STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2016-08

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.: 15-T-0096**
	:	**sales and use 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 September 22, 2015 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to the Taxpayer's request for hearing filed with the Division. The parties agreed to have the decision rendered on stipulated facts, exhibits, and oral argument. The parties were represented by counsel. Oral arguments were made on March 2, 2016 with the parties resting 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 § 44-18-1 *et seq.*, and the *Division's Administrative Hearing Procedures, Regulation AHP 97-01.*

III. ISSUE

The parties agreed that the issue was whether denial of the Taxpayer's claim for refund of use tax paid on a vehicle is appropriate when the Taxpayer has failed to obtain a properly-issued certificate of exemption from Rhode Island sales and use tax prior to the purchase and registration of said vehicle.

IV. MATERIAL FACTS AND TESTIMONY

The parties submitted and agreed to the following stipulated facts:[1]

1. The Taxpayer is a domestic corporation chartered under the laws of Rhode Island on June 7, 2011 with principal place of business is located in Rhode Island. See Exhibits One (1) and Two (2) (non-profit corporation articles of incorporation and annual report).

2. The Taxpayer engages in the business of providing fire protection and rescue services to the residents of a town ("Town") in Rhode Island and the surrounding communities (Exhibit One (1)) and has held a Certificate of Exemption, issued by the Division pursuant to the Rhode Island Sales and Use Tax Act, since September 29, 2014.

3. The Division is a state agency charged with the administration and enforcement of all State taxes.

4. On May 11, 2015, the Division received from the Taxpayer a claim for refund of use tax in the amount of and supporting documentation. Exhibit Four (4). On May 22, 2015, the Division sent a letter to the Taxpayer denying the Taxpayer's refund claim on the basis of the Division's Regulation SU 07-48, and notifying the Taxpayer of its right to request a hearing on the matter. On June 19, 2015, the Division received from the Taxpayer a request for hearing. On September 22, 2015, the Tax Administrator issued a Notice of Hearing to the Taxpayer and a pre-hearing conference was held on November 2, 2015.

5. On October 16, 2013, the Taxpayer took title to a 1995 "KME Pumper" fire truck ("Vehicle"), with purchase price listed on the bill of sale as Exhibit Eight (8) (invoice).

6. On October 30, 2013, the Taxpayer registered the Vehicle in its own name with the Rhode Island Department of Motor Vehicles ("DMV"), declaring a gross sale price of and total use tax due in the amount of Exhibit Nine (9). Notwithstanding the Taxpayer's present claim for a refund of use tax on the Vehicle, the amount of use tax due on the Vehicle at the time of registration, based on the bill of sale was , as assessed in accordance with the Sales and Use Tax Act.

7. Had the Taxpayer timely received a letter from the Internal Revenue Service stating that the Taxpayer had been determined exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code ("IRS Letter") and submitted form EXO-APP, Sales and Use Exemption for an Exempt Organization ("R.I. Exemption Application") to the Division, the Taxpayer would have qualified for a Certificate of Exemption at the time of registration of the Vehicle.

8. If the Vehicle had been registered by the Town, rather than the Taxpayer, no sales or use tax would have been due upon registration.

---

[1] See partial stipulation of facts and exhibits for the complete agreement. The parties agreed that the statutes and/or regulations at issue are R.I. Gen. Laws § 44-18-30 and the Division's *Sales and Use Tax Regulations* SU 07-48 and SU 87-118.

9. On November 5, 2013, the Taxpayer's check to the DMV for use tax due in the amount of cleared.

10. On August 13, 2014, the Taxpayer received the IRS Letter. Exhibit 11.

11. On August 27, 2014, the Division received from the Taxpayer the "R.I. Exemption Application." Exhibit 12. By submitting the R.I. Exemption Application, the Taxpayer sought issuance by the Division of a Certificate of Exemption for an Exempt Organization from the Rhode Island Sales and Use Tax. The R.I. Exemption Application included a copy of the IRS Letter, as required on form EXO-APP.

12. On September 29, 2014, the Division issued a Certificate of Exemption to the Taxpayer pursuant to the Taxpayer's R.I. Exemption Application. Exhibit Three (3).

13. It is undisputed that the Division issued the R.I. Exemption Certificate within a reasonable amount of time after receiving from the Taxpayer all necessary documentation associated with the R.I. Exemption Application.

14. It is undisputed that the Taxpayer did not receive the R.I. Exemption Certificate until roughly eleven (11) months after registering the Vehicle with the DMV in its own name and paying in use tax on the declared gross sale price of the Vehicle.

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 (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). 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 Statute and Regulation

Pursuant to R.I. Gen. Laws § 44-18-18, Rhode Island imposes a sales tax of 7% on gross receipts of a retailer. Pursuant to R.I. Gen. Laws § 44-18-20, a use tax is imposed on the storage, use or consumption of tangible personal property.[2] However, by statute certain items are exempted from the collection of sales tax. R.I. Gen. Laws § 44-18-30(5)(i) provides that charitable, educational, and religious organizations are exempt from sales taxes. However, in order to provide proof of sales tax exemption, the Division's Regulation SU 07-48 ("07-48") *Exempt Agencies, Organizations and Institutions - Sales To* requires that tax exempt organizations obtain an exemption certificate from the Division. Said regulation further provides that an entity may not make any tax exempt purchases prior to obtaining said exemption certificate.

Regulation SU 07-48 provides in part as follows:

> I. Sales of tangible personal property to the Federal Government or to any of its agencies or instrumentalities, to the State of Rhode Island, or any of its cities or towns, and to any redevelopment agency created pursuant to Chapter 45-31 of the Rhode Island General Laws are not subject to the tax. Such governmental agencies or instrumentalities are not required to furnish exemption certificates to their suppliers. However, the seller must make appropriate notations in his/her records covering his/her sales to such governmental agencies or instrumentalities.
>
> II. Sales to all other exempt organizations, including . . . are exempt from sales and use tax, but each such organization must file an application for and obtain from the Tax Administrator an exemption certificate covering such exempt organizations.
>
> ***
>
> Sales to exempt entities, other than the Federal government, the State government and municipal governments of this State, will be deemed to be taxable unless the retailer obtains a copy of the exemption certificate (issued by the RI Division

[2] "The use tax . . . is a complement to Rhode Island's sales tax . . . The sales tax applies to 'sales at retail in this state.' (citation omitted). The use tax, in contradistinction, is imposed on 'the storage, use, or other consumption in this state of tangible personal property.'" *Dart Industries, Inc. v. Clark*, 696 A.2d 306, 309 (R.I.1997).

of Taxation) or obtains a properly completed exemption certificate authorized by the Streamlined Sales and Use Tax Agreement.

The Division's Regulation SU 87-118 *Volunteer Fire Companies* ("SU 87-118") provides as follows:

> Inasmuch as incorporated volunteer fire companies are regarded as operating in a governmental capacity in the town in which they are located, the tax does not apply to sales made to such volunteer fire companies provided they have obtained a certificate of exemption from this office and furnish the vendor with their exemption number.

C. Arguments

The Taxpayer argued that this is an issue of equity and fairness. The Taxpayer argued that pursuant to SU 07-48, a municipality is not required to apply for a tax exempt certificate, but in this matter, the fire department, a government entity, purchased the Vehicle and paid tax on it. The Taxpayer argued that it eventually received an exemption certificate and had been eligible for the sales exempt certificate at the time of purchase and at the time of registration of the Vehicle.

The Division argued that this is an administrative hearing which is not a forum for equity, but rather the law must be applied as is. The Division argued that the sales and use regulations have continuously required the tax exemption certificate be in hand in order to obtain the exemption. The Division argued that it would not be good policy to make a case-by-case exemption since it would defeat the purpose of the requirement to have the certificate and would be unfair to other taxpayers affected by this regulation.

D. Whether the Taxpayer's Refund Request Should be Granted

The Taxpayer argued that its refund request is a matter of equity and fairness. However, equitable principles are not applicable to an administrative procedure. See *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004) (Supreme Court vacated a Superior Court order that had vacated an agency sanction on so-called "inherent equitable powers"). Indeed, all administrative agencies

powers are derived from statute, and an agency cannot do what is not provided for in law. "An administrative agency is a product of the legislation that creates it, and it follows that '[a]gency action is only valid, therefore, when the agency acts within the parameters of the statutes that define [its] powers.'" *In re Advisory Opinion to the Governor,* 627 A.2d 1246, 1248 (R.I. 1993) (citation omitted).

R.I. Gen. Laws § 44-19-33[3] specifically states that the Tax Administrator may prescribe regulations that are not inconsistent with the law and are reasonably designed to carry out the intent and purposes of the law and are *prima facie* evidence of the proper interpretation of statutes. SU 07-48 requires that exempt organizations must obtain the exemption certificate in order to be exempt from sales tax. SU 87-118 requires volunteer fire companies obtain the exemption certificate in order to be exempt from sales tax. As set forth in R.I. Gen. Laws § 44-19-33, such requirements are consistent with the law and reasonably designed to carry out the intent and purposes of the law.[4]

The Taxpayer relied on *Keystone Auto Leasing, Inc. v. Norberg*, 486 A.2d 613 (R.I. 1985). That case discussed whether federal employees were exempt from sales tax on certain purchases that they made and found that they were not tax exempt even if the Federal government was tax exempt from sales tax. The Court looked at who was the actual purchaser of the items. In this matter, there was no dispute that the Taxpayer (and not the Town) was the purchaser of the Vehicle.

---

[3] R.I. Gen. Laws § 44-19-33 provides 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.

[4] Indeed, the requirement for an exempt organization to obtain the exemption certificate ensures that the law is orderly enforced and uniformly and fairly applied to the appropriate and eligible organizations.

Keystone is not applicable to this matter. The issue in this matter was whether the Taxpayer could be exempt from sales tax despite not having obtained the required tax exemption certificate. Under the statute and applicable regulations, the Taxpayer was not eligible to be exempt from the sales tax since it did not have the required exemption certificate at the time of the purchase.

VI. FINDINGS OF FACT

1. On or about September 22, 2015, the Division issued a Notice of Hearing and Appointment of Hearing Officer.

2. The parties submitted an agreed statement of facts and exhibits and oral arguments were made on March 2, 2016 with the parties resting on the record.

3. The facts and exhibits have been agreed upon by both parties and are not disputed.

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.*

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-18-18, R.I. Gen. Laws § 44-18-30(5)(i), SU 07-48, and SU 87-118, the Division properly denied the Taxpayer's request for a refund of the sales tax paid by the Taxpayer so that the Taxpayer's request for refund is denied.

Date: 3/18/16

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: 4/21/16

Neena S. Savage
Acting 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 21ST day of April, 2016, 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 attorney's address on file with the Division of Taxation and by hand delivery to Matthew Cate, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02908.

Lori Belasco