documents show what the Taxpayer purports them to show, motor vehicle dealers are required to prepare the details of a sales transaction on the T-336 form. The dealers are the entities making the sales of motor vehicles and the ones with the knowledge to put the required sales transaction information on the required form. It is that form that is filed with the DMV at which time payment of tax is made. In this matter, the details of this transaction as prepared by the Seller indicate the sale was either February 26 or March 2, 2012. Even if the bills of sale were used, their dates are in 2012. (Additionally, the Seller's own records indicate the original purchase and sales agreement was after October 1, 2011.)

Thus, the insurance proceeds exemption does not apply to this sale and the Taxpayer owes the assessed tax.

F. Interest and Penalties

The Division properly imposed interest on the use tax assessment pursuant to R.I. Gen. Laws § 44-19-11.[3] The Division also properly imposed a 10% penalty on the sales

[3] R.I. Gen. Laws § 44-19-11 states 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.

tax deficiency pursuant to R.I. Gen. Laws § 44-19-12.[4] The statute clearly provides that if a taxpayer does not pay a tax because of negligence or does not pay tax, a 10% penalty is imposed. That penalty is not discretionary because the statute provides that the penalty "is" to be added rather than "may be added." See *Brier Mfg. Co. v. Norberg*, 377 A.2d 345 (R.I. 1977).

In addition, the Division assessed a fraud or intent to evade penalty. The Previous Car was declared a total loss. The Taxpayer used a bill of sale claiming a trade-in value for a motor vehicle that had been totaled. The Taxpayer herself did not appear and testify regarding this claim. Her husband testified it was an error. However, based on the documentary evidence, such a claim lacks credibility. The T-336 form filled out by the Seller and signed by the Taxpayer lists the Previous Car by VIN number, year, and make but it was known that this car had been salvaged and insurance proceeds received. The bill of sale given to DMV stated that the sale was a trade-in. There was no dispute that the Previous Car was involved in an accident on August 28, 2011 and was declared a total loss on September 14, 2011. The Seller provided the Division with a different bill of sale with no trade-in allowance claimed and different dates and different invoice numbers. Presumably two bills of sales were prepared because of the changing nature of the tax exemption claim, but whatever the reason for two bills of sale, the evidence is that the Taxpayer knew the Previous Car was totaled. Without the change in the law, the Taxpayer would have been exempt from tax on the insurance proceeds. Since the law

[4] R.I. Gen. Laws § 44-19-12 states as follows:

> 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.

changed, the only conclusion that can be drawn from the evidence (e.g. Taxpayer signed for a trade-in for the salvaged Previous Car by make, model, VIN number) is that the Taxpayer initially tried to evade the tax by claiming that the Previous Car was traded in when that was known to be untrue. When the Division determined that the Previous Car had not been traded in, the Taxpayer then tried to argue that the Car sale was prior to October 1, 2011. However, the Taxpayer tried to evade the tax on the Car by claiming a trade-in not allowed by law and which the Taxpayer knew was untrue so a 50% penalty must be assessed.

VI. FINDINGS OF FACT

1. On or about August 8, 2013, the Division issued a Notice of Hearing and Appointment of Hearing Officer to the Taxpayer in response to the Taxpayer's request for hearing filed with the Division. A hearing in this matter was held on October 28, 2013 and the parties rested on the record.

2. The Car was purchased on either February 26 or March 2, 2012 (T-336 forms). The Bills of Sale for the Car put the sale in 2012.

3. The Taxpayer's insurance binder and deposit do not show a sale.

4. 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 § 44-18-1 *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*

2. Pursuant to R.I. Gen. Laws § 44-18-30(23), the Taxpayer was not entitled to a tax exemption for the insurance proceeds.

3. Pursuant to R.I. Gen. Laws § 44-18-30(23), R.I. Gen. Laws § 44-19-11, and R.I. Gen. Laws § 44-19-12, the Taxpayer owes the use tax, interest, 10% penalty, and the 50% intent to evade penalty as assessed in the Notice of Deficiency. See Division's Exhibit L.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-18-30(23), R.I. Gen. Laws § 44-19-11, and R.I. Gen. Laws § 44-19-12, the Taxpayer owes the use tax, interest, 10% penalty, and the 50% intent to evade penalty as assessed in the Notice of Deficiency.

Date: December 13, 2013

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: December 16, 2013

David Sullivan
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 16th day of December, 2013 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and return receipt requested to the Taxpayer's address on file with the Division of Taxation and by hand delivery to Meaghan Kelly, Esquire, Department of Administration, One Capitol Hill, Providence, RI 02908.

Gail Belasco