STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2011-23

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

IN THE MATTER OF:	:	**Sales and Use Tax**
	:	**Case No.: 11-T-0013**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Hearing and Appointment of Hearing Officer dated May 25, 2011 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing. A hearing was held on November 15, 2011. At hearing, the Division was represented by counsel and the Taxpayer was represented by a certified public accountant. The parties filed a stipulation of facts. At hearing, the parties made oral argument and rested on the record.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Taxpayer owes use tax on a car ("Car") purchased by the Taxpayer.

IV. MATERIAL FACTS AND TESTIMONY

The parties stipulated to the following facts:

1. The Taxpayer purchased the Car on July 15, 2008 for at ("Dealer") in Smithfield, RI.

2. The Taxpayer held a Maine driver's license in 2008.

3. The Taxpayer filed Rhode Island resident returns for 2000-2009.

4. The Taxpayer is the owner of a residential property located at RI.

5. The Dealer's purchase agreement shows sale of the vehicle to Taxpayer under the address, ME

6. Assignment of Certificate of Title by owner shows assignment of title to the Car to Taxpayer at ME by Dealer.

7. Cash receipt of purchase of the Car from Dealer to Taxpayer under the address, ME

8. Three (3) checks for and were used to purchase the Car drawn on account with Sovereign Bank. Name on checks is Taxpayer, Glendale, RI

9. The Car was registered by Taxpayer with the Motor Vehicle Department in Maine on August 19, 2008 under the address, ME

10. The Car's insurance with The Hartford lists Taxpayer's address as ME

11. A notice of deficiency was issued to Taxpayer on October 8, 2010 at for tax of , interest and penalty of for a total amount due of

12. The Taxpayer's representative submitted a request for administrative hearing on this issue that was received by Tax Division October 28, 2011.

13. From September 8, 2004 to present, the Taxpayer is co-owner of a property at Maine. The property was granted a homestead exemption in 2005.

14. The Taxpayer filed an absentee ballot in Maine for year in question, 2008. See Taxpayer's Exhibit One (1).

In closing, the Division argued that the Taxpayer was not a *bona fide* non-resident in that he owned Rhode Island property in 2008, paid for the Car with Rhode Island checks, and filed Rhode Island resident returns for the years 2000 through 2009.

In closing, the Taxpayer argued that he was a resident of Maine since the late 1990's because he lived on leased property there and in 2004, bought property there and received a homestead exemption in 2005 and has voted in Maine since 1998. See Taxpayer's Exhibit One (1) (voting record in Maine and Maine homestead exemption). Thus, the Taxpayer argued he does not owe Rhode Island use tax on the Car.

V. DISCUSSION

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. Relevant Statutes and Regulations

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

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

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

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

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

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

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

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

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(13) Motor vehicles sold to nonresidents.

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

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

Presumption that sale is for storage, use, or consumption – Resale certificate. – It is presumed that all gross receipts are subject to the sales tax, and that the use of all tangible personal property is subject to the use tax, and that all tangible personal property sold or in processing or intended for delivery or delivered in this state is sold or delivered for storage, use, or other consumption in this state, until the contrary is established to the satisfaction of the tax administrator. The burden of proving the contrary is upon the person who makes the sale and the purchaser, unless the person who makes the sale

takes from the purchaser a certificate to the effect that the purchase was for resale. The certificate shall contain any information and be in the form that the tax administrator may require.

C. The Taxpayer Owes Use Tax on the Car

Pursuant to R.I. Gen. Laws § 44-18-20, use tax is imposed on the "storage, use, or other consumption in this state" of personal property including automobiles. R.I. Gen. Laws § 44-18-10 defines "use" as "the exercise of any right or power of tangible personal property incident to the ownership of that property." The use tax rate is 7% of the "sale price of the property." R.I. Gen. Laws § 44-18-20(a) and (h).

By registering the Car in Maine, the Taxpayer did not pay any Rhode Island tax on the Car. Pursuant to R.I. Gen. Laws § 44-18-30(13), only a *bona fide* Rhode Island nonresident who does not register the vehicle in State does not have to pay Rhode Island tax on vehicles. The Rhode Island District Court case of *McLaughlin v. Norberg*, AA No. 83-429 (1985) addressed the test for residency as contained in the case of *Randall v. Norberg*, 403 A.2d 240 (R.I. 1979). *McLaughlin* found that taxpayer had sufficient connection with Rhode Island to be liable as a "resident" for taxes under Title 44 even though the car in that matter was registered, titled, and garaged in Florida

In this matter, the Taxpayer argued that he is a *bona fide* nonresident of Rhode Island because he owns a house in Maine for which he received a homestead exemption in 2005 and voted in Maine in 2008 (year purchased Car). However, the Taxpayer filed a Rhode Island resident income tax return in 2008. Thus, for the purposes of R.I. Gen. Laws § 44-18-30(13), the Taxpayer has not shown that he was a *bona fide* nonresident of

Rhode Island at the time he purchased the Car.[1] Instead, the Taxpayer has sufficient connections with Rhode Island to be liable for the use tax on the Car.

In addition, the Division properly imposed interest on the use tax assessment pursuant to R.I. Gen. Laws § 44-19-11.[2] The Division also properly imposed a 10% penalty on the sales tax deficiency pursuant to R.I. Gen. Laws § 44-19-12.[3] The statute clearly provides that if a taxpayer does not pay a tax because of negligence or does not pay, a 10% penalty is imposed. That penalty is not discretionary because the statute provides that the penalty "is" to be added rather than "may be added." See *Brier Mfg. Co. v. Norberg*, 377 A.2d 345 (R.I. 1977).

VI. FINDINGS OF FACT

1. On or about May 25, 2011, the Division issued a Notice of Hearing and Appointment of Hearing Officer.

2. A hearing in this matter was held on November 15, 2011.

3. The parties rested on the record at hearing.

4. The facts as detailed in Section V are incorporated herein by reference.

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[1] Pursuant to R.I. Gen. Laws § 44-18-25, there is a presumption that all sales are taxable and it is a taxpayer's burden to show otherwise.

[2] R.I. Gen. Laws § 44-19-11 states as follows:

> Deficiency determinations – Interest. – If the tax administrator is not satisfied with the return or returns or the amount of tax paid to the tax administrator by any person, the administrator may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one or for more than one month. The amount of the determination, exclusive of penalties, bears interest at the annual rate provided by § 44-1-7 from the fifteenth day (15th) after the close of the month for which the amount, or any portion of it, should have been paid until the date of payment.

[3] R.I. Gen. Laws § 44-19-12 states as follows:

> Pecuniary penalties for deficiencies. – If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of the provisions of this chapter and chapter 18 of this title, a penalty of ten percent (10%) of the amount of the determination is added to it. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade the provisions of this chapter or chapter 18 of this title, a penalty of fifty percent (50%) of the amount of the determination is added to it.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-30-1 *et seq*. and R.I. Gen. Laws § 44-1-1 *et seq*.

2. Pursuant to R.I. Gen. Laws § 44-18-20 and R.I. Gen. Laws § 44-18-30(13), the Taxpayer owes the use tax and interest and penalty as assessed in the Notice of Deficiency. See Division's Exhibit Fourteen (14).

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-18-20 and R.I. Gen. Laws § 44-18-30(13), the Taxpayer owes the use tax and interest and penalty as assessed in the Notice of Deficiency. See Division's Exhibit Fourteen (14).

Date: 12/9/11

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

X ADOPT
_____ REJECT
_____ MODIFY

Date: 12/16/11

David Sullivan
Tax Administrator

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:

R.I. Gen. Laws § 44-19-18 Appeals

Appeals from administrative orders or decisions made pursuant to any provisions of this chapter are to the sixth (6th) division district court pursuant to chapter 8 of title 8. The taxpayer's right to appeal under this chapter is expressly made conditional upon prepayment of all taxes, interest, and penalties, unless the taxpayer moves for and is granted an exemption from the prepayment requirement pursuant to § 8-8-26.

CERTIFICATION

I hereby certify that on the 20th day of December, 2011, a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid to the Taxpayer's authorized representative's address on file with the Division of Taxation and by hand delivery to Linda Riordan, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02908.

Gail Belasco