

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-02

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

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**IN THE MATTER OF:**

**Taxpayer.**

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**Case No.: 13-T-0119  
Public Service Gross Earnings**

**DECISION**

**I. INTRODUCTION**

The above-entitled matter came for hearing pursuant to a Notice of Hearing and Appointment of Hearing Officer (“Notice”) issued on May 29, 2013 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to the Taxpayer’s request for hearing. A pre-hearing conference was held on October 18, 2013 at which time the Taxpayer did not appear. By letter dated October 18, 2013, the Taxpayer was notified that the hearing was scheduled for December 3, 2013 and if the Taxpayer failed to appear the Division would go forward. In response, the Taxpayer forwarded a letter to the undersigned that was received on October 21, 2013. The hearing was held on December 3, 2013. The Taxpayer did not appear but as the Taxpayer had adequate notice of hearing, the hearing went forward. The Division rested on the record.

**II. JURISDICTION**

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-13-1 *et seq.*, and the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*.

### **III. ISSUE**

Whether the Taxpayer owes the tax assessed by the Division on it pursuant to R.I. Gen. Laws § 33-13-4.

### **IV. MATERIAL FACTS AND TESTIMONY**

Principal Revenue Agent, testified on behalf of the Division. He testified that the Taxpayer had previously filed under the business corporation tax but on review of the business, it was determined the Taxpayer should have filed as a public service corporation under R.I. Gen. Laws § 44-13-1 *et seq.* He testified the Taxpayer's business was installing pay telephones in businesses such as bars and restaurants and repairing and collecting money from these pay telephones and the business owners where the payphones were located would receive a cut of the profit from the payphone. He testified that the pay telephones were customer-owned, coin-operated pay phones ("COCOT") and that the Public Utilities Commission ("PUC") regulates this type of activity. He testified that a pay telephone is a two-way voice transmission and the Taxpayer provided such services. He testified that the audit covered January 1, 2004 to December 31, 2006 and that he gave credit to the Taxpayer for business tax paid. See Division's Exhibits Two (2) (audit report); Three (3) (audit work papers); and Four (4) (interest calculation). He testified a Notice of Deficiency was issued to the Taxpayer for the tax and interest owed. He testified that the statute does not provide for a penalty. See Division's Exhibit Five (5) (Notice of Deficiency).

## 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, 1049 (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, 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 § 44-14-4(4) provides as follows:

§ 44-13-4 Rate of taxation. – The tax imposed will be at the following rates: \*\*\*

(4) In the case of every telecommunications corporation providing telecommunications service, ten percent (10%) of its gross earnings; provided, that the rate shall be nine percent (9%) effective July 1, 1985, eight percent (8%) effective July 1, 1986, seven percent (7%) effective July 1, 1987, six percent (6%) effective July 1, 1988, and five percent (5%) effective July 1, 1997. For purposes of this chapter, "telecommunications service" means the transmission of any interactive two-way electromagnetic communications

including voice, image, data, and other information, by means of wire, cable, including fiber optical cable, microwave, and radio wave, or any combinations of these media. This definition does not include value added non-voice services in which computer processing applications are used to act on the form, content, code, and protocol of the information to be transmitted.

The Division has promulgated Regulation PS 95-01 *Public Services Corporation Tax* in order to implement R.I. Gen. Laws § 44-13-4. The regulation provides that public service corporations, including telecommunications companies, must file a public service corporation gross earning tax return every year.

### **C. Arguments**

The Division argued that pursuant to R.I. Gen. Laws § 44-13-4 (4), the Taxpayer falls under the definition of a “telecommunications corporation” so owes the assessed tax.

The Taxpayer did not appear at hearing. However, in the letter submitted after the pre-hearing conference and prior to hearing, the Taxpayer wrote that “[t]he [l]aw and [s]tatute clearly states[,] ‘Owns Transmission Lines and or Switches’. (sic) This is the definition of PSC ‘Telephone Co’. (sic) [Taxpayer] owned neither transmission lines or switches.” The letter did not provide a cite to its quote regarding what is considered a telephone company so it is unclear what source the Taxpayer is relying on for its argument that it was not a telephone company.

### **D. The Taxpayer Owes the Assessed Tax and Interest**

R.I. Gen. Laws § 44-13-4(4) provides that for the purpose of that statute, telecommunications includes payphones. testified that the Taxpayer provided two-way communications. The statutory definition includes two-way voice electromagnetic communications. A payphone certainly falls under that type of

communication. By statute, the definition is specific to the taxing statute and relates to whether an entity should be taxed.

The Taxpayer argued in its letter that pursuant to an unidentified statute, it is not a telephone company since it did not own transmission lines or switches. The issue is not whether the Taxpayer is a telephone company but rather whether it falls under the statutory definition contained in R.I. Gen. Laws § 44-13-4(4). The Taxpayer falls under R.I. Gen. Laws § 44-13-4(4). It should also be noted that customer-owned, coin-operated telephones (COCOTs) are regulated by the Rhode Island PUC.<sup>1</sup>

also testified that the Taxpayer had told him that it could not be taxed as a public service corporation because previously it had been taxed under business tax. If the Taxpayer should have been taxed under the public service corporation statute and had not been previously, that fact is irrelevant. A government entity or its representative has no authority to modify, waive, or ignore state law that conflicts with its actions or representations. See *Romano v. Retirement Board*, 767 A.2d 35 (R.I. 2001). In other words, just because the Division previously accepted business tax filings from the Taxpayer, the Division did not waive the current application of the public services corporation tax to the Taxpayer. In addition, 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 Division properly assessed interest on the tax owed pursuant to R.I. Gen. Laws § 44-13-17 which provides that interest shall be applied to deficiencies under said statute as set forth in R.I. Gen. Laws § 44-1-7. See Division's Exhibit Four (4).

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<sup>1</sup> The PUC provides an on-line communication regarding the types of telecommunications companies and requirements for them within the State. See <http://www.ripuc.org/utilityinfo/telecom/filingreq.html>.

**VI. FINDINGS OF FACT**

1. A Notice was issued on May 29, 2013 by the Division to the Taxpayer in response to its request for a hearing.

2. A hearing was held on December 3, 2013 at which the Taxpayer did not appear. As the Taxpayer had been adequately notified of 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 § 44-13-1 *et seq.*

2. Pursuant to R.I. Gen. Laws § 44-13-4(4) and R.I. Gen. Laws § 44-13-17, the Taxpayer owes the public service corporations tax and interest as assessed in the Notice of Deficiency. See Division's Exhibit Five (5).

**VIII. RECOMMENDATION**

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

Pursuant to R.I. Gen. Laws § 44-13-4(4) and R.I. Gen. Laws § 44-13-17, the Taxpayer owes the public service corporations tax and interest as assessed in the Notice of Deficiency.

Date: December 26, 2013




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:

<input checked="" type="checkbox"/>	ADOPT
<input type="checkbox"/>	REJECT
<input type="checkbox"/>	MODIFY

Dated: 1/14/2014

  
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 § 44-13-32 Appeals. – Appeals from administrative orders or decisions made pursuant to any provisions of this chapter shall be to the sixth (6th) division district court pursuant to chapter 8 of title 8. The taxpayer's right to appeal under this section shall be 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. If the court, after appeal, holds that the taxpayer is entitled to a refund, the taxpayer shall also be paid interest on the amount at the rate provided in § 44-1-7.1.

**CERTIFICATION**

I hereby certify that on the 14<sup>th</sup> day of January, ~~December~~ 2014 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, Department of Revenue, One Capitol Hill, Providence, RI 02908.

