

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2012-11

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

IN THE MATTER OF:	:	
	:	
	:	Case No.: 12-T-0003
	:	Sales and Use Tax
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 February 6, 2012 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to the Taxpayer's request for hearing filed with the Division. The parties agreed to have the decision rendered on stipulated facts, exhibits, and briefs. The Division was represented by counsel and the Taxpayer represented himself. All briefs were timely filed by July 12, 2012.

II. JURISDICTION

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

III. ISSUE

The issue is whether the Taxpayer is entitled to a refund of the sales tax paid on the property tax which was included in the sales price of a leased vehicle and which was assessed to lessor and passed on to the Taxpayer/lessee.

IV. MATERIAL FACTS AND TESTIMONY

The parties submitted and agreed to the following stipulated facts:

1. The Taxpayer is a Rhode Island resident. Exhibit One (1).
2. The Taxpayer entered a Motor Vehicle Lease Agreement with _____ on September 5, 2009. Exhibit Two (2).
3. The Taxpayer leased a new 2009 _____ *Id.*
4. Thirty-nine (39) lease payments of _____, including _____ in "Monthly sales, use or lease tax" were to be made by Taxpayer for a total of _____. *Id.*
5. Section 17 of the Motor Vehicle Lease Agreement entitled, Official Fees and Taxes, reads: "You will pay when due all official fees and taxes, including registration, title and license fees, and personal property taxes related to this Vehicle or this Lease, which are incurred during the lease term, even if they are assessed after this Lease terminates. Should we have to pay any official fee or tax on your behalf, you will pay us the amount of the official fee or tax, and any interest or penalties assessed. You may also agree to pay personal property taxes in advance of the applicable due date, by mutual settlement of an estimated amount with us." *Id.*
6. The Town of North Providence, the taxing authority, assessed property taxes to the title holder (owner) of the vehicle which is _____.
7. The Taxpayer received a monthly lease statement from _____ in August 2009 which included a charge in the amount of _____ for property tax on the leased vehicle and an additional seven (7) percent sales tax charged on that amount of _____. Exhibit Four (4).
8. The Taxpayer received a monthly lease statement from _____ September 2011 which included a charge in the amount of _____ for property tax on the vehicle and an additional seven (7) percent sales tax charged on that amount of _____. *Id.*
9. On November 22, 2011, the Taxpayer made a timely refund claim of _____ for the sales tax paid by Taxpayer on the property tax. Exhibit One (1).
10. The Taxpayer's claim for refund was denied in a letter dated November 30, 2011. Exhibit Five (5).
11. A preliminary hearing was held on December 19, 2011. The parties were unable to reach an agreement during this conference and the matter was referred for a full administrative hearing on the denial of Taxpayer's claim for refund.

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). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). 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). 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 and Regulation

Pursuant to R.I. Gen. Laws § 44-18-18, Rhode Island imposes a sales tax of 7% on gross receipts of a retailer. Pursuant to R.I. Gen. Laws § 44-18-19, the retailer is responsible for the collection of sales tax. Specifically at issue here, is R.I. Gen. Laws § 44-18-12, which defines “sale price” in the context of sales and use taxes as follows:

- (a) “sales price” applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit,

property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in the money form or otherwise, without any deduction for the following:

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expenses of the seller;

(b) "Sales price" shall not include:

(iv) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

Regulation SU 92-62 *Rental and Leases of Tangible Personal Property (92-62)*

which was in effect during the period at issue states, in part, as follows:

The receipts or proceeds derived from the rental or lease of tangible personal property are subject to sales and use taxes. . . . The tax shall be computed on the gross amount without any allowance for service, maintenance, insurance, property taxes, etc., whether paid by the lessor or lessee.

C. Constitutional Issue

The Taxpayer argued that the Division is seeking to enforce a statute which violates the Fourteenth Amendment of the United States Constitution and/or Article 1 Section 2 of the Constitution of the State of Rhode Island. However, the Taxpayer acknowledged that a determination of unconstitutionality of a statute is a not an issue that is properly before an administrative agency. *See Easton's Point Association et al v. Coastal Resources Management Council et al.*, 522 A.2d 199 (RI 1987).¹

D. Arguments

This matter turns on the statutory interpretation of R.I. Gen. Laws § 44-18-12(b). The Division argued that for a tax be excluded from the sales price under R.I. Gen. Laws

¹ In his brief, the Taxpayer stated that he reserved discussion and argument on the constitutional issue, as well as his right to maintain a class action, for later inclusion in a complaint for declaratory judgment.

§ 44-18-12(b), the tax must be legally imposed directly on the consumer and be separately stated on the bill. The Division argued that while the lessor shifted its property tax to the lessee (Taxpayer), the property tax is legally imposed on the lessor rather than the Taxpayer so it included in the sale price and the tax is on that amount.

The Taxpayer argued that his reading of the statute is interpretive rather than literal and acknowledged that a literal interpretation of the statute “simply and clearly would result in a decision for the . . . Division.” The Taxpayer argued that the tax is really a pass through to the consumer and that the lease agreement does not expressly state that the lessee is obligated to pay sales tax on property tax and the lessor in reality is acting as a collection agent for the Division. The Taxpayer argues that the tax collected by Nissan is an excise tax under R.I. Gen. Laws § 44-34-1 and not a property tax so it is really a tax on the consumer since the cost of an excise tax is passed onto the consumer.

E. The Tax

If a statute is clear and unambiguous, the Court must interpret the statute literally. While the Taxpayer adapts a non-literal reading of the statute, the relevant statute states that in order for the tax to fall within R.I. Gen. Laws § 44-18-12(b)(iv) exception, the tax must be legally imposed directly on the consumer, and be separately stated on the invoice, bill of sale, or similar document given to the purchaser. The Taxpayer argues that the tax is a sales tax on a property tax. This interpretation is incorrect as the sales tax is being charged on the sales price which *includes* the property tax. The Taxpayer further argues that the property taxes were legally imposed directly on the consumer. In actuality, the property tax is legally imposed directly on the seller, , and simply being passed through to the Taxpayer to pay the tax. Although the seller passes the taxes

onto the Taxpayer, the legal obligation to pay the tax is still on the seller, .
Therefore, since the tax was not legally imposed directly the Taxpayer, the first clause of R.I. Gen. Laws § 44-18-12(b)(iv) is not met.

The Taxpayer further argues that since the property tax is separately stated on the monthly statements, the property tax is directly imposed on the Taxpayer. It is more logical that may simply separately list the charges on the monthly statement in order better inform the Taxpayer. The Taxpayer's argument is flawed because although chooses to pass the cost of those property taxes onto the Taxpayer, it does not shift the legal incidence of the property taxes onto the Taxpayer. The property tax is not legally imposed on the Taxpayer nor was it legally shifted to the Taxpayer.

Furthermore, Regulation SU 92-62 tracks R.I. Gen. Laws § 44-18-12 and states that the sale price shall not include the amount of any taxes legally imposed directly on the consumer that are separately stated to the purchaser. Here, neither the legal incidence nor the property tax were legally shifted or imposed directly on the consumer; therefore, the property tax is correctly included in the sales price which is subject to taxation.

The Taxpayer also argued that the tax imposed on the motor vehicle was an excise tax and not a property tax. The Taxpayer cites R.I. Gen. Laws § 44-34-1 which provides that there is an "excise tax on motor vehicles" and authorizes towns and cities to collect the "the excise on registered motor vehicles and trailers in lieu of property tax." However, despite that statutory phrasing, *Cohen v. Harrington*, 722 A.2d 1191 (R.I. 1999) found that said tax is not an excise tax but rather is a property tax. The Court found that a label given a tax by the General Assembly is not controlling on what type of tax it is but rather the character of the levy is determined by its function. The Court

found that said tax is a property tax. *Id.* at 1194. The Taxpayer's argument that the tax is an excise tax is incorrect.

The Taxpayer also raised speculative arguments about whether a leasing company pays the town or State on a vehicle once the lease expires, and whether the lessor transfers title to the property in question as soon as possible so as not to incur any future property taxes. However, those arguments are speculative and have no merit or legal basis and are irrelevant to the issue in this matter.

VI. FINDINGS OF FACT

1. On or about February 6, 2012, the Division issued a Notice of Hearing and Appointment of Hearing Officer.

2. The parties submitted an agreed statement of facts and exhibits and all briefs were timely filed by July 12, 2012.

3. The property tax was legally imposed on the lessor and was passed on to the Taxpayer by the lessor.

4. The facts and exhibits have been agreed upon by both parties and are not disputed.

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

2. Pursuant to R.I. Gen. Laws § 44-18-12, the property tax is included in the sales price.

3. The property tax was not legally imposed on the Taxpayer so R.I. Gen. Laws § 44-18-12(b)(4) is inapplicable.

4. Since the property tax is included in the sales price, under R.I. Gen. Laws § 44-18-12, the property tax is subject to sales tax.

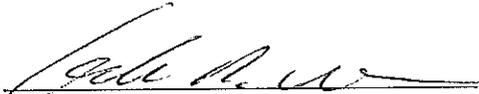
5. Pursuant to R.I. Gen Laws § 44-18-12, the Division properly denied the Taxpayer's request for a refund of the sales tax paid by the Taxpayer on said property tax.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-18-12, the Division properly denied the Taxpayer's request for a refund of the sales tax paid by the Taxpayer on said property tax so that the Taxpayer's request for refund is denied.

Date: August 31, 2012


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

Date: 9/5/2012


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 5th day of September, 2012, 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 Linda Riordan, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02908.

