

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-27

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

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IN THE MATTER OF:

Case No.: 14-T-0040  
Motor Fuel Tax

Taxpayer.  
\_\_\_\_\_

**DECISION**

**I. INTRODUCTION**

The above-entitled matter came before the undersigned as the result of a Notice of Hearing and Appointment of Hearing Officer dated May 23, 2014 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division"). A hearing was held on October 10, 2014. The Taxpayer did not appear. As the Taxpayer had been adequately notified of the hearing,<sup>1</sup> the hearing went forward. The Division was represented by counsel and rested on the record.

**II. JURISDICTION**

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 31-36-1 *et seq.*, *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-0*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*.

<sup>1</sup> The notice of hearing was sent by first class and certified mail to the Taxpayer to the Taxpayer's address on record with the Division. The parties corresponded and the date for hearing was forwarded to all parties.

### **III. ISSUE**

Whether the Taxpayer was eligible for a refund of motor fuel tax pursuant to R.I. Gen. Laws §31-36-13.

### **IV. MATERIAL FACTS AND TESTIMONY**

Revenue Agent, testified on behalf of the Division. He testified that he is in the Excise Division and reviewed the Taxpayer's request for refund of motor fuel tax dated October 18, 2013. See Division's Exhibit A (refund request). He testified that the Taxpayer had purchased the motor fuel on July 1, 2012 and July 11, 2012. He testified that the Division denied the requests for refund pursuant to R.I. Gen. Laws § 31-36-13 which requires that a refund request be filed within 240 days of purchase of the fuel. See Division's Exhibit B (denial letter). He testified that if the requests had been timely filed, the July 1, 2012 purchase request would have had to been filed by February 26, 2013 and the July 11, 2012 request by March 8, 2013. He testified that the Taxpayer requested a hearing and represented that the fuel tax was paid in error by a third party vendor. See Division's Exhibit C (Taxpayer April 3, 2014 letter acknowledging out-of-time request but requesting a hearing because of this error). He testified that the error did not affect the statutory analysis that the request was out of time.

### **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 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**

R.I. Gen. Laws § 31-36-13 provides as follows:

Exemption and reimbursement for sales to United States or outside state – Emergency sales to other distributors. – Any person who shall purchase fuels upon which the tax provided in this chapter shall have been paid and shall sell the fuels outside this state or to the United States government, may be reimbursed the amount of the tax in the manner and subject to the conditions provided in this chapter. All claims for reimbursement shall be made under oath to the tax administrator upon forms to be obtained from the tax administrator, within two hundred forty (240) days from the date of the purchase of the fuels, and shall contain any information and proof that the tax administrator may require, that the claimant has paid the tax and that the fuels have been sold by the claimant outside this state or to the United States government. Claims for reimbursement shall be paid by the general treasurer from the general fund upon certification by the tax administrator and with the approval of the controller. However, any distributor shall be exempt from the payment of any tax on fuels sold by the distributor to the United States government or to a person, firm, or corporation who or which shall use the fuel solely for the operation of railroad transportation equipment on fixed rails or tracks, upon the presentation to the tax administrator by the distributor of proof satisfactory to the tax administrator as to the sale. Provided, that any distributor shall be exempt from the payment of any tax on fuels sold by the distributor to another distributor who is registered with the tax administrator.

### **C. Whether the Refund Should be Granted**

The Division rested on the record. It was undisputed that the Taxpayer filed both its requests for motor fuel tax refunds on October 18, 2013 which is more than 240 days from the date of Taxpayer's purchases of fuel on July 1, 2012 and July 11, 2012. Thus, the Taxpayer filed both refund requests out-of-time. See Division's Exhibits A, B, and C.

## VI. FINDINGS OF FACT

1. On or about May 23, 2014, the Division issued a Notice of Hearing and Appointment of Hearing Officer to the Taxpayer.
2. The Taxpayer was adequately notified of the hearing but did not appear at the hearing. A hearing was held on October 10, 2014 with the Division resting on the record.
3. The Taxpayer purchased motor fuel on July 1, 2012 and July 11, 2012. The Taxpayer filed both its requests for those motor fuel tax refunds on October 18, 2013. Its refund requests were filed more than 240 days from date of the two (2) purchases.

## VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

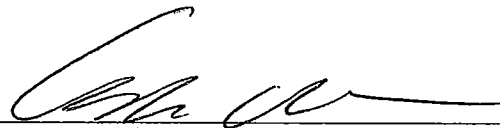
1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.* and R.I. Gen. Laws § 31-36-1 *et seq.*
2. The Taxpayer's requests for motor fuel tax refunds were out-of-time pursuant to R.I. Gen. Laws § 31-36-13.

## VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 31-36-13, the Taxpayer's two (2) requests for refunds of motor fuel tax were out-of-time and the Division properly denied said refund requests.

Date: November 6, 2014

  
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: November 17, 2014

David Sullivan  
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 RHODE ISLAND LAW WHICH STATES AS FOLLOWS:**

R.I. Gen. Laws § 8-8-25 Time for commencement of proceeding against the division of taxation. – (a) Any taxpayer aggrieved by a final decision of the tax administrator concerning an assessment, deficiency, or otherwise may file a complaint for redetermination of the assessment, deficiency, or otherwise in the court as provided by statute under title 44.

(b) The complaint shall be filed within thirty (30) days after the mailing of notice of the final decision and shall set forth the reasons why the final decision is alleged to be erroneous and praying relief therefrom. The clerk of the court shall thereupon summon the division of taxation to answer the complaint.

**CERTIFICATION**

I hereby certify that on the 17<sup>th</sup> day of November, 2014 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 of Taxation and by hand delivery to Meaghan Kelly, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Paul Belasco