

STATE OF RHODE ISLAND
DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2023-05

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

IN THE MATTER OF: :
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Taxpayer. :
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**22-T-007
sales and use tax refund**

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Pre-Hearing Conference and Appointment of Hearing Officer dated September 27, 2022 and issued to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to a request for hearing filed with the Division. A hearing was held on June 7, 2023.¹ The Division was represented by counsel, and the Taxpayer was *pro se*. The parties rested on the record.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-18-1 *et seq.*, 280-RICR-20-00-2 *Administrative Hearing Procedures*, and 220-RICR-50-10-2, Department of Administration’s *Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Taxpayer’s claim for a sales and use tax refund for his tax payment on a car (“Car”) that he purchased should have been denied by the Division.

¹ The Taxpayer participated by telephone.

IV. MATERIAL FACTS AND TESTIMONY

Principal Tax Auditor (“Auditor”), testified that (“Initial Auditor”) initially handled this refund request, but no longer was with the Division. 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 that the Taxpayer’s purchase was a casual sale which is a sale between parties where neither are licensed automobile dealers. He testified that DMV charges sales tax on the higher of either the book value or purchase price. He testified that when a taxpayer thinks his or her car was overvalued by DMV, a taxpayer may request a refund. He testified that the tax refund form states that the refund must be filed within 30 days.

The Auditor testified the Taxpayer registered the Car on April 11, 2022 and paid tax based on a book value of which he claimed a refund. He testified that the refund request was due by May 11, 2022, and the Taxpayer filed his refund request form on May 10, 2022. He testified that the refund request form was incomplete and missing items such as the Taxpayer’s name, social security number, signature, and the Car’s appraisal. Division’s Exhibit Six (6) (first refund form). He testified that he understood the Initial Auditor told the Taxpayer that the refund request form was incomplete and allowed him five (5) more days to file the form. He testified the Taxpayer filed another refund request form on May 30, 2022. Division’s Exhibit Eight (8).

The Auditor testified that the appraisal that is to be attached to the refund request form is to be by a licensed motor vehicle dealer and the Taxpayer’s second form had a company name for a motor vehicle dealer but a different name for the appraiser who signed the appraisal, and that appraiser was not a licensed motor vehicle dealer. He testified that even when a refund request is timely made, it is not automatically granted but is subject to review. He testified that the Taxpayer’s refund request was out of time and incomplete.

On cross-examination, the Auditor testified that the book value is to be from a nationally recognized, used vehicle guide, and the DMV generally uses NADA (National Automobile Dealers Association, a/k/a the “blue book”) to determine a vehicle’s book value.

The Taxpayer testified on his behalf. He testified that the book value was based on the Car being in pristine condition, but he would have to spend \$ _____ \$: _____ restore the Car to pristine condition. He testified the Car is in poor condition with a hole in the trunk and floor. Division’s Exhibit Eight (8) (photographs attached to appraisal). He testified that it was very hard to find an appraiser for a vintage car (as the Car is vintage), and he called several autobody shops until one referred him to the appraiser, and he paid \$ _____ for the appraisal. He testified that he does not know if the appraiser was licensed or not. He testified that the Initial Auditor told him to get his refund request in as quickly as possible.

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 (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 April 11, 2022 so the refund request was due by May 11, 2022. On May 10, 2022, the Taxpayer submitted a refund request form which did not include an appraisal. The Taxpayer wrote in his cover letter for his refund request that he had a hard time finding an appraiser, but an appraiser had looked at the Car on May 9, 2022 and

said it would take about a week for the report, and he would send the appraisal in when he received it. Division's Exhibit Six (6) (refund request form received by the Division on May 10, 2022).

The Taxpayer forwarded a second request for refund form that was received by the Division on May 30, 2022. That request included another cover letter that stated the Taxpayer had spoken to the Initial Auditor who had agreed for him to have an extension of time to submit his refund request. Division's Exhibits Seven (7) (cover letter for second request) and Eight (8) (second request). The second submission included an appraisal.

The refund form itself indicates that the appraisal must come from a licensed motor vehicle dealer. The second page of the form provides for an "affidavit of vehicle examination and appraisal" that is "to be completed by a licensed Rhode Island motor vehicle dealer." The form provides space for the licensed motor vehicle dealer to provide its license and sales tax permit number. The form also states that the refund request is due in 30 days of payment of the tax.

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.

Here, the first refund request was filed on time but was incomplete and did not include the appraisal. The Taxpayer then filed a refund request after the due date with an appraisal. However, the appraisal was not from a licensed motor vehicle dealer. The second form listed a company

called "Competition Appraisal" with an address in Chepachet. The appraisal itself was signed by a licensed motor vehicle damage appraiser with a license number and Chepachet address.²

The second form also included a company name that purports to be of a motor vehicle dealer with a license number. The form indicated that the dealer company is in Johnston. The person's name next to the company name is the same name as the appraiser. While the form includes the company name of a motor vehicle dealer, the appraisal was not from a motor vehicle dealer but was from a motor vehicle damage appraiser in Chepachet.³

Whether the second refund request was timely or not, the first one was incomplete as was the second request as it failed to include the required appraisal by a licensed motor vehicle dealer. The refund request was out of time as it was incomplete and not filed within 30 days.⁴

² The undersigned notes that the appraiser who signed the appraisal gave a license number for a person who is presumably a relative as he has the same last name, but the person who signed the appraisal was also a licensed motor vehicle damage appraiser. The Taxpayer indicated that " " would be performing the appraisal. Division's Exhibit Six (6). The appraisal in the second refund request was signed by a " " Division's Exhibit Eight (8).

The undersigned takes administrative notice that in the appraisal, gave a motor vehicle damage appraisal license number that is a for a . However, a also has a motor vehicle damage appraisal license. Both licensees are listed as being in Chepachet when the licenses are looked up via the Department of Business Regulation's website at www.dbr.ri.gov.

See motor vehicle damage appraiser license:

See motor vehicle damage appraiser license:

³ The undersigned takes administrative notice that by statute a motor vehicle damage appraiser must operate separately from a motor vehicle dealer.

R.I. Gen. Laws § 27-10.1-3 provides as follows:

Independent status required. All persons, partnerships, corporations, or individuals engaged in the motor vehicle physical damage appraisal business shall operate separate and apart from any body repair shop, or motor vehicle repair shop, of any new or used automobile dealership. Those engaged in this business shall retain a permanent established address affording themselves to the general public during normal business hours.

⁴ The Taxpayer could have argued that he filed on time even if the initial refund form did not include the appraisal as that was forthcoming. The Division could have argued that if a refund request form is not complete when filed even if filed within the 30 days, it is untimely as incomplete. There is also the issue of whether the Division was able to waive the statutory deadline of 30 days. However, in light of the fact that both requests were incomplete and thus untimely, it is not necessary to dive into those arguments.

VI. FINDINGS OF FACT

1. On or about September 27, 2022, the Division issued a Notice of Pre-Hearing Conference and an Appointment of Hearing Officer to the Taxpayer.
2. A hearing was held on June 7, 2023 with the parties resting on the record.
3. The Taxpayer filed an incomplete refund request on May 10, 2022. It did not include an appraisal.
4. The Taxpayer filed a second incomplete refund request on May 30, 2022. It included an appraisal but not a required appraisal by a licensed motor vehicle dealer.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

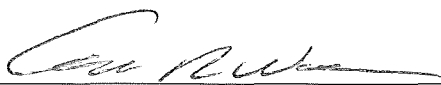
1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-18-1 *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*
2. Pursuant to R.I. Gen. Laws § 44-18-20(e), the Taxpayer is not entitled to his refund claimed for payment of tax on the Car as his request was out of time and incomplete.

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 not entitled to his refund claimed 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: June 28, 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

Dated: 6/29/23

Neena S. Savage
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 29th day of June, 2023, 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.

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