

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

DISTRICT COURT

SIXTH DIVISION

RHODE ISLAND MEDICAL IMAGING INC. :

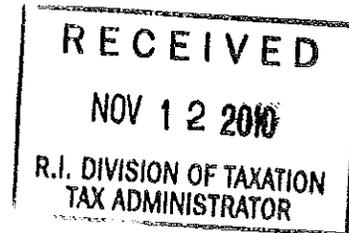
Plaintiff :

VS. :

A.A. NO. 08-185

DAVID L. SULLIVAN, :  
TAX ADMINISTRATOR FOR THE :  
STATE OF RHODE ISLAND :

Defendant



JUDGMENT

This cause came on before Pirraglia, J. on Administrative Appeal, and upon review of the record and memoranda of counsel, and a decision having been rendered, it is

ORDERED AND ADJUDGED

Judgment is entered in favor of the defendant.

Dated at Providence, Rhode Island, this 9th day of November, 2010.

ENTER:

BY ORDER:

A handwritten signature in cursive script, appearing to read "Melvin J. Enright".

Melvin J. Enright  
Acting Chief Clerk

A handwritten signature in cursive script, appearing to read "Pirraglia, J.". The signature is written over a horizontal line.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

DISTRICT COURT  
SIXTH DIVISION

RHODE ISLAND MEDICAL IMAGING, INC., :  
 COASTAL MEDICAL, INC, :  
 JOSEPH C. CAMBIO, M.D. D/B/A :  
 RHODE ISLAND UROLOGICAL SPECIALTIES, :  
 OPEN MRI OF NEW ENGLAND, INC., AND :  
 LGLN CARDIOLOGY CONSULTANTS, LLC :

PLAINTIFFS :

V. :

A.A. No. 08-185

DAVID M. SULLIVAN, *in his official capacity as* :  
*the Administrator of the* RHODE ISLAND :  
 DEPARTMENT OF TAXATION :

DEFENDANT :

DECISION

PIRRAGLIA, J. The matter before the Court is an appeal of a final decision of the Rhode Island Division of Taxation (“Tax Division”) by Plaintiffs Rhode Island Medical Imaging, Inc. (“RI Medical Imaging”), Coastal Medical, Inc. (“Coastal Medical”), Joseph C. Cambio, M.D. d/b/a/ Rhode Island Urological Specialties (“RI Urological”), Open MRI of New England, Inc. (“Open MRI”), and LGLN Cardiology Consultants, LLC (“LGLN Cardiology”) (collectively “Taxpayers” or “Plaintiffs”) in which the Tax Division denied each of the Taxpayers’ respective refund claims. On *de novo* appeal to this Court in accordance with G.L. 1956 § 8-8-24, the Taxpayers seek declaratory and injunctive relief to declare “The Outpatient Health Care Facility Surcharge Act” (“Outpatient Surcharge”) set forth in Chapter 64 of Title 44 of the General Laws and “The Imaging Services Surcharge Act”

("Imaging Surcharge") set forth in Chapter 65 of Title 44 of the General Laws (collectively "Medical Surcharge Acts") unconstitutional. Further, the Taxpayers petition the Court for damages in the form of refunds for all taxes paid in accordance with the Medical Surcharge Acts, plus interest. Finally, the Taxpayers request the Court to enjoin any further enforcement of the Medical Surcharge Acts. This Court has jurisdiction of the Taxpayers' timely appeal pursuant to G.L. 1956 § 42-35-15 and G.L. 1956 § 8-8-25.

For the reasons which follow, the Taxpayers' appeal is hereby denied and dismissed.

## I FACTS AND TRAVEL

The Taxpayers are either for-profit professional corporations or limited liability companies who maintain their principal place of business within the State of Rhode Island. Moreover, the Taxpayers are licensed health care providers and, with the exception of RI Urological, provide various medical diagnostic imaging services on an outpatient referral basis. The services offered by each Taxpayer are as follows:

- (1) RI Medical Imaging provides general radiology (x-rays), mammograms, ultrasound, magnetic resonance imaging (MRI), CT scans, and bone densitometry. Additionally, RI Medical Imaging offers ambulatory or outpatient surgical services.
- (2) Coastal Medical provides general radiology (x-rays), ultrasound, CT scans, and bone densitometry.
- (3) Open MRI provides magnetic resonance imaging (MRI).
- (4) LGLN Cardiology provides medical diagnostic services for cardiac patients, including echocardiograms, stress tests, stress echocardiograms, dobutamine stress echocardiogram, and cardiac perfusion imaging (nuclear medicine).

- (5) RI Urological offers services for the diagnosis and treatment of male urological conditions, including services on outpatients.

At all pertinent times hereto, each Taxpayer has offered the respective services enumerated above.

In June 2007, the General Assembly passed House Bill 5300 Substitute A as Amended (“Budget Bill”). Portions of this legislation amended Title 44 of the General Laws to add thereto a Chapter 64 entitled “The Outpatient Health Care Facility Surcharge Act” and a Chapter 65 entitled “The Imaging Services Surcharge Act.” Both of these amendments were to take effect upon passage. Although the Governor vetoed the Budget Bill upon presentment, the General Assembly overrode the veto with the requisite two-thirds majority vote on June 21, 2007. Thus, the Medical Surcharge Acts were enacted into the General Laws as P.L. 2007, Chapter 73, Article 11. Under the terms of these statutory provisions, the Tax Division is charged with the administration and collection of the Medical Surcharges.

After the Medical Surcharge Acts were enacted, each of the Taxpayers filed returns with the Tax Division and made the requisite payments in accordance with the applicable statute. Specifically, Plaintiffs RI Medical Imaging, Coastal Medical, Open MRI, and LGLN Cardiology each made payments in accordance with the Imaging Surcharge codified in G.L. 1956 § 44-65-1 et seq. Further, Plaintiffs RI Medical Imaging and RI Urological each made payments in accordance with the Outpatient Surcharge codified in G.L. 1956 § 44-64-1 et seq. Simultaneously with these payments, however, the Taxpayers filed refund claims for the

amounts that had been remitted. On February 22, 2008, the Tax Division denied the Taxpayers' refund requests.

On March 5, 2008, the Taxpayers filed a timely request for an administrative review of the Tax Division's denial of their claimed refunds and, by agreement, the matters were consolidated for a hearing on stipulated facts. On November 10, 2008, the Hearing Officer for the Tax Division issued a Decision and Recommendation, which concluded that the Taxpayers were not entitled to the requested refunds. On November 28, 2008, the Tax Administrator adopted the Hearing Officer's Decision and Recommendation as his Final Decision and Order.

On December 22, 2008, the Taxpayers filed a timely Complaint with this Court seeking a *de novo* judicial review of the Tax Administrator's Final Decision pursuant to G.L. 1956 § 8-8-24. Although G.L. 1956 § 8-8-24 provides that "[e]ach appeal of a final decision of the tax administrator . . . shall be an original, independent proceeding in the nature of a suit in equity . . . and shall be tried de novo and without a jury," the Parties here have submitted an agreed statement of facts and have jointly submitted exhibits, along with memoranda in support of their respective positions. A brief hearing was held before the Court on May 27, 2010.

## II STATUTORY PROVISIONS AT ISSUE

### A The Outpatient Surcharge

The Outpatient Surcharge was enacted as a component of Article 11 of the 2007 Budget Bill. Article 11 was entitled "Relating to Hospital Facilities and Other Medical

Facilities and Services” and imposed fees or levies upon various health care providers. The Outpatient Surcharge was set forth in Section 2 of Article 11 and was made effective upon passage of the Budget Bill. Following its enactment, the Outpatient Surcharge was codified at Chapter 64 of Title 44 of the General Laws, entitled “The Outpatient Health Care Facility Surcharge Act.” According to the terms of this statute:

“A surcharge at a rate of two percent (2.0%) shall be imposed upon the net patient services revenue received each month by every outpatient health care facility. Every provider shall pay the monthly surcharge no later than the twenty-fifth (25th) day of the month following the month that the gross patient revenue is received. This surcharge shall be in addition to any other authorized fees that have been assessed upon outpatient facilities.” G.L. 1956 § 44-64-3(b).

As set forth therein, an “outpatient health care facility” is defined as:

“[A] person or governmental unit that is licensed to establish, maintain, and operate a free-standing ambulatory surgery center or a physician ambulatory surgery center or a podiatry ambulatory surgery center, in accordance with chapter 17 of title 23.” G.L. 1956 § 44-64-3(a).

Further, according to Chapter 64, the two percent (2.0%) surcharge is imposed upon “net patient services revenue,” defined as “the charges related to patient care services less (i) charges attributable to charity care, (ii) bad debt expenses, and (iii) contractual allowances.” G.L. 1956 § 44-64-2(3). Finally, a “provider” subject to the surcharge pursuant to this chapter is “a licensed facility or operator, including a governmental facility or operator.” G.L. 1956 § 44-64-2(5).

## B The Imaging Surcharge

Similar to the Outpatient Surcharge, the Imaging Surcharge was enacted as a component of Article 11 of the 2007 Budget Bill. The Imaging Surcharge was set forth in Section 3 of Article 11 and, as discussed above, was made effective upon passage of the Budget Bill. Following its enactment, the Imaging Surcharge was codified at Chapter 65 of Title 44 of the General Laws, entitled “The Imaging Services Surcharge Act.” According to the terms of this statute:

“A surcharge shall be imposed upon the net patient revenue received by every provider in each month at a rate of two percent (2.0%). Every provider shall pay the monthly surcharge no later than the twenty-fifty [*sic*] (25th) day of each month following the month of receipt of net patient services revenue. This surcharge shall be in addition to any other fees or assessments upon the provider allowable by law.” G.L. 1956 § 44-65-3.

Under Chapter 65, a “provider” subject to this surcharge is defined as:

“[A]ny person who furnishes imaging services for the purpose of patient diagnosis, assessment or treatment, excluding any person licensed as a hospital or a rehabilitation hospital center or a not-for-profit organization ambulatory care facility, pursuant to the provisions of chapter 17 of title 23 of the Rhode Island general laws, as amended or not performing more than two hundred (200) radiological procedures per month. Further, the term ‘provider’ shall not apply to any person subject to the provisions of chapter 64 of title 44 or to any person licensed in the state of Rhode Island as a dentist or a podiatrist or a veterinarian.” G.L. 1956 § 44-65-2(6).

Further, Chapter 65 sets forth that “imaging services” means and includes:

“[A]ll the professional and technical components of x-ray, ultrasound (including echocardiography), computed tomography (CT), magnetic resonance imaging (MRI), positron emission tomography (PET), positron emission

tomography/computed tomography (PET/CT), general nuclear medicine, and bone densitometry procedures.”<sup>1</sup> G.L. 1956 § 44-65-2(4).<sup>2</sup>

Although the statute provides that the two percent (2.0%) surcharge is to be imposed upon a provider’s “net patient revenue,” this term is not defined within the statute. Nonetheless, the statute provides a definition of “net patient services revenue,” setting forth that this figure represents “the charges related to patient care services less (i) charges attributable to charity care, (ii) bad debt expenses, and (iii) contractual allowances.” G.L. 1956 § 44-65-2(3).<sup>3</sup>

### III ARGUMENTS ON APPEAL

On appeal to this Court, the Taxpayers challenge the constitutionality of both the Imaging Surcharge and the Outpatient Surcharge. Specifically, the Taxpayers aver that these

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<sup>1</sup> In the initial draft of this legislation, the term “imaging services” was defined as including:

“[A]ll the professional and technical component of x-ray, ultrasound (including echocardiography), computed tomography (CT), magnetic resonance imaging (MRI), positron emission tomography (PET), positron emission tomography/computed tomography (PET/CT), mammography, and bone densitometry procedures.” (Emphasis added.)

However, a later version of the legislation—put forth in House Bill 5300 Substitute A—which would eventually be enacted by the General Assembly, deleted the term “mammography” and added the term “general nuclear medicine” in the definition of “imaging services.” See G.L. 1956 § 44-65-2(4).

<sup>2</sup> The Court notes that G.L. 1956 § 44-65-2 was amended by P.L. 2010, ch. 239, § 47, which became effective on June 25, 2010. The only statutory change made by this amendment, however, was that the definitions of “imaging services” and “net patient services revenue” were reordered. Specifically, the definition of “imaging services,” formerly set forth in G.L. 1956 § 44-65-2(4), is now provided in G.L. 1956 § 44-65-2(3). Likewise, the definition of “net patient services revenue,” formerly set forth in G.L. 1956 § 44-65-2(3), is now provided in G.L. 1956 § 44-65-2(4). There were no other substantive changes made to this statutory scheme by the 2010 amendment. Nonetheless, because the commencement of this action predated the 2010 amendment, the Court will cite to the former numbering of G.L. 1956 § 44-65-2 for the purposes of this decision.

<sup>3</sup> See id.

Medical Surcharge Acts are comprised of a series of arbitrary and irrational classifications among various medical practices and practitioners, which are violative of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Rhode Island Constitution. Additionally, the Taxpayers contend that the Medical Surcharge Acts at issue are inherently vague and ambiguous such that they fail to provide adequate notice to affected taxpayers, and thus, are in violation of the Due Process Clause set forth in the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Rhode Island Constitution.

In response, the Tax Administrator asserts that the Taxpayers' claims are wholly unfounded. Specifically, the Tax Administrator contends that the Taxpayers' Equal Protection Clause challenges are unavailing because any classifications contained within the Medical Surcharge Acts are supported by rational and logical justifications. Further, the Tax Administrator maintains that the Taxpayers' Due Process Clause challenges must similarly fail, as the Medical Surcharge Acts at issue are neither vague nor ambiguous, and the terms contained therein can be reasonably understood by the class of persons who are subject to each respective provision.

#### IV LAW AND ANALYSIS

##### A Taxpayers' Burden of Proof for Constitutional Challenges

It is axiomatic that a reviewing court must afford great respect and deference to the enactments of the General Assembly. Indeed, it is a well settled principle that "all laws regularly enacted by the legislature are presumed to be constitutional and valid." Parrella v.

135, 221 A.2d 99, 102 (R.I. 1966). As has been set forth by the R.I. Supreme Court, “[t]he validity of tax legislation derives ‘from the inherent power of the State to impose taxes.’” In re Opinion to the Governor, 101 R.I. at 30, 170 A.2d at 909 (quoting Manning v. Bd. of Tax Com’rs, 46 R.I. 400, 413, 127 A. 865, 871 (1925)). Further, according to the R.I. Supreme Court, “[t]he imposition or levy of a tax is an exercise of the legislative power of the state and, in the absence of express constitutional restriction or limitation, the taxing power may be exercised in [its] entirety by the legislature.” In re Opinion to the Governor, 101 R.I. at 31, 170 A.2d at 909. Hence, the General Assembly is vested with broad authority over taxation and has the power to determine what will be taxed, the amount to be assessed, and what will be exempt. Id. Inherent in this broad authority is the power to create classifications of persons and property for tax purposes and, as mentioned, to grant exemptions from such taxes. With regard to the former—the creation of tax classifications—the R.I. Supreme Court has said:

“It is within the power of the Legislature to classify persons and property for the purpose of taxation, and to impose different burdens upon different classes, provided such classification is not unreasonable nor arbitrary, but is based upon differences indicating a reasonable and just relation to the act in respect to which the classification is proposed. The authority of the Legislature in the exercise of its police power and its power of taxation to make classification of persons and property has frequently been considered in cases involving alleged violations of the Fourteenth Amendment to the Constitution of the United States. The growing tendency is apparent on the part of the state and federal courts to hold that where a difference appears it need not be great nor conspicuous to warrant classification by the Legislature.” Manufacturers’ Mut. Fire Ins. Co. v. Clarke, 41 R.I. 277, 103 A. 931, 933 (1918) (internal quotations omitted).

Similarly, with respect to the latter—the power to grant exemptions from taxes—the R.I. Supreme Court has opined that:

“The granting of exemptions when not outrageously subversive is as thoroughly an attribute of sovereignty as is the imposition of the tax to which the exemption relates. Likewise it is not for this court to question the wisdom of the policy pursued by the general assembly when in the exercise of its exclusive power it enacted the exemptions [at issue].” General Finance Corp. v. Archetto, 93 R.I. 392, 395-96, 176 A.2d 73, 75 (R.I. 1961).

Ultimately, “[i]t is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and grant exemptions[,] [and] [n]either due process nor equal protection imposes upon a state any rigid rule of equality of taxation.” Archetto, 93 R.I. at 397, 176 A.2d at 76 (quoting Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 509, 57 S.Ct. 868, 872 (1937)).

### C Taxpayers’ Equal Protection Challenges

With the foregoing discussion of the General Assembly’s plenary taxation power as a backdrop, the Court will now address the Taxpayers’ first constitutional challenge; namely, that the Imaging Surcharge and Outpatient Surcharge are each comprised of a series of arbitrary and irrational classifications among various medical practices and practitioners in contravention of the Equal Protection Clause set forth in the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Rhode Island Constitution. At the outset, the Court notes that because the equal protection guarantees of the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Rhode Island Constitution are similar, only one analysis is necessary. See Rhode Island Insurers’ Fund v.

Leviton Mfg. Co., Inc., 716 A.2d 730, 734 (R.I. 1998); Rhode Island Depositors Economic Protection Corp. v. Brown, 659 A.2d 95, 100 (R.I.1995).

Article I, Section 2 of the Rhode Island Constitution provides: “nor shall any person be denied equal protection of the laws.” It is well settled that an equal protection analysis pursuant to this provision begins with an examination of the nature of the classification created by the Legislature. Levitron Mfg. Co., Inc., 716 A.2d at 734. When the classification does not involve a fundamental right and is not related to a suspect classification, as is the case in the instant matter, the appropriate standard of review is the rational basis test. See Mackie v. State, 936 A.2d 588, 596 (R.I. 2007). This standard of review is markedly deferential and the Court will not delve into the actual motives of the General Assembly relative to legislation at issue. See Power v. City of Providence, 582 A.2d 895, 903 (R.I. 1990). Rather, if the Court “can conceive of *any* rational basis to justify the classification, [it] will uphold the statute as constitutional.” Id. (quoting Cherenzia v. Lynch, 847 A.2d 818, 825 (R.I. 2004)) (emphasis added). Given that an enactment of the General Assembly is presumed to be constitutional and the Plaintiffs bear the burden of proving beyond a reasonable doubt that a statute is repugnant to the constitution, the Plaintiffs are required to “negate *every* conceivable basis which might support it.” See Mackie, 936 A.2d at 597 (quoting Medeiros v. Vincent, 431 F.3d 25, 32 (1st Cir. 2005)) (internal quotations omitted) (emphasis in original).

In the case at bar, the Taxpayers aver that both the Imaging Surcharge and the Outpatient Surcharge are violative of the guarantees of equal protection. For the sake of clarity of analysis, the Court will consider each constitutional challenge individually.

## Taxpayers' Equal Protection Challenge of the Imaging Surcharge

The Taxpayers contend that the Imaging Surcharge contravenes the Equal Protection Clause in that it imposes different burdens on persons providing the same services. Specifically, the Taxpayers maintain that the statutory scheme is comprised of a series of arbitrary and irrational classifications, providing tax exemptions for (1) providers who do not perform more than two hundred procedures, (2) certain medical practices that provide the same type of imaging services, and (3) diagnostic imaging techniques that are not expressly set forth in the statute. According to the Taxpayers, the guarantees of equal protection do not comport with these provisions.

The Court disagrees. As will be discussed in the coming sections, the Court finds sufficient basis for concluding that any classifications or exemptions provided in the Imaging Surcharge are neither arbitrary nor irrational, and in turn, concludes there exists a rational basis to support each challenged provision.

### a

#### Exemption for Persons Performing Two-Hundred (200) or Less Radiological Procedures Per Month

The Taxpayers first argue that Imaging Surcharge arbitrarily imposes a tax solely based on the number of procedures performed. In particular, the Taxpayers take issue with the provision of the Imaging Surcharge which exempts persons “not performing more than two hundred (200) or more radiological procedures per month.” See G.L. 1956 § 44-65-2(6). According to the Taxpayers, medical practices with a larger volume of procedures must pay the tax and smaller practices are exempt. Further, the Taxpayers emphasize that there is no evidence that any study or analysis was conducted by the Legislature to arrive at the two

hundred procedure threshold. Accordingly, the Taxpayers contend that this exemption for persons performing two hundred or less radiological procedures is irrational and arbitrary, and thus, fails to comport with the constitutional guarantees of equal protection.

At the outset, the Court reiterates that, as challengers of the statute's constitutionality, the Taxpayers carry the burden of persuasion to demonstrate that the classification at issue lacks any rational basis (City of Pawtucket, 662 A.2d at 45) and the Court need only conceive of any rational basis—not wholly irrelevant to the purpose of the statute—which supports the classification in order to find that the Taxpayers have not met their burden. See Mackie, 936 A.2d at 596-97. Given that the Court finds the exemption from the Imaging Surcharge for persons performing two hundred or less radiological procedures is supported by a number of logical bases, the Court concludes that this classification is not violative of the Equal Protection Clause as the Taxpayers contend.

First and foremost, it is conceivable that the General Assembly made the determination that exempting persons performing two hundred or less radiological procedures from the Imaging Surcharge was necessary in order to fulfill the apparent purpose of the statute; namely, to levy a tax on medical facilities who are principally engaged in the practice of diagnostic imaging services rather than those who employ such techniques infrequently, as an incidental component of providing broader medical care. While the Court is mindful that the Equal Protection Clause does not permit the State to single out an individual and subject him to taxes not imposed on others in the same class (see Hillsborough v. Cromwell, 326 U.S. 620, 623, 66 S.Ct. 445, 448 (1946)), the Court does not agree that every medical practitioner who performs radiological services can be grouped

together as one single undifferentiated class. Rather, there is a readily discernable and markedly vast difference between a provider such as Plaintiff RI Medical Imaging—that performs hundreds of thousands of outpatient diagnostic radiological examinations on a purely referral basis every year<sup>4</sup>—and a medical practice that comparatively conducts only a handful of such services in the course of providing medical care to its patients. The General Assembly may have rationally concluded that the threshold radiological procedure requirement at issue, in conjunction with the other enumerated statutory exemptions, afforded a means to direct the tax towards this entirely distinct class of practices and practitioners. Although it is arguable that the Legislature may not have utilized the most narrowly tailored means to differentiate between these taxpayers, such is not required for the purpose of a rational basis review. See Williamson v. Lee Optical of Oklahoma Inc., 348 U.S. 483, 489, 75 S.Ct. 461, 465 (1955) (noting that a statute’s under-inclusiveness does not amount to a statutory classification that offends the Equal Protection Clause); see also 16B Am. Jur. 2d Constitutional Law § 859 (2010). Further, the U.S. Supreme Court has repeatedly stressed that “[a] classification having some reasonable basis does not offend against [the equal protection] clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality.” Gallagher v. Crown Kasher Super Market of Mass., Inc., 366 U.S. 617, 624 81 S.Ct. 1122, 1126 (1961) (quoting Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 31 S.Ct. 337, 340 (1911)). Accordingly, the Court is persuaded that the exemption for persons performing two hundred or less radiological procedures per month is adequately supported by a rational basis.

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<sup>4</sup> See Transcript at 9, May 27, 2010. (Testimony of Dr. John A. Pezzullo)

Additionally, the General Assembly may have determined that providing an exemption for those persons who do not perform more than two hundred radiological procedures per month was a means to lend support to smaller providers in the State. In fact, the Taxpayers acknowledge in their post-hearing memorandum that this provision has effectively exempted smaller practices from the Imaging Surcharge. Upon review of the pertinent case law, the Court is unable to find any constitutional infirmity with such an objective. To the contrary, courts have held that assisting small businesses is a legitimate legislative objective, and affording a tax exemption in order to effectuate such is rational and not violative of the Equal Protection Clause. *See, e.g., Gunther v. Dubno*, 487 A.2d 1080, 1086-87 (Conn. 1985).

Finally, the General Assembly may have concluded that the time, effort, and expense of administering a monthly two percent tax on a medical practitioner or practice group that performs less than two hundred imaging procedures outweighs the benefit that would be derived from the tax revenue. Despite the Taxpayers' strenuous argument to the contrary, the Court is satisfied that considerations of expense and administrative convenience can serve as a rational basis, in compliance with the Equal Protection Clause, to justify differences in tax treatment between taxpayers providing similar services. Indeed, the U.S. Supreme Court has held that "[a] legislature is not bound to tax every member of a class or none" and, in turn, "[a]dministrative convenience and expense in the collection or measurement of the tax are alone a sufficient justification for the difference between the treatment of small incomes or small taxpayers and that meted out to others." *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 509-11, 57 S.Ct. 868, 872-73 (1937). Extrapolating

this principle, courts have frequently cited administrative convenience as a rational basis to justify tax distinctions for taxpayers providing or engaging in similar services. See, e.g., Hearst Corp. v. Iowa Dept. of Revenue, 461 N.W.2d 295, 305-06 (Iowa 1990) (exempting the sale of newspapers from a tax applicable to other periodicals did not violate the Equal Protection Clause, in part, because the State has a legitimate interest in “maintaining administrative economy” and the legislature could have determined it would be “uneconomical and highly impractical if the tax department was forced to monitor, regulate and audit the hundreds of carriers who sell and collect for newspapers on a daily and/or weekly basis”); Trump v. Chu, 489 N.Y.S.2d 455, 460 (N.Y. 1985) (exempting property conveyances of less than one million dollars from a real estate transfer tax did not violate the Equal Protection Clause, in part, because the Legislature could have determined that expense and inconvenience of collecting the tax on small real estate transactions would be disproportionate to the revenue obtained); Paper Supply Co. v. City of Chicago, 317 N.E.2d 3, 13-14 (Ill. 1974) (exempting employers with less than fifteen employees from a monthly tax surcharge did not violate the Equal Protection Clause because “the administrative convenience and expense incurred in collection or measurement of the tax provide[d] a sufficient justification and a rational basis for [the exemption]”); see also Ramrod, Inc. v. Wisconsin Dept. of Revenue, 219 N.W.2d 604, 610-11 (Wis. 1974); Rocco Atobelli, Inc. v. State, 524 N.W.2d 30, 37-38 (Minn. Ct. App. 1994); City of San Jose v. Donohue, 123 Cal.Rptr. 804, 807-08 (Cal. Ct. App 1975). It is conceivable that the General Assembly may have likewise determined that the requirements to administer the Imaging Surcharge on providers who perform two hundred or less procedures a month outweighed the revenue

that would be generated therefrom. This, as the Court has noted above, is not repugnant to the Constitution.

On a final note, the Court observes that the Taxpayers place great emphasis on the fact that the two hundred procedure threshold set forth in the Imaging Surcharge is unsupported by any study or analysis by the General Assembly. According to the Taxpayers, it appears as if “the legislature picked the number 200 out of thin air.” This line of argument is wholly unavailing as it is well settled that a legislature is not required to articulate its reasons for enacting a statute. See Fed. Communications Commission v. Beach Communications Inc., 508 U.S. 307, 315, 113 S.Ct. 2096, 2102 (1993); see also Nordlinger v. Hahn, 505 U.S. 1, 15, 112 S.Ct. 2326, 2334 (1992) (“[T]he Equal Protection Clause does not demand for purposes of rational-basis review that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification.”). Thus, “a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.” Beach Communications Inc., 508 U.S. at 315, 113 S.Ct. at 2102. To require the General Assembly to set forth a rationale for each statutory distinction or exemption—as the Taxpayers implicitly request—would be contrary to well-established law and the Court declines to entertain such an argument. After all, the responsibility for drawing distinctions and making classifications is inherently vested in the General Assembly. As aptly stated by Justice Holmes:

“When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It

might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the Legislature must be accepted unless we can say that it is very wide of any reasonable mark.” Louisville Gas & Electric Co. v. Colman, 277 U.S. 32, 41, 48 S.Ct. 423, 426 (1928) (Holmes, J., dissenting).

After reviewing the provision of the Imaging Surcharge which exempts persons “not performing more than two hundred (200) or more radiological procedures per month,” in light of the applicable law, the Court finds that the Taxpayers have not met their burden to demonstrate that this classification drawn by the Legislature lacks any rational basis.

**b**

**Exemption for Certain Medical Practices That Provide Similar Imaging Services**

The Taxpayers’ second contention is that the Imaging Surcharge is violative of the Equal Protection Clause because it exempts certain medical practices that provide the same type of imaging services as the Taxpayers. Specifically, the Taxpayers take issue with the fact that the General Assembly exempted dentists, podiatrists, and veterinarians from paying the Imaging Surcharge. See G.L. 1956 § 44-65-2(6). The Taxpayers aver that these practitioners each regularly utilize x-ray equipment—an imaging service subject to the Imaging Surcharge pursuant to G.L. 1956 § 44-65-2(4)—and yet are not subject to the two percent tax. According to the Taxpayers, this exemption is arbitrary, and thus, is in violation of the guarantees of equal protection. Also, the Taxpayers again emphasize that there is no evidence that any investigation or analysis was conducted by the Legislature that would provide a rationale for these exemptions.

Guided by the standard of review set forth above, the Court once again concludes that the exemptions set forth in the Imaging Surcharge do not contravene the Equal

Protection Clause. As the Court is able to conceive of rational and logical bases that would justify affording dentists, podiatrists, and veterinarians these respective exemptions. Given that much of the forthcoming discussion overlaps with the preceding section, the Court will abbreviate its analysis.

First and foremost, it is conceivable that the General Assembly made the determination that these exemptions provided another means to ensure that the Imaging Surcharge was levied on outpatient medical facilities primarily engaged in the practice of diagnostic imaging services rather than those who employ such techniques as a mere component of providing broader medical care. The differentiation between these very distinct classes of practitioners was discussed in the preceding section. In sum, the General Assembly may have utilized these exemptions to distinguish between facilities such as Plaintiff RI Medical Imaging—who performs extensive diagnostic imaging services for patients on a referral basis—and those medical practices—such as dentists, podiatrists, and veterinarians—who merely conduct diagnostic imaging services as a component of providing medical care to their patients. Indeed, when this exemption is considered in conjunction with the threshold imaging procedure requirement, it is certainly conceivable that the General Assembly was attempting to differentiate between these distinct classes of practitioners. As stressed in the preceding section, although the General Assembly may not have utilized the most narrowly tailored means to differentiate between these taxpayers, such is not required for the purpose of a rational basis review. See Williamson, 348 U.S. at 489, 75 S.Ct. at 465.

Alternatively, the General Assembly may have made the determination that since dentists, podiatrists, and veterinarians are each subject to their own regulations and, in turn, are obligated by statute to pay biennial fees to remain eligible to practice,<sup>5</sup> these practitioners should not be subject to an additional levy on imaging procedures performed in the course of treating their patients. As emphasized above, the General Assembly's power to grant tax exemptions is inherently a policy-making function which is vested exclusively to the legislative branch, and thus, the Court is not permitted to question the wisdom of these enactments. See Archetto, 93 R.I. at 395-97, 176 A.2d at 75-76. Rather, for a finding of constitutionality, the Court must merely determine if there is any conceivable rational basis to justify these exemptions. See Power, 582 A.2d at 903. Finding that the General Assembly may have exempted dentists, podiatrists, and veterinarians from the Imaging Surcharge because each is subject to comprehensive statutory regulation and obligated to pay biennial licensing-related fees, the Court cannot say these exemptions lack any conceivable rational basis.

Finally, the Court reiterates that the General Assembly's failure to disclose any findings or analysis which would justify these tax exemptions does not have any bearing on the constitutionality of the statute. As stressed in the preceding section, it is well settled that the Legislature is not required to articulate any explanation regarding statutory classifications

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<sup>5</sup> The regulations for dentists are set forth in G.L. 1956 § 5-31.1-1 et seq. Likewise, the regulations for podiatrists are set forth in G.L. 1956 § 5-29-1 et seq. Finally, the regulations for veterinarians are set forth in G.L. 1956 § 5-25-1 et seq. Each of these statutory schemes set forth the qualifications to become licensed in each of these respective medical fields and detail the regulations for the practice. The Court takes notice of the fact that each of these medical practitioners is required to register or renew their license to practice every two years, requiring a fee on each occasion. See G.L. 1956 §§ 5-31.1-6, -21 (dentists); G.L. 1956 §§ 5-29-10, -11 (podiatrists); G.L. 1956 § 5-25-12 (veterinarians).

or exemptions. Beach Communications Inc., 508 U.S. at 315, 113 S.Ct. at 2102; Nordlinger, 505 U.S. at 15, 112 S.Ct. at 2334. The Court declines to alter this established and common sense precedent.

After reviewing the provision of the Imaging Surcharge which exempts “any person licensed in the state of Rhode Island as a dentist, or a podiatrist, or a veterinarian,” in light of the applicable law, the Court once again finds that the Taxpayers have not met their burden to demonstrate that this classification drawn by the Legislature lacks any rational basis.

c

**Diagnostic Imaging Services Not Expressly Enumerated in the Imaging Surcharge**

Lastly, the Taxpayers contend that the Imaging Surcharge contravenes the Equal Protection Clause because it arbitrarily exempts those diagnostic imaging techniques that are not expressly set forth in the definition of “imaging services.” The Taxpayers note that providers who furnish “imaging services” are subject to the Imaging Surcharge. As defined in G.L. 1956 § 44-65-2(4), “imaging services” means and includes:

“[A]ll the professional and technical components of x-ray, ultrasound (including echocardiography), computed tomography (CT), magnetic resonance imaging (MRI), positron emission tomography (PET), positron emission tomography/computed tomography (PET/CT), general nuclear medicine, and bone densitometry procedures.”

The Taxpayers point out that the Parties have stipulated that there are four major modalities of modern medical diagnostic imaging: (1) x-ray, (2) ultrasound, (3) magnetic resonance imaging, and (4) nuclear medicine. Further, the Taxpayers acknowledge that there is agreement among the Parties that within these modalities, there are a series of particular imaging techniques. Consequently, the Taxpayers argue that since the Imaging Surcharge’s

definition of “imaging services” combines both imaging modalities and specific imaging techniques, it is designed to be an exhaustive list of procedures, and as a result, any diagnostic imaging techniques not set forth therein are exempted. The Taxpayers rely upon the interpretative canon of *expressio unius est exclusio alterius*—the express mention of one is the exclusion of another—to support this interpretation. Further, the Taxpayers note that a prior unenacted version of the Imaging Surcharge included the term “mammography” in the definition of “imaging services.” According to the Taxpayers, by removing the reference to “mammography,” the General Assembly signaled an intention to exempt any diagnostic imaging techniques not enumerated therein.

Based upon the Taxpayers’ contention that the definition of “imaging services” is exhaustive, and thus, any procedures not expressly set forth in the definition are exempted, the Taxpayers have proffered a list of diagnostic techniques they maintain are not subject to the Imaging Surcharge. Specifically, the Taxpayers argue the following diagnostic techniques are not subject to the Imaging Surcharge: mammography, bone densitometry, fluoroscopy, angiography, obstetric ultrasonography, bone scanning, thyroid scanning, lymphoscintigraphy, hepatobiliary scan, and nuclear cardiology stress tests. Ultimately, the Taxpayers argue that there is no rational basis to exempt these diagnostic techniques, and thus, the Imaging Surcharge fails to comport with the Equal Protection Clause.

The Court disagrees with the Taxpayers’ interpretation of the definition of “imaging services” set forth in G.L. 1956 § 44-65-2(4). As will be discussed, this provision is not exhaustive, and thus, the Imaging Surcharge does not provide an exemption for those diagnostic imaging techniques not expressly set forth in the statute. Accordingly, since this

provision does not make any classifications or exemptions pertaining to diagnostic imaging techniques, the Taxpayers' equal protection challenge is without merit.

At the outset, the Court notes that “[i]t is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give words of the statute their plain and ordinary meaning.” Iselin v. Retirement Bd. Of Employees’ Retirement System of Rhode Island, 943 A.2d 1045, 1049 (R.I. 2008) (quoting Accent Story Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996)). In other words, when the Court is presented with an unambiguous statute, “there is no room for statutory construction and [the Court] must apply the statute as written.” In re Harrison, 992 A.2d 990, 994 (R.I. 2010) (internal quotations omitted). “It is only when confronted with an unclear or ambiguous statutory provision that this Court will examine the statute in its entirety to discern the legislative intent and purpose behind the provision.” Id. (quoting State v. LaRoche, 925 A.2d 885, 888 (R.I. 2007)). A determination of legislative intent is accomplished by “an examination of the language, nature, and object of the statute.” Downey v. Carcieri, 996 A.2d 1144, 1150 (R.I. 2010) (quoting Berthiaume v. School Committee of Woonsocket, 121 R.I. 243, 247, 397 A.2d 889, 892 (1979)). In such, the Court presumes that the Legislature intended to attach significance to each word, sentence, and provision of a statute. Retirement Bd. of Employees’ Retirement System of Rhode Island v. DiPrete, 845 A.2d 270, 279 (R.I. 2004). Thus, “no construction of a statute should be adopted that would demote any significant phrase or clause to mere surplusage.” State v. Clark, 974 A.2d 558, 572 (R.I. 2009) (quoting State v. DeMagistris, 714 A.2d 567, 573 (R.I. 1998)). Nor will the Court construe a statute in such a way as to arrive at an absurd result.

Kaya v. Partington, 681 A.2d 256, 261 (R.I. 1996) (citing Beaudoin v. Petit, 122 R.I. 469, 476, 409 A.2d 536, 540 (1979)).

Upon careful review of the definition of “imaging services” as set forth in G.L. 1956 § 44-65-2(4), the Court is satisfied that this provision is neither unclear nor ambiguous. Indeed, upon consideration of the plain and ordinary meaning of the statutory language, it is readily apparent that, contrary to the Taxpayers’ argument, the definition of “imaging services” is not comprised of an exhaustive list of diagnostic procedures which are to be subject to the Imaging Surcharge. Rather, the definition expressly encompasses “all the professional and technical components” of the procedures enumerated therein. Thus, applying the literal meaning to this qualifying phrase, it is clear that if a diagnostic technique could be considered a “professional and technical component” of a procedure set forth in the statutory definition of “imaging services,” it is subject to the Imaging Surcharge.

The Court notes that if it were to accept the Taxpayers’ contention that the General Assembly intended the list to be exhaustive, it would result in giving no effect to the statutory language “all the professional and technical components.” In accordance with the well settled rules of statutory interpretation, the Court declines to relegate this qualifying phrase to mere surplusage. See Clark, 974 A.2d at 572. Additionally, while the Court is mindful of the interpretative cannon of *expressio unius est exclusio alterius*, the Court nonetheless concludes that this doctrine is inapplicable if it leads to a result which is at odds with the clear and unambiguous language of the statute. The R.I. Supreme Court has consistently emphasized that this doctrine is “merely an aid to construction and is not dispositive of legislative intent in every instance.” Volpe v. Stillman White Co., 415 A.2d

1034, 1036 (R.I. 1980); see also Murphy v. Murphy, 471 A.2d 619, 622 (R.I. 1984). Further, the R.I. Supreme Court has said that courts must “apply cautiously the principle that express enumeration of items in a statute impliedly excludes all others, so that the principle furthers, rather than defeats, legislative intent.” Volpe, 415 A.2d at 1036. In the instant matter, the Court finds that application of this interpretative cannon is improper since it would lead to a result that is in direct conflict with the clear and unambiguous language of the statute.

Given that the Court has determined the clear and unambiguous meaning of “imaging services” set forth in the Imaging Surcharge, it must apply the statute as written. See In re Harrison, 992 A.2d at 99. In due course, the Court must determine those diagnostic imaging techniques that could be considered a “professional and technical component” of a procedure set forth in the statutory definition of “imaging services.”

As the Taxpayers acknowledge, the definition of “imaging services” contains each of the four modalities of modern medical diagnostic imaging: (1) x-ray, (2) ultrasound, (3) magnetic resonance imaging, and (4) nuclear medicine. In essence, these modalities are categorized by the imaging technology they employ. As set forth in the stipulated facts, three of these respective modalities encompass a wide array of specific diagnostic imaging techniques. First, x-ray is an imaging modality that utilizes ionizing radiations to produce an image. The specific imaging techniques that fall within this modality include computed tomography (formerly computerized axial tomography), bone densitometry (bone density scans), fluoroscopy, mammography, and angiography. Second, ultrasound is an imaging modality that uses high frequency sound waves to produce images of the body. The specific imaging techniques that are categorized under this modality include echocardiograms

(cardiac ultrasounds) and obstetric ultrasonography. Finally, nuclear medicine is an imaging modality that encompasses the use of radioisotopes in order to create an image. This broad modality, also referred to as radionuclide imaging, encompasses a wide array of imaging techniques, including positron emission tomography, positron emission tomography/computed tomography, nuclear stress tests (myocardial perfusion imaging), lymphoscintigraphy, hepatobiliary scans (hepatobiliary imino-diacetic acid scan or gallbladder scan) and bone scans (nuclear bone scans).

In light of the foregoing, the Court is satisfied that the definition of “imaging services” set forth in the Imaging Surcharge includes all the specific imaging techniques that—although not expressly listed—nonetheless fall within the ambit of the modalities that are enumerated therein. Indeed, the plain and ordinary meaning of the statutory language “all the professional and technical components of x-ray, ultrasound, . . . magnetic resonance imaging . . . [and] general nuclear medicine” commands such a result. After all, each of these enumerated modalities employs an imaging technology that encompasses many specific diagnostic imaging procedures. For example, as mentioned above, mammography is a type of imaging technique that uses x-rays to produce images of human breasts. Likewise, obstetric ultrasonography is a procedure that uses standard ultrasound technology to monitor fetal development. Finally, lymphoscintigraphy is a nuclear medicine imaging procedure that is used to check the spread of cancer through a patient’s lymphatic system. Although mammography, ultrasonography, and lymphoscintigraphy are not expressly set forth in the definition of “imaging services,” they are clearly subject to the Imaging Surcharge given that they are “professional and technical components” of x-ray, ultrasound,

and nuclear medicine, respectively. Ultimately, given the General Assembly's use of the phrase "all the professional and technical components" in conjunction with the four modalities of modern diagnostic imaging, it is readily apparent that the Imaging Surcharge is designed to apply to an array of various imaging procedures not expressly set forth in the definition of "imaging services." In fact, when these modalities are considered *in toto*, the Court is unable to identify a diagnostic imaging procedure that would not fall within the ambit of the statute.

After reviewing the provision of the Imaging Surcharge which sets forth those "imaging services" that are subject to taxation, the Court concludes that this statutory provision does not provide an exemption for any of the diagnostic imaging procedures identified by the Taxpayers. Accordingly, because the Imaging Surcharge does not make any classifications or exemptions pertaining to diagnostic imaging techniques, the Taxpayers' final equal protection challenge to the Imaging Surcharge is without merit.

## 2

### Taxpayers' Equal Protection Challenge of the Outpatient Surcharge

The Taxpayers next contend that the Outpatient Surcharge contravenes the Equal Protection Clause. Specifically, the Taxpayers argue that the Outpatient Surcharge is violative of the guarantees of equal protection because it is arbitrarily imposed on some, but not all, ambulatory surgery centers. The Taxpayers note that pursuant to G.L. 1956 § 44-64-3(b), the Outpatient Surcharge is imposed on each "outpatient health care facility." Further, the Taxpayers note that an "outpatient health care facility" is defined in G.L. 1956 § 44-64-3(a) as "a person or governmental unit that is licensed to establish, maintain, and operate a free-standing ambulatory surgery center or a physician ambulatory surgery center or a

podiatry ambulatory surgery center, in accordance with chapter 17 of title 23.” However, according to the Taxpayers, the terms “free-standing ambulatory surgery center” and “ambulatory surgery center” are not defined in Chapter 17 of Title 23. Given this fact, the Taxpayers aver that the statute must be read to find that the Outpatient Surcharge is imposed on some, but not all, ambulatory surgery centers. Thus, according to the Taxpayers, the Outpatient Surcharge irrationally discriminates between persons who provide outpatient surgical services.

Once again, the Court disagrees with the Taxpayers’ statutory interpretation. Guided by the standards of statutory review set forth in the preceding section, the Court concludes that Outpatient Surcharge does not differentiate between ambulatory surgery centers. Therefore, since the Taxpayers have not identified any classifications or differential treatment created by this statutory scheme, their equal protection challenge is unavailing.

At the outset, the Court acknowledges that the Taxpayers have properly identified that the Outpatient Surcharge is applicable to those facilities licensed as “a free-standing ambulatory surgery center or a physician ambulatory surgery center or a podiatry ambulatory surgery center, in accordance with chapter 17 of title 23.” See G.L. 1956 § 44-64-3. Chapter 17 of Title 23 of the General Laws is entitled the “Health Care Facility Licensing Act of Rhode Island,” and deals broadly with the licensing and regulation of health care facilities. See G.L. 1956 § 23-17-1 et seq. Therein, the General Assembly has defined certain health care facilities. Pertinent to this discussion, both of the terms “physician ambulatory surgery center” and “podiatry ambulatory surgery center” have been expressly defined. A “physician ambulatory surgery center” is defined, in pertinent part, as:

“[A]n office or portion of an office owned and/or operated by a physician controlled professional service corporation . . . or a private physician’s office or group of the physicians’ offices . . . which is utilized for the purpose of furnishing surgical services to the owner and/or operator’s patients on an ambulatory basis.” G.L. 1956 § 23-17-2(13).<sup>6</sup>

Likewise, a “podiatry ambulatory surgery center” is defined, in pertinent part, as:

“[A]n office or portion of an office owned and/or operated by a podiatrist controlled professional service corporation . . . or a private podiatrist’s office or group of the podiatrists’ offices . . . which is utilized for the purpose of furnishing surgical services to the owner and/or operator’s patients.” G.L. 1956 § 23-17-2(14).<sup>7</sup>

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<sup>6</sup> The Court notes that the definition of a “physician ambulatory surgery center” set forth in G.L. 1956 § 23-17-2(13) was amended by P.L. 2009, ch. 287, § 2, which became effective on November 13, 2009. The amended statute defines a “physician ambulatory surgery center,” in pertinent part, as:

“[A]n office or portion of an office which is utilized for the purpose of furnishing surgical services to the owner and/or operator’s own patients on an ambulatory basis, and shall include both single-practice physician ambulatory surgery centers and multi-practice physician ambulatory surgery centers.” G.L. 1956 § 23-17-2(13).

Although the Court is of the opinion that this statutory alteration is of no significance to the case at bar, because the commencement of this action predated the 2009 amendment, the Court will use the former definition of “physician ambulatory surgery center.”

<sup>7</sup> As in the preceding footnote, the definition of a “podiatry ambulatory surgery center” set forth in G.L. 1956 § 23-17-2(14) was amended by P.L. 2009, ch. 287, § 2, which became effective on November 13, 2009. The amended statute defines a “podiatry ambulatory surgery center,” in pertinent part, as:

“[A]n office or portion of an office which is utilized for the purpose of furnishing surgical services to the owner and/or operator’s own patients on an ambulatory basis, and shall include both single-practice podiatry ambulatory surgery centers and multi-practice podiatry ambulatory surgery centers.” G.L. 1956 § 23-17-2(14).

For the reasons stated in the preceding footnote, the Court will use the former definition of “podiatry ambulatory surgery center.”

The Taxpayers correctly note that the term “free-standing ambulatory surgery center” is not expressly defined within the statute. What the Taxpayers have manifestly overlooked, however, is that G.L. § 23-17-2 does not purport to define every existing health care facility that falls under its provisions. As set forth therein, the term “health care facility” mean and includes

“[A]ny institutional health service provider, facility or institution, place, building, agency, or portion thereof, whether a partnership or corporation, whether public or private, whether organized for profit or not, use, operated, or engaged in providing health care services, including but not limited to hospitals, nursing facilities, home nursing care provider[;] . . . home care provider[;] . . . rehabilitation centers; kidney disease treatment centers; health maintenance organizations; free-standing emergency care facilities, and facilities providing surgical treatment to patients not requiring hospitalization (surgi-centers); hospice care, and physician ambulatory surgery centers and podiatry ambulatory surgery centers providing surgical treatment.” G.L. 1956 § 23-17-2(6).

The vast majority of the above mentioned facilities are not expressly defined in the statute, however. See G.L. 1956 § 23-17-2. Rather, G.L. 1956 § 23-17-2(6) provides that “[i]ndividual categories of health care facilities shall be defined in rules and regulations promulgated by the [Rhode Island State Department of Health] with the advice of the health services council.” Pursuant to G.L. 1956 § 23-17-10, the Department of Health is vested with the responsibility to “adopt, amend, promulgate, and enforce rules, regulations, and standards with respect to each category of health care facility . . . .” See G.L. 1956 § 23-17-10(a)(1).

In accordance with the authority conferred by G.L. 1956 § 23-17-10, the Department of Health enacted the “Rules and Regulations for the Licensing of Freestanding Ambulatory

Surgical Centers.” See R.I. Admin. Code 31-4-6 (2005). As mandated by G.L. 1956 § 23-17-2(6), the Department of Health set forth those health care facilities that qualify as a “freestanding ambulatory surgical center.” Specifically, these rules and regulations define a “freestanding ambulatory surgical center” as:

“[A]n establishment or place which may be a public or private organization equipped and operated exclusively for ambulatory patients for the purpose of performing surgical procedures which have the approval of the governing body and which in the opinion of the surgeon and anesthesiologist can be performed safely without requiring extensive anesthesia or overnight stay.” R.I. Admin. Code 31-4-6:1.5 (2005).

Although the Court acknowledges that the Department of Health’s definition pertains to the term “freestanding ambulatory surgical center” and the term contained in the Outpatient Surcharge is “free-standing ambulatory surgery center,” the Court is satisfied that these terms are functionally synonymous and interchangeable. Thus, although Chapter 17 of Title 23 of the General Laws does not expressly define “free-standing ambulatory surgery center,” this term, and the process by which to become licensed as such a facility, is comprehensively set forth in the Department of Health’s rules and regulations, effectuated pursuant to the authority conferred by G.L. 1956 § 23-17-10.

The Court also notes that pursuant to this statutory authority, the Department of Health enacted the “Rules and Regulations for the Licensure of Physician Ambulatory Surgery Centers and Podiatry Ambulatory Surgery Centers.” See R.I. Admin. Code 31-4-3 (2002). Therein, the Department of Health set forth the guidelines that govern the operation of these ambulatory surgery centers. In due course, the Department of Health has adopted the definitions of “physician ambulatory surgery center” and “podiatry ambulatory

surgery center” set forth in G.L. §§ 23-17-2(13) and (14). See R.I. Admin. Code 31-4-3:1.16 and :1.18 (2002).

Upon consideration of definitions of the facilities that are subject to the Outpatient Surcharge—“free-standing ambulatory surgery center,” “physician ambulatory surgery center,” and “podiatry ambulatory surgery center”—the Court concludes that, contrary to the Taxpayers’ assertion, the Outpatient Surcharge does not provide any exemptions for outpatient surgical centers. Indeed, in light of the broad language employed in each of these respective definitions, the Court—upon review G.L. 1956 § 23-17-1 et seq. and the rules and regulations established by the Department of Health regarding the licensing of health care facilities—is unable to locate an ambulatory surgery center that is not subject to the Outpatient Surcharge. More importantly, however, apart from a mere assertion that “it would appear that the Outpatient Surcharge irrationally discriminates against persons who are in the same class and provide the same service, namely outpatient surgical services,” the Taxpayers have not proffered a scintilla of evidence to demonstrate any such classification or discrimination. Specifically, the Taxpayers have not presented to the Court even one ambulatory surgery center that would not fall within the purview of the Outpatient Surcharge. Rather, the Taxpayers have relied exclusively on the erroneous conclusion that term “free-standing ambulatory surgery center” is lacking a definition, and thus, the statute must be read to find that it does not apply to all ambulatory surgery centers. Respectfully, this Court finds this rationale patently insufficient.

Accordingly, in light of the foregoing statutory construction and the fact that the Taxpayers have failed to demonstrate to the Court that the Outpatient Surcharge creates any

classifications between ambulatory surgery centers, the Court concludes that the Taxpayers have failed to meet their burden to prove that this statute is repugnant to the Equal Protection Clause.

#### D

#### Taxpayers' Challenges Pertaining to Statutory Ambiguity and Due Process

The Taxpayers' final challenges to the Medical Surcharge Acts stem from allegations that each statute contains various ambiguities which, in turn, are violative of the principles of due process. Specifically, the Taxpayers contend that the Medical Surcharge Acts at issue are unenforceable because they are vague and ambiguous with respect to what receipts are to be taxed. Further, the Taxpayers aver that because of these ambiguities, the Medical Surcharge Acts fail to provide adequate notice to affected taxpayers, and thus, are unconstitutionally vague in violation of the Due Process Clause set forth in the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Rhode Island Constitution. Given that these challenges to the Medical Surcharge Acts pertain to the same purported ambiguities in each respective statute, as well as the fact that the Taxpayers have combined these challenges in their memorandum of law, the Court will address them collectively.

At the outset, the Court notes that because the due process guarantees of the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Rhode Island Constitution are similar, only one analysis is necessary. See Rhode Island Depositors Economic Protection Corp. v. Brown, 659 A.2d 95, 100 (R.I.1995).

Additionally, the Court reiterates that enactments of the General Assembly are presumed to be constitutional and valid. Parrella v. Montalbano, 889 A.2d 1226, 1240 (R.I. 2006). Consequently, a party attempting to invalidate a legislative act has the burden to

prove beyond a reasonable doubt that the statute is repugnant to a provision in the constitution. City of Pawtucket v. Sundlun, 662 A.2d 40, 45 (R.I. 1995). In due course, the Court will “make every reasonable intendment in favor of the constitutionality of a legislative act, and so far as any presumption exists it is in favor of so holding.” Id.

With regard to statutory challenges for vagueness, the R.I. Supreme Court has held that “[i]n order for a statute to be found unconstitutionally vague and therefore violative of the due-process clause . . . the statute must be such that its wording fails to alert the public of the statute’s scope and meaning.” City of Warwick v. Aptt, 497 A.2d 721, 723-24 (R.I. 1985). Generally, the applicable test to make this determination is “whether the language used is commonly understood by persons of ordinary intelligence.” Id. (quoting State v. Picillo, 105 R.I. 364, 369, 252 A.2d 191, 194 (1969)). Thus, “[a] statute is unconstitutionally vague if it compels ‘a person of average intelligence to guess and to resort to conjecture as to its meaning and/or as to its supposed mandated application.’” Kaveny v. Town of Cumberland Zoning Bd. of Review, 875 A.2d 1, 10 (2005) (quoting Trembley v. City of Central Falls, 480 A.2d 1359, 1365 (R.I. 1984)). However, when a statute is designed to apply to a specific group, the Court must determine whether the enactment gives “fair notice to those to whom [it] is directed.” Grayned v. City of Rockford, 408 U.S. 104, 113, 92 S.Ct. 2294, 2301 (1972) (quoting American Communications Assn. v. Douds, 339 U.S. 382, 412, 70 S.Ct. 674, 691 (1950)) (alteration in original); see also In the Matter of Halverson, 169 P.3d 1161, 1176 (Nev. 2007); Commission for Lawyer Discipline v. Benton, 980 S.W.2d 425, 437 (Tex. 1998). More specifically, if the statute “involves conduct of a select group of persons having specialized knowledge, and the challenged phraseology is indigenous to the

idiom of that class . . . a court may uphold a statute which uses ‘words or phrases having a technical or other special meaning, well enough known to enable those within its reach to correctly apply them.’” Precious Metals Associates, Inc. v. Commodity Futures Trading Commission, 620 F.2d 900, 907 (1st Cir. 1980) (quoting Connally v. General Construction Corp., 269 U.S. 385, 391, 46 S.Ct. 126, 127 (1926)).

The R.I. Supreme Court has held that “[a] vagueness challenge to an enactment that ‘do[es] not involve First Amendment freedoms must be examined in light of the facts of the case at hand.’” State ex rel. Town of Westerly v. Bradley, 877 A.2d 601, 606 (R.I. 2005) (quoting Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc., 455 U.S. 489, 495 n.7, 102 S.Ct. 1186, 1191 n.7 (1982)). In this analysis, “one ‘who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.’” Id. (quoting Village of Hoffman Estates, 455 U.S. at 495, 102 S.Ct. at 1191). Although “vagueness” has historically been applied to invalidate criminal or regulatory statutes that unconstitutionally impinge upon First Amendment freedoms, the R.I. Supreme Court has acknowledged that the “void for vagueness” doctrine is applicable to civil as well as criminal actions. See D’Agostino v. D’Agostino, 463 A.2d 200, 201 (R.I. 1983).

In the instant matter, the Taxpayers aver that both the Imaging Surcharge and the Outpatient Surcharge are ambiguous as to what receipts are to be taxed, and further contend that each statute is unconstitutionally vague. For the sake of clarity of analysis, the Court will consider each statutory challenge individually.

## Taxpayers' Vagueness Challenges of the Imaging Surcharge

The Taxpayers first aver that the Imaging Surcharge is unenforceable because it is vague, confusing, and illogical. Specifically, the Taxpayers maintain that the Imaging Surcharge is (1) ambiguous with respect to those "imaging services" that are subject to taxation, and (2) illogical in that it purports to impose a tax on certain imaging services that are not yet performed by any health care provider that could be subject to the surcharge. As a result of these issues, the Taxpayers contend that the Imaging Surcharge is unconstitutionally vague, in violation of the guarantees of due process.

The Court disagrees. As will be discussed in the coming sections, the Imaging Surcharge is neither ambiguous nor illogical, and thus, the Taxpayers have failed to meet their burden to demonstrate the statute is unconstitutionally vague.

### a

#### Diagnostic Imaging Procedures Subject to the Imaging Surcharge

The Taxpayers' first contention is that the Imaging Surcharge is ambiguous with respect to those "imaging services" that are subject to taxation. Specifically, the Taxpayers once again maintain that the definition of "imaging services" set forth in G.L. 1956 § 44-65-2(4) contains an exhaustive list of procedures that are subject to taxation, and as a result, any diagnostic imaging techniques not set forth therein are exempted. Given this interpretation, the Taxpayers contend that the statute is ambiguous on its face since there is no clear statutory basis to impose the tax on diagnostic imaging procedures not expressly listed in the statute. Furthermore, based on this purported ambiguity, the Taxpayers aver that the Imaging Surcharge fails to provide adequate notice to affected taxpayers regarding the

procedures that are subject to taxation, and therefore, the statute is unconstitutionally vague, in violation of the Due Process Clause.

As an initial response, the Court notes that it considered and subsequently rejected the Taxpayers' interpretation of this provision in the preceding section. To briefly summarize, the definition of "imaging services" expressly encompasses "all the professional and technical components" of the procedures that are enumerated therein. Thus, contrary to the Taxpayers' interpretation, the definition of "imaging services" is not exhaustive. Rather, it includes all the specific imaging techniques that—although not expressly listed—nonetheless fall within the ambit of the procedures that are enumerated in the definition. Given that the General Assembly included all four modalities of modern medical diagnostic imaging—(1) x-ray, (2) ultrasound, (3) magnetic resonance imaging, and (4) nuclear medicine—in this statutory definition, it is readily apparent that the Imaging Surcharge is designed to apply to a wide array of diagnostic imaging procedures not expressly enumerated in the statute. Indeed, as set forth in the stipulated facts, these modalities encompass a plethora of specific imaging techniques. The Court reaffirms its aforementioned conclusion that the Taxpayers have not proffered a diagnostic imaging procedure that would not be subject to the Imaging Surcharge. Accordingly, in light of this clear and unambiguous statutory language, the Court once again disagrees with the Taxpayers' interpretation of those diagnostic imaging techniques that are subject to the Imaging Surcharge.

Given the foregoing, the Court concludes that the statute is not unconstitutionally vague with respect to those diagnostic imaging procedures that are subject to the Imaging Surcharge. As discussed above, the Court is satisfied that the statutory language "all the

professional and technical components of x-ray, ultrasound, . . . magnetic resonance imaging . . . [and] general nuclear medicine” effectively sets forth the statute’s scope and meaning. See City of Warwick v. Apts, 497 A.2d at 723-24. Although this description employs certain medical terminology, it nonetheless gives “fair notice to those to whom [it] is directed;” namely physicians and other medical specialists who are the object of the legislation. See Grayned v. City of Rockford, 408 U.S. at 113, 92 S.Ct. at 2301. As the Taxpayers’ witness, Dr. John A. Pezzullo, testified, the class of physicians and other medical specialists subject to the Imaging Surcharge would understand the nature of the procedures set forth in the definition of “imaging services,” and would further comprehend that each enumerated modality encompasses a broad array of specific imaging techniques.<sup>8</sup> Consequently, it is unsurprising that there is not any evidence whatsoever in the record to suggest that, on the facts of this case, there was any actual confusion pertaining to the application of the Imaging Surcharge. Rather, the record reveals that each of the Taxpayers subject to the Imaging Surcharge made regular filings and payments in accordance with the statute’s mandate. Accordingly, in light of the clear and unambiguous statutory language, the Court concludes that the Taxpayers have not met their burden to demonstrate that the Imaging Surcharge is unconstitutionally vague with respect to those diagnostic imaging procedures subject to taxation.

b

**Diagnostic Imaging Procedures Not Performed in Rhode Island**

The Taxpayers second contention is that the Imaging Surcharge is illogical because it imposes a tax on certain imaging techniques—positron emission tomography (PET) and

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<sup>8</sup> See Transcript at 34-37, May 27, 2010. (Testimony of Dr. John A. Pezzullo)

positron emission tomography/computed tomography (PET/CT)—that are not yet performed by a provider in Rhode Island who would be subject to the Imaging Surcharge. Specifically, the Taxpayers contend that a health care provider is required to get a license through the certificate of need process in order to operate PET and PET/CT equipment. According to the Taxpayers, there is no evidence that any health care provider, other than certain hospitals, has received a license to operate this equipment. However, the Taxpayers note that hospitals are expressly exempted from the Imaging Surcharge. Thus, the Taxpayers contend that the Imaging Surcharge is illogical. The Taxpayers seem to imply that this purported illogicality renders the Imaging Surcharge unconstitutionally vague.

Although the Taxpayers have not identified, nor has the Court located, any authority to support the notion that a statute can be rendered unconstitutionally vague because of an illogical provision, the Court need not consider the propriety of such an argument because the provision at issue is clearly not illogical. Indeed, by subjecting the Imaging Surcharge to all diagnostic imaging techniques—irrespective of whether currently performed by a “provider” who would be subject to the surcharge—the General Assembly may have been attempting to legislate prospectively in order to ensure that all imaging procedures that could be performed in Rhode Island are covered by the Imaging Surcharge. In other words, the General Assembly may have enacted the statute to address situations that arise in the future; namely, that a “provider” subject to the Imaging Surcharge obtains a license to perform PET or PET/CT procedures in the State. In light of this obvious rationale, the Court disagrees with the Taxpayers’ contention that the Imaging Surcharge is illogical. Therefore, the

Taxpayers argument that the statute is unconstitutionally vague because it is illogical is without merit.

2

**Taxpayers' Vagueness Challenges of the Outpatient Surcharge**

The Taxpayers next contend that the Outpatient Surcharge is ambiguous with respect to which medical practices are subject to the surcharge. Specifically, the Taxpayers once again argue that although the Outpatient Surcharge is applicable to persons licensed to operate “a free-standing ambulatory surgery center or a physician ambulatory surgery center or a podiatry ambulatory surgery center, in accordance with chapter 17 of title 23,” the terms “free-standing ambulatory surgery center” and “ambulatory surgery center” are not defined in Chapter 17 of Title 23. Based on this fact, the Taxpayers again assert that the statute must be read to find that the Outpatient Surcharge is imposed on some, but not all, ambulatory surgery centers. Thus, the Taxpayers allege that the Outpatient Surcharge is ambiguous with respect to which outpatient surgical centers must pay the surcharge. The Taxpayers seem to argue that this purported ambiguity renders the Outpatient Surcharge unconstitutionally vague.

At the outset, the Court notes that it considered and subsequently rejected the Taxpayers' interpretation of this provision in a preceding section. To briefly summarize, although the term “free-standing ambulatory surgery center” is not defined in Chapter 17 of Title 23, this fact is inconsequential because this statutory scheme does not purport to define every specific health care facility. Rather, G.L. 1956 § 23-17-2(6) provides that “[i]ndividual categories of health care facilities shall be defined in rules and regulations promulgated by the [Rhode Island State Department of Health] with the advice of the health services

council.” In accordance with this provision, and pursuant to the authority conferred by G.L. 1956 § 23-17-10, the Department of Health enacted the “Rules and Regulations for the Licensing of Freestanding Ambulatory Surgical Centers.” See R.I. Admin. Code 31-4-6 (2005). This type of facility, and the process by which to become licensed as such, is comprehensively set forth in these rules and regulations. Accordingly, the Taxpayers’ argument that the Outpatient Surcharge is ambiguous with respect to which outpatient surgical centers must pay the surcharge because Chapter 17 of Title 23 did not define a pertinent term is without merit.

Even assuming *arguendo* that this statutory provision is ambiguous, the Taxpayers’ due process challenge for vagueness would still nonetheless be wholly unavailing. Indeed, it is well settled that “one ‘who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.’” Bradley, 877 A.2d at 606 (quoting Village of Hoffman Estates, 455 U.S. at 495, 102 S.Ct. at 1191). Here, the Taxpayers subject to the Outpatient Surcharge—RI Medical Imaging and RI Urological—each provide surgical services on an ambulatory basis. Thus, both Taxpayers fall squarely within the ambit of a “physician ambulatory surgery center,” defined, in pertinent part, as:

“[A]n office or portion of an office owned and/or operated by a physician controlled professional service corporation . . . or a private physician’s office or group of the physicians’ offices . . . which is utilized for the purpose of furnishing surgical services to the owner and/or operator’s patients on an ambulatory basis.” G.L. 1956 § 23-17-2(13).

Accordingly, even assuming that the provision at issue is ambiguous, which the Court determined that it is not, the Taxpayers’ vagueness challenge to the statute would still be

unavailing because the ambulatory surgical services they provide are clearly subject to taxation under the Outpatient Surcharge.

## V CONCLUSION

Upon review and consideration of the Taxpayers' constitutional challenges to the Imaging Surcharge and the Outpatient Surcharge, the Court concludes that the Taxpayers have failed to meet their burden to prove that either of the Medical Surcharge Acts is repugnant to the state or federal constitution. Specifically, the Taxpayers' equal protection challenges to the Medical Surcharge Acts are unavailing because the Taxpayers failed to demonstrate that any classifications or exemptions provided by the General Assembly lacked a rational basis justification. Further, the Taxpayers' due process challenges are similarly without merit because the Taxpayers were unable to present any ambiguity in the Medical Surcharge Acts that would render either statute unconstitutionally vague. Accordingly, in light of the foregoing discussion, the Taxpayers' appeal is hereby denied and dismissed.