

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-29

**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.: 14-T-0053**
:
: **Franchise**
:

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 June 17, 2014 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division"). A hearing was held on October 14, 2014. The Division was represented by counsel and the Taxpayer was *pro se*. The parties 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 § 44-11-1 *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*.

III. ISSUE

Whether the Taxpayer owes the minimum corporate tax pursuant to R.I. Gen. Laws § 7-16-67(b)(2).

IV. MATERIAL FACTS AND TESTIMONY

Chief Revenue Agent, Corporate Tax, testified on behalf of the Division. He testified that the Division's computer data warehouse collects information and identified the Taxpayer's property records. He testified that the Taxpayer is located at an address in Narragansett, Rhode Island ("Property"). He testified that the Taxpayer owes corporate tax of annually from 2001 to 2003 and a year from 2004 to 2012 and a late filing penalty but no interest is assessed until the bill issues. (The parties agreed that the Taxpayer purchased the Property in 2001).

The Taxpayer's member testified on the Taxpayer's behalf. He testified that the Taxpayer is a foreign LLC and is not a business but an entity that holds property. He testified that the Property was purchased as one-time event pursuant to R.I. Gen. Laws §7-16-54(e)(10). On cross-examination, he testified there is an account for the LLC and he and his wife have liability and casualty insurance in their name that is paid through their personal account. He testified that the Taxpayer LLC owns property in Connecticut, Rhode Island, and Maine and pays an annual fee for Connecticut. He testified that the Taxpayer LLC pays annual property tax in Rhode Island but receives no income.

Entered at hearing were the Taxpayer's operating agreements, Property's property tax and sale information, 2006 through 2011 US 1065 partnership returns, gift letters, and notice of deficiency. See Joint Exhibits Three (3) through Eighteen (18).

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 § 7-16-54 states in part as follows:

Transaction of business by foreign limited liability company without registration.

(e) Without excluding other activities which may not constitute transacting business in this state, a foreign limited liability company is not considered to be transacting business in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

(10) Conducting an isolated transaction completed within a period of thirty (30) days and not in the course of a number of repeated transactions of like nature;

R.I. Gen. Laws § 7-16-67 states in part as follows:

Filing of returns with the tax administrator – Annual charge. – (a) A return in the form and containing the information as the tax administrator may prescribe shall be filed with the tax administrator by the limited liability company:

(b) An annual charge shall be due on the filing of the limited liability company's return filed with the tax administrator and shall be paid to the Division of Taxation as follows:

(1) If the limited liability company is treated as a corporation for purposes of federal income taxation, it shall pay the taxes as provided in chapters 11 and 12 of title 44; or

(2) If the limited liability company is not treated as a corporation for purposes of federal income taxation, it shall pay a fee in an amount equal to the minimum tax imposed upon a corporation under § 44-11-2(e). The due date for a limited liability company that is not treated as a corporation for purposes of federal income taxation shall be on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year.

(c) The annual charge is delinquent if not paid by the due date for the filing of the return and an addition of one hundred dollars (\$100.00) to the charge is then due.

C. Arguments

The Division argued that pursuant to R.I. Gen. Laws § 7-16-67(b)(2), the Taxpayer is a foreign LLC who owes the minimum corporation tax as provided for in R.I. Gen. Laws § 44-11-2(e)¹ and also owes penalties for failing to file.² The Division argued that R.I. Gen. Laws § 7-16-54 provides that those who do not do business within the State do not need to file, but the Taxpayer is doing business in the State so has to pay the minimum corporate tax. The Division agreed that the Taxpayer does not receive income, does not have gross receipts, and its only expenses in this State are the occasional property tax. However, the Division argued that there are many businesses that do not receive income.

The Taxpayer argued that pursuant to R.I. Gen. Laws § 7-16-54(e)(10), the Taxpayer's purchase of the Property was an one-time event so that the Taxpayer is exempt from having to file a return. The Taxpayer argued that it is an entity that is holding property and is not conducting a business for a profit.

¹ R.I. Gen. Laws § 44-11-2 provides in part as follows:

Imposition of tax. – (a) Each corporation shall annually pay to the state a tax equal to nine percent (9%) of net income, as defined in § 44-11-11, qualified in § 44-11-12, and apportioned to this state as provided in §§ 44-11-13 – 44-11-15, for the taxable year.

(b) A corporation shall pay the amount of any tax as computed in accordance with subsection (a) of this section after deducting from "net income," as used in this section, fifty percent (50%) of the excess of capital gains over capital losses realized during the taxable year, if for the taxable year:

(e) Minimum tax. The tax imposed upon any corporation under this section shall not be less than five hundred dollars (\$500).

² The failure to file penalty is provided for in R.I. Gen. Laws § 7-16-67(c).

D. Whether the Taxpayer owes the Assessed Corporate Tax

The Taxpayer is treated as a partnership for federal income taxation purposes (See Joint Exhibits Seven (7) to Thirteen (13)) so the Division seeks to impose the minimum corporate tax on the Taxpayer pursuant to R.I. Gen. Laws § 7-16-67(b)(2). The Division argued that the Taxpayer is conducting business in this State. The Taxpayer argued that it is not conducting business for profit in this State since pursuant to R.I. Gen. Laws § 7-16-67(e)(10), its purchase of the Property was a one-time event. R.I. Gen. Laws § 7-16-2(4) defines “business” to mean “any trade, occupation or other commercial activity engaged in for gain, profit or livelihood for which a corporation can be organized under chapter 1.2 of this title.”

It is true that a foreign LLC could be transacting business in this State and not make a profit or receive any income and instead only have losses. However, there was no evidence that the Taxpayer was engaged in a trade, occupation, or other commercial activity. The only evidence in this matter was that the Taxpayer purchased the Property in 2001 – an isolated transaction that has not been repeated – and pays property tax. If the Taxpayer was buying and selling property, it would not fall under its claimed exemption as the purchase of property would not be an isolated event but rather a number of repeated transactions of the like nature.

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. A hearing was held on October 14, 2014 with the parties resting on the record.
3. The Taxpayer is a foreign LLC that owns the Property in Rhode Island.
4. The facts contained in Sections IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

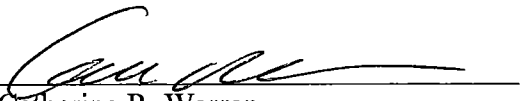
1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.* and R.I. Gen. Laws § 44-11-1 *et seq.*
2. The Taxpayer falls under the exemption of R.I. Gen. Laws § 7-16-67(e)(10).

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 7-16-67(e)(10), the Taxpayer is exempt from the minimum corporate tax so does not owe the assessed Notice of Deficiency.

Date: 11/13/14



 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:

 X ADOPT
 REJECT
 MODIFY

Dated: 11/14/14


 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 14th 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 Bernard Lemos, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

