

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

IN THE MATTER OF :
: **Case No. 23-T-003**
: **Sales and Use Tax Refund**
: **Taxpayer.**
:

ORDER MODIFYING HEARING OFFICER'S DECISION AND RECOMMENDATION

The Tax Administrator of the Division of Taxation (the "Tax Administrator") has reviewed the Decision and Recommendation of the Hearing Officer (attached herein) in this matter and modifies the Decision and rejects the Recommendation, in part, as provided herein.

STANDARD FOR TAX ADMINISTRATOR'S REVIEW

The Department of Administration's *Rules of Procedure for Administrative Hearings*, 220-RICR-50-10-2.17(A) ("DOA Hearing Regulation"),¹ state, "If required by law or by the delegation of authority, the decision of the Hearing Officer shall be reviewed by the Director of the Department [here, the Tax Administrator] who shall enter an order adopting, modifying or rejecting the decision of the Hearing Officer."

In a two-tiered administrative process, the ultimate decision-maker's standard of review of a hearing officer's decision and recommendation is *de novo* unless the hearing officer's recommendations are based on witness credibility, in which case the ultimate decision-maker owes

¹ The Division of Taxation's regulation entitled *Administrative Hearing Procedures*, 280-RICR-20-00-2.6 ("Hearing Regulation"), states, "In the event that . . . other Rules of Practice and Procedure [promulgated by another agency board or office] address an issue not set forth herein, the hearing officer shall utilize these Rules of Practice and Procedure."

deference to the recommendations of the first-tier decision-maker. *See Ret. Bd. of Emps. ' Ret. Sys. v. Corrente*, 174 A.3d 1221, 1237-38 (R.I. 2017) (citing *Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan*, 755 A.2d 799, 807 (R.I. 2000); *Envtl. Scientific Corp. v. Durfee*, 621 A.2d 200, 209 (R.I. 1993)).

In this matter, the Tax Administrator relies on the material facts as presented by the Hearing Officer and, as detailed below, submits the following analysis in modifying the Decision and rejecting the Recommendation of the Hearing Officer, in part.

ORDER

After a careful review of the Hearing Officer's Decision and Recommendation, the Tax Administrator hereby:

- i) adopts Sections I.-IV., V. A.-B., VI., and VII. 1. and 3.;
- ii) modifies Section V. C. and VII. 2.; and
- iii) rejects Section VIII. (Recommendation) as to the Taxpayer being entitled to a refund pursuant to R.I. Gen. Laws § 44-18-20(e).

Based on the testimony by both the Division² and the Taxpayer, the purchase of the Car was a casual sale. A casual sale “in the case of a sale of a motor vehicle, [] means a sale made by a person other than a licensed motor vehicle dealer or an auctioneer at an auction sale.” R.I. Gen. Laws § 44-18-20(e). Pursuant to R.I. Gen. Laws § 44-19-33, the Tax Administrator “may prescribe, and may furnish, any forms necessary or proper for the administration of [chapters 18 and 19 of title 44].” The Tax Administrator requires the filing of a Form C-REF-SU (Claim for Refund – Sales and Use Tax), further titled “Claim for Refund – Sales and Use Tax on Casual Purchase of Motor Vehicle,” to request a claim for refund of sales and use tax paid on a casual

² Unless otherwise defined herein, all defined terms in the Hearing Officer's Decision have the same meaning in this Order.

sale. A blank Form C-REF-SU was presented to the Hearing Officer as the Division’s Exhibit 13.

As noted in the Hearing Officer’s Decision, the Taxpayer did submit a Claim for Refund Sales or Use Tax prescribed by the Tax Administrator for a non-casual sale claim, rather than the “Claim for Refund – Sales and Use Tax on Casual Purchase of Motor Vehicle,” for refund on April 4, 2022. This filing was presented to the Hearing Officer as the Division’s Exhibit 5.³ The Division sent correspondence dated April 12, 2022 to the Taxpayer requesting that the proper form be completed and allowing for response within thirty (30) days of the date of the April 12th correspondence. The Division made multiple efforts to obtain the correct form and documentation from the Taxpayer and the Taxpayer failed to file the correct form or provide the necessary information and documentation. The Taxpayer never filed a proper claim for refund of the sales tax paid on the casual purchase of the Car within the time prescribed pursuant to R.I. Gen. Laws § 44-18-20(e).

R.I. Gen. Laws § 44-18-20(e) provides that “[t]he tax administrator shall use as his or her guide the retail dollar value as shown in the current issue of any nationally recognize, used-vehicle guide for appraisal purposes in this state.” As provided in the Division’s Exhibit 14, the retail dollar value as shown in the then-current issue of the National Automobile Dealers Association (“NADA”) guide, which is a nationally recognized, used-vehicle guide for appraisal purposes in this state, was [redacted]. The value used by the DMV was [redacted] and does not match the NADA value. As the [redacted] value was the value mandated to be used pursuant to R.I. Gen. Laws § 44-18-20(e), the Division will return the amount of [redacted] paid in tax on the difference between the

³ Not only could this form not be accepted as a proper claim for refund of sales tax paid on a casual sale, it also did not include all necessary elements to properly submit a claim for refund, including the amount of tax paid and the amount of refund claimed. It further did not include the required documentation for a claim for refund in relation to a casual sale. The two forms serve different statutory purposes and construing the submission of an incomplete and incorrect form as the basis for allowing a valid, out-of-time, refund sets dangerous precedent for this administrative agency.

mandated value and the DMV value to the Taxpayer.

Therefore, it is hereby ORDERED that the Hearing Officer's Decision is modified, and her Recommendation is rejected, in part, as set forth in this Order.



Neena S. Savage
Tax Administrator

Date: 1/12/24

ENTERED as Administrative Order No. 2024-02 on the 12th day of Jan. 2024.

CERTIFICATION

I hereby certify that on this 12th day of Jan. 2024, a copy of the above Order Modifying Hearing Officer's Decision and Recommendation was sent by first class mail and electronic delivery to the Taxpayer's address on record with the Division and by electronic delivery to Matthew R. Cate, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, R.I. 02908.



Nail Belasco

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-02

IV. MATERIAL FACTS AND TESTIMONY

Principal Tax Auditor (“Auditor”), testified on the Division’s behalf. He testified he reviewed the Taxpayer’s request for a partial refund of tax paid on the Car. He testified the Taxpayer purchased the Car and registered it at the Division of Motor Vehicles (“DMV”) and paid sales tax based on the Car’s book value. He testified the Taxpayer’s purchase was a casual sale which is a sale between parties, and that the DMV charges sales tax based on the book value for a casual sale. He testified a taxpayer may request a tax refund of the tax paid if he or she thinks the vehicle was overvalued by DMV, but the refund request must be filed within 30 days.

The Auditor testified the Taxpayer purchased the Car for [redacted] and registered the Car on March 15, 2022 and paid tax based on a value of [redacted]. He testified that the Taxpayer’s refund request was received by April 4, 2022, but it did not claim a specific amount. He testified that based on his experience, the Taxpayer was requesting a refund of the difference between the tax charged by the DVM and what tax would have been paid on the purchase price. He testified that difference would be [redacted]. He testified that the Taxpayer did not use the correct refund request form and did not include the required appraisal of the Car. He testified that he sent a letter to the Taxpayer on April 12, 2022 requesting that the Taxpayer provide further information such as an appraisal but he did not receive the requested information from the Taxpayer. He testified that he forwarded a letter to the Taxpayer denying the requested refund request on May 27, 2022 as the Taxpayer did not comply with R.I. Gen. Laws § 44-18-20, and the Taxpayer requested a hearing. He testified that the Taxpayer had more than the required 30 days to submit the required information but did not. Division’s Exhibits One (1) (bill of sale for Car dated March 14, 2022); Two (2) (DMV receipt for tax paid on Car dated March 15, 2022); Four (4) (use tax return dated March 15, 2022); Five (5) (Taxpayer’s claim for refund dated April 4, 2022); Six (6) (Division’s

April 12, 2022 letter requesting more information from the Taxpayer); Seven (7) (May 27, 2022 letter from Division denying claim for refund); and 13 (blank form to request such type of refund).

The Taxpayer testified on his behalf. He testified that he bought the Car from his friend. He testified that the friend based the sales price to him on what the dealer would have charged for buying the Car at the end of his friend's lease.² He testified that he commutes to Boston every day, and he could not find a place to appraise the Car. He testified that he asked a dealer for an appraisal but was told no. He testified that he did not respond to the Division's letter because he could not obtain an appraisal. He testified that the Division offered to refund some money based on an overpayment, but he felt he was due the entire overpayment.

Based on the National Automobile Dealers Association ("NADA") value for the Car that was entered in as an exhibit, the value of the car was [redacted] Division's Exhibit 14 (NADA value for Car). DMV charged the Taxpayer tax on a value of [redacted] Division's Exhibit Four (4). On questioning from the undersigned, the Auditor testified that the figure used was a DMV error, but the refund request was out of time, and no appraisal was provided so the refund request was denied.

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and

² The record was left open until October 18, 2023 for the Taxpayer to submit the lease pay off amount. The Taxpayer submitted a page from what appears to be a nine (9) page document showing the pay off price for a leased car which matches his purchase price. The other submitted page shows the purchase price of a different but newer car with that price being less than the assigned value of the Taxpayer's Car. The purchase price of this other vehicle is not relevant to this matter. These documents were admitted at Taxpayer's Exhibit One (1).

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) (citation omitted). 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

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

Use tax imposed.

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

(e) The term “casual” means a sale made by a person other than a retailer, provided, that in the case of a sale of a motor vehicle, the term means a sale made by a person other than a licensed motor vehicle dealer or an auctioneer at an auction sale. In no case is the tax imposed under the provisions of subsections (a) and (b) of this section on the storage, use, or other consumption in this state of a used motor vehicle less than the product obtained by multiplying the amount of the retail dollar value at the time of purchase of the motor vehicle by the applicable tax rate; provided, that where the amount of the sale price exceeds the amount of the retail dollar value, the tax is based on the sale price. The tax administrator shall use as his or her guide the retail dollar value as shown in the current issue of any nationally recognized, used-vehicle guide for appraisal purposes in this state. On request within thirty (30) days by the taxpayer after payment of the tax, if the tax administrator determines that the retail dollar value as stated in this subsection is inequitable or unreasonable, he or she shall, after affording the taxpayer reasonable opportunity to be heard, re-determine the tax.

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

C. Whether the Division Properly Denied the Refund Request

Pursuant to R.I. Gen. Laws § 44-18-20(e), the Taxpayer had 30 days from the payment of the tax to request a refund. He paid the tax on the Car on March 15, 2022 so the refund request was due by April 14, 2022. On April 4, 2022, the Taxpayer filed a form for refund of sales or use tax; however, it was not the more specific form for a request for refund of sales and use tax on a casual purchase of a motor vehicle. Division's Exhibits Five (5) and 14 respectively. The Division forwarded the correct form to the Taxpayer and indicated that an appraisal was required for the refund request. Division's Exhibit Six (6). The Taxpayer was requested to respond with that information within 30 days of the letter. The Taxpayer agreed that he did not provide the further information requested by the Division since he was unable to obtain an appraisal.

Pursuant to R.I. Gen. Laws § 44-18-20(e), the Division shall review the refund request to determine if the tax was inequitable or unreasonable and allow the taxpayer to be heard. The process for the Division's review is set forth in the refund request form which states what is required for the Division to review the refund appeal. As part of that process, the Division requires a refund request to include documentation which can include an appraisal to support the claim that the book value (NADA) was too high. The appraisal is to be by a licensed motor vehicle dealer. Such a process allows for a taxpayer to submit an independent verification of the value of a vehicle. The statute requires the refund request to be filed within 30 days of the payment of tax.

The refund request form provides other methods besides an appraisal to show the value given was too high. These include bills/estimates or high mileage or leased vehicle pay off but only if purchaser was original lessee. Division's Exhibit 14. For the Taxpayer to show that the Car's value was what he paid rather than the NADA value, he needed to provide an appraisal. Based on the evidence at hearing, the other valuing methods do not apply in that there was no

evidence about repairs or mileage for the Car. Additionally, the Taxpayer was not the original lessee so cannot use the lease payoff amount to show the Car's value. However, in order to claim a refund for overpayment of the Car's value versus what NADA actually valued it at, he did not need an appraisal so his refund request was timely made. That value is in the Division's Exhibit 14. The DMV charged him tax on a higher amount than the NADA book value.

Pursuant to R.I. Gen. Laws § 44-18-20, the "tax administrator shall use as his or her guide the retail dollar value as shown in the current issue of any nationally recognized, used-vehicle guide for appraisal purposes in this state." A review of the April 4, 2022 refund request shows that the DMV did not charge the NADA book value as set forth in Division's Exhibit 14. The appropriate book value is listed in said exhibit.

However, the Taxpayer's request for a refund based on his purchase price is out of time as he failed to provide written documentation of that value within the time allowed. The Taxpayer did not provide an appraisal that the Car should be valued at the purchase price rather than the book value.

VI. FINDINGS OF FACT

1. On or about January 17, 2023, the Division issued a Notice of Pre-Hearing Conference and an Appointment of Hearing Officer to the Taxpayer.
2. A hearing was held on October 11, 2023 with the parties resting on the record. The record was left open for seven (7) days for the Taxpayer to submit certain documents which he did.
3. The Taxpayer paid the tax on the Car on March 15, 2022. He filed a refund request on April 4, 2022. It did not include an appraisal. The Division requested more information including an appraisal, but the Taxpayer did not file an appraisal.

4. The Taxpayer paid tax on the Car on a value of _____ but the actual NADA value for the Car is _____

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 § 44-18-1 *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*

2. Pursuant to R.I. Gen. Laws § 44-18-20(e), the Taxpayer is entitled to a refund based on the actual book value of the Car and the value of the Car which the DMV used to charge tax. The Taxpayer is entitled to the difference of tax paid between those two (2) values. His request for that overpayment was timely.

3. Pursuant to R.I. Gen. Laws § 44-18-20(e), the Taxpayer is not entitled to his refund claimed for the difference in what he paid on tax on the Car at the DMV and his purchase price. His claim for that refund of _____ is denied as his request was out of time and incomplete since he failed to timely provide an appraisal.

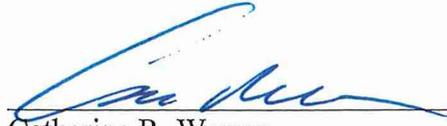
VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-18-20(e), the Taxpayer is entitled to the difference of what the tax paid on the actual book value of _____ would be and the tax paid on the DMV's value given of _____

Pursuant to R.I. Gen. Laws § 44-18-20(e), the Taxpayer is not entitled to his refund of _____ claimed (difference between the tax paid on DMV value and what would be paid on purchase price) for payment of tax on the Car as his request was out of time and incomplete so the Division was correct in denying said refund request.

Date: October 31, 2023


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 *in attached Order.

Dated: 1/12/24


Neena S. Savage
Tax Administrator

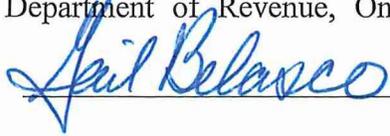
NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO R.I. Gen. Laws § 44-19-18 WHICH PROVIDES AS FOLLOWS.

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 12th day of January 2024, a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail, return receipt requested to the Taxpayer's address on file with the Division of Taxation and by electronic delivery to Matthew Cate, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.


Paul Belasco