STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2011-06

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

IN THE MATTER OF:	:	
	:	**Sales/Use Tax**
Taxpayer.	:	**Case No.: 09-T-015**

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 October 1, 2010 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 November 18, 2010. The Division was represented by counsel and the Taxpayer was represented by an authorized officer, its owner ("Owner"). A briefing schedule was set and the parties timely filed briefs by January 24, 2011.

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*., the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*, and the *Division of Taxation Administrative Hearing Procedures, Regulation AHP 97-01*.

III. ISSUE

Whether the Taxpayer owes the Division's assessment in light of R.I. Gen. Laws § 44-18-40.

IV. MATERIAL FACTS AND TESTIMONY

Revenue Agent II, testified on behalf of the Division. He testified that he performed a field audit for the period of 2003 to 2008 on the Taxpayer, an IFTA (International Fuel Tax Agreement) registrant and warehouse company. He testified that the audit related to deliveries within Rhode Island. He testified that he reviewed corporate returns, accounts payable, assets, and drivers' logs. He testified he used a test period for expenses. See Division's Exhibit Five (5) (test period agreement). He testified that he determined three (3) different taxable measures: Schedule 3A ex-tax purchases of assets, Schedule 3B ex-tax expenses, and Schedule 3B-1 one time occurrence. See Division's Exhibit Six (6) (summary of differences).

testified that Schedule 3A refers to the rental invoices for trailers and the invoices showed those which were rented by the Taxpayer and corresponded to the pick up and delivery invoices. See Division's Exhibit Nine (9) (daily pick up/delivery reports). He testified that the delivery sheets showed that goods were picked up out-of-state, stored in Rhode Island, and then shipped out. He testified that the vehicles were not used exclusively for interstate shipping, so the interstate exemption did not apply so he assessed use tax on twelve (12) tractors and twelve (12) trailers. He testified that the tractor assessments were based on the invoices but the trailer assessments were based on an agreed to amount of per trailer. He testified that for the second taxable measure, he used a one (1) year test period of expense items. He testified that he agreed with the Taxpayer regarding the one time occurrence of an extax purchase in Schedule 3B-1. He testified that the use tax applied since merchandise was being unloaded, stored, and placed on different trucks. He testified that

a Notice of Deficiency was issued on October 16, 2009. See Division Exhibit's Twelve (12). He testified that the assessed statutory interest was 12% until August, 2006 when it was raised by statute to 18%.

The Owner testified on the Taxpayer's behalf. He testified that during the audit, he discussed with the Division's auditor a truck that had a made a trip from the Taxpayer's Rhode Island terminal to a Rhode Island store. The Owner testified that he explained to the auditor that said trip from the terminal to the Rhode Island store was only completing a shipment that had originated the previous week in Ohio and there were no extra charges to the Rhode Island store for the truck stopping at the terminal. He testified that the daily trip sheets demonstrate that the Taxpayer is an out-of state carrier that stops off in Rhode Island for safety or convenience under *Randall v. Norberg*, 403 A.2d 240 (RI 1979) so that it is a safety issue if the driver can't drive anymore or a convenience issue if need to make an appointment for delivery. He testified that it doesn't matter if freight is taken off one truck and put on another truck as that goes to convenience. See Taxpayer's Exhibit One (1) (27 trip sheets).

On cross-examination, the Owner testified that the Taxpayer owns and leases some trucks and some trailers. He testified that a load will come to the Rhode Island warehouse and could sit for days and then get shipped out. He testified that the Taxpayer will not know how long the delay will be in Rhode Island since it depends on what the recipient wants. He testified that for example, a truck can hold 24 pallets and might pick up six (6) pallets for a store and that store wants those six (6) pallets in three (3) days but the recipient for the other pallets on the truck might want them that day, so the truck will return to the warehouse and split the contents of the truck for delivery.

On questioning from the undersigned, the Taxpayer testified regarding trip sheet four (4) (as marked in Taxpayer's Exhibit One (1)). He testified that two (2) loads were picked up in Rhode Island on April 2, 2007 with one (1) load bound for New York and the other for Massachusetts but the truck then returned to the warehouse to transfer the loads for delivery. He testified that the loads were transferred on the same day because both loads were contracted for overnight delivery. He testified that the first truck didn't leave Rhode Island but was engaged in interstate commerce because the shipments were terminating outside of Rhode Island. (The trip sheets for the truck pick up in Rhode Island for the two (2) out-of-state deliveries were not part of the trip sheet four (4)).

For trip sheet five (5) which relates to a truck's activities on Friday, April 6, 2007, the Owner testified that a shipment originating in New Jersey was picked up on April 2, 2007 in New Jersey, stored in the Rhode Island warehouse, and delivered in Rhode Island on April 6, 2007. He testified that there was also a shipment from South Carolina that was picked up on March 29, 2007 and was delivered in Rhode Island on April 6, 2007. He testified that there was also another shipment picked up in Rhode Island on April 6, 2007 for delivery to Ohio and the truck returned to the warehouse and the shipment then left on Sunday, April 8, 2007, for delivery to Ohio on April 10, 2007. He testified there was also a shipment picked up in State on April 6, 2007 for delivery to Massachusetts so it stayed in the warehouse at the weekend and was delivered on April 9, 2007.

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. Pursuant to R.I. Gen. Laws § 44-18-20, a use tax is imposed on the storage, use or consumption of tangible personal property. "The use tax . . . is a complement to Rhode Island's sales tax . . . The sales tax applies to 'sales at retail in this state.' (citation omitted). The use tax, in contradistinction, is imposed on 'the storage, use, or other consumption in this state of tangible personal property.'" *Dart Industries, Inc. v. Clark*, 696 A.2d 306, 309 (R.I.1997). In this matter, the Division is assessing use tax on the Taxpayer.

Pursuant to R.I. Gen. Laws § 44-18-25, there is a presumption that the use of all tangible personal property is subject to the use tax. Said statute states 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 is subject to the use tax, and that all tangible personal property 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.

The Taxpayer argues that it is exempt from use tax on its trucks and trailers because of R.I. Gen. Laws § 44-18-40 which states as follows:

> Exemption for buses, trucks and trailers in interstate commerce. – Notwithstanding any provision of the general laws to the contrary, the purchase, rental or lease of a bus, truck, or trailer by a bus or trucking company is not subject to the provisions of the sales and use taxes imposed by this chapter on the condition that the bus, truck and/or trailer is utilized exclusively in interstate commerce.

The Division's Sales and Use Tax Regulation SU 99-111 ("SU 99-111") addresses the issue of the interstate commerce tax exemption. Said Regulation states in part as follows:

> The purchase or rental/lease of a truck, trailer or bus by a trucking or busing company that transports goods or passengers for hire is not subject to sales and use tax provided such vehicle is to be used "exclusively in interstate commerce."
>
> In order to qualify for the exemption, the purchaser is required to furnish a completed "Affidavit of Truck, Trailer or Bus to be Used Exclusively in Interstate Commerce" to the Registry of Motor Vehicles at the time of registration. In the case of a lease, the lessee must furnish the Affidavit form to the lessor at the time of signing the lease.[1]
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> ***
>
> A truck, trailer or bus used partly or wholly in intrastate operations does not qualify for the exemption.

[1] No such affidavit was submitted by either party at hearing.

> If a vehicle qualifies for the exemption initially and at some later time is used for purposes other than "exclusively in interstate commerce," the purchaser will immediately be required to pay a sales/use tax to the Division of Taxation. In the case of a lease, the lessee will be required to notify the lessor that the exemption no longer applies so that lease billings from that point forward change from an exempt to a taxable status.

C. Arguments

i. The Division

The Division argues that exemptions are narrowly construed and R.I. Gen. Laws § 44-18-40 is clear and unambiguous and the evidence is that the trucks were not used "exclusively" in interstate commerce so the exemption does not apply. The Division further argues that SU 99-111 is the appropriate regulation to rely on. The Division argues that *Randall* is not applicable to this matter and the breaks in the trip are sufficient to establish an end of a trip.

ii. The Taxpayer

The Taxpayer argues that despite its trucks stopping in Rhode Island, it is engaging in interstate commerce so is entitled to the exemption. It argues that under *Randall*, its trucks stop for safety and convenience which does not deprive the deliveries of being interstate in nature and pursuant to *Alvan Motor Freight v. Department of Treasury*, 761 N.W.2d 269 (Mich.App. 2009), trucks do not have to leave a state to be conducting interstate commerce.

D. Whether the Taxpayer Owes the Assessed Tax

There is no dispute that the Taxpayer is a trucking company under R.I. Gen. Laws 44-18-40. The dispute arises from whether or not the tractors and trailers are utilized exclusively in interstate travel. Under the statute and the regulation, if the tractors and/or trailers are used at any point during the year in intrastate commerce, the exemption does

not apply. There is no authority to *pro-rata* the taxes on the basis on how often a truck was used in interstate and intrastate commerce. Thus, if any part of the Taxpayer's trucking is found to be intrastate commerce, the exemption does not apply.

The Taxpayer argued that the stoppage in transit in Rhode Island is for safety or convenience so the trucks and trailers are exempt from taxation. This test arises from *Randall v. Norberg* which discusses R.I. Gen. Laws § 44-18-11[2] which is a different exemption from the statutory exemption at issue in this matter. R.I. Gen. Laws § 44-18-11 exempts from tax goods that are shipped or brought in to Rhode island for the purpose of subsequently transporting them out of state; in other words for interstate commerce. *Randall* relies on *Pan American Word Airways, Inc. v. Morgan*, 513 P.2d 278 (WA 1973) which relies on a US Supreme Court case, *Minnesota v. Blasius*, 290 US 1 (1933). Both *Pan American* and the *Minnesota* discuss the issue of property and when it can be taxed when stopped within a state. *Minnesota* found that,

> Where property has come to rest within a state, being held the pleasure of the owner, for disposal or use, so that he may dispose of it either within the state, or for shipment elsewhere, as his interest dictates, it is deemed to be part of the general mass of property within the state and is thus subject to its taxing power. *Minnesota*, at 9.

Minnesota established a "continuity of transit test" so that if that test is not met, goods that come to rest in a state may be taxed. If interstate movement has begun it may be considered as continuing despite temporary interruptions due to the necessities of the

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[2] R.I. Gen. Laws § 44-18-11 states as follows:

> Storage or use for export. – "Storage" and "use" do not include the keeping, retaining, or exercising of any right or power over tangible personal property shipped or brought into this state for the purpose of subsequently transporting the property outside of the state for use solely outside of the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside of the state and used solely outside of the state.

journey or for the purposes of safety and convenience during the course of movement. *Pan American*, at 279-280. On the basis of these cases, *Randall* found as follows:

> As noted previously, the exemption applies only to property brought into Rhode Island to be used Solely (sic) outside the state. Consistent with the mandates of the commerce clause of the United States Constitution art. I, s 8, this section exempts from taxation any property in the flow of interstate commerce which enters Rhode Island from out of state and, with only minor interruption, continues on its interstate journey. See *Paul Arpin Van Lines Co. v. Norberg*, . . . 346 A.2d 655, 656 (1975); *Safeway Systems, Inc. v. Norberg*, . . . 341 A.2d 47, 49 (1975). A taxable event does occur, however, when the stoppage in transit is essential neither to the interstate journey nor for the purposes of safety and convenience in the course of that journey. See *Pan American World Airways, Inc. v. Morgan* . . . Citing *Minnesota v. Blasius* . . . . Under such facts the property in question loses its interstate character and a state may tax the privilege of exercising ownership rights without running afoul of the constitutional prohibition against state taxation of interstate commerce. *Randall*, at 243.

By analogy, the Taxpayer argues that its trucks are involved in an interstate commerce because the goods being shipped are only temporarily stopping in Rhode Island for safety or convenience. Thus, for example, the Taxpayer argues that on a trip by a truck that picks up two (2) loads in Rhode Island whose ultimate destination is out-of-state but returns to the warehouse, the trucks are still being used for interstate commerce since they stop at the warehouse for convenience while the loads are transferred to different trucks for delivery outside of Rhode Island. But the Division argues that those types of trips makes the trucks used in both interstate and intrastate commerce so the exemption for taxing trucks and trailers would not apply.

While *Randall* refers to a different statute, *Randall* requires that for goods not to be taxable, they must pass through Rhode Island without stopping or only stop for safety or convenience. In this matter, there are goods that are shipped to Rhode Island from out-of-state but then do not continue on to another state. These goods stop in Rhode Island

without the intention of passing through Rhode Island but rather are destined for a Rhode Island destination. The stoppage in Rhode Island is not for safety and convenience for continuing onto another state but rather the goods are destined for Rhode Island. Thus, for those goods that do not continue on out-of-state, *Randall* would not apply.

In terms of Rhode Island cases that actually discuss the statute at issue, there is only one that relates to this actual issue. *Tax Decision*, 2003 WL 22321390 (R.I.Div.Tax) found that a trucking company was not exempt under said statute because it has interstate and intrastate usage but there was not enough detail in the decision to determine if the instrastate usage was similar to this matter or not.[3]

However, *Rhode Island Tax Decision* (3/24/75 and rehearing 12/29/75) ("1975 Decision") involves a similar regulation which allowed trucking companies to register trucks tax-free in Rhode Island when the truck was used "exclusively in its interstate operations as a carrier." In that case, the taxpayer at issue would pick up shipments that had been made by another vendor to the Port of Providence and bring the shipment to its Rhode Island facility and later transport the goods to points within Rhode Island. The decision found that while the goods were coming into Rhode Island from out-of-state, the picking up of the goods within Rhode Island and transporting them elsewhere in Rhode Island was intrastate commerce. The decision found that once the goods were unloaded in Rhode Island and then shipped to the point in Rhode Island chosen by the goods' owner, the shipping was intrastate. The Taxpayer rejects this analogy by arguing that none of its shipments both originate and terminate in Rhode Island.

[3] The other Division administrative decisions presented were inapplicable to this issue because they addressed the issue of companies hauling their own goods so were not "trucking companies" under the exemption.

The Taxpayer also relies on *Alvan Motor Freight v. Department of Treasury*, 281 Mich.App. 35 (2008) which found that the term "used in interstate commerce" applied to trucks that carried goods within state but the goods were part of interstate commerce. The decision found that in order to qualify for that state's exemption (different from the one at issue here), rolling stock must be both used in interstate commerce and purchased, leased or rented by an interstate motor carrier as defined by the statute. Of course, such rolling stock must be used to transport goods that are passing through the state. In the situation where out-of-state cruise ships docked in Maine and the passengers disembarked for in-state day coach tours, the coaches were taxable and not part of interstate commerce. *John T. Cyr & Sons, Inc. v. State Tax Assessor*, 970 A.2d 299, 309 (ME 2009) found that as follows:

> This type of recreational round-trip journey differs from a situation in which a payload is moved in a continuous stream of commerce from a point of origin in one state to a destination in another state. *See Alvan* . . . In such circumstances, a carrier may be found to be acting in interstate commerce even if it carries the payload during a portion of the transport that occurs exclusively within a single state.

In this matter, goods are often picked up out-of-state and then are delivered to Rhode Island for delivery to another state and may sit overnight or for a few days in the Rhode Island warehouse depending on the circumstances. Sometimes the goods are regrouped into different trucks for efficiency or the purchaser may want a later delivery. Sometimes goods are picked up out-of-state and delivered to the Rhode Island warehouse and then shipped the next day or a few days later to a Rhode Island location. Goods can also be picked up in Rhode Island and delivered to the Rhode Island warehouse overnight or several days before being shipped out-of-state.

Applying the *Randall* test, not all the goods are part of a continuous stream of commerce passing through Rhode Island on their way to out-of-state destinations. This matter is not about the taxability of interstate commerce but rather whether the trucks and trailers used by the Taxpayer engage exclusively in interstate commerce.

On the basis of the forgoing, the Taxpayer's trucks and trailers are used for both intrastate and interstate commerce. When trucks make a delivery to the Rhode Island warehouse and the goods are unloaded and then shipped (the next day or several days later) to a Rhode Island destination, the trucks are engaged in intrastate commerce. The goods have stopped in Rhode Island and are not passing through on the way to another state. In the 1975 Decision, the vendor shipping goods to Providence was different from the taxpayer shipping the goods from Providence to elsewhere in Rhode Island. While this matter has the same trucker delivering goods from out-of-state to the Rhode Island warehouse and then delivering goods within Rhode Island, the concept is the same. The goods arrive in Rhode Island and their separate shipment within Rhode Island is intrastate commerce because the goods are not continuing to another state. This instance of intrastate commerce means that the Taxpayer's trucks and trailers were not used exclusively in interstate commerce so that the exemption does not apply.

E. Interest and Penalties

The Division imposed interest on the assessment pursuant to R.I. Gen. Laws § 44-19-11.[4] In addition, the Division properly imposed a 10% penalty on said deficiencies

[4] 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

pursuant to R.I. Gen. Laws § 44-19-12 and/or R.I. Gen. Laws § 44-19-14.[5] See Division's Exhibits Ten (10) (interest and penalty work papers) and Twelve (12) (Notice of Deficiency). Those statutes provide that if a taxpayer does not pay a tax because of negligence (e.g. poor records) or does not pay, a 10% penalty is imposed. See *Brier Mfg. Co. v. Norberg*, 377 A.2d 345 (R.I. 1977).

VI. FINDINGS OF FACT

1. On or about October 1, 2010, the Division issued a Notice of Hearing and Appointment of Hearing Officer.

2. A hearing in this matter was held on November 18, 2010 and all briefs were timely filed by January 24, 2011.

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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.

[5] 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.

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. The facts contained in Sections IV and V are reincorporated 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*. and R.I. Gen. Laws § 44-1-1 *et seq*.

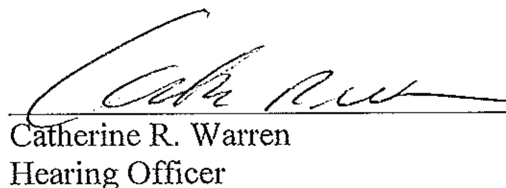
2. Pursuant to R.I. Gen. Laws § 44-18-40, the Taxpayer is not exclusively engaged in interstate commerce so owes the assessed taxes, interest, and penalty. See Division's Exhibit Twelve (12) (Notice of Deficiency).

VIII. RECOMMENDATION

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

As set forth above, the Taxpayer is not exclusively engaged in interstate commerce so owes the assessed taxes and interest and penalties as properly assessed by the Division pursuant to R.I. Gen. Laws § 44-18-40. See Division's Exhibit Twelve (12).

Date: April 15, 2011



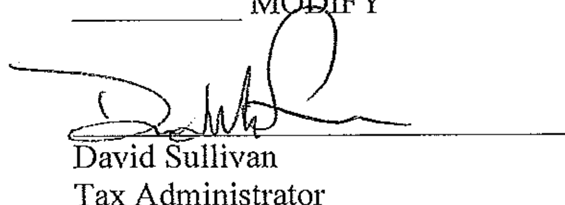
Catherine R. Warren
Hearing Officer

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: 4/19/11



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 20th day of April, 2011 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 Bernard Lemos, Esquire, and Linda Riordan, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02908.