

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2011-03

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

IN THE MATTER OF:

Case No.: 10-T-0012
Sales and Use Trust Funds

and

Case No.: 10-T-0013
Meals and Beverage
Trust Funds

Consolidated

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as a result of a Notice of Hearing and Appointment of Hearing Officer (“Notice”) dated September 3, 2010 relating to sales and use tax trust funds (“Case No.: 10-T-0012”) and a Notice dated September 3, 2010 relating to the meals and beverage tax trust funds (“Case No. 10-T-0013”) both of which were issued to the above-captioned

(“Taxpayer”) for

(“Taxpayer Company”)

by the Division of Taxation (“Division”) in response to the Taxpayer’s requests for hearing on both matters. A hearing was held on October 7, 2010. Pursuant to Section 8(g) of the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01-B-8(g)*, two (2) matters were consolidated. The Division was represented by counsel and the Taxpayer represented himself. The parties rested on the record.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, the *Division of Legal Services Regulation 1 – Rules of Procedure for Administrative Hearings*, and the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*.

III. ISSUE

Whether the Taxpayer is the responsible officer for the Taxpayer Company and thus, whether he is liable for both the sales and use and meals and beverage assessments issued by the Division.

IV. MATERIAL FACTS AND TESTIMONY

Senior Revenue Agent, testified on behalf of the Division. She testified that the Taxpayer Company filed for receivership and that triggered a review of the Taxpayer Company. She testified that she reviewed the period of November 1, 2007 to July 23, 2008 since the Taxpayer Company was no longer filing taxes. She testified that the Notice of Deficiency was issued for meals and beverage and sales and use to the Taxpayer but after speaking with the Taxpayer, another Notice of Deficiency was also issued for the Taxpayer Company's co-owner ("Co-Owner") as a responsible officer; however, the Co-Owner did not request a hearing. She testified that the Taxpayer and the Co-Owner both exercised control over the Taxpayer Company, were corporate officers, had signing authority, signed the business application, and had signatory power at the bank. She testified that the Co-Owner signed the Taxpayer Company's liquor license application and temporary tax returns. She testified that the EFT filing listed the Taxpayer as an owner. She testified that the Taxpayer signed

approximately 11 or 12 checks. She testified that there is no cap on the number of responsible officers that a company may have but a responsible officer must be a corporate officer and exercise control of the company.

The Taxpayer testified on his behalf. He testified that he doesn't dispute the assessments against the Taxpayer Company. He testified that he is an officer, shareholder, and owner of the Taxpayer Company. He testified that he has co-owned restaurants and businesses as an officer and/or shareholder and he believes that just because one is an owner, shareholder, or officer does not automatically make one a responsible officer since one's conduct within the business is key.

The Taxpayer testified that the Taxpayer Company was founded in 2005 by the original owner ("Original Owner") who became ill and the Taxpayer took over said company in lieu of money owed him (Taxpayer) by the Original Owner. The Taxpayer testified that he hired the Co-Owner to run said company and the Co-Owner has the authority to hire and fire employees and the Co-Owner signed forms as an owner. See Exhibit Two (2). He testified that when he found out that the Taxpayer Company owed sales tax, he petitioned on July 20, 2008 to put the Taxpayer Company into receivership.

The Respondent testified that under *Administrative Decision, 2009-01 (2/18/09)* ("2009 Decision"), he does not qualify as a responsible officer. He testified that he was not active in day-to-day activities of the Taxpayer Company but rather the company was run by Co-Owner. He testified that he did not have the ability to hire and fire anyone and did not make decisions as to payment of money owed because if he had, the company would have paid its taxes. He testified that he had signatory authority at the bank but never exercised it. He testified that of 5,000 checks between January 1, 2007 and July,

2008, he signed 12 checks. He testified he signed checks for suppliers when the Co-Owner was not available. He testified that he never signed a check for the State, never signed a tax return, and tax returns were signed by Co-Owner. He testified he never signed a payroll or pay check which were signed by Co-Owner. See Exhibit 16. He testified he never took a salary or a distribution but that Co-Owner had a salary of a week and a company charge card.

On cross-examination, the Taxpayer testified that the receiver hired another individual to run the company and is listed on the EFT but the receiver also listed him on the EFT. See Exhibit Five (5). He testified that he agreed that his argument is that he was a passive owner in said company so is not a responsible officer.

On questioning from the undersigned, the Taxpayer testified to the following chronology: In 2005, the Original Owner opened the Taxpayer Company and owned 100% of the shares. In early 2006, the Taxpayer purchased 25% of said company from the Original Owner. On October 1, 2006, the Original Owner signed a blank power of attorney to turn over the rest of his shares to the Taxpayer. In October, 2006, the Taxpayer called Co-Owner to assist him in running said company. The Co-Owner invested money into said company. The Taxpayer retained 60% ownership in the Taxpayer Company with the Co-Owner owning 40%. The Taxpayer found out that the Taxpayer Company was not paying its taxes from the Co-Owner and because of that filed the receivership in July, 2008.

The Division did not dispute that the Taxpayer only signed 12 out of the 5,000 checks for the audit period (which terminates at the filing of the petition for receivership).

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, 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**

Sales price is defined by R.I. Gen. Laws § 44-18-12 and sales is defined by R.I. Gen. Laws § 44-18-7(d)(4). R.I. Gen. Laws § 44-18-18 imposes a 7% sales tax upon sales at retail. R.I. Gen. Laws § 44-18-18.1 is the meals and beverage tax statute and its administration and collection fall under R.I. Gen. Laws § 44-18-1 *et seq.* and R.I. Gen. Laws § 44-19-1 *et seq.* R.I. Gen. Laws § 44-18-19 requires that retailers collect sales tax which are owed to the Division. In the event collected sales tax is not paid to the

Division, R.I. Gen. Laws § 44-19-35 addresses the issue of who is responsible for both the sales and use tax and the meals and beverage tax trust funds.

R.I. Gen. Laws § 44-19-35 states in part as follows:

Tax collection as property held in trust for the state. – All taxes collected by any retailer from purchasers in accordance with the provisions of chapter 18 of this title, and all taxes collected by any retailer from purchasers under color of those provisions, constitutes a trust fund for the state until paid to the tax administrator. That trust is enforceable against:

- (1) The retailer;
- (2) Any officer, agent, servant, or employee of any corporate retailer responsible for either the collection or payment, or both, of the tax.

C. Arguments

The Taxpayer did not dispute that the Taxpayer Company owed both the meals and beverage and the sales and use tax assessments. See Division's Exhibits. The Taxpayer argued that under the 2009 Decision, he was not a responsible officer. The Division argued that the Taxpayer was a responsible officer under R.I. Gen. Laws § 44-19-35 for said taxes collected in trust for the State and that while the Co-Owner may also be responsible, the Taxpayer is also still responsible.

D. Whether the Taxpayer is a Responsible Officer

The 2009 Decision discussed *Fiataruolo v. U.S.*, 8 F.3d 930 (Conn. 1993) which is a Federal case on the issue of the Internal Revenue Service seeking to recover unpaid withholding tax pursuant to 26 U.S.C.A. § 6672.¹ The 2009 Decision addressed both

¹ 26 U.S.C.A. § 6672 states in part as follow:

a) General rule.--Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 or part II of subchapter A of chapter 68 for any offense to which this section is applicable.

withholding tax and the sales and use tax responsible officer statutes, R.I. Gen. Laws § 44-30-76² and R.I. Gen. Laws § 44-19-35 respectively. 26 U.S.C.A. § 6672 is closer to R.I. Gen. Laws § 44-30-76 than to R.I. Gen. Laws § 44-19-35.

The interpretation of R.I. Gen. Laws § 44-19-35 turns on the meaning of responsible: does it mean the person actually performed those duties or could have performed those duties.

i. What Rhode Island Has Previously Found

In deciding whether a taxpayer who had been found to be a responsible officer had to prepay taxes on appeal to the Sixth District Court, the Court found as follows:

[The taxpayer] was the person who signed the checks remitted to the Division of Taxation for tax payments prior to these deficiencies. He is then involved in the collection and remission process and is therefore a 'responsible officer' within the meaning of the statutes [withholding and sales and use]."

Unlike the transferee knowledge requirement of § 44-19-35(c) as discussed in Norberg v. Feist, 495 A2d (sic) 687 (1985), § 44-19-35(b) requires only that the party against whom the sales tax trust is to be enforced be 'responsible for either the collection or payment, or both of the tax[es].' . . . There are no specific intent requirements in these provisions." See *Mayes et al. v. Clark*, A.A. # 85-322 (6th District 11/19/85).

In *Fiataruolo v. U.S.*, 8 F.3d 930 (Conn. 1993), the seven (7) factors to be considered in determining whether an individual is a responsible officer are as follows:

1. whether is an officer or member of board of directors,
2. whether owns shares or possesses an entrepreneurial stake in the company,
3. whether is active in the management of the day-to-day affairs of the company,
4. whether has the ability to hire and fire employees,
5. whether makes decisions regarding which, when, and in what order outstanding debts or taxes should be paid,
6. whether exercises control over daily bank accounts and disbursements records, and
7. whether has check-signing authority.

² R.I. Gen. Laws § 44-30-76 states in part as follows:

(a) Employer's liability for withheld taxes – Violations – Penalties. – (a) Every employer required to deduct and withhold Rhode Island personal income tax is hereby made liable for the tax. In addition, any amount of Rhode Island personal income tax actually deducted and withheld shall be held to be a special fund in trust for the tax administrator. No employee shall have any right of action against his or her employer in respect to any moneys deducted and withheld from his or her wages and required to be paid over to the tax administrator in compliance or in intended compliance with this law.

Division cases prior to the 2009 Decision have addressed the responsible officer issue *vis a vis* withholding and sales and use tax as follows:

Whether an officer of the corporation is responsible for or under a duty to pay sales or use tax or payroll taxes is a factual question to be determined in each individual case. Although there are no specific Rhode Island Supreme Court cases on the matter, there are several state and federal cases which outline the pertinent indicia for responsibility such that would make an officer of a corporation liable for taxes due the state.

Among the indicia of the duty to pay are the officer's day to day responsibilities and involvement with the financial affairs and management of the corporation, his knowledge of such matters, the officer's duties and functions outlined by the certificate of incorporation and by-laws, and the regular preparation and filing of sales tax forms or other tax returns. Other cases have outlined the indicia of responsibility as holding corporate office, control over financial affairs, authority to disburse funds, stock ownership, or ability to hire and fire (see Vogel vs. New York State Department of Taxation and Finance, 413 N.Y. Supp. 2nd 862; Harcel Liquors vs Edson Parking, 61 A2d 967, 403 NYS 2nd 264; VanOrman vs. State, Ind. Opp., 416 N.E. 2d 1301 (1981); Edgar B. Thomsen vs. United States (no cite available 1989). See 1998 WL 661390 (R.I.Div.Tax.), 4

In applying that standard in that matter, the Division previously found as follows:

It became clear at the hearing that the taxpayer was never an official officer of the corporation but was one of the investors helping to organize the corporations for the purpose of running a restaurant.

In order to determine the taxpayer's liability in the instant assessment, it is necessary to compare this taxpayer' factual situation with the indicia generally held to be that which would support a responsible officer finding. Some of the cases would limit an officer's responsibility to those who are actively involved in corporate affairs, some extend responsibility even to officers who have become incapacitated and are no longer able to carry out their normal functions. But all of the materials indicate that there must be some knowledge of or ongoing relationship with the business practices of the business under audit.

It is clear from the testimony and evidence adduced at the hearing that this taxpayer is not only not an officer of the corporation, but he did not have the requisite responsibility or knowledge of the day to day business activities of the restaurant to make him liable under this statute.

Id., at 4.

In 1993, the Division of Taxation in applying the same discussion of responsibility under R.I. Gen. Laws § 44-19-35 found as follows:

Applying the facts of the instant case to the general criteria it is undisputed that the taxpayer was an officer of the corporation who was actively involved in corporate affairs. The taxpayer signed checks for the corporation. [The other owner] was responsible for hiring and firing those individuals who handled the day to day operations of the company. The taxpayer signed the returns which were submitted to the Division of Taxation, but did not prepare them. The taxpayer had the authority as a full partner to determine whether or not payment for sales taxes should be paid and whether or not they would be paid on a timely basis, but he chose not to exercise that authority.

In the instant matter, the taxpayer testified that his responsibilities were limited to outside sales, but he could have had control over the day to day operations of the business. He signed checks and returns even though he did not prepare them.

The taxpayer considered himself to be a partner even though he hadn't literally "bought" in to the business. He also on numerous occasions admitted responsibility for the tax. His only argument was that he should only pay half of the bill. Partners, however, are jointly and severably liable for the debts of the business.

1993 WL 276041 (R.I.Div.Tax.), 3.

ii. Other State Statutes

Rhode Island's statute speaks of the responsibility for the collection and/or payment of taxes. Other states have different type of standards. For example, in New York personal liability for sales and use tax is imposed on "every person required to collect any tax." See N.Y. Tax Law § 1131 (McKinney). Massachusetts imposes personal liability on every person who "is under a duty to pay over the [sales] taxes imposed by this chapter." Mass. Gen. Laws ch. 64H § 16 (West).

However, Kansas has a similar statute to Rhode Island's sales and use tax responsible officer statute.³ In contrast to Rhode Island, Kansas requires a willful failure

³ Kan. Stat. Ann. § 79-3643 states in part as follows:

(a) Any individual who is responsible for collection or payment of sales or compensating tax or control, receipt, custody or disposal of funds due and owing under the Kansas retailers' sales and compensating tax acts who willfully fails to collect such tax, or account for and pay over such tax, or attempts in any manner to evade or defeat such tax or the payment thereof shall be personally liable for the total amount of the tax evaded, or not collected, or not accounted for and paid over, together with any interest and penalty imposed

like the Federal statute but like Rhode Island's, Kansas speaks of being responsible for the collection or payment of taxes. Kansas has promulgated regulations, Kan. Admin. Regs. § 92-19-64a, in which a "responsible individual" is defined as follows:

(a) Under K.S.A. 79-3643 . . .

(b) "Responsible individual" shall mean any person with sufficient status, duties, and authority to have significant control over business finances or the disbursement of business funds.

(c) Having one or more of the following factors that establish status, duties, and authority of a person shall be sufficient to establish that the person has significant control over business finances or the disbursement of business funds:

- (1) A significant ownership interest in a business;
- (2) a significant involvement in the day-to-day management of the business;
- (3) the authority to sign business checks or tax returns;
- (4) the authority to direct payment of business funds to creditors;
- (5) the authority to pledge business assets as collateral for loans, advances, or lines of credit for the business;
- (6) the authority to bind the business to contracts entered into as part of the day-to-day business operations; or
- (7) the authority to hire or fire employees who are authorized to perform any act described in paragraphs (3) through (6) of this subsection.

iii. Federal Courts

As mentioned above, the Federal statute, 26 U.S.C.A. § 6672, standard is required to pay as well as willfulness. (Rhode Island's withholding statute speaks of required to pay though does not have a willfulness requirement). However, the Courts in discussing the Federal statute and who is a responsible officer have also looked at the question of whether the person had the authority or should have exercised authority as well the

thereon. The provisions of this section shall apply regardless of the: (1) Relationship with the retailer held by such individual; (2) form under which the retailer conducts business, whether a sole proprietorship, partnership or corporation; or (3) dissolution of the business. As used in this section, "willfully" has the same meaning as such term has for federal tax purposes in 26 U.S.C. 6672.

person's level of authority. See *Fiataruolo*. An U.S. First Circuit decision discussed responsible officer as follows:

As we have noted, “[c]ourts have explicitly given the word ‘responsible’ a broad interpretation.” *Caterino [v. United States]*, 794 F.2d [1] at 5 [1st Cir. 1986]. Specifically, responsibility “is a matter of status, duty, and authority,” *Thomsen [v. United States]*, 887 F.2d [14] at 16 [1st Cir. 1989] (internal quotations and citations omitted), aimed at the ultimate determination of “whether the person had the power to determine whether the taxes should be remitted or paid or had ‘the final word as to what bills should or should not be paid and when.’” *Caterino*, 794 F.2d at 5 (internal citation omitted).

We impose responsibility on “all with the responsibility and authority to avoid the default,” *Harrington v. United States*, 504 F.2d 1306, 1312 (1st Cir.1974), but predicate our definition of who is a responsible person on the function of the employee in the business, and not the level of the office held, see *Caterino*, 794 F.2d at 5; see also *O'Connor [v. United States]*, 956 F.2d [48] at 51 [4th Cir. 1992] (indicating that § 6672(a) liability must derive from substance, not form). As the Second Circuit recently stated, § 6672(a) “is not meant to ensnare those who have merely technical authority or titular designation,” but instead encompasses those close enough to the business to prevent the default. *United States v. Rem*, 38 F.3d 634, 642 (2d Cir.1994). At bottom, in order to be responsible, an individual must have had significant control over the financial affairs of the company. See *Caterino*, 794 F.2d at 5; see also *Rem*, 38 F.3d at 642; *United States v. Carrigan*, 31 F.3d 130, 133 (3rd Cir.1994). The individual assessed either must have exercised his authority over financial affairs or general management, or must have had a duty to do so. See *O'Connor*, 956 F.2d at 51.

In the absence of uncontroverted evidence establishing an individual's “precise responsibility” to pay withholding taxes, see *Barnett v. Internal Revenue Serv.*, 988 F.2d 1449, 1455 (5th Cir.1993), or of specific acts of management or financial decision-making that would manifest the level of control necessary for responsibility, various indicia may establish responsibility under § 6672(a). Such indicia include the holding of corporate office, the authority to disburse corporate funds, stock ownership, and the ability to hire and fire employees. See *Thomsen*, 887 F.2d at 16. *Vinick v. C.I.R.*, 110 F.3d 168, 172 (1st Cir. 1997)

E. The Meaning of R.I. Gen. Laws § 44-19-35

The factors used by Kansas to establish the “status, duties, and authority” of a person who has significant control over business finances and disbursement of business

funds are similar to those factors discussed in previous Division administrative decisions as well in Federal court decisions. Thus, while there have been no Rhode Island Supreme Court cases and no regulations have been promulgated on this issue, it is clear based on previous administrative decisions and similar types of laws and cases, that there are certain indicia to be considered in determining whether the Taxpayer is a responsible officer. Kansas finds that just one (1) factor is determinative. The Division has found that significant control does not mean absolute control but rather the test is used to hold those liable who are closely connected to the business so as to prevent a default from occurring and no one factor is determinative.

The Division did not dispute the Taxpayer's testimony and accepting his testimony as all true, it is clear that the Co-Owner had much more day-to-day involvement in the Taxpayer Company and would easily meet the indicia established by various States and Courts to be a responsible officer. However, the statute provides for joint and several liability by making all responsible officers responsible. See R.I. Gen. Laws § 44-19-35. See also 1993 WL276041 (R.I.Div.Tax). Thus, using the factors set forth in the pertinent Kansas regulation, the Taxpayer's involvement is as follows:

i. A significant ownership interest in a business

The Taxpayer owned 60% of the Taxpayer Corporation.

ii. A significant involvement in the day-to-day management of the business

The Taxpayer did not have any significant involvement in the day-to-day management of the business.

iii. The authority to sign business checks or tax returns

The Taxpayer signed 12 out of 5,000 checks. He may not have signed many checks, but he did have the authority to sign checks for vendors. He never signed a tax return. He was listed by the receiver on the electronic filing information.

iv. The authority to direct payment of business funds to creditors

There was no direct testimony on this topic. However, the Taxpayer did have signatory authority on the checking account and paid vendors. Thus, he could have exercised some authority over payment of funds. In addition, the Taxpayer testified that he did not make the decision over payment of taxes because if he had, the taxes would have been paid. However, even if the Taxpayer did not make such decisions that does not mean he did not have the authority to make such decisions.

v. The authority to pledge business assets as collateral for loans, advances, or lines of credit for the business

There was no testimony on this topic.

vi. The authority to bind the business to contracts entered into as part of the day-to-day business operations

There was no testimony on this topic.

vii. The authority to hire or fire employees who are authorized to perform any act described in paragraphs (3) through (6) of this subsection.

There was no testimony on the hiring or firing of employees with that type of authority. There was testimony that the Taxpayer did not hire or fire employees. It is unclear if he would have had the authority to hire or fire the employees (e.g. the restaurant staff) if he chose to.

F. Conclusion

The Taxpayer may not have been involved in the day-to-day operations of the business but he was the majority owner and had the authority to sign checks (even if did infrequently). Unfortunately for him, he was not aware that the Taxpayer Company was no longer paying its taxes. However, ironically, the Taxpayer testified that as a shareholder, he put the Taxpayer Company into receivership when he found out the sales taxes were not being paid. Thus, he did have authority over the Taxpayer Corporation.

A theme of the various cases on this issue is not necessarily whether a taxpayer uses his or her authority but whether a taxpayer could exercise such authority and a taxpayer's knowledge and/or involvement in a business. In this case, the Taxpayer could have exerted influence over the Taxpayer Company. He owned 60% of the business, had check signing authority though he infrequently signed checks, and put the company into receivership. Thus, while the taxpayer's contacts and authority exercised over said company is less than the Co-Owner, the taxpayer still had enough involvement and authority under the various tests to be a responsible officer.

Based on the forgoing, the Taxpayer is a responsible officer and is liable for all of the sales tax Notice of Deficiencies as set forth in Division's Notices of Deficiency for sales tax and meals and beverage taxes. See Exhibits 11 and 13.

G. Penalties

The Division properly imposed interest on the sales tax assessment pursuant to R.I. Gen. Laws § 44-19-11. In addition, the Division properly imposed a 10% penalty on the sales tax deficiency pursuant to R.I. Gen. Laws § 44-19-12.⁴ The statute clearly

⁴ R.I. Gen. Laws § 44-19-12 states as follows:

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. This matter came before the undersigned as a result of Notices of Hearing and Appointment of Hearing Officer issued to the Taxpayer and consolidated at hearing.
2. A hearing was held on October 7, 2010. At hearing, the two (2) matters were consolidated. The parties rested on the record.
3. The Taxpayer did not dispute the amount of either assessment issued to the Taxpayer Company.
4. The Taxpayer disputed that he was a responsible officer.
5. The facts contained in Section 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.*, R.I. Gen. Laws § 44-19-1 *et seq.*, and R.I. Gen. Laws § 44-18-1 *et seq.*
2. Pursuant to R.I. Gen. Laws § 44-19-35, R.I. Gen. Laws § 44-19-11, and R.I. Gen. Laws § 44-19-12, the Taxpayer is a responsible officer and is liable for the

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.

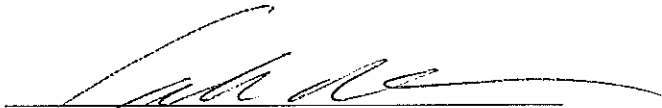
assessed sales taxes and meals and beverage taxes and the assessed interest and penalties. See the Division's Exhibits 11 and 13 (Notices of Deficiency).

VIII. RECOMMENDATION

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

The Taxpayer did not make a showing that he was not a responsible officer. Pursuant to R.I. Gen. Laws § 44-19-35, the Taxpayer is a responsible officer and is liable for both Notices of Deficiency and pursuant to R.I. Gen. Laws § 44-19-11 and R.I. Gen. Laws § 44-19-12, the assessed interest and penalty. (Exhibits 11 and 13).

Date: 1/24/11

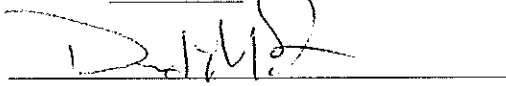

Catherine R. Warren
Hearing Officer

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: 2/11/11


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 § 44-19-18 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 ^{February} day of ~~January~~, 2011 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, Division of Taxation, One Capitol Hill, Providence, RI 02908.

Neil R. Belasco