

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2025-06

**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.: 24-T-019
sales tax exemption**

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 April 29, 2024 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 January 23, 2025. 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 § 44-18-30B, R.I. Gen. Laws § 44-1-1 *et seq.*, and 280-RICR-20-00-2 *Administrative Hearing Procedures*.

III. ISSUE

Whether the Taxpayer should be granted a sales tax exemption pursuant to R.I. Gen. Laws § 44-18-30B for his compact disc (“CD”) sales.

IV. MATERIAL FACTS AND TESTIMONY

Chief Implementation Aide, Audit and Investigation Unit, testified on behalf of the Division. She testified she received the Taxpayer’s application for an exemption from sales tax for a CD he produced. She testified she reviewed the tax exemption application and forwarded

it to the Rhode Island State Council on the Arts (“RISCA”) which makes the final determination for such requests. She testified that RISCA denied the application because the CD was not a limited edition, not one of a kind, and not hand made. She testified the application did not indicate the CD was a limited edition and/or signed. She testified the denial was based on the relevant statute and regulation. Division’s Exhibits Three (3) (Taxpayer’s application dated September 8, 2023 for tax exemption); Five (5) (Division’s denial of tax exemption application dated September 15, 2023); and Six (6) (Taxpayer’s request for hearing). There was no cross-examination.

RISCA, Director of Artistic Programs, testified on behalf of the Division. She testified she received the Taxpayer’s tax exemption application from the Division, reviewed it, and denied it. She testified the basis for denial was the application did not indicate the CD was a limited edition and/or signed and/or numbered, and it was available for sale on a variety of streaming sites including Bandcamp, Youtube Music, and Amazon. On cross-examination, she testified that an original painting would qualify for the sales tax exemption but a mass produced poster reproduction of said painting would not.

The Taxpayer testified on his behalf. He testified that a CD has better sound quality than streaming. Taxpayer’s Exhibit One (1) (articles about CD and streaming sound quality). He testified there is a difference between purchasing a CD and a streamed song since the latter often are limited to a license to own while subscribing to the streaming service. He testified the CD comes with 24 pages of liner notes that are a limited edition so that it could be seen as the booklet is for sale with a free CD. On cross-examination, he testified the content of the CD is available for sale on streaming platforms. He testified the streamed music is for sale and some sites download the music. He testified the same collection of songs on the CD is available for purchase online.

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) (citation omitted). 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 Statute and Regulation**

R.I. Gen. Laws § 44-18-30B provides in part as follows:

Exemption from sales tax for sales by writers, composers, artists — Findings.

(a) The general assembly makes the following findings of facts:

(2) Since 1998, the establishment of arts districts, where “one-of-a-kind, limited-production” works of art may be sold exempt from state sales tax, has resulted in an increased presence for the arts in designated cities and towns, with benefits to those communities and to the state.

(b)(1) This section only applies to sales by writers, composers, and artists residing in and conducting a business within the state of Rhode Island. For the purposes of this section, a “work” means an original and creative work, whether written, composed, or executed for “one-of-a-kind, limited production” that falls into one of the following categories:

(iii) A musical composition or the performance of said composition;

(2) For the purposes of this section, a “work” includes any product generated as a result of any of the above categories.

(3) For the purposes of this section, a “work” does not apply to any piece or performance created or executed for industry-oriented, commercial, or related production.

(c)(1) This section applies to sales by any individual:

(i) Who is a resident of, and has a principal place of business situated in, the state of Rhode Island.

(ii) Who is determined by the tax administrator in consultation with the Rhode Island council on the arts, after consideration of any evidence he or she deems necessary or that is submitted to him or her by the individual, to have written, composed, or executed, either solely or jointly, a work or works that would fall into one of the categories listed in subsection (b)(1).

(3) The tax administrator shall not make a determination unless:

(i) The individual(s) concerned duly make(s) an application to the tax administrator for the sales tax exemption that applies to the works defined in this section; and

(ii) The individual has complied and continues to comply with any and all requests made by the tax administrator.

(d) Any individual to whom this section applies, and who makes an application to the tax administrator, is entitled to a sales tax exemption for the sale of a work or works sold from the individual’s business located in the State of Rhode Island that would, apart from this section, be subject to the tax rate imposed by the state of Rhode Island.

The relevant regulation, *Exemption of Sales by Writers, Composers and Artists*, 280-RICR-20-70-11 (“Regulation”) provides in part as follows:

11.5 Definitions

D. “One of a kind” means the creation of a solitary work, conceived and produced by the artist or author or under their direction, not intended for multiple or mass production.

E. “Limited edition” means the creation of a solitary work, conceived and produced by the artist or author under their direction, which is intended for limited reproduction, signed and numbered by the artist.

I. “Work” means:

1. An original and creative work, whether written, composed or executed for “one of a kind or limited edition” production and which falls into one of the following categories:

c. A musical composition;

2. "Work" also includes any product generated as a result of any of the above categories.

3. This definition does not apply to any piece or performance created or executed for industry oriented, commercial or related production. A commercial use includes the hiring of a photographer to take a photograph, as opposed to purchasing a one of a kind scenic photograph taken by a photographer held out for sale.

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 (R.I. 1999).

D. Arguments

The Division argued the issue is not sound quality but that the content of the CD is the same for the streaming sales. It argued that since the Taxpayer is selling the CD music online, the product is not one of a kind or a limited edition so that the request should be denied.

The Taxpayer argued the statute does not define industry oriented commercial or related production and a broad definition excludes all sales so that the statute would be meaningless as no sales could be exempt. He argued the CD's are different from the online sales. He argued that he was only seeking the tax exemption for the 100 CD's because they are a distinct commercial product with liner notes as compared to the streaming versions.

E. Whether the Taxpayer Should Receive the Tax Exemption

When the Taxpayer originally submitted his application for the sale tax exemption, he did not include on his application that there were only 100 CD's available. At hearing, it was agreed

the sales tax exemption request was for the 100 CD's that have been signed and numbered. As indicated in the Taxpayer's response to interrogatories, he was the primary composer of the music and wrote the lyrics and performed the music on the CD's. Division's Exhibit 11 (Division's interrogatories with responses thereto). Thus, the Taxpayer is seeking a sales tax exemption for an album of his performances of his musical compositions.

The Taxpayer requested a sales tax exemption for the 100 CD's. He did not request a sales tax exemption for the liner notes (which are part of the CD sale). The sales tax exemption being requested is for music compositions. It is not for the liner notes despite the Taxpayer's arguments that the liner notes are only available by purchasing the CD.

As defined by the Regulation, a limited edition means it is intended for limited reproduction that is then signed and numbered by the creator. Thus, a limited edition means that only a certain number of the edition is printed, and the print run is numbered and signed. Thus, for example, 200 prints are made from a painting, and the artist signs and numbers the print as 1/200, the first of 200, etc.

While the Taxpayer only has 100 CD's for sale that are numbered and signed, he is also selling the same album – the same content of the CD - online. Thus, while only 100 CD's were produced, the album is not limited because the same album is being sold as a CD and online on multiple websites. The online album and CD album are not separate items even if the CD has better sound quality and liner notes. The CD album and the online album are the same. Thus, the online sales of the album are neither a one of a kind creation nor a limited edition under the Regulation. Instead, those sales are commercial under the Regulation. The sales tax exemption cannot just apply to certain sales but rather only can apply to the sales of the same item. See *Administrative Decision*, 2024 WL 1039189 (R.I.Div.Tax.).

Based on the foregoing, the Taxpayer's 100 CD's do not fall under the statutory sales tax exemption because they are not a limited edition nor a one of a kind creation. The Taxpayer's sales of the album by CD and by online means the CD is not a limited edition under the Regulation. Therefore, the request for a sales tax exemption for the CD's was properly denied by the Division.

VI. FINDINGS OF FACT

1. On or about April 24, 2024, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayer.
2. A hearing was held on January 23, 2025 with the parties resting on the record.
3. The Taxpayer has created, composed, and produced an album and is offering it for sale as one of a 100 CD's. Each CD is numbered and signed by the Taxpayer.
4. The same album – e.g. the content of the CD - is also available in digital form online on multiple streaming websites.
5. The facts contained in Section 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 § 44-18-30B *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*
2. Pursuant to R.I. Gen. Laws § 44-18-30B, the Taxpayer does not qualify for a tax exemption for his 100 CD's as they are not a limited edition because the same item, the album on the CD, is also being sold online commercially.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-18-30B *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*, the Taxpayer does not qualify for a sales tax exemption for his 100 CD's, so the Division appropriately denied his application for such an exemption including the request for a sales tax exemption solely for CD sales.

Date: February 13, 2025


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: Feb. 13, 2025


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 14th day of February, 2025 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and by certified mail, return receipt requested and by electronic delivery to the Taxpayer's address on file with the Division and by electronic delivery to John Beretta, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.


