

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-04

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

IN THE MATTER OF:	:	
	:	
	:	Case No.: 22-T-112
	:	sales tax exemption
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 7, 2022 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 September 14, 2023. The Division was represented by counsel, and the Taxpayer was *pro se*. A briefing schedule was set with all briefs being timely filed by January 19, 2024.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-18-30B, R.I. Gen. Laws § 44-1-1 *et seq.*, and 280-RICR-20-00-2 *Administrative Hearing Procedures*.

III. ISSUE

Whether the Taxpayer should be granted a sales tax exemption pursuant to R.I. Gen. Laws § 44-18-30B for her in person book sales.

IV. MATERIAL FACTS AND TESTIMONY

Chief Implementation Aide, testified on behalf of the Division. She testified that she works in the Audit and Investigation Unit. She testified that she received the Taxpayer's application for an exemption from sales tax for a book ("Book") that the Taxpayer wrote and published. She testified that she reviewed the tax exemption application and forwarded it to the Rhode Island State Council on the Arts ("RISCA") which makes the final determination for such requests. She testified that RISCA denied the application because the Book was sold on so was commercial and was also not a signed and numbered limited edition. She testified that the denial was based on the relevant statute and regulation. She testified that the RISCA website explains the criteria for the exemption and that while the Taxpayer represented that she was self-published, it was still a commercial book. Division's Exhibits One (1) (Taxpayer's application dated March 23, 2022 for tax exemption); Two (2) (RISCA website on artistic tax exemption); Three (3) (Division's denial of tax exemption application dated April 13, 2022); Four (4) (Taxpayer's request for hearing); Nine (9) (" ") documents); and Ten (10) (Taxpayer's letter of February 1, 2023). On cross-examination, she testified the Taxpayer's Book would be taxed when sold by a bookstore or by She testified that the Taxpayer's agreement to print with makes it a commercial use, and the exemption request applies to all sales and cannot be for just some sales.

RISCA, Director of Artistic Programs, testified on behalf of the Division. She testified that she received the Taxpayer's application for tax exemption from the Division and reviewed it. She testified that the exemption request was denied. She testified the basis for denial was that the Book was published by an external publisher and sold commercially by . She testified the application was also denied because the Book is not

a one of a kind, limited edition that was overseen by the artist that were signed and numbered. She testified that the Book is not a limited edition because it is published by

On cross-examination, testified that the Book did not qualify as a self-published art sale because it is sold on so is sold for commercial purposes. She testified that most approvals for tax exemptions are for limited editions which applies to all kinds of works and not just visual arts. She testified that while the Taxpayer may sign the Book when it is purchased in person, it is not intended for limited reproduction and is also being sold on so it is not a signed, numbered edition. She testified that there also needs to be oversight by the artist of the printing as a limited edition so for example, if a graphic art artist put his or her design on 300 mugs by using Café Press that would not be a limited edition. She testified that one cannot sell a work on both and be a limited edition because it would be mass produced on and not have been signed and numbered. She testified that she was not aware that and were two (2) separate companies. She testified the exemption is only for original works of art with limited editions that are not intended for mass reproduction.

The Taxpayer testified on her behalf. She testified that she is a self-published author, and her first book was sold on and at in person events, and she received a tax exemption for that book from the Division, so she was surprised not to receive a tax exemption for this Book. She testified that she wrote the Book, and needed assistance for formatting so used

which formatted and published the Book. She testified the Book is printed by which is a printing company and not a publishing company. She testified all self-publishers use to print books. She testified her sales on are not that successful, and she is more successful with sales at in person events. She testified that collects tax on sales of her Book, but she is only looking for the tax exemption for when she sells the Books at in person

events. She testified her Book sales at events are one of a kind in that the Books are autographed with a personal note for the purchaser and are not meant for anyone else. She testified that the tax exemption is for a self-published Book that she created, and it is not for commercial purposes.

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). 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 Statute and Regulation**

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

Exemption from sales tax for sales by writers, composers, artists — Findings.

(a) The general assembly makes the following findings of facts:

(2) Since 1998, the establishment of arts districts, where “one-of-a-kind, limited-production” works of art may be sold exempt from state sales tax, has resulted in an increased presence for the arts in designated cities and towns, with benefits to those communities and to the state.

(b)(1) This section only applies to sales by writers, composers, and artists residing in and conducting a business within the state of Rhode Island. For the purposes

of this section, a “work” means an original and creative work, whether written, composed, or executed for “one-of-a-kind, limited production” that falls into one of the following categories:

(i) A book or other writing;

(2) For the purposes of this section, a “work” includes any product generated as a result of any of the above categories.

(3) For the purposes of this section, a “work” does not apply to any piece or performance created or executed for industry-oriented, commercial, or related production.

(c)(1) This section applies to sales by any individual:

(i) Who is a resident of, and has a principal place of business situated in, the state of Rhode Island.

(ii) Who is determined by the tax administrator in consultation with the Rhode Island council on the arts, after consideration of any evidence he or she deems necessary or that is submitted to him or her by the individual, to have written, composed, or executed, either solely or jointly, a work or works that would fall into one of the categories listed in subsection (b)(1).

(3) The tax administrator shall not make a determination unless:

(i) The individual(s) concerned duly make(s) an application to the tax administrator for the sales tax exemption that applies to the works defined in this section; and

(ii) The individual has complied and continues to comply with any and all requests made by the tax administrator.

(d) Any individual to whom this section applies, and who makes an application to the tax administrator, is entitled to a sales tax exemption for the sale of a work or works sold from the individual’s business located in the State of Rhode Island that would, apart from this section, be subject to the tax rate imposed by the state of Rhode Island.

The relevant regulation, *Exemption of Sales by Writers, Composers and Artists*, 280-RICR-

20-70-11 provides in part as follows:

11.5 Definitions

D. “One of a kind” means the creation of a solitary work, conceived and produced by the artist or author or under their direction, not intended for multiple or mass production.

E. “Limited edition” means the creation of a solitary work, conceived and produced by the artist or author under their direction, which is intended for limited reproduction, signed and numbered by the artist.

I. “Work” means:

1. An original and creative work, whether written, composed or executed for “one of a kind or limited edition” production and which falls into one of the following categories:

a. A book or other writing;

2. “Work” also includes any product generated as a result of any of the above categories.

3. This definition does not apply to any piece or performance created or executed for industry oriented, commercial or related production. A commercial use includes the hiring of a photographer to take a photograph, as opposed to purchasing a one of a kind scenic photograph taken by a photographer held out for sale.

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 (R.I. 1999).

D. Arguments

The Division argued that the Taxpayer sells the Book on _____ so it is a commercial venture. It argued that while the Taxpayer is only requesting an exemption for her in person sales, the statute and regulation do not allow bifurcation of a sales tax exemption as an exemption either applies or not. It argued that if one copy of the Book is sold for commercial or industry oriented purposes, no other copies are exempt. It argued that the Book is not a limited edition nor a one of a kind since more than one copy is available for sale online and at arts fairs. It argued there is no threshold requirement for royalties to show a book is mass produced.

The Taxpayer argued that her Book is a limited edition work of art because it is a solitary work conceived and produced by an artist and is intended for limited reproduction and is signed

and numbered so when she sells a Book at an art festival, it is as an original work of art. She argued that she writes a personalized note and signs and numbers each Book sold so that a buyer buys a one of a kind edition. She argued that the Book is not mass produced as she makes very little money from the sales. The Taxpayer also argued that her Book is not mass produced of a commercial nature because it does not have large quantities of standardized products, and she personally sells it to a specific person by inscribing a personal note in the Book.

E. Whether the Taxpayer Should Receive the Tax Exemption

The Taxpayer has written a Book that she sells on [redacted] and in person at art festivals. While she does not sell many copies of the Book on [redacted], that is not the issue for this type of tax exemption. The issue is whether the work is commercial or not. Selling the Book - no matter how many are actually sold - on [redacted] is commercial. The Taxpayer acknowledged that her sales on [redacted] are commercial just by requesting the tax exemption for sales of the Book in person at art festivals.

However, the sale of the Book in person at art festivals is also commercial. Such sales are neither a one of a kind creation nor a limited edition under the regulation. As defined by the regulation, a limited edition means it is intended for limited reproduction that is then signed and numbered by the creator. Thus, a limited edition means that only a certain number of the edition is printed, and the print run is numbered and signed. Thus, for example, 200 prints are made from a painting, and the artist signs and numbers the print as 1/200, the first of 200, etc. While more prevalent with the visual arts, a book could be printed in a limited run (assuming oversight by author) and signed and numbered in the same way. While the Taxpayer personally inscribes the Books that she sells at in person events, that does not make the Book a limited edition. Hypothetically, sales of the Books that are personally inscribed could run from ten (10) to 500 or

over 1,000 etc. For a limited edition book, it would be decided in advance that only 100 (or whatever the number) would be printed of the certain edition. There was no evidence here that the Book was part of a limited print run. The Book is being sold on _____ as well as in general at the art fairs even if the number of sales are not high. There was no intention by the Taxpayer to limit the number of Books that would be printed to be sold (by whatever method).

By regulation, one of a kind means the creation of a solitary work that is not intended for multiple or mass production. The Book is intended for mass production whether only a few copies are sold or not. It is sold on _____ and at art fairs. When it is sold, it is the same Book being sold regardless of the inscription. The personal inscription does not mean that the Book becomes one of a kind in that it still is the same Book with the same contents that was produced for sale commercially on _____ and at art fairs.

Based on the foregoing, the Taxpayer's Book does not fall under the statutory sales tax exemption because it is not a limited edition nor is it a one of a kind creation. The Taxpayer's person sales of the Book does not result in the Book becoming a limited edition or a one of a kind creation under the regulation. Therefore, the request for a sales tax exemption for the Book was properly denied by the Division.

VI. FINDINGS OF FACT

1. On or about December 7, 2022, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayer.
2. A hearing was held on September 14, 2023 with all briefs being timely filed by January 19, 2024.
3. The Taxpayer is a self-published author. She sells her book on _____ and at in person events such as art fairs.

4. The Book was not printed as a limited edition with only a certain number being printed.

5. The Book was not numbered and signed by the author as part of a limited edition with a limited print run.

6. There was not only one copy of the Book available to be sold.

7. More than one copy of the Book was made to be sold or was made to be available to be sold.

8. The Book is commercially for sale on _____ and at in person events.

9. The facts contained in Section IV and V are incorporated 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 § 44-18-30B *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*


2. Pursuant to R.I. Gen. Laws § 44-18-30B, the Taxpayer does not qualify for a tax exemption for her self-published Book.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-18-30B *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*, the Taxpayer does not qualify for a sales tax exemption for her self-published Book, so the Division appropriately denied her application for such an exemption including the request for a sales tax exemption solely for in person sales.

Date: February 26, 2024


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: 3/5/24

MSavage
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 5th day of March, 2024 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and by certified mail, 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.

Luigi Belasco