

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-08

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

IN THE MATTER OF:

:
:
: **SC 14-001**
: **sales permit**
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:
:

Taxpayer.

:

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of an Order to Show Cause, Notice of Hearing, and Appointment of Hearing Officer dated January 24, 2014 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division"). A hearing was held on February 5, 2014. The Taxpayer did not appear. As the Taxpayer had been adequately notified of the hearing,¹ the hearing went forward. The Division was represented by counsel and 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.*, R.I. Gen. Laws § 44-19-1 *et seq.*, *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-0*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*.

¹ The Order of Show Cause was sent by first class and certified mail to the Taxpayer to the Taxpayer's address on record with the Division. Neither was returned to the Division. The certified mail was delivered. See Division's Exhibit One (1) (United States Postage Office tracking sheet for certified mail).

III. ISSUE

Whether the Taxpayer's sales permit should be revoked pursuant to R.I. Gen. Laws § 44-19-5.

IV. MATERIAL FACTS AND TESTIMONY

Revenue Officer II, testified on behalf of the Division. He testified that he works in Collections. He testified that the Taxpayer is a restaurant and has held a sales permit since 2012. See Division's Exhibit Two (2) (2012 application for said permit with permit number). He testified that the Taxpayer is not current with filing its sales tax and its meals and beverage tax for November and December, 2013. He testified that he spoke to the Taxpayer's accountant who told him the figures for said November and December filings but the Division has not received those payments. He testified that the Taxpayer was assessed on January, 15, 2014 for outstanding sales tax and meals and beverage tax for the period of July through October, 2103. See Division's Exhibit Four (4) (notice of deficiency for each assessment). He testified that in January, 2014, the Taxpayer paid part of its sales tax assessment but no arrangements were made for the payment of the rest of the assessments. He testified that the Taxpayer has only been current with its tax payments once and that was in June, 2013 when the Taxpayer cleared its outstanding tax liability in order to renew its sales permit.

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 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 Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998).

B. Relevant Statute

R.I. Gen. Laws § 44-19-5 states in part as follows:

Suspension or revocation of permit – New permit. – Whenever any person fails to comply with any provision of this chapter or chapter 18 of this title, the tax administrator upon a hearing, after giving the person at least five (5) days' notice, in writing, specifying the time and place of the hearing and requiring the person to show cause why his or her permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The notice may be served personally or by mail. The tax administrator shall not issue a new permit after the revocation of a permit unless the tax administrator is satisfied that the former holder of the permit will comply with the provisions of this chapter and chapter 18 of this title; and in this case the tax administrator may require the filing of a bond with surety or the deposit of a security as the tax administrator deems necessary to assure compliance with those chapters.

C. Whether the Taxpayer's Sales Permit Should be Revoked

R.I. Gen. Laws § 44-18-18 imposes sales tax. R.I. Gen. Laws § 44-18.1-19 imposes the meal and beverage tax. R.I. Gen. Laws § 44-18-19 requires a retailer to collect the sales tax and meals and beverage tax from a purchaser. Pursuant to R.I. Gen. Laws § 44-19-1, those collecting taxes imposed by R.I. Gen. Laws § 44-18-1 *et seq.* are required to have a permit to collect such taxes. The Taxpayer holds its sales

permit pursuant to R.I. Gen. Laws § 44-19-1 *et seq.* Pursuant to R.I. Gen. Laws § 44-19-10, the taxes imposed pursuant to R.I. Gen. Laws § 44-18-1 *et seq.* are due and payable to the Tax Administrator by the 20th day of the month following the month for which the taxes were collected.

R.I. Gen. Laws § 44-19-5 provides that a tax permit may be revoked for failure to comply with any provision of R.I. Gen. Laws § 44-18-1 *et seq.* and R.I. Gen. Laws § 44-19-1 *et seq.* The Taxpayer has failed to file sales tax and meals and beverage tax for the period of July through October, 2013 and those taxes were collected by the Taxpayer pursuant to R.I. Gen. Laws § 44-18-1 *et seq.*² See Division's Exhibit Four (4). The Taxpayer also has not filed its November and December, 2013 sales tax and meals and beverage taxes which were due respectively by December 20, 2013 and January 20, 2014.

By failing to file the sales tax and meals and beverage tax as provided for in R.I. Gen. Laws § 44-18-1 *et seq.* and R.I. Gen. Laws § 44-19-1 *et seq.*, the Taxpayer's sales permit should be revoked pursuant to R.I. Gen. Laws § 44-19-5.

VI. FINDINGS OF FACT

1. On or about January 24, 2014, the Division issued an Order to Show Cause, Notice of Hearing, and Appointment of Hearing Officer to the Taxpayer.
2. The Taxpayer was adequately notified of the hearing but did not appear at the hearing. A hearing was held on February 5, 2014 with the Division resting on the record.

² also testified that an assessment was also issued to the Taxpayer for payroll withholding taxes; however, those taxes do not fall under R.I. Gen. Laws § 44-18-1 *et seq.* and R.I. Gen. Laws § 44-19-1 *et seq.*

3. The Taxpayer failed to file collected sales tax and meals and beverage tax for 2013 as required by R.I. Gen. Laws § 44-18-1 *et seq.* and R.I. Gen. Laws § 44-19-1 *et seq.*

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

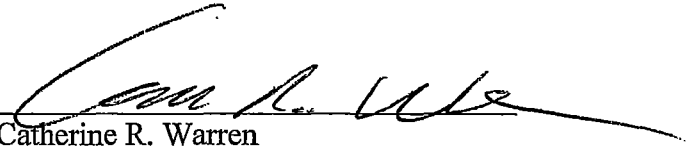
1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-18-1 *et seq.*, and R.I. Gen. Laws § 44-19-1 *et seq.*
2. The Taxpayer violated R.I. Gen. Laws § 44-19-5

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-19-5, the Taxpayer's sales permit shall be revoked.

Date: February 7, 2014

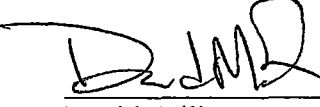

Catherine R. Warren
Hearing Officer

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: FEB 11, 2014


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 R.I. Gen. Laws § 44-30-90 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 11th day of February, 2014 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and return receipt requested to the Taxpayer's address on file with the Division of Taxation and by hand delivery to Bernard Lemos, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

