

STATE OF RHODE ISLAND
DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2023-03

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

	:	
IN THE MATTER OF:	:	
	:	Case No.: 21-T-224
	:	Rental Vehicle Surcharge
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 December 23, 2021 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 March 1 and 22, 2023. 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 § 31-34.1-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, and 280-RICR-20-00-2 *Administrative Hearing Procedures*.

III. ISSUE

Whether the Taxpayer owes the Division’s assessment for tax years 2015 through 2019 in relation to the rental vehicle surcharge (“RVS”).

IV. MATERIAL FACTS AND TESTIMONY

(“Auditor”), Principal Revenue Agent, testified on behalf of the Division. He testified that he conducted a sales and use audit for the period of October 1, 2015 to September 30, 2019 on the Taxpayer. He testified that he reviewed the Taxpayer’s corporate returns, sales invoices, and credit card statements, and the Taxpayer signed a test period agreement for 2017. Division’s Exhibits One (Taxpayer’s Secretary of State’s filings for 2015 through 2019); Three (3) (audit contact letter); Four (4) (records request); Seven (7) (field audit history log); and Nine (9) (test period agreement). He testified that the Taxpayer is an automobile body shop that also provides rental cars.

The Auditor testified he reviewed the Taxpayer’s invoices and saw that the Taxpayer rented out individual cars. He testified that by statute, the RVS must be paid when an entity that rents vehicles has five (5) or more vehicles in its fleet. He testified that the Taxpayer had five (5) or more vehicles in its fleet so the surcharge should have been paid, and the Taxpayer did not pay the surcharge. Division’s Exhibits 17 (list of Taxpayer’s rental cars for the fourth quarter); and Two (2) (Taxpayer filing history showing did not file rental vehicle surcharge). He testified that Division’s Exhibit Eight (8) is a list of the Taxpayer’s car rentals. He testified that exhibit shows the booked amount paid for a rental which is the total amount the customer paid for the rental. He testified that he determined the taxable measure by deducting the amount of tax from the booked amount.¹ He testified that he determined the total amount of the taxable measure for 2017. Division’s Exhibit Eight (8) (page three (3)). He testified that he determined the gross receipts for 2017 (Division’s Exhibit 15) and divided the 2017 taxable measure by the 2017 gross receipts to obtain the error factor. Division’s Exhibit Eight (8) (page four (4)).

¹ E.g. The Auditor testified that the first example has a booked amount of \$ so that the taxable measure was \$ minus the amount of tax which would have been 7% (\$ x .07) leaving the taxable measure to be \$

The Auditor testified that the error factor is the percentage of the gross receipts that should have been subject to the surcharge. He testified that he applied the error factor to the gross receipts on a monthly basis to total up the taxable measure. He testified that the surcharge is 8% which is what should have been paid on the taxable measure. He testified that the surcharge is submitted quarterly with an annual filing, and the Taxpayer did not collect or remit the surcharge. Division's Exhibits 11 (interest calculation as of May 29, 2020); 12 (field audit report); 18 (July 16, 2020 notice of assessment); 19 (quarterly form); 20 (annual form); and 21 (request for hearing).

On cross-examination, the Auditor testified that the Taxpayer did not use the accrual method of accounting where a taxpayer files sales tax by the date that the sale was billed. Rather, he testified that the Taxpayer filed the invoices by when its invoices were paid rather than billed. He testified that meant that a car (2003 Nissan) rented in 2015 was included in the 2017 invoices because that was when the invoice was paid. He testified that the test period agreement was to review the 2017 invoices. Exhibit 17 lists a 2006 Nissan so the Auditor was asked if he could have accidentally written 2006 instead of 1996 especially if the invoice just said "96." The Auditor testified that he carefully wrote down what was written on the invoices, so he does not think he confused the years of the make of the cars listed in Division's Exhibit 17. The Taxpayer referenced that the invoices were facsimiles so was asked if those could have been hard to read. The Auditor testified that he had a box of invoices to review, and he wrote down the year and plate number and the plate numbers checked out with the Division of Motor Vehicles so if he correctly read the plates, he correctly read the years on the invoices. The Auditor testified that he felt the plates could have been switched which would explain why the same plates were on different cars. He testified that he does not think he confused 1998 with 1996. He testified that even if a taxpayer sold a car during the year and then bought another car, the taxpayer still would be renting two (2)

cars. The Auditor testified that if the Taxpayer wanted him to review by the billing date, the Taxpayer would need to change its filing method and provide invoices by invoice date.

(“Owner”), an officer and owner of the Taxpayer, testified on the Taxpayer’s behalf. He testified that the 2003 Nissan was rented in 2015 but the insurance company did not pay the bill until 2017. Taxpayer’s Exhibit One (1) (invoice for 2003 Nissan rental in 2015). He testified that invoice was for over 30 days, and the statute provides that the RVS is only for first 30 days. He testified that he does not have a 2006 Nissan as listed on Division’s Exhibit 17. He testified that the plate listed is for a 1996 Nissan, and he thinks it was erroneously listed by the Auditor as a 2006 car.

The Owner provided the actual invoices used to compile Division’s Exhibit Eight (8). Taxpayer’s Exhibit Four (4). He testified that he only had four (4) cars for rent in 2017 which were the two (2) Nissans from 1996 with plates and but he occasionally erroneously wrote on an invoice that a Nissan was from 1998. He testified that the other cars were a Toyota RAV 4 and a Jeep Grand Cherokee. Taxpayer’s Exhibit Two (2) (2016 local excise tax record for the two (2) 1996 Nissans and a 2001 Toyota). He testified that he occasionally wrote the wrong year for the Cherokee. He testified when reviewing the actual invoices, he only had four (4) cars for rent when looking at the plates except for the 2003 Nissan that showed up once. He testified that the 2003 Nissan was rented in 2015 but was only paid in 2017 so it showed up in 2017. He testified that the 2003 car was not rented in 2017. He also testified that only the first 30 days are due on the RVS so that if it was found that the Taxpayer was liable, the assessment should be recalculated to delete some that are over 30 days. On cross-examination, the Owner testified that he was not sure what the handwritten notation of “1/2017” on the first invoice for Taxpayer’s Exhibit Four (4) meant but it could have been his deposit or sales tax filing.

The Auditor was called in rebuttal. He testified that in reviewing his records, he realized that he never finished reviewing the 2017 invoices, so he only reviewed them from January through July, 2017. He testified that his audit notes indicated that he planned to finish reviewing 2017 but he never did. Division's Exhibit Five (5). He testified that during his audit, he noticed the car rental invoices from the fourth quarter which he wrote down and which are listed in Division's Exhibit 17. He testified that the handwritten notation on the invoices like "1/2017" showed when the invoice was paid. He testified that in order to perform an audit on when the car was billed/rented rather than paid for, he would need to have all the invoices. He testified that since the 2003 car rental in 2015 was paid for in 2017, it was included in the rentals for 2017. He testified that Division Exhibit 17 lists nine (9) vehicles with separate license plates and five (5) separate license plates.² He testified that there were at least five (5) vehicles in Taxpayer's fleet available to rent. On cross-examination, the Auditor testified that he performed a one (1) year test, and the Taxpayer had at least five (5) rental cars. He testified that it is likely that the license plates were moved between cars, and he does not think it likely that he confused 1996 written on an invoice with 2006 written on an invoice.³

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*

² The Division's Exhibit 17 listed an antique car rented to _____ as one of the cars in the Taxpayer's fleet. During the Owner's testimony, he produced an invoice for approximately _____. The Division acknowledged that it did not include the antique car in the assessment. (The total taxable measure for 2017 was for approximately _____). The Taxpayer argued that the antique car rental did not fall under the statutory definition of a rental. The Division agreed to take the antique car off its list of cars that it contended were in the Taxpayer's rental fleet.

³ The Taxpayer also called _____, Revenue Agent II, Excise, Division of Taxation, to testify regarding the payment of sales tax if a car is used as a rental or not. The Owner testified that he paid sales tax when he did not need to on the rental cars. However, the issue before the undersigned solely relates to the audit and assessment of the RVS on the car rentals. Whether the Taxpayer paid a sales tax or not is not relevant to whether the RSV should be assessed.

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 Statutes

R.I. Gen. Laws § 31-34.1-2 provides follows:

Rental vehicle surcharge. (a) Each rental company shall collect, at the time a motor vehicle is rented in this state, on each rental contract, a surcharge equal to eight percent (8.0%) of gross receipts per vehicle on all rentals for each of the first thirty (30) consecutive days. The surcharge shall be computed prior to the assessment of any applicable sales taxes, provided, however, the surcharge shall be subject to the sales tax.

(b) The surcharge shall be included on the rental contract and collected in accordance with the terms of the rental contract. Sixty percent (60%) of the surcharge shall be retained by the rental company in accordance with this section and subsection (c), and forty percent (40%) of the surcharge shall be remitted to the state for deposit in the general fund, on a quarterly basis in accordance with a schedule adopted by the tax administration. Each rental company collecting and retaining surcharge amounts may reimburse itself in accordance with this section from the funds retained for the total amount of motor vehicle licensing fees, title fees, registration fees and transfer fees paid to the state of Rhode Island and excise taxes imposed upon the rental companies’ motor vehicles during the prior calendar year; provided, that rental companies shall not be authorized to reimburse themselves for title fees, motor vehicles licensing fees, transfer fees, registration fees and excise taxes unless those fees and taxes shall have been assessed and paid in full to the state or appropriate city or town prior to any reimbursement. No reimbursement shall be allowed upon the prepayment of any fees or excise taxes.

(c) At a date to be set by the state tax administrator, but not later than February 15th of any calendar year, each rental company shall, in addition to filing a quarterly remittance form, file a report with the state tax administrator on a form prescribed by

him or her, stating the total amount of motor vehicles licensing fees, transfer fees, title fees, registration fees and excise taxes paid by the rental company in the previous year. The amount, if any, by which the surcharge collections exceed the amount of licensing fees, title fees, transfer fees, registration fees and excise taxes paid shall be remitted by the rental company to the state of Rhode Island for deposit in the Rhode Island highway maintenance fund beginning in fiscal year 2015.

R.I. Gen. Laws § 31-34.1-1 provides as follows:

Definitions. The following words and phrases used in this chapter, for the purposes of this chapter, have the following meanings:

(1) "Excise tax" means the tax imposed under chapter 34 of title 44.

(2) "Gross receipts" means the total amount of money for the value of other consideration received by a renter of motor vehicles from motor vehicles rented in the state of Rhode Island. Gross receipts includes any charges related to the rental including gas, insurance, etc. whether or not set out in separate contract.

(3) "Motor vehicle" means a private passenger motor vehicle designed to transport fifteen (15) or fewer passengers that is rented without a driver and is part of a fleet of five (5) or more passenger vehicles used for that purpose, owned or leased by the same person or entity.

(4) "Rental company" means any business entity engaged in the business of renting motor vehicles in the state of Rhode Island.

(5) "Rented in this state" means any vehicle if it is picked up by or delivered to the renter in this state.

R.I. Gen. Laws § 31-34.1-3 provides as follows:

Regulations. The tax administrator shall promulgate rules and regulations necessary to implement the provisions of this chapter. All administrative provisions of chapters 18 and 19 of title 44 relating to interest, penalties, assessments and hearings shall apply.

C. Arguments

The Division argued that its assessment was valid since the Taxpayer had a fleet of at least five (5) passenger vehicles during one (1) quarter of the test period and made vehicle rentals to which the RVS applied. The Division argued that for the test period of 2017, there were at least five (5) rental vehicles and license plates.

The Taxpayer argued that it had four (4) or fewer cars that it rented in 2017. It argued that the 2003 car should not be included because while the invoice was paid in 2017, it was not

available for rental in 2017. The Taxpayer argued that the tax is for a fleet which means the vehicles should be available for rent. The Taxpayer argued that while it does not owe the assessment, if it was found liable, the assessment should be reduced for those rentals over 30 days and the amount it could have been reimbursed under the statute.

D. Whether the Taxpayer Owes the Assessment

No regulations have been promulgated for this statute. The statute defines a rental company as any business engaged in renting motor vehicles. Motor vehicles are defined as passenger vehicles that are part of a fleet of five (5) or more passenger cars that are rented. Thus, a rental company that rents out vehicles in a fleet of five (5) or more passenger cars must collect a surcharge on vehicles rented. The statute further states that the surcharge is collected “at the time the vehicle is rented” and “on each rental contract.” R.I. Gen. Laws § 31-34.1-2 requires an annual report along with quarterly filings be made for the remittance of the rental vehicle surcharge. Each rental company is to file a quarterly remittance form for the surcharges and no later than February 15 is to file an annual report regarding the qualifying expenses. Division’s Exhibits 19 (quarterly filing) and 20 (annual report).

There is no doubt that the Taxpayer rented cars. For entities whose business is just the rental of cars, this is an easy statute to implement. If a car rental company has a fleet of 100 cars, it is presumably renting five (5) or more cars a quarter and has five (5) or more cars available to rent each quarter. Indeed, if during the year, a car rental company with 100 or 200 cars sold or disposed of some of its cars, it still would have a fleet of five (5) or more cars for the year and during each quarter and would have presumably rented out five (5) or more cars a quarter. A car rental company knows it has a fleet of five (5) or more cars to rent or that are rented each quarter.

However, for an entity like the Taxpayer that only rents a few cars as a sideline to its business, the statute is potentially harder to implement since it could be harder to calculate the number of cars in its fleet. An entity renting out vehicles that fall under the RVS statute are by statute to file quarterly reports. Some entities might know that they have five (5) or six (6) cars that they might rent out each quarter so that they would collect the RSV on their rental cars each quarter. Thus, those entities might end up only renting out three (3) or four (4) cars in a quarter but still collect the RVS.

In contrast, if an entity rented out less than five (5) vehicles in a quarter, presumably the RVS does not apply. This matter was discussed at hearing, and the Division's position is that this is a quarterly issue so that if an entity rents out five (5) or more vehicles in one (1) quarter, the statute applies all year. There are practical problems to this reading. Suppose in the first quarter, a company only has three (3) cars and rents out three (3) cars and again in the second and third quarter. However, if in the fourth quarter, the company obtains three (3) more cars and rents those cars out as well, it has rented a total of six (6) cars in the fourth quarter. Under the Division's theory, the RVS statute applies to all vehicles rented that year even when the entity only had three (3) cars for rent in the first three (3) quarters. The entity would not necessarily know during the first three (3) quarters that it would expand its fleet to fall under the statute so that it should collect the RVS all year.

This hypothetical company would not have filed quarterly reports for the first three (3) quarters and would only have filed a report for the fourth quarter when it had a fleet of five (5) or more cars. The annual RVS reconciliation provides that a taxpayer shall list the total surcharge revenue for the calendar year which the form indicates is the total for all four (4) quarterly returns. Thus, the hypothetical company would file a form for the fourth quarter and then also the annual

report. The annual report would only list the revenue from the fourth quarter as that was when the company collected the RVS, and there was no remittance for the first three (3) quarters because during the first three (3) quarters, the company would only have had a fleet of three (3) cars, so it would not have collected the RVS nor filed those quarterly reports. In this situation, the total surcharge revenue for the calendar year would only be for the fourth quarter when the hypothetical company had five (5) or more cars and collected the RVS. Thus, on the annual form, the hypothetical company would have to total the four (4) quarterly returns, e.g. nothing for the first three (3) quarters plus the fourth quarter return.

Now, it would be easier if a hypothetical company had six (6) cars it rented out in the first quarter and then it sold three (3) cars in March and only rented three (3) cars for the rest of the year. That company would know that it had a fleet of five (5) or more cars in the beginning of the year so could collect the RVS for the rest of the year on its rentals under the Division's theory.

For this audit, the Division calculated the number of cars in the Taxpayer's potential fleet as those cars that the Taxpayer rented out rather than those available to rent out. The statute defines "Motor vehicle" as "a private passenger motor vehicle . . . that is rented without a driver and is part of a fleet of five (5) or more passenger vehicles used for that purpose, owned or leased by the same person or entity." R.I. Gen. Laws § 31-34.1-1(3). Thus, it is not an issue of which cars were available to rent but which ones were rented out. Presumably, a company owner knows what cars are available to rent out, and the company would know if there were five (5) or more available to rent. And if so, the company owner would then collect the RVS as would know it could be renting five (5) or more cars in a quarter. Therefore, the issue in the audit relates to the number of cars rented and not a surmise of how many were available to rent.

There are no regulations that provide that the definition of a fleet applies to how many rentals were made in an entire calendar year. As indicated above, for car rental companies, this presumably is never an issue because they are renting out so many cars that they easily surpass the required number each quarter. But the statutory requirement for quarterly filing raises the question of whether it should be a per quarter requirement rather than an annual requirement.

The Taxpayer argued that it only had four (4) cars that it rented in 2017 with the 2003 Nissan only appearing once in the invoices as it was paid in 2017 but actually rented in 2015. The four (4) cars that the Taxpayer argued it only rented in 2017 are as follows: 1) 1996 Nissan Maxima with plate ; 2) 1996 Nissan Maxima with plate ; 3) 2001 Toyota RAV 4 with plate , and 4) 2001 Jeep Grand Cherokee with plate . The Division argued that to determine what year each car was rented rather than paid, the Taxpayer would have to provide all of its invoices.

Based on Taxpayer's Exhibit Four (4) which are the invoices that were reviewed for Division's Exhibit Eight (8), the first quarter rentals were as follows: 1) 2001 Jeep Grand Cherokee with plate ; 2) 2003 Nissan Maxima with plate ; and 3) 1998 Nissan Maxima with plate . Thus, there were three (3) cars rented during the first quarter.

The second quarter rentals were as follows: 1) 1998 Nissan Maxima with plate 2) 2001 Jeep Grand Cherokee with plate ; and 3) 2000 Jeep Grand Cherokee with plate . The Taxpayer argued that the invoice calling the Grand Cherokee a year 2000 was an error as it really was a 2001 year. Taxpayer's Exhibit Five (5) (Division of Motor Vehicles' record showing registration of 2001 Jeep Grand Cherokee with plate . The Division argued that the Taxpayer moved license plates from among the rental cars. However, either way, there were only two (2) or three (3) cars rented by the Taxpayer in the second quarter.

The third quarter rentals were as follows: 1) 2001 Toyota RAV 4 with plate ; and 2) 1996 Nissan Maxima with plate . Thus, there were two (2) rentals during the third quarter.

The Division's Exhibit 17 listed various cars and license plates rented by the Taxpayer in the fourth quarter of 2017. It listed a 2000 and 2001 Jeep Grand Cherokee with plate . which the Taxpayer argued were the same car. It also listed a 1996 and 1998 and 2006 Nissan Maxima with plate . The Taxpayer argued that those were the same car – a 1996 - and either the Owner made a mistake in writing the year on the invoice or the Auditor read a notation of “96” as a “98” or “06.” The list also included the 2003 Nissan with plate . which the Taxpayer argued was only rented in 2015 but showed up in the first quarter when paid. It also included a 2014 Honda Accord (plate) of which the Owner apparently had no knowledge. It also has a 2001 and 2011 Toyota RAV 4 with plate which the Taxpayer contended were the same car. It also included a 1996 Nissan with plate (presumably). The Taxpayer contended that it only rented four (4) cars during the year. Taxpayer's Exhibit Five (5) (DMV registration records for the 1996 Nissans, Jeep Cherokee, and the Toyota).

The Division's review of the 2017 fourth quarter invoices indicated to the Division that apparently the RSV should have been collected by the Taxpayer as it appeared the Taxpayer rented five (5) or more cars in 2017. The Division's list of the Taxpayer's fourth quarter rentals included more than five (5) cars. However, the Division did not then review all 2017 invoices when it determined the taxable measure as it used invoices from January to July, 2017 for its assessment. The Division argued the Taxpayer moved license plates from car to car which would explain the same license plates on different cars. The Taxpayer argued that it, the Taxpayer, must have made an error(s) in the invoices about the year of the cars rented so that the same car was counted twice and/or an error was made by the Auditor in reading the invoices. The Division did not have copies

of those fourth quarter invoices and did not request them in discovery. The Taxpayer did not produce those fourth quarter invoices as it felt it had enough to prove its arguments.

Using just the license plates, the Division's Exhibit 17 lists six (6) cars.⁴ However, the test period only used invoices from the first three (3) quarters to find the taxable measure. The invoices reviewed were from January to July. (It could be that other cars were rented in August and September but that was not in evidence). The undersigned understands that the Exhibit 17 list caused the Auditor to review the invoices in relation to the applicability of the RVS; however, at issue is not the list itself but the test period as reflected in Division's Exhibit Eight (8) which was derived from the Taxpayer's Exhibit Four (4). It could be the Taxpayer rented out five (5) or more cars in the fourth quarter and if so, would have had to collect the RVS and remit that for the fourth quarter. But the undersigned is only reviewing the invoices that were the basis for the assessment.

If a company knows it has five (5) or more vehicles to rent out in a quarter, presumably it would be prudent to collect the RVS. If that company then only rents out four (4) vehicles in a quarter, an audit would not find that the company should have collected the RVS. This decision cannot square that circle. However, the decision can review the audit based on quarterly rentals which is in line with the statutory filing requirements and provide for a company to determine its fleet by quarter rather than by year as the number of cars rented could change each quarter and be below five (5) to start the year but above five (5) at the end of the year.

No regulations have been promulgated implementing the RVS and clarifying whether the rental fleet of five (5) or more cars is by quarter or by year. The statute does not limit the fleet to either by year or by quarter. However, the statute requires quarterly filing of the RSV. Consistent

⁴ The Division's Exhibit 17 also listed the antique car that the Division deleted from consideration during the hearing. *Supra*. The Auditor testified there were five (5) license plates but a review of Division's Exhibit 17 shows there were six (6) license plates assuming plate [redacted] and plate [redacted] were different plates.

with quarterly filing and for practical purposes, the determination of a fleet shall be by quarter. The Taxpayer never rented five (5) or more vehicles in the first, second, or third quarter of 2017 which was the basis for the test period and the assessment.⁵ Therefore, the Taxpayer does not fall under R.I. Gen. Laws § 31-34.1-1 *et seq.* so does not owe the assessment.⁶

VI. FINDINGS OF FACT

1. On or about December 23, 2021, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayer.
2. A hearing was held on March 1 and 22, 2023 with the parties resting on the record.
3. The Division issued the Taxpayer a notice of assessment dated July 16, 2020 as set forth in Division's Exhibit 18. The assessment has been updated as set forth in Division's Exhibit Ten (10).
4. The Division did not review the invoices for the fourth quarter of 2017.
5. The fourth quarter invoices for 2017 were not included in the determination of the taxable measure and were not a basis for the assessment.
6. The Taxpayer did not rent five (5) or more vehicles in the first, second, or third quarter of 2017.
7. The facts contained in Section IV and V are incorporated by reference herein.

⁵ If the fourth quarter invoices had shown that this Taxpayer had car rentals of five (5) or more in the fourth quarter then the RSV should have been collected that quarter, and a taxable measure for a quarter determined and applied to the other years for one (1) quarter (rather than all year).

⁶ The Owner testified that the Jeep Cherokee is registered in his name and not the Taxpayer's name. The Division argued that even if that car was registered personally to the Owner, the same entity is still renting the car. R.I. Gen. Laws § 31-34.1-1(3) provides that a fleet rental is of "five (5) or more passenger vehicles used for that purpose [renting], owned or leased by the same person or entity." *Supra*. In other words, the rental cars must be owned or leased by the same person. However, a determination under the statute is not necessary as the Taxpayer already did not rent five (5) or more vehicles in the first, second, or third quarters of 2017 so the issue is irrelevant.

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 § 31-34.1-1 *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*
2. Pursuant to R.I. Gen. Laws § 31-34.1-1 *et seq.*, the Taxpayer did not rent a fleet of vehicles as defined by statute in the first, second, or third quarter of 2017.
3. Pursuant to R.I. Gen. Laws § 31-34.1-1 *et seq.*, the Taxpayer does not owe the RSV assessment.

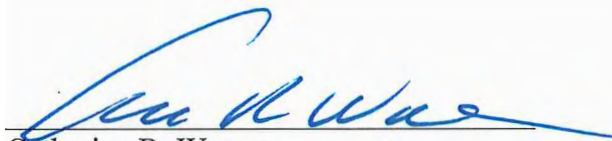
VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 31-34.1-1 *et seq.*, the Taxpayer does not owe the RSV assessment so that this matter is dismissed.

Date:

May 5, 2023



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:

5/23/23



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.

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 24th day of May, 2023 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and return receipt requested and by electronic delivery to the Taxpayer's address on file with the Division and by electronic delivery to Matthew Cate, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

