

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-19

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

IN THE MATTER OF:

**24-T-021
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 May 3, 2024 and issued to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to a request for hearing. The Taxpayer did not appear for the prehearing conference scheduled for June 20, 2024. By letter dated June 21, 2024, the Taxpayer was notified that a full hearing would be held on July 30, 2024. A hearing was held on July 30, 2024 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing,¹ a hearing was held before the undersigned on July 30, 2024. Pursuant to Section 2.7(G)(3) of the 280-RICR-20-00-2 *Administrative Hearing Procedures* (“Hearing Regulation”), a default judgment may be entered against the party not appearing at hearing. The Division was represented by counsel and rested on the record.

¹ The notice for the June 21, 2024 prehearing conference was sent by first class and certified mail to the Taxpayer to the address on record with the Division. Division’s Exhibit 14 (said notice and print out of the United States Post Office certified mail tracking sheet showing delivery). Notice of the July 30, 2024 full hearing was sent to the Taxpayer by letter dated June 21, 2024, and was sent by first class and certified mail to the Taxpayer’s address on record with the Division. Division’s Exhibit 15 (June 21, 2024 letter and print out of the United States Post Office certified mail tracking sheet showing certified mail was delivered). The notices were sent to the Taxpayer’s certified public accountant who had entered an appearance on behalf of the Taxpayer. Division’s Exhibit 13 (power of attorney form from certified public accountant).

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, and the Hearing Regulation.

III. ISSUE

Whether the Taxpayer owes the tax assessed by the Division for sales and use.

IV. MATERIAL FACTS

Senior Tax Auditor, testified on behalf of the Division. He testified he conducted the audit of the Taxpayer who was notified of the audit but did not produce the requested records despite several requests. Division's Exhibits One (1) (October 11, 2018 letter); Two (2) (Division audit logs); Three (3) (Notice to Appear dated August 27, 2019); and Four (4) (Notice to Appear dated September 11, 2020). He testified a certified public accountant entered his appearance for the Taxpayer, and the Taxpayer finally supplied some records. Division's Exhibits 13 (CPA power of attorney dated September 23, 2020) and Five (5) (March 20, 2022 summons and subpoena for records sent to Taxpayer). He testified the audit was for sales and use for the period of October 4, 2015 to December 31, 2021. He testified that during the audit period, the Taxpayer was located in Rhode Island and fabricated and sold countertops and did not have a permit to make sales at retail and did not regularly file sales taxes. He testified the Taxpayer supplied the 2019 accounts payable and general ledger, but never provided sales invoices for 2016 through 2021. He testified he performed his audit on the best available information, so he used 2019 as a test period. Division's Exhibit Six (6) (field audit). He testified a notice of assessment was sent to the Taxpayer for tax, interest, and penalty. Division's Eight (8) (notice of assessment dated January 9, 2023). He testified a preliminary conference was held in 2023 after which the assessment was revised based on information received at the conference. He testified a new

assessment was sent to the Taxpayer for sales tax rather than for use tax as in the initial assessment. Division's Exhibits 11 and 12 (offer to resolve with revised assessment and Taxpayer's rejection and request for hearing). He testified as to the amount of current assessment based on the initial assessment of January 9, 2023 for which tax, interest, and penalty are owed.

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. **Whether the Assessments are Owed**

Pursuant to R.I. Gen. Laws § 44-18-18, Rhode Island imposes a sales tax of 7% on gross receipts of a retailer. R.I. Gen. Laws § 44-18-20 imposes the corresponding use tax. Pursuant to R.I. Gen. Laws § 44-18-19, the retailer is responsible for the collection of sales tax.

When a taxpayer cannot produce records demonstrating its sales and/or taxes collected, the Division will use the available evidence to make an assessment as provided for in R.I. Gen. Laws

§ 44-19-11 and R.I. Gen. Laws § 44-19-14.² Such audits where there were few or no records have been the subject of prior administrative decisions which have found that assessments are to be made on the available evidence.³

Pursuant to R.I. Gen. Laws § 44-18-25, the burden of proof is on the Taxpayer rather than the Division since the statute provides for a statutory presumption that all items purchased or sold are subject to tax unless the “contrary” is established by a taxpayer to the satisfaction of the Tax Administrator. The purpose of this hearing was to provide the Taxpayer with an opportunity to rebut the presumption of taxability. The burden of proof for the Taxpayer is the preponderance of the evidence. See R.I. Gen. Laws § 8-8-28 and *DeBlois v. Clark*, 764 A.2d 727 (R.I. 2003).

² 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.

R.I. Gen. Laws § 44-19-14 states as follows:

Determination without return – Interest and penalties. – If any person fails to make a return, the tax administrator shall make an estimate of the amount of the gross receipts of the person or, as the case may be, of the amount of the total sales price of tangible personal property sold or purchased by the person, the storage, use, or other consumption of which in this state is subject to the use tax. The estimate shall be made for the month or months in respect to which the person failed to make a return and is based upon any information, which is in the tax administrator's possession or may come into his or her possession. Upon the basis of this estimate, the tax administrator computes and determines the amount required to be paid to the state, adding to the sum arrived at a penalty equal to ten percent (10%) of that amount. One or more determinations may be made 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 (15th) day after the close of the month for which the amount or any portion of the amount should have been paid until the date of payment. If the failure of any person to file a return is due to fraud or an intent to evade the provisions of this chapter and chapter 18 of this title, a penalty of fifty percent (50%) of the amount required to be paid by the person, exclusive of penalties, is added to the amount in addition to the ten percent (10%) penalty provided in this section. After making his or her determination, the tax administrator shall mail a written notice of the estimate, determination, and penalty.

³ For example, see 2003 Division administrative decision (2003 WL 23105231) and 1994 Division administrative decision (1994 WL 143289).

The Division initially issued an assessment for use tax to the Taxpayer in January, 2023. Division's Exhibit Eight (8). After the preliminary conference, the Division revised its assessment for sales tax and notified the Taxpayer of same by letter dated Division's Exhibit 11. The September 12, 2023 letter with the second assessment indicated to the Taxpayer that if the Taxpayer did not accept the revised assessment, the matter would be forwarded to hearing on the initial assessment. However, the Division's Notice provided notice to the Taxpayer that the hearing would be on both assessments. The Notice included the statutory bases for both assessments.

The Taxpayer did not appear at hearing. The Taxpayer did not make a showing that it did not owe either assessment. At hearing, it was undisputed that the Taxpayer owed both sales and use tax assessed after an audit.

C. Interest and Penalty

R.I. Gen. Laws § 44-1-7 provides that interest shall be imposed on any tax not paid when due and payable. Thus, the Division properly imposed interest on the tax assessments pursuant to R.I. Gen. Laws § 44-19-11. In addition, the Division properly imposed a 10% penalty on both assessments pursuant to R.I. Gen. Laws § 44-19-12⁴ and R.I. Gen. Laws § 44-19-14. The statutory imposition of penalties for sales and use tax deficiencies is mandatory. *Brier Mfg. Co. v. Norberg*, 377 A.2d 345 (R.I. 1977).

VI. FINDINGS OF FACT

1. On or about May 3, 2024, the Division issued a Notice of Pre-Hearing Conference and an Appointment of Hearing Officer to the Taxpayer.

⁴ R.I. Gen. Laws § 44-19-12 provides 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.

2. By letter dated June 21, 2024, the Taxpayer was notified that a full hearing would be held on July 30, 2024.

3. A hearing in this matter was held on July 30, 2024. The Taxpayer did not appear. As the Taxpayer was adequately notified of the hearing, a hearing was held with the Division resting on the record. The Taxpayer is in default for failing to appear at the hearing.

4. The facts contained in Sections I, IV, and V are incorporated by reference herein.

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.*, R.I. Gen. Laws § 44-19-1 *et seq.*, and R.I. Gen. Laws § 44-1-1 *et seq.*

2. The Taxpayer owes the assessed sales tax and use tax and their respective assessed interest and penalties.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows: Pursuant to R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, R.I. Gen. Laws § 44-1-7, and R.I. Gen. Laws § 44-1-1 *et seq.*, the Taxpayer owes the assessed sales tax and use tax and their respective interest and penalties.⁵

Date: August 27, 2024


Catherine R. Warren
Hearing Officer

⁵ At hearing, it was undisputed the Taxpayer owed both assessments. Both assessments were included in the Notice despite the September, 2023 letter regarding the first assessment. There was testimony at hearing regarding the first assessment and its current amount. The undersigned notes the revised assessment is a higher assessment and would recommend that if only one assessment is to be upheld that the sales tax assessment be upheld.

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: 9/5/24

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 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 Sept., 2024 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 representative's address and the Taxpayer's address on file with the Division and by electronic delivery to John Beretta, Esquire, Department of Revenue, One Capitol Hill, Providence, R.I. 02903.

Neil Belasco