

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2023-07

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

IN THE MATTER OF:	:	
	:	
	:	Case No.: 23-T-048
	:	Sales and Use Tax
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 May 22, 2023 and issued to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to a request for hearing. A hearing was scheduled for August 23, 2023, at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing,¹ a hearing was held on August 23, 2023 before the undersigned. Pursuant to Section 2.7(G)(3) of the 280-RICR-20-00-2 *Administrative Hearing Procedures* (“Hearing Regulation”), a default judgment may be entered against the party not appearing at hearing. The Department was represented by counsel who rested on the record.

¹ Division’s Exhibit 17 is the Notice dated May 22, 2023 which scheduled a prehearing conference for June 7, 2023 and which was sent by first class mail and certified mail by the Division to the Taxpayer. The Taxpayer did not appear at the prehearing conference on June 7, 2023. A hearing was then scheduled for August 23, 2023 with notice being given to the Taxpayer by forwarding notice to a Rhode Island and a Massachusetts address on record with the Division. This notice was sent by first class mail and certified mail. The certified notice sent to the Massachusetts’ address was delivered. Division’s Exhibit 19 (notice of August 23, 2023 hearing and United States Post Office tracking sheet from website showing delivery of certified mail to the Massachusetts’ address).

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.*, 280-RICR-20-00-2, *Administrative Hearing Procedures*, and 220-RICR-50-10-2, Department of Administration's *Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Taxpayer owes use tax on two (2) trucks purchased, one in 2018 and one in 2019, by the Taxpayer and if so, is a trade-in allowance allowed for trucks pursuant to R.I. Gen. Laws § 44-18-30(23). This issue also requires a determination of whether the Taxpayer was a *bona fide* nonresident of Rhode Island at the time of the purchase of the trucks.

IV. MATERIAL FACTS AND TESTIMONY

Senior Tax Auditor, testified on behalf of the Division. He testified that as part of his duties, he reviews T-336 forms (Rhode Island car dealers are required to file a T-336 form for all motor vehicles sold). He testified that in the course of those reviews when he sees an out of state sale, he will check Division, Lexis, Division of Motor Vehicles, and voting records to determine if there are any records in relation to the purchaser. He testified that the Taxpayer purchased a truck in 2018 and a truck in 2019 from a Rhode Island dealer and both times used a Massachusetts address. He testified that the Taxpayer filed Rhode Island resident income tax returns from 2013 to 2020. Division's Exhibit 15 (Division's records showing Taxpayer filed a Rhode Island resident income tax return in 2018 and 2019). He testified that there were no voting or driver's license or car registration records for the Taxpayer in either 2018 or 2019 in Rhode Island.

The Auditor testified that for the 2018 purchase by the Taxpayer of a 2017 truck at a Rhode Island dealer, the Taxpayer was given a trade-in allowance for a truck. He testified that since the

Taxpayer used a Massachusetts address, the Rhode Island dealer was required to collect the Rhode Island tax at the Massachusetts rate on the net price. He testified that the Taxpayer then bought a truck in 2019 in Rhode Island trading in the 2017 truck. Again, he testified that the Rhode Island dealer was required to collect the Rhode Island tax at the Massachusetts rate on the net price. Division's Exhibit Two (2) (car dealer's T-336 form showing date of purchase for truck on November 6, 2018); and Three (3) (retail purchase agreement for the 2019 purchase dated June 18, 2019).

The Auditor testified that since the Taxpayer was not a *bona fide* nonresident of Rhode Island as provided by law at the time of the sales, he owed Rhode Island tax on his truck purchase in 2018 and his truck purchase in 2019. He testified that while Massachusetts gives credit for trade-in of trucks, Rhode Island does not so that Rhode Island would not give the trade-in credit that the Taxpayer received in both sales when he traded in the trucks. He testified that the Division gave the Taxpayer credit for the tax already paid but assessed him on the full sales price for both trucks.

The Auditor testified that an use tax assessment was issued for these two (2) purchases. He testified that the Taxpayer was notified that the trade-in credit was not allowed and since he was not qualified as a *bona fide* nonresident, he owed the full amount of tax. Division's Exhibits Seven (7) (first letter with assessment dated October 4, 2021); and Eight (8) (November 18, 2021 letter with assessment). He testified that a bill was issued on December 10, 2021, and the Taxpayer requested a hearing. Division's Exhibits Ten (10) (notice of assessment issued December 10, 2021); and 11 (request for hearing). He testified that at the preliminary conference, the Taxpayer agreed to settle the matter but never paid the settlement amount. Division's Exhibits 14 (settlement offer); and 16 (Division records indicating no payments made pursuant to settlement and Taxpayer now requested a full hearing).

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) (citing to *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).

B. **Relevant Statutes**

R.I. Gen. Laws § 44-18-21 states in part as follows:

(a) Every person storing, using, or consuming in this state tangible personal property, including a motor vehicle, boat, airplane, or trailer, purchased from a retailer, and a motor vehicle, boat, airplane, or trailer, purchased from other than a licensed motor vehicle dealer or other than a retailer of boats, airplanes, or trailers respectively, is liable for the use tax.

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

Gross receipts exempt from sales and use taxes. – There are exempted from the taxes imposed by this chapter the following gross receipts:

(13) Motor vehicles sold to nonresidents.

(i) From the sale, subsequent to June 30, 1958, of a motor vehicle to a bona fide nonresident of this state who does not register the motor vehicle in this state, whether

the sale or delivery of the motor vehicle is made in this state or at the place of residence of the nonresident.

(23) Trade-in value of motor vehicles. From the sale and from the storage, use, or other consumption in this state of so much of the purchase price paid for a new or used automobile as is allocated for a trade-in allowance on the automobile of the buyer given in trade to the seller, or of the proceeds applicable only to the automobile as are received from the manufacturer of automobiles for the repurchase of the automobile whether the repurchase was voluntary or not towards the purchase of a new or used automobile by the buyer. For the purpose of this subdivision, the word “automobile” means a private passenger automobile not used for hire and does not refer to any other type of motor vehicle.

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, 454 (R.I. 1999). Pursuant to R.I. Gen. Laws § 44-18-25,² there is a presumption that the use of all tangible personal property is subject to the use tax.

² R.I. Gen. Laws § 44-18-25 provides 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, or prewritten computer software delivered electronically or by load and leave, or services as defined in § 44-18-7.3, are subject to the use tax, and that all tangible personal property, or prewritten computer software delivered electronically or by load and leave, or services as defined in § 44-18-7.3, 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.

D. The Taxpayer Owes Use Tax on Both Truck Purchases

Pursuant to R.I. Gen. Laws § 44-18-20,³ an excise tax is imposed on the “storage, use, or other consumption in this state” of personal property including the purchase of a motor vehicle. R.I. Gen. Laws § 44-18-30(13) provides an exemption to this tax if the purchaser of a motor vehicle is a *bona fide* nonresident of Rhode Island. As discussed above, a tax exemption is to be strictly construed against a taxpayer.

As the trucks were purchased in Rhode Island but with a Massachusetts address, the car dealer collected tax at the Massachusetts rate on both sales. Pursuant to R.I. Gen. Laws § 44-18-30(13), only a *bona fide* Rhode Island nonresident does not have to pay Rhode Island tax on the purchase of a vehicle. In regard to the claim of being a *bona fide* nonresident, the Rhode Island District Court case of *McLaughlin v. Norberg*, AA No. 83-429 (1985) addressed the test for residency as delineated in *Randall v. Norberg*, 403 A.2d 240 (1979) (sufficient connection with Rhode Island to determine whether a taxpayer would be liable as a “resident” for taxes under Title 44). *McLaughlin* held that the issue was not whether that taxpayer was resident or domiciliary of another state or a resident of Rhode Island or a resident of Rhode Island for the purposes of Title 31 (motor vehicles), but rather whether that taxpayer was a resident of Rhode Island for title 44 purposes. *McLaughlin* found that that the taxpayer had sufficient connections (owned a summer

³ R.I. Gen. Laws § 44-18-20 provides in part as follows:

(a) An excise tax is imposed on the storage, use, or other consumption in this state of tangible personal property, including a motor vehicle, a boat, an airplane, or a trailer, purchased from any retailer at the rate of six percent (6%) of the sale price of the property.

(b) An excise tax is imposed on the storage, use, or other consumption in this state of a motor vehicle, a boat, an airplane, or a trailer purchased from other than a licensed motor vehicle dealer or other than a retailer of boats, airplanes, or trailers respectively, at the rate of six percent (6%) of the sale price of the motor vehicle, boat, airplane, or trailer.

(h) The use tax imposed under this section for the period commencing July 1, 1990 is at the rate of seven percent (7%).

house in Rhode Island and owned a second car that was registered in Rhode Island) with Rhode Island to be liable as a “resident” for taxes on the purchase of a car under Title 44 even though the car at issue was registered, titled, and garaged in Florida. In *Randall*, the taxpayer often visited Rhode Island, maintained a home there, and filed a resident income tax return. *Randall* found that taxpayer had enough of a connection with Rhode Island to be considered a resident. The Division has consistently applied the District Court case of *McLaughlin* in order to determine whether a taxpayer is a *bona fide* nonresident at the time of purchase of a vehicle.⁴

In *Administrative Decision*, 2011 WL 6749688 (R.I.Div.Tax), the taxpayer owned a house in and voted in Maine in 2008 when he bought a car and registered it in Maine; however, he was not a *bona fide* nonresident of Rhode Island when he purchased the car as he had filed a 2008 Rhode Island resident income tax return. *Administrative Decision*, 2004 WL 2370466 (R.I.Div.Tax) rejected a taxpayer’s argument that she was a resident or domiciliary of Oregon finding that the taxpayer could be both but based on *McLaughlin v. Norberg*,⁵ if the taxpayer was a resident of Rhode Island, she would owe tax. In that matter, the taxpayer had filed resident income tax return in Rhode Island as well as voted, attended school in Rhode Island, and held a Rhode Island driver’s license so was found to be a resident of Rhode Island. *Administrative*

⁴ The *McLaughlin v. Norberg*, AA No. 83-429 (1985) standard for taxing for the purposes of the use tax is a different standard than the standard for personal income tax or domicile.

⁵ This Administrative Decision cited to *McLaughlin* and quoted from that case as follows:

In this case the simple issue is whether the plaintiff-taxpayer is a resident of Rhode Island for the purposes of Title 44 of the Rhode Island General Laws pertaining to sales and use taxes. This is the sole issue to be considered and this Court is bound by the existing case law in Rhode Island. The tests for residency in this matter is contained in the case of Randall v. Norberg, 121 R.I. 714, 403 A.2d 240 (1979) where the court used a “sufficient connection with Rhode Island” test to determine whether the taxpayer would be liable as a “resident” for taxes under Title 44. The court held that repeated visits to this state in addition to retaining a home here and the filing of a Rhode Island residential income tax return were sufficient for the trial justice to find residency status. This Court must decide whether there exists substantial evidence on which the Division could find the taxpayer had a “sufficient connection” with Rhode Island or whether the agency erred as matter of law in finding residency status. (See William H. McLaughlin v. John H. Norberg, District Court, A.A. No. 83-429).

Decision, 2001 WL 1606904 (R.I. Div.Tax) found that the taxpayer corporation was not a *bona fide* nonresident as it filed Rhode Island returns and was a Rhode Island corporation. *Administrative Decision*, 1998 WL 751234 (R.I.Div.Tax) found that the taxpayer was a Rhode Island resident despite claims to be a Florida resident as the taxpayer had filed Rhode Island resident returns. In *Administrative Decision*, 2015 WL 4592260 (R.I.Div.Tax.), it was found that even if the taxpayer had dual-residency in both Rhode Island and Massachusetts (as argued by the taxpayer), it would still owe the use tax in Rhode Island because said vehicle was purchased by a Rhode Island corporation that filed resident corporate returns and paid tax to Rhode Island so was not a *bona fide* nonresident of Rhode Island.

In 2018 and 2019, the years of each truck purchase, the Taxpayer filed resident Rhode Island personal income tax returns. Thus, he had sufficient contacts with Rhode Island not to be considered a *bona fide* nonresident of Rhode Island at the time of the purchase of a truck in 2018 and of another truck in 2019.

Furthermore, R.I. Gen. Laws § 44-18-30(23) specifically defines an automobile as a private passenger automobile not used for hire, and the statute further states specifically that said definition does not refer to any other type of motor vehicle. Thus, R.I. Gen. Laws § 44-18-30(23) only allows for a trade-in allowance for passenger cars and not trucks. Therefore, the Taxpayer cannot be given trade-in allowance on either purchase. *Administrative Decision*, 2015 WL 4592260 (R.I.Div.Tax.).

Finally, the Division properly imposed interest on the use tax assessment pursuant to R.I. Gen. Laws § 44-19-11.⁶ The Division also properly imposed a 10% penalty on the sales tax

⁶ 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

deficiency pursuant to R.I. Gen. Laws § 44-19-12.⁷ The statute clearly provides that if a taxpayer does not pay a tax because of negligence or does not pay, a 10% penalty is imposed. That penalty is not discretionary because the statute provides that the penalty “is” to be added rather than “may be added.” See *Brier Mfg. Co. v. Norberg*, 377 A.2d 345 (R.I. 1977).

VI. FINDINGS OF FACT

1. On or about May 22, 2023, the Division issued the Notice to the Taxpayer.

2. A hearing in this matter was held on August 23, 2023. The Taxpayer did not appear.

As the Taxpayer was adequately notified of the hearing, a hearing was held with the Division resting on the record. The Taxpayer is in default for failing to appear at the hearing.

3. The Taxpayer purchased a truck in 2018 in Rhode Island. He purchased another truck in Rhode Island in 2019. The Taxpayer used a Massachusetts address for both purchases.

4. The Taxpayer was given trade-in allowance for both truck purchases.

5. In 2018 and 2019, the Taxpayer filed a Rhode Island resident income tax return.

6. The facts as detailed in Section V are incorporated herein by reference.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

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 amount of the determination, exclusive of penalties, bears interest at the annual rate provided 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.

⁷ 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.

1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.* and R.I. Gen. Laws § 44-18-1 *et seq.*

2. The Taxpayer is not a *bona fide* nonresident of Rhode Island.

3. Pursuant to R.I. Gen. Laws § 44-18-20 and R.I. Gen. Laws § 44-18-30(13), the Taxpayer is not exempt from paying use tax upon the purchase of the two (2) trucks as he was not a *bona fide* nonresident of Rhode Island at the time of the purchase of each truck in 2018 and 2019.


4. R.I. Gen. Laws § 44-18-30(23) does not allow for trade-in credit for trucks so that the Taxpayer owes tax on the full sales price for both trucks.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-18-20 and R.I. Gen. Laws § 44-18-30(13), the Division properly issued the notice of assessment for tax, penalty, and interest owed on the purchase of the truck in 2018 and of another truck in 2019 as the Taxpayer was not a *bona fide* nonresident of Rhode Island in either year.

Date: September 6, 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: 9/7/2023


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 11th day of September, 2023 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid to the Taxpayer's addresses on file with the Division of Taxation and by electronic delivery to Matthew Cate, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02908.

