

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-07

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

| | | |
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| IN THE MATTER OF: | : | |
| | : | |
| | : | Case No.: 23-T-005 |
| | : | Sales and Use Tax |
| Taxpayer: | : | |
| | : | |

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 (“Notice”) dated January 17, 2023 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 March 4, 2024. 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 § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, and 280-RICR-20-00-2, *Administrative Hearing Procedures*.

III. ISSUE

Whether the Taxpayer owes use tax on a car (“Car”) purchase in 2019. The issue requires a determination of whether the Taxpayer was a *bona fide* nonresident of Rhode Island at the time of the purchase of the Car.

IV. MATERIAL FACTS AND TESTIMONY

(“Auditor”), Senior Tax Auditor, testified on behalf of the Division. He testified he was familiar with the Taxpayer’s purchase of the Car. He testified that for every motor vehicle sold within Rhode Island by motor vehicle dealers, the dealers fill out a statement of sale

and file it with the Division. He testified that when a buyer uses an out of state address for a motor vehicle purchase, the Division will review the sale to determine if the buyer is a *bona fide* nonresident of Rhode Island. He testified that while the Taxpayer used an out of state address for the purchase of the Car, she was not a *bona fide* nonresident of Rhode Island. He testified that he based that determination on his review of her income tax records, Division of Motor Vehicle (“DMV”) records, and her voting records. He testified the Taxpayer has paid Rhode Island resident income tax since at least 2004 and had a Rhode Island driver's license and was registered to vote in Rhode Island at the time of the sale. Division’s Exhibits One (1) (Taxpayer’s purchase agreement for Car dated February 21, 2019; dealer’s statement of sale dated February 21, 2019; receipt for payment of tax on the Car); and Two (2) (Division records showing Taxpayer’s resident Rhode Island income tax returns from 2012 through 2020; Taxpayer’s 2019 joint Rhode Island resident income tax return; DMV records showing has held Rhode Island driver’s license since 1988; voter records showing registered to vote in Rhode Island in 2019).

The Auditor testified he forwarded notices to the Taxpayer regarding the tax owed on the Car but revised the amount because the Taxpayer traded in a vehicle during the purchase of the Car so she received credit for the trade in. He testified a notice of assessment was issued to the Taxpayer which was based on his audit report. Division’s Exhibits Four (4) (audit report dated July 12, 2022 indicating the Taxpayer was not a *bona fide* nonresident of Rhode Island so owed Rhode Island use tax on the Car); and Five (5) (notice of assessment dated July 14, 2022). He testified the Taxpayer requested a hearing, and a preliminary conference was held after which he sent the Taxpayer the relevant laws and the District Court decision on the topic of a *bona fide* nonresident of Rhode Island. Division’s Exhibit Eight (8) (email dated November 10, 2022). He testified the assessment has been further reduced because of an offset from an income tax refund due to the

Taxpayer. He testified the Division's Exhibit 11 represents the current balance of tax, penalty, and interest owed by Taxpayer.

On cross-examination, the Auditor testified he was aware the Taxpayer owned other cars in Rhode Island, and he believes a *bona fide* nonresident of Rhode Island is someone who has no ties or no connection to Rhode Island.

The Taxpayer testified on her behalf. She testified that at the time of the purchase of the Car, she had two (2) daughters in college in [redacted] who were pursuing an Olympic sport and had been training in [redacted] since 2013 before college. She testified they trained in [redacted] and competed internationally so as a result, she purchased a second home in [redacted] and they spent a lot of time there. She testified that her older daughter obtained a [redacted] driver's license in 2013 using the [redacted] address. She testified she purchased the Car for her daughter in [redacted]. She testified that at the time of the purchase, the type of car that she bought was only available used in Rhode Island or [redacted] so she could not obtain a used one in [redacted]. She testified that at the time, her family were living in more than one (1) state and were a global family, but had a designated home in Rhode Island. She testified that she was looking for fairness and referred to the Division provision allowing for the abatement of excessive taxes.¹

On cross-examination, the Taxpayer testified she purchased the Car for her daughter and at the time, she, the Taxpayer, was a resident of Rhode Island.

¹ The Taxpayer referred to this provision by a number she found on the internet. However, that internet summary was referring to R.I. Gen. Laws § 44-1-10 which provides as follows:

Compromise or abatement of uncollectible or excessive taxes. Whenever the tax administrator determines that any tax, excise, fee, penalty, interest, or other charge payable to the tax administrator is un-collectible, illegal, or excessive, in whole or in part, the tax administrator may, with the approval of the director of revenue, compromise, abate, or cancel the charge, as the circumstances may warrant.

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, 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. *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989). 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 § 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:

(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.

C. Tax Exemptions

Not only are taxation exemption statutes strictly construed against a taxpayer, but “[t]he party claiming the exemption from taxation under a statute has the burden of demonstrating that the terms of the statute illustrate a clear legislative intent to grant such exemption.” *Cookson v. Clark*, 610 A.2d 1095, 1098 (R.I. 1992). Tax exemption statutes are also strictly construed in favor of the taxing authority and against the party seeking the exemption. *Fleet Credit Corp. v. Frazier*, 726 A.2d 452, 454 (R.I. 1999). Pursuant to R.I. Gen. Laws § 44-18-25,² there is a presumption that the use of all tangible personal property is subject to the use tax.

D. The Taxpayer Owes Use Tax on the Car Purchase

Pursuant to R.I. Gen. Laws § 44-18-20,³ an excise tax is imposed on the “storage, use, or other consumption in this state” of personal property including the purchase of a motor vehicle. R.I. Gen. Laws § 44-18-30(13) provides an exemption to this tax if the purchaser of a motor vehicle

² R.I. Gen. Laws § 44-18-25 provides 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, or prewritten computer software delivered electronically or by load and leave, or services as defined in § 44-18-7.3, are subject to the use tax, and that all tangible personal property, or prewritten computer software delivered electronically or by load and leave, or services as defined in § 44-18-7.3, 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.

³ R.I. Gen. Laws § 44-18-20 provides 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.

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

is a *bona fide* nonresident of Rhode Island. As discussed above, a tax exemption is to be strictly construed against a taxpayer.

The Car was purchased in Rhode Island but with a _____ address. Pursuant to R.I. Gen. Laws § 44-18-30(13), only a *bona fide* Rhode Island nonresident does not have to pay Rhode Island tax on the purchase of a vehicle. In regard to the claim of being a *bona fide* nonresident, the Rhode Island District Court case of *McLaughlin v. Norberg*, AA No. 83-429 (1985) addressed the test for residency as delineated in *Randall v. Norberg*, 403 A.2d 240 (1979) (sufficient connection with Rhode Island to determine whether a taxpayer would be liable as a “resident” for taxes under Title 44). *McLaughlin* held that the issue was not whether that taxpayer was resident or domiciliary of another state or a resident of Rhode Island or a resident of Rhode Island for the purposes of Title 31 (motor vehicles), but rather whether that taxpayer was a resident of Rhode Island for title 44 purposes. *McLaughlin* found the taxpayer had sufficient connections (owned a summer house in Rhode Island and owned a second car that was registered in Rhode Island) with Rhode Island to be liable as a “resident” for taxes on the purchase of a car under Title 44 even though the car at issue was registered, titled, and garaged in Florida. In *Randall*, the taxpayer often visited Rhode Island, maintained a home there, and filed a resident income tax return. *Randall* found that taxpayer had enough of a connection with Rhode Island to be considered a resident. The Division has consistently applied the District Court case of *McLaughlin* in order to determine whether a taxpayer is a *bona fide* nonresident at the time of purchase of a vehicle.⁴

In *Administrative Decision*, 2011 WL 6749688 (R.I.Div.Tax), the taxpayer owned a house in and voted in Maine in 2008 when he bought a car and registered it in Maine; however, he was not a *bona fide* nonresident of Rhode Island when he purchased the car as he had filed a 2008

⁴ The *McLaughlin v. Norberg*, AA No. 83-429 (1985) standard for taxing for the purposes of the use tax is a different standard than the standard for personal income tax or domicile.

Rhode Island resident income tax return. *Administrative Decision*, 2001 WL 1606904 (R.I. Div.Tax) found the taxpayer corporation was not a *bona fide* nonresident as it filed Rhode Island returns and was a Rhode Island corporation. *Administrative Decision*, 1998 WL 751234 (R.I.Div.Tax) found that the taxpayer was a Rhode Island resident despite claims to be a Florida resident as the taxpayer had filed Rhode Island resident tax returns.

The Taxpayer did not dispute that in 2019, she was a resident of Rhode Island. In 2019, she filed a Rhode Island resident income tax return and was registered to vote in Rhode Island and held a Rhode Island driver's license. Thus, she had sufficient contacts with Rhode Island not to be considered a *bona fide* nonresident of Rhode Island at the time of the purchase of the Car in 2019.

Finally, the Division properly imposed interest on the use tax assessment pursuant to R.I. Gen. Laws § 44-19-11.⁵ The Division also properly imposed a 10% penalty on the sales tax deficiency pursuant to R.I. Gen. Laws § 44-19-12.⁶ 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).

⁵ 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.

⁶ 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.

The Taxpayer argued that she was looking for fairness. The Taxpayer provided an explanation that she bought the Car for her daughters who were living and training for a sport in

The Taxpayer may have had a good reason for buying the Car in Rhode Island and then giving it to her daughter in but that does not mean that under the applicable statute, she does not owe the applicable tax. The statute provides that *bona fide* nonresidents do not owe the tax. That does not apply to the Taxpayer.

In terms of an equitable/fairness argument, equitable principles are not applicable to administrative proceedings. See *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004) (Supreme Court vacated a Superior Court order that vacated an agency sanction on equitable grounds).

The Taxpayer argued the Tax Administrator has the authority to abate or compromise taxes or penalties or interest that may be excessive or uncollectible. *Brier* found that R.I. Gen. Laws § 44-19-12 does not provide authority for a hearing officer to waive a penalty. That interpretation is consistent with R.I. Gen. Laws § 44-1-10 which grants the Tax Administrator the authority to settle and compromise tax, penalties, or interest. *Supra*. That statutory provision applies to settlements entered into prior to a hearing so it is not applicable to this matter.

VI. FINDINGS OF FACT

1. On January 17, 2023, the Division issued the Notice to the Taxpayer.
2. A hearing in this matter was held on March 4, 2024. The parties rested on the record.
3. The Taxpayer purchased a Car in 2019 in Rhode Island. The Taxpayer used a address for the purchase.
4. In 2019, the Taxpayer filed a Rhode Island resident income tax return, was registered to vote in Rhode Island, and held a Rhode Island driver's license.
5. The facts as detailed in Section V are incorporated herein by reference.

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. The Taxpayer is not a *bona fide* nonresident of Rhode Island.
- 3. Pursuant to R.I. Gen. Laws § 44-18-20 and R.I. Gen. Laws § 44-18-30(13), the Taxpayer is not exempt from paying use tax upon the purchase of the Car as she was not a *bona fide* nonresident of Rhode Island at the time of the purchase of the Car in 2019.

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 Division properly issued the notice of assessment for tax, penalty, and interest owed on the purchase of the Car in 2019 as the Taxpayer was not a *bona fide* nonresident of Rhode Island in 2019 so that the Taxpayer owes the assessment as set forth in Division’s Exhibit 11.

Date: March 26, 2024


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: 4/2/24


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 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 3rd day of April, 2024 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid to the Taxpayer's address on file with the Division of Taxation and by electronic delivery to John Beretta, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02908.

Gail Belasco