

STATE OF RHODE ISLAND
DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2021-02

**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.: 19-T-013
Historic Preservation Tax Credit**

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to a Notice of Hearing and Appointment of Hearing Officer (“Notice”) issued on March 6, 2019 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to the Taxpayer’s request for hearing. A hearing was scheduled for June 11, 2021 at which time the Taxpayer did not appear at the hearing. Since the Taxpayer was adequately noticed of hearing,¹ a hearing was held before the undersigned. Pursuant to Section 2.7(G)(3) of 280-RICR-20-00-2, *Administrative Hearing Procedures* (“Hearing Regulation”), a default judgment may be entered against the party not appearing at hearing.² The Department was represented by counsel who rested on the record.

¹ The Division sent notice to the Taxpayer of the day and time of hearing by first class mail and certified mail, return receipt requested. The first class mail was not returned to the Division. The certified mail was unclaimed by the Taxpayer. Division’s Exhibit AA (certified mail online tracking sheet by the United States Post Office). In addition, the undersigned notified the parties of the day and time of hearing by email on May 18, 2021 using the email address by which the Taxpayer had previously corresponded with the undersigned and Division. *Id.* The notice of hearing was sent to the mailing address that the Taxpayer indicated should be used in its historic preservation tax credit agreement with the Division. Division’s Exhibit C. Said address has been previously used by the Division to correspond with the Taxpayer. Division’s Exhibits O, Q, S, T, W, and X.

² The Hearing Regulation provides that the defaulted party be given notice of the default by mail and may request reinstatement of the matter pursuant to a motion for reconsideration as set forth in the Hearing Regulation.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-33.6-1 *et seq.*, the Hearing Regulation, and 220-RICR-50-10-2, Department of Administration's *Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Division correctly denied the Taxpayer's historic tax credits pursuant to R.I. Gen. Laws § 44-33.6-1 *et seq.*

IV. MATERIAL FACTS AND TESTIMONY

On August 17, 2015, the Taxpayer entered into a contract with the Division regarding the receipt of tax credits under the Historic Preservation Tax Credits 2013 program. Division's Exhibit C. The Taxpayer was required to begin substantial construction on the project by July 17, 2016. Division's Exhibit E. The Taxpayer provided the Division with quarterly reports dated October 5, 2016, and January 5, April 5, July 5, and October 5, 2017, and January 5 and April 5, 2018. Division's Exhibits F, G, H, I, J, M, and N. By letter dated May 18, 2018, the Division notified the Taxpayer that it was no longer eligible for the tax credits as the project had remained idle for over six (6) months as it failed to document its quarterly reports. Division's Exhibit O.

Chief Revenue Agent, Form, Credit, and Incentive Section, testified on behalf of the Division. She testified that her section oversees the 2013 historic tax program that provides tax credits for applicants who rehabilitate or renovate historic structures. She testified the Taxpayer entered into an agreement to agree to place its historic site in service, and the Taxpayer started work in July, 2016. She testified that when work begins, an applicant sends notice that the work has begun and a copy of the building permit to the Division which this Taxpayer did. Division's Exhibits D and E. She testified that an applicant is required to provide ongoing

quarterly reports. She testified that the historic preservation tax credit agreement requires the quarterly reports as they show that the property is not remaining idle. She testified that the Taxpayer filed several quarterly reports but did not include any supporting documentation with the reports. She testified that the Division made repeated requests to obtain supporting documentation from the Taxpayer and received no response. She testified that the Taxpayer was notified that its project was deemed to have remained idle from October, 2016 to March, 2018 and therefore, it forfeited its tax credits as it remained idle for over six (6) months. Division's Exhibit O (letter dated May 18, 2018). She testified that there was no documentation by the Taxpayer of the cost invested in the structure.

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. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (internal citation omitted). In cases where a statute may contain ambiguous language, the 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 Statutes and Regulation

R.I. Gen. Laws § 44-33.6-1 *et seq.* is the Historic Preservation Tax Credits 2013 act. R.I.

Gen. Laws § 44-33.6-2 provides in part as follows:

(13) "Remain idle" means that substantial work has ceased at the subject project; work crews have been reduced by more than twenty-five percent (25%) for reasons unrelated to scheduled completion of work in accordance with the project schedule, reasonably unanticipated physical conditions, or force majeure; or the project schedule that was originally submitted by the taxpayer to the commission has been extended by more than twelve (12) months for reasons other than reasonably unanticipated physical conditions or an event of force majeure (by way of example, and not in limitation, any delays, work stoppage, or work force reduction caused by issues with project funding, finances, disputes, or violation of laws shall be deemed to cause a project to remain idle).

R.I. Gen. Laws § 44-33.6-7 provides in part as follows:

Timing and reapplication

Taxpayers shall have twelve (12) months from the approval of Part 2 application to commence substantial construction activities related to the subject substantial rehabilitation. Upon commencing substantial construction activities, the taxpayer shall submit an affidavit of commencement of substantial construction to the commission, together with evidence of such requirements having been satisfied. Furthermore, after commencement of substantial construction activities, no project shall remain idle prior to completion for a period of time exceeding six (6) months. In the event that a taxpayer does not commence substantial construction activities within twelve (12) months from the approval of Part 2 application, or in the event that a project remains idle prior to completion for a period of time exceeding six (6) months, the subject taxpayer shall forfeit all fees paid prior to such date and its then-current contract for tax credits shall be deemed null and void, and shall terminate without need for further action or documentation. ***

The *Historic Preservation Tax Credits 2013 Regulation*, 280-RICR-20-20-6

("Regulation") provides in part as follows:

A. Taxpayers shall have twelve (12) months from the certification date of Part 2 Application to commence Substantial Construction activities.

1. For this purpose, Substantial Construction activities shall be deemed to have commenced upon receipt by the Division of Taxation of all of the following:

- a. Building permit;
- b. Executed construction contract; and

c. Notice to proceed issued to the contractor.

2. For taxpayers acting as their own contractor, Substantial Construction activities shall be deemed to have commenced upon receipt by the Division of Taxation of the building permit along with an affidavit of commencement of Substantial Construction and supporting documentation.

B. Upon commencing Substantial Construction activities, the Applicant shall submit an affidavit of Commencement of Substantial Construction Activities to the Commission and the Division of Taxation, together with evidence of such requirements having been satisfied.

C. Pursuant to R.I. Gen. Laws § 44-33.6-7, no project shall Remain Idle prior to completion for a period of time exceeding six (6) months. In the event that an Applicant does not commence Substantial Construction activities within twelve (12) months from the date of Part 2 Certification, or in the event that a project Remains Idle prior to completion for a period of time exceeding six (6) months, the subject Applicant shall forfeit all fees paid prior to such date, and all rights and entitlements to the tax credits, and its then-current Contract for tax credits shall be deemed null and void, and shall terminate without need for further action or documentation.

C. Arguments

The Division argued that pursuant to R.I. Gen. Laws § 44-33.6-7, the project failed to provide supporting documentation for its quarterly reports and has remained idle for over six (6) months so that the Taxpayer forfeited its credits. The Division stated that the Taxpayer had informed the Division that it was harvesting lumber on another property that was 12 minutes away from the subject property but did not provide any supporting documentation to the Division. The Division argued that even so, any lumber work being performed would not have been on-site and would have been statutorily insufficient.

D. Whether the Taxpayer Can Receive the Tax Credits

The statutory definition of remain idle means substantial work has ceased on the project. It also means that if work crews are reduced by over 25% for reasons other than 1) scheduled completion of work in accordance with work schedule; 2) reasonably unanticipated physical conditions; or 3) force majeure. Remain idle does not include if the work schedule has been

extended for reasonably unanticipated physical conditions or force majeure by the Rhode Island Historical Preservation and Heritage Commission.

It was undisputed that the Taxpayer's project remained idle for over six (6) months from October, 2016 to March, 2018. The Taxpayer filed quarterly reports for the periods at the end of 2016, in 2017, and in the beginning of 2018. However, it was undisputed that those reports lacked the requisite documentation and the Taxpayer did not supply any documentation despite requests from the Division. Division's Exhibit O. After the hearing began, the Taxpayer provided further information to the Division. This information included a spreadsheet submitted by the Taxpayer on July 20, 2020 indicating the costs of supplies and labor but without explanation for various times from 2015 to 2020. Division's Exhibit Y. The Taxpayer also submitted receipts for the third quarter of 2018 and checks dated in 2019 but without explanation. Division's Exhibits V and X. There was no evidence that the Taxpayer's project had not remained idle from October, 2016 to March, 2018.

Based on the foregoing, the Taxpayer's project was idle for more than six (6) months. Pursuant to statute and regulation, when a project remains idle for over six (6) months, the tax credits are null and void.

VII. FINDINGS OF FACT

1. A Notice was issued on March 6, 2019 by the Division to the Taxpayer in response to its request for a hearing.
2. A hearing was held on June 11, 2021 at which time the Taxpayer did not appear. As the Taxpayer had been adequately notified of the hearing, the hearing was held. The Division rested on the record.
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 § 44-1-1 *et seq.* and R.I. Gen. Laws § 44-33.6-1 *et seq.*

2. Pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-33.6-1 *et seq.*, R.I. Gen. Laws § 44-33.6-7, and the Regulation, the Taxpayer’s historic tax credits are deemed null and void.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-33.6-1 *et seq.*, R.I. Gen. Laws § 44-33.6-7, and the Regulation, the Taxpayer’s historic tax credits are deemed null and void.

Date: June 28, 2021


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

Dated: 6/29/2021


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 § 8-8-25 Time for commencement of proceeding against the division of taxation. – (a) Any taxpayer aggrieved by a final decision of the tax administrator concerning an assessment, deficiency, or otherwise may file a complaint for redetermination of the assessment, deficiency, or otherwise in the court as provided by statute under title 44.

(b) The complaint shall be filed within thirty (30) days after the mailing of notice of the final decision and shall set forth the reasons why the final decision is alleged to be erroneous and praying relief therefrom. The clerk of the court shall thereupon summon the division of taxation to answer the complaint.

CERTIFICATION

I hereby certify that on the 29th day of June, 2021 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 address on file with the Division of Taxation and by electronic delivery to Bethany Whitmarsh, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02908.


