

STATE OF RHODE ISLAND
DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2020-08

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

IN THE MATTER OF:

Taxpayer.

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**Case No.: 20-T-008
corporate franchise tax**

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as a result of a Notice of Hearing and Appointment of Hearing Officer dated February 28, 2020 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 September 10, 2020 at which time the Taxpayer did not appear. As the Taxpayer was properly noticed of the hearing, the undersigned held the hearing.¹ The Division was represented by counsel who rested on the record.

¹ A notice of deficiency dated September 7, 2016 was sent to the Taxpayer using the address of the Taxpayer LLC from the Taxpayer’s 2008 articles of organization and its 2009 through 2015 annual reports filed with the Secretary of State’s office. Division’s Exhibits One (1) (articles of organization; annual reports) and Two (2) (notice of deficiency). The Taxpayer received the notice of deficiency as it requested a hearing. Division’s Exhibit Three (3) (request for hearing). After trying to resolve this matter at a preliminary conference (Division’s Exhibits Four (4) to Six (6) (letters), a notice of hearing was sent on February 28, 2020 to the Taxpayer’s address used on the notice of deficiency. The February 28, 2020 notice was sent by first class mail and certified mail to the Taxpayer scheduling a prehearing conference for April 7, 2020. The Taxpayer did not claim the certified mail. Division’s Exhibit Eight (8) (February 28, 2020 notice and United States Post Office tracking sheet showing the certified mail was unclaimed). Due to the COVID19 pandemic, another notice of hearing was forwarded to the Taxpayer rescheduling the prehearing conference. This notice was sent on April 1, 2020 scheduling the prehearing conference for June 15, 2020 and was sent by first class mail and certified mail to the same address used previously and the Taxpayer received the certified mail). Department’s Exhibit Nine (9) (April 1, 2020 notice with United States Post Office tracking sheet showing certified mail was delivered). Due to the COVID19 pandemic, a notice of hearing dated May 27, 2020 was sent to the Taxpayer changing the June 15, 2020 prehearing conference to a telephone conference rather than an in-person conference. The May 27, 2020 notice was sent by first class and certified mail to the same address used previously and was delivered to the Taxpayer by certified mail. Department’s Exhibit Ten (10) (May 27, 2020 notice with United States Post Office tracking sheet showing certified mail was delivered). The Taxpayer did not appear at the June 15, 2020 prehearing conference. A notice of hearing dated June 16, 2020 was forwarded to the Taxpayer

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-30-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, 280-RICR-20-00-2, Division of Taxation's *Administrative Hearing Procedures*, and 220-RICR-50-10-2, Department of Administration's *Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Taxpayer owes the minimum corporate tax for calendar years 2008 through 2015 pursuant to R.I. Gen. Laws § 44-11-2(e).

IV. MATERIAL FACTS

The Taxpayer was an LLC that was organized in Rhode Island in May, 2008. It filed annual reports for the years 2009 to 2015. Its articles of organization were revoked by the Secretary of State's office on June 27, 2017. Division's Exhibit One (1) (2008 articles of organization; 2009 to 2015 annual reports; certificate of revocation from Secretary of State's office). It was undisputed that no minimum corporate tax was paid by the Taxpayer for the years 2008 through 2015. A notice of deficiency was issued to the Taxpayer by the Division for the minimum corporate tax for the years 2008 through 2015 and for late payment penalties. Division's Exhibit Two (2). The Taxpayer requested a hearing. Division's Exhibit Three (3).

scheduling a full hearing for September 10, 2020 and informing the Taxpayer that failure to appear at the hearing could result in a default judgment. The June 16, 2020 notice was sent by first class and certified mail to the same address used previously for the Taxpayer. Both the certified mail and first class mail were returned to the Division. The first class mail indicated "unable to forward." The certified mail tracking sheet indicated that the "forward" had expired. Division's Exhibits 11 (certified mail June 16, 2020 notice with the United States Post Office certified mail tracking sheet) and 12 (first class mail June 16, 2020 notice with return envelope). The Taxpayer had notice of the hearing as the Division sent the notice to the Taxpayer's last known address. Indeed, the Taxpayer had already received notices at that address. *Harris v. Turchetta*, 622 A.2d 487 (R.I. 1993) (notice sent to address on record). See also *Bresette v. Department of Business Regulation*, 2013 WL 140344 (R.I.Super.) (in administrative proceeding, notice given by certified mail to address on record); *Castro v. Employees' Retirement System of Rhode Island*, 2012 WL 1154774 (R.I.Super.) (if the plaintiff was no longer receiving mail at the address provided to the agency, the burden was on the plaintiff to notify the agency); and *Koslow v. Department of Business Regulation*, 2002 WL 31749518 (notice was proper when sent by certified mail to last known address obtained from Florida secretary of state's office).

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) (citing *Cocchini v. City of Providence*, 479 A.2d 108 (R.I. 1984)). 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).

B. **Relevant Statutes**

R.I. Gen. Laws § 7-16-67(c)(2) provides that limited liability companies (LLC) that are not treated as a corporation for purposes of federal income taxation shall pay a fee in an amount equal to the minimum tax imposed upon a corporation under R.I. Gen. Laws § 44-11-2(e).² In 2000, the minimum corporate tax provided for in R.I. Gen. Laws § 44-11-2(e) was \$250 annually. See

² R.I. Gen. Laws § 44-11-2 (as amended in 2016) currently provides in part as follows:

Imposition of tax. (a) Each corporation shall annually pay to the state a tax equal to nine percent (9%) of net income[.] *** For tax years beginning on or after January 1, 2015, each corporation shall annually pay to the state a tax equal to seven percent (7.0%) of net income[.] ***

(e) *Minimum tax.* The tax imposed upon any corporation under this section, including a small business corporation having an election in effect under subchapter S, 26 U.S.C. § 1361 et seq., shall not be less than four hundred fifty dollars (\$450). For tax years beginning on or after January 1, 2017, the tax imposed shall not be less than four hundred dollars (\$400).

P.L. 1992 ch. 15, Art. 4 § 1. In 2004, the minimum corporate tax provided for in R.I. Gen. Laws § 44-11-2(e) was changed to \$500 annually. See P.L. 2004 ch. 595, Art. 17 § 6; and P.L. 2004 ch. 595, Art. 29 § 1. The current statute was amended in 2016 to be \$400 annually effective in 2017. P.L. 2016 ch. 142, Art 13 § 9. The penalty for late filing of the annual corporate tax is \$100 as provided for in R.I. Gen. Laws § 7-16-67.³ Therefore, the annual minimum corporate tax was \$500 during the applicable time period of 2008 through 2015.

C. Whether the Taxpayer owes the Minimum Corporate Tax

The Taxpayer was organized in 2008 and filed annual reports from 2009 through 2015. Division's Exhibit One (1). It was undisputed that the Taxpayer had not filed any returns and had not paid the minimum corporate tax provided for in R.I. Gen. Laws § 44-11-2(e) for the calendar years 2008 through 2015. In 2016, the Division issued a notice of deficiency⁴ for the minimum annual tax of \$500 owed for calendar years 2008 through 2015 as well as a \$100 penalty for each year.

Based on the foregoing, pursuant to R.I. Gen. Laws § 44-11-2(e) and R.I. Gen. Laws § 7-16-67(e), the Taxpayer owes the tax and penalty as assessed by the Division.

VI. FINDINGS OF FACT

1. On February 28, 2020, the Division issued the Notice of Hearing to the Taxpayer.
2. A hearing in this matter was held on September 10, 2020. The Taxpayer was properly noticed of hearing but did not appear at hearing.
3. The Taxpayer is in default for not appearing at the hearing.

³ R.I. Gen. Laws § 7-16-67(e) provides that the "annual charge is delinquent if not paid by the due date for the filing of the return and an addition of one hundred dollars (\$100) to the charge is then due."

⁴ Pursuant to R.I. Gen. Laws § 44-11-7.1(b)(1)(i), the business corporation tax can be assessed at any time if no return was filed by a taxpayer.

4. The Taxpayer did not file and did not pay any minimum corporate tax for the calendar years 2008 through 2015 as provided for in the relevant statutory provisions of R.I. Gen. Laws § 44-11-2(e).

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 § 44-11-1 *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*

2. Pursuant to R.I. Gen. Laws § 44-11-2(e) and R.I. Gen. Laws § 7-16-67(e), the Taxpayer owes the tax and penalty as assessed by the Division.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows: Pursuant to R.I. Gen. Laws § 44-11-2(e) and R.I. Gen. Laws § 7-16-67(e), the Taxpayer owes the tax and penalty as assessed by the Division. Division's Exhibit Two (2).

Date: October 8, 2020

\s\ Catherine R. Warren

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: 12/12/20

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 § 44-11-35 WHICH STATES AS FOLLOWS:

§ 44-11-35. Appeals. Appeals from administrative orders or decisions made pursuant to any provisions of this chapter shall be to the sixth (6th) division district court pursuant to chapter 8 of title 8: The taxpayer's right to appeal shall be 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. If the court, after appeal, holds that the taxpayer is entitled to a refund, the taxpayer shall also be paid interest on the amount at the rate provided in § 44-1-7.1.

CERTIFICATION

I hereby certify that on the 14th day of December, 2020 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 and by electronic delivery to Michael Brady, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.


