

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2015-21

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

IN THE MATTER OF:

Taxpayer.

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**Sales and Use Tax
Case No.: 15-T-0030**

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 March 13, 2015 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing dated December 23, 2014. A hearing was held on May 5, 2015. At the hearing, the Division and the Taxpayer were represented by counsel. Briefs were timely filed by June 16, 2015.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *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. ISSUES

Whether the Taxpayer owes use tax on a truck purchased by the Taxpayer and if so, is a trade-in allowance allowed for a truck pursuant to R.I. Gen. Laws § 44-18-30(23).

IV. MATERIAL FACTS AND TESTIMONY

Based on the exhibits entered at hearing, the Taxpayer is a corporation incorporated in Rhode Island with its listed principal place of business in Providence, Rhode Island. The sole officer of the corporation is _____ (“Owner”).¹ See Division’s Exhibit E (incorporation papers). The Taxpayer purchased a 2013 model truck (“Truck”) on August 26, 2013 from a dealer (“Dealer”) located in Rhode Island. See Division’s Exhibit A (Dealer’s statement of sale). The Dealer gave the Taxpayer a trade-in allowance for a 2010 model truck (“2010 Truck”) and charged the Taxpayer at the Massachusetts tax rate of 6.25% on the net sales price. See Division’s Exhibit A. On June 13, 2014, the Division forwarded a letter to the Taxpayer in which the Division indicated that it found that the Taxpayer was not a *bona fide* nonresident of Rhode Island when it purchased the Truck so that the Taxpayer owed use tax on the entire sales price of the Truck (excluding the trade-in credit) but gave credit for the tax already paid. See Division’s Exhibit I (Division’s June, 2014 letter). A second letter was forwarded by the Division to the Taxpayer on October 15, 2014. See Division’s Exhibit J (October, 2014 letter). After correspondence between the Taxpayer and the Division, the Division issued a Notice of Deficiency on November 28, 2014 and by letter dated December 23, 2014, the Taxpayer requested a hearing on the assessment. See Division’s Exhibits U (Notice of Deficiency) and V (Taxpayer’s letter requesting a hearing).

Senior Revenue Agent, testified on the Division’s behalf. He testified that all Rhode Island dealers are required to complete a T-336 form for every motor vehicle sold and he reviews said forms for accuracy. He testified that he reviewed said form for the Taxpayer’s purchase of the Truck and ascertained that the Truck was registered in Massachusetts and he tried to verify whether the purchaser (Taxpayer) was a *bona fide*

¹ He also acted as the attorney for the Taxpayer.

nonresident of Rhode Island. He testified the Taxpayer is qualified to do business and is registered as a foreign entity in Massachusetts with the Owner as a Registered Agent but without a declared presence in Massachusetts. He testified that he found no business address for the Taxpayer listed with the Massachusetts Secretary of State and the Taxpayer had not filed a Massachusetts corporate or excise return for the tax year 2013. He testified the Taxpayer had filed a 2013 Rhode Island corporate tax return declaring Rhode Island as its principal place of business. See Division's Exhibits F (Massachusetts' records indicating Taxpayer registered as a foreign corporation); G (Taxpayer's 2013 corporate Rhode Island tax return); H (Division records indicating that Taxpayer filed Rhode Island corporate tax returns other years); and X (letter indicating Taxpayer did not file a Massachusetts' corporate excise return in 2013).

He testified that based on his review, he determined that the Taxpayer was not a *bona fide* nonresident pursuant to R.I. Gen. Laws § 44-18-30(13) when it purchased the Truck so that use tax on the Truck should have been paid to Rhode Island. He testified he forwarded the June, 2014 letter to the Taxpayer and when he received no reply, he forwarded the October, 2014 letter to the Taxpayer. He testified that he received a letter from the Taxpayer indicating that the Taxpayer's business has an office in Massachusetts and the Truck is kept in Massachusetts so that there is no tax due to Rhode Island. See Division's Exhibit K (Taxpayer's October, 2014 letter). He testified that he obtained further information from the Dealer regarding the sale of the Truck. See Division's L (letter to Dealer). He testified that the Dealer's records included an invoice that showed the same information as the T-336 but showed sales tax as _____ rather than _____. See Division's Exhibit M. He testified that Massachusetts allows a trade-in for trucks so that the Dealer had calculated the tax without the trade-in credit. He testified that the Dealer paid a check to the Owner that was in the amount of the difference between the initial tax

paid and tax with the trade-in allowance. See Division's Exhibit P. He testified that the Owner paid a personal check to the Dealer for the cash deposit for the Truck. See Division's Exhibit O. He testified that he obtained the Taxpayer's application for the Massachusetts' registration for Truck and it used the Taxpayer's Providence address as the mailing address with a Massachusetts address for the corporate address. See Division's Exhibit R.

On cross-examination, testified to be a *bona fide* resident one needs to have a connection with Rhode Island. He testified that there is a Massachusetts address for the Taxpayer's registered agent but he never inspected the address. He testified the Taxpayer purchased the Truck in Rhode Island, took delivery in Rhode Island of the Truck, and registered the Truck in Massachusetts. He testified the Taxpayer's insurance coverage indicated that said the Truck is garaged in Massachusetts. See Taxpayer's Exhibit One (1). He testified that he had no evidence the Truck was kept in Rhode Island.

testified on the Taxpayer's behalf. He testified that he has been a certified public accountant for the Taxpayer and the Owner for the past five (5) years. He testified that the Owner took a deduction in Massachusetts for a home office, but did not depreciate the Truck in either Massachusetts or Rhode Island for 2013 and 2014. On cross-examination, he testified that the Taxpayer's Owner charges the Taxpayer for the home office that he uses and the Taxpayer did not file a corporate return in Massachusetts. He testified that the Taxpayer is incorporated in Rhode Island.

The Owner testified on behalf of the Taxpayer. He testified the Truck was bought in Rhode Island and immediately brought to Massachusetts after purchase and the Truck is insured, stored, and used in Massachusetts. He testified that the Taxpayer has an office in Massachusetts, even if it is not listed on the Massachusetts Secretary of State's office. He testified that it was a

mistake by one the Taxpayer's employees that the Massachusetts' office address is not listed on the Massachusetts Secretary of State's website. He testified that the Providence address is also his law office address so he uses it as a mail drop for the Taxpayer. He testified the Truck is never used in Rhode Island. He testified that no taxes are owed because there is no storage, or consumption, or use pursuant to R.I. Gen. Laws § 44-18-20 and there was no intent to evade sales tax. See Taxpayer's Exhibit One (1) (insurance coverage for Truck).

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). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). 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) (citing to *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. Relevant Statutes

R.I. Gen. Laws § 44-18-21 states in part as follows:

(a) Every person storing, using, or consuming in this state tangible personal property, including a motor vehicle, boat, airplane, or trailer, purchased from a retailer, and a motor vehicle, boat, airplane, or trailer, purchased from other than a licensed motor vehicle dealer or other than a retailer of boats, airplanes, or trailers respectively, is liable for the use tax.

R.I. Gen. Laws § 44-18-30 provides in part as follows:

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

(13) Motor vehicles sold to nonresidents.

(i) From the sale, subsequent to June 30, 1958, of a motor vehicle to a bona fide nonresident of this state who does not register the motor vehicle in this state, whether the sale or delivery of the motor vehicle is made in this state or at the place of residence of the nonresident.

(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.

C. Arguments

The Division argued that the Taxpayer was not a *bona fide* nonresident under R.I. Gen. Laws § 44-18-30(13) so owed tax on said Truck. The Division argued that the Taxpayer tried to claim that it was really a Massachusetts corporation and that it was a clerical mistake that it did not have a Massachusetts address on the Massachusetts' Secretary of State's filing. The Division argued that the Taxpayer is a resident Rhode Island corporation, paid 2013 corporate Rhode Island tax, and filed no Massachusetts corporate returns.

The Taxpayer argued that it does not owe use tax on the Truck because the Truck is not being used, stored, or consumed in Rhode Island so it is not taxable pursuant to R.I. Gen. Laws § 44-18-21. The Taxpayer argued that under the definition of storage contained in R.I. Gen. Laws § 44-18-9,² the Truck was not stored in Rhode Island since it was bought for use solely outside this state. The Taxpayer argued that it is a *bona fide* nonresident Rhode Island corporation since it is for all intents and purposes a Massachusetts corporation. The Taxpayer argued that while it is incorporated in Rhode Island, it is also registered as foreign corporation in Massachusetts and conducts most if not all of its business in Massachusetts. The Taxpayer argued that there is no prohibition on an entity with dual status from using out-of-state status to obtain an exemption from a tax. Finally, the Taxpayer argued that it was eligible for the trade-in allowance for the 2010 Truck under R.I. Gen. Laws § 44-18-30(23).

D. Tax Exemptions

Not only are taxation exemption statutes strictly construed against a taxpayer, but “[t]he party claiming the exemption from taxation under a statute has the burden of demonstrating that the terms of the statute illustrate a clear legislative intent to grant such exemption.” *Cookson v. Clark*, 610 A.2d 1095, 1098 (R.I. 1992). Tax exemption statutes are also strictly construed in favor of the taxing authority and against the party seeking the exemption. *Fleet Credit Corp. v. Frazier*, 726 A.2d 452, 454 (R.I. 1999). Pursuant to R.I. Gen. Laws § 44-18-25,³ there is a presumption that the use of all tangible personal property is subject to the use tax.

² R.I. Gen. Laws § 44-18-9 provides as follows:

"Storage" defined. – "Storage" includes any keeping or retention in this state, except for sale in the regular course of business or for subsequent use solely outside of this state, of tangible personal property purchased from a retailer.

³ R.I. Gen. Laws § 44-18-25 provides as follows:

Presumption that sale is for storage, use, or consumption – Resale certificate. – It is presumed that all gross receipts are subject to the sales tax, and that the use of all tangible personal property, or prewritten computer software delivered electronically or by load and leave, or services as defined in §

E. The Taxpayer Owes Use Tax on the Truck

a. R.I. Gen. Laws § 44-18-30(13)

Pursuant to R.I. Gen. Laws § 44-18-20,⁴ an excise tax is imposed on the “storage, use, or other consumption in this state” of personal property including the purchase of a motor vehicle. R.I. Gen. Laws § 44-18-30(13) provides an exemption to this tax if the purchaser of a motor vehicle is a *bona fide* nonresident of Rhode Island. As discussed above, a tax exemption is to be strictly construed against a taxpayer.

By registering the Truck in Massachusetts, the Taxpayer did not pay any Rhode Island tax on the Truck.⁵ Pursuant to R.I. Gen. Laws § 44-18-30(13), only a *bona fide* Rhode Island nonresident does not have to pay Rhode Island tax on the purchase of a vehicle. In regard to the claim of being a *bona fide* nonresident, the Rhode Island District Court case of *McLaughlin v. Norberg*, AA No. 83-429 (1985) addressed the test for residency as delineated in *Randall v. Norberg*, 403 A.2d 240 (1979) (sufficient connection with Rhode Island to determine whether a

44-18-7.3, are subject to the use tax, and that all tangible personal property, or prewritten computer software delivered electronically or by load and leave, or services as defined in § 44-18-7.3, sold or in processing or intended for delivery or delivered in this state is sold or delivered for storage, use, or other consumption in this state, until the contrary is established to the satisfaction of the tax administrator. The burden of proving the contrary is upon the person who makes the sale and the purchaser, unless the person who makes the sale takes from the purchaser a certificate to the effect that the purchase was for resale. The certificate shall contain any information and be in the form that the tax administrator may require.

⁴ R.I. Gen. Laws § 44-18-20 provides in part as follows:

(a) An excise tax is imposed on the storage, use, or other consumption in this state of tangible personal property, including a motor vehicle, a boat, an airplane, or a trailer, purchased from any retailer at the rate of six percent (6%) of the sale price of the property.

(b) An excise tax is imposed on the storage, use, or other consumption in this state of a motor vehicle, a boat, an airplane, or a trailer purchased from other than a licensed motor vehicle dealer or other than a retailer of boats, airplanes, or trailers respectively, at the rate of six percent (6%) of the sale price of the motor vehicle, boat, airplane, or trailer.

(h) The use tax imposed under this section for the period commencing July 1, 1990 is at the rate of seven percent (7%).

⁵ The tax paid on a purchased motor vehicle owed in Rhode Island would be paid upon registering the vehicle in Rhode Island directly to the Tax Administrator. See R.I. Gen. Laws § 31-3-4 and Sales and Use Regulation SU 03-69 *Motor Vehicles - Payment of Tax as Prerequisite to Registration*.

taxpayer would be liable as a “resident” for taxes under Title 44). *McLaughlin* found that the taxpayer had sufficient connection with Rhode Island to be liable as a “resident” for taxes on the purchase of a car under Title 44 even though the car in that matter was registered, titled, and garaged in Florida.

In *Randall*, the taxpayer often visited Rhode Island, maintained a home there, and filed a resident income tax return. *Randall* found that taxpayer had enough of a connection with Rhode Island to be considered a resident. The Division has consistently applied the District Court case of *McLaughlin* in order to determine whether a taxpayer is a *bona fide* nonresident at the time of purchase of a vehicle. Thus, the issue in this matter does not turn on what happens to the vehicle after purchase but whether the purchaser is a resident or nonresident at the time of purchase.

In *Administrative Decision*, 2011 WL 6749688 (R.I.Div.Tax), the taxpayer owned a house in and voted in Maine in 2008 when he bought a car and registered it in Maine; however, he was not a *bona fide* nonresident of Rhode Island when he purchased the car as he had filed a 2008 Rhode Island resident income tax return. In *Administrative Decision*, 2011 WL 4907239 (R.I.Div.Tax), the taxpayer admitted to being a Rhode Island resident but argued that no tax was owed since the vehicle was purchased out-of-state. That decision found that taxpayer to be liable since the issue was not the location of purchase but “rather whether the purchaser – in this matter, the Taxpayer – was a resident of Rhode Island at the time of purchase.”

Administrative Decision, 2004 WL 2370466 (R.I.Div.Tax) rejected a taxpayer’s argument that she was a resident or domiciliary of Oregon finding that the taxpayer could be both but based on *McLaughlin v. Norberg*,⁶ if the taxpayer was a resident of Rhode Island, she

⁶ This Administrative Decision cited to *McLaughlin* and quoted from that case as follows:

In this case the simple issue is whether the plaintiff-taxpayer is a resident of Rhode Island for the purposes of Title 44 of the Rhode Island General Laws pertaining to sales and use taxes. This is the sole issue to be considered and this Court is bound by the existing case law in Rhode

would owe tax. In that matter, the taxpayer had filed resident income tax return in Rhode Island as well as voted, attended school in Rhode Island, and held a Rhode Island driver's license so was found to be a resident of Rhode Island. *Administrative Decision*, 2001 WL 1606904 (R.I. Div.Tax) found that the taxpayer corporation was not a *bona fide* nonresident as it filed Rhode Island returns and was a Rhode Island corporation. *Administrative Decision*, 1998 WL 751234 (R.I.Div.Tax) found that the taxpayer was a Rhode Island resident despite claims to be a Florida resident as the taxpayer had filed Rhode Island resident returns.

The Taxpayer disputed that it was a Rhode Island resident at the time of purchase and argued that the Truck is kept and garaged and insured in Massachusetts. The Taxpayer argued that it is registered as a foreign corporation in Massachusetts and conducts most of its business in Massachusetts and is for all intents and purposes is a Massachusetts corporation. However, the residency status of the purchaser is determinative for this tax exemption. The Taxpayer is incorporated in Rhode Island with its principal place of business being its Rhode Island address. The Taxpayer filed a Rhode Island corporate tax return in 2013 and paid tax to Rhode Island. It did not file a tax return or pay any tax to Massachusetts in 2013.

Based on the forgoing, the Taxpayer has sufficient connections with Rhode Island not to be considered a *bona fide* nonresident of Rhode Island and thus is liable for use tax on the Truck. Even if the Taxpayer had dual-residency in both Rhode Island and Massachusetts (as argued by the Taxpayer), it would still owe the use tax in Rhode Island because the Truck was purchased

Island. The tests for residency in this matter is contained in the case of *Randall v. Norberg*, 121 R.I. 714, 403 A.2d 240 (1979) where the court used a "sufficient connection with Rhode Island" test to determine whether the taxpayer would be liable as a "resident" for taxes under Title 44. The court held that repeated visits to this state in addition to retaining a home here and the filing of a Rhode Island residential income tax return were sufficient for the trial justice to find residency status. This Court must decide whether there exists substantial evidence on which the Division could find the taxpayer had a "sufficient connection" with Rhode Island or whether the agency erred as matter of law in finding residency status. (See *William H. McLaughlin v. John H. Norberg*, District Court, A.A. No. 83-429).

by a Rhode Island corporation that filed resident corporate returns and paid tax to Rhode Island so is not a *bona fide* nonresident of Rhode Island. The Taxpayer has not shown that he was a *bona fide* nonresident of Rhode Island.

b. R.I. Gen. Laws § 44-18-20(23)

The Taxpayer argued that it can avail itself to the trade-in allowance for the 2010 Truck despite the language in R.I. Gen. Laws § 44-18-20(23) limiting the trade-in allowance to a private passenger automobile. The Taxpayer argued that a truck is a private passenger automobile.

In terms of construing the statute, a pertinent statute includes R.I. Gen. Laws § 31-1-3⁷ which states in part as follows:

Types of vehicles.

(d) "Automobile" means, for registration purposes, every motor vehicle carrying passengers other than for hire.

(t) "Motor vehicle" means every vehicle which is self-propelled or propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except vehicles moved exclusively by human power, an EPAMD and electric motorized bicycles as defined in subsection (g) of this section, and motorized wheelchairs.

(u) "Motor vehicle for hire" means every motor vehicle other than jitneys, public buses, hearses, and motor vehicles used chiefly in connection with the conduct of funerals, to transport persons for compensation in any form, or motor vehicles rented for transporting persons either with or without furnishing an operator.

(ff) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

The Division's Sales and Use Tax Regulation SU 03-72 ("SU 03-72") *Motor Vehicles - Trade-In Allowance* states in part as follows:

Motor Vehicles - Trade-In Allowance

The Rhode Island sales and use tax law provides that the amount of the trade in allowance of a private passenger automobile when given in trade toward the

⁷ This refers to the statute in effect when the Truck was purchased in 2013. See P.L. 2010 ch. 231 § 25.

purchase of a new or used private passenger automobile is excluded from the measure of the use tax.

A passenger automobile shall be deemed a motor vehicle carrying passengers other than for hire, if the Registry of Motor Vehicles registers the vehicle as a private passenger automobile. Hearses and other automobiles used chiefly in connection with the conduct of funerals are not considered automobiles for hire and therefore qualify for the trade-in allowance.

R.I. Gen. Laws § 44-18-30(23) specifically defines an automobile as a private passenger automobile not used for hire and the statute further states specifically that said definition does not refer to any other type of motor vehicle. Therefore, this section specifically defines an “automobile” for that statutory section as opposed to other definitions of “automobile” used in other statutory sections. Said definition does not define private passenger automobile as a private passenger motor vehicle but rather sets it apart from any other type of motor vehicle.

Thus, if the trade-in statute intended to define automobile as defined in R.I. Gen. Laws 31-1-3(d), it would not have specifically defined it in R.I. Gen. Laws § 44-18-30(23). Rather it would have allowed automobile to mean every motor vehicle other than those for hire that carry passengers. Instead, R.I. Gen. Laws § 44-18-30(23) provides a narrower definition of automobile than the statutory definition of motor vehicle. R.I. Gen. Laws 31-1-3(t) broadly defines motor vehicle as every vehicle which is self-propelled or not propelled by electric power or obtained from overhead trolley wires. Obviously, R.I. Gen. Laws § 44-18-30(23) specifically did not want either statutory definition of automobile or motor vehicle to apply to its tax exemption.

The Taxpayer argued that private passenger automobile must include a truck which is a private passenger vehicle. However, the statute clearly defines an automobile to mean a private passenger automobile not used for hire and not referring to any other type of motor vehicle. The statute clearly does not intend automobile to be defined as it is defined elsewhere in the law.

Those other statutory definitions of automobile are broader than the R.I. Gen. Laws § 44-18-30(23) definition. Thus, the exemption does not want to exempt every passenger carrying motor vehicle. If the statute's intent was to exempt every motor vehicle that can carry passengers, the statute would not have narrowly defined automobile. The statute clearly sets forth that a private passenger automobile for the purpose of the tax exemption is not any other type of motor vehicle.

SU 03-72 states that a passenger automobile will be deemed a motor vehicle carrying passengers other than for hire if the Registry of Motor Vehicles registers the vehicle as a private passenger automobile. R.I. Gen. Laws § 31-1-4(c) defines trucks as follows:

Trucks and tractors

(c) "Truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property. The administrator of the division of motor vehicles shall determine, in case of doubt, if a motor vehicle is subject to registration as a truck.

In defining an automobile as a private passenger automobile rather than a passenger motor vehicle, it is clear that the intent was to limit the tax exemption to private automobiles and further to the type of automobile designed primarily to transport passengers. Otherwise, the tax exemption would not have excluded any other type of motor vehicle. Trucks are designed to primarily transport property. Even if the Taxpayer uses the Truck for personal use, the issue is not what the truck is used for but what is designed for physically. A truck is primarily designed for transporting property. R.I. Gen. Laws § 44-18-30(23) excluded trucks because it narrowly defined automobile not to include any other type of other motor vehicle and defined automobile separate and apart from those other statutory definitions. See *Administrative Decision*, 2008 WL 5582981 (R.I.Div.Tax); and *Administrative Decision*, 1998 WL 751234 (R.I.Div.Tax). Therefore, the Taxpayer cannot claim a trade-in allowance for the 2010 Truck.

c. Interest and Penalty

The Division properly imposed interest on the use tax assessment pursuant to R.I. Gen. Laws § 44-19-11.⁸ The Division also properly imposed a 10% penalty on the sales tax deficiency pursuant to R.I. Gen. Laws § 44-19-12.⁹ The statute clearly provides that if a taxpayer does not pay a tax because of negligence or does not pay, 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).

VI. FINDINGS OF FACT

1. On or about March 13, 2015, the Division issued a Notice of Hearing and Appointment of Hearing Officer.
2. A hearing in this matter was held on May 5, 2015 with the parties timely filing briefs.
3. The Taxpayer is a Rhode Island corporation that filed a resident corporate return in 2013 (and other years) and paid tax to Rhode Island in 2013.
4. The facts as detailed in Section V are incorporated herein by reference.

⁸ 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.

⁹ 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.

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 § 44-18-1 *et seq.*
2. The Taxpayer is not a *bona fide* nonresident of Rhode Island.
3. Pursuant to R.I. Gen. Laws § 44-18-20 and R.I. Gen. Laws § 44-18-30(13), the Taxpayer owes the use tax and interest and penalty as assessed in the Notice of Deficiency. See Division's Exhibit V. Pursuant to R.I. Gen. Laws § 44-18-30(23), the Taxpayer cannot claim a trade-in allowance for the 2010 Truck.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-18-20 and R.I. Gen. Laws § 44-18-30(13), the Taxpayer owes the use tax and interest and penalty as assessed in the Notice of Deficiency.

Date: July 16, 2015


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

Date: July 27, 2015


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 27th day of July, a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid 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.


