STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. DISTRICT COURT
SIXTH DIVISION

SHERER'S CAR RENTAL, INC.	:	
	:	
v.	:	A.A. No. 2011-14
	:	
STATE OF RHODE ISLAND, DIVISION OF TAXATION	:	

DECISION

In this case, plaintiff, a Rhode Island corporation, seeks a de novo review of a final decision made by the Tax Administrator for the State of Rhode Island. The complaint alleges that the tax administrator erred in rejecting plaintiff's tax refund claim relating to surcharge funds that were collected in connection with rental vehicles owned by plaintiff during the 2006 calendar year. This court has jurisdiction pursuant to Rhode Island General Laws §§ 42-35-15(a) and 8-8-24.

I. PROCEDURAL HISTORY AND FACTS[1]

Between January 1 and August 1, 2006, the plaintiff, Sherer's Car Rental, Inc., operated a car rental company in Warwick, Rhode Island under the trade names "National" and "Alamo." On August 1, 2006, Sherer's sold

[1] The parties have agreed that this case is to be decided based on stipulated facts and exhibits submitted to the court.

the car rental business to Vanguard Car Rental USA, Inc., a Delaware corporation through an "Asset Purchase Agreement." The agreement excluded some assets from the sale, and plaintiff expressly retained "all rights to or claims to refunds or rebates of any kind to all taxes, fees, levies . . . and governmental impositions of any kind in the nature of (or similar to) taxes payable to any federal, state, local or foreign taxing authority."

Vanguard operated the car rental business in Warwick from August 1 through the end of year under the same trade names: "National" and "Alamo." At all times during the 2006 calendar year, the vehicles used for the National and Alamo businesses were owned by Sherer's.

Rhode Island General Law § 31-34.1-2 requires rental companies to collect a six percent surcharge on vehicles rented in this state, and sets out a procedure for remitting these charges to the taxing authorities. The statute provides in relevant part:

> (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 six percent (6%) of gross receipts per vehicle on all rentals for each of the first thirty (30) consecutive days. . .
>
> (b) The surcharge shall be included in the rental contract and collected in accordance with the terms of the rental contract. Fifty percent (50%) of the surcharge shall be retained by the rental company in accordance with this section and subsection (c), and fifty percent (50%) 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 . . .
>
> (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 general fund.

The statute includes a "definitions" section which reads:

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

From January 1, 2006 to August 1, 2006, during the course of operating the car rental business at the Post Road location, Sherer's regularly charged and collected $325,133.68 in Rental Vehicle Surcharges from its customers as required under § 31-34.1-2(a), and retained $162,566.84 (50%) of these surcharges, remitting the balance to the Tax Division of the State of Rhode Island in conformity with subsection (b) of the statute. Sherer's did not collect vehicle rental surcharges for the period from August 1, to

December 31, 2006, and did not transfer any surcharge funds to the state for the last five months of that year.

During the 2006 calendar year, Sherer's paid a total of $390,133.68 in transfer fees, title fees, registration fees, and excise taxes in connection with the fleet of vehicles used for the car rental business conducted at the Post Road location. The parties agree that all of these payments are "qualifying expenses" under the reimbursement provisions of § 31-34.1-2. Sometime after December 31, 2006, Sherer's filed an annual reconciliation return with the tax division, showing the total amount it paid in qualifying expenses, and that it exceeded the surcharge amount retained by the company.

Between August 1, 2006 and December 31, 2006, Vanguard operated the car rental business at the Post Road location and charged and collected $286,841.92 in surcharges from its customers. Vanguard retained $143,420.96 (50%) of these monies and remitted the remaining $143,420.96 to the tax division.

In February, 2007, Vanguard filed an annual reconciliation tax return with the tax division reflecting the surcharge funds it collected and retained. That return listed no expenses which would allow Vanguard to keep any portion of the $143,420.96 it retained under § 31-34.1-2, and this amount was paid to the state.

Sherer's filed an amended annual reconciliation tax return in September, 2007, and claimed that it was entitled to a refund of the $143,420.46 in rental surcharges collected and retained, but later remitted to the state by Vanguard. After a hearing conducted pursuant to the Rhode Island Administrative Procedures Act, §§42-35-1, *et. seq*., the hearing officer recommended that this claim be denied, and the Rhode Island Tax Administrator adopted the recommendations of the hearing officer. A final order to this effect was entered by the tax administrator on February 4, 2011.

On February 14, 2011 the taxpayer filed the complaint requesting judicial review.

II. DISCUSSION

As in many tax appeals, here, there is no dispute concerning the procedures followed or the amounts paid and retained in the tax paying process. The parties have stipulated to all the facts needed to decide the case. They have further agreed that a single issue is presented for this court to decide: "[I]s Sherer's entitled to recover the Rental Vehicle Surcharges charged, collected and retained by Vanguard during the latter portion of 2006 by virtue of Sherer's paying the qualifying expenses on the fleet of rental vehicles earlier in the same year[?]"

In order to answer the sole question raised in this case, the court must determine what the language used in the tax statute, § 31-34.1-2, means. As with any controversy involving statutory construction, the starting point is the words found in the applicable law. If the wording of the relevant statute is clear and unambiguous, the law must be applied literally, and the words used will be given their plain and ordinary meaning. *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996). The only exception to this rule occurs when a literal application of the statute would lead to an unjust or absurd result. *LaPlante v. Honda North America, Inc.*, 697 A.2d 625,628 (R.I. 1997).

It is also axiomatic that when interrupting a statute, the "ultimate goal" is to discern and effectuate the legislative intent. *Silva v. Fitzpatrick*, 913 A.2d 1060, 1063 (R.I. 2007), and a corollary principle of statutory construction is that the court will not broaden the provisions of a law unless it is necessary and appropriate in carrying out the clear intent of the legislation. *State v. Stantos*, 870 A.2d 1029, 1032 (R.I. 2005).

With these rules in mind, the court will attempt to ascertain whether § 31-34.1-2 entitles Sherer's to recover the funds collected and remitted to the state by Vanguard. Considering the statutory scheme in its entirety, the legislative intent is obvious and uncontested. The law was designed to raise

money for the state and to allow car rental companies to recover some, or all, of the fees paid to the state in connection with the vehicles used in the rental business. However, in drafting the section, the legislators did not anticipate the possibility that the entity actually dealing with the customers and collecting the surcharges, would not own the vehicles and be responsible for paying excise taxes as well as the transfer, registration, licensing, and other fees paid to the state.

The Division of Taxation argues that in order to allow one rental company to offset qualifying expenses it incurred against surcharges collected and retained by another company, the court would have to disregard the word "each" used throughout the statute. The taxing officials contend that each car rental company is a "stand alone" tax paying and reporting entity. They further suggest that to grant the relief sought by Sherer's would require treating the activities of the separate companies as a consolidated or unified operation even though Vanguard was a separate and distinct business. The Division of Taxation believes that under the statute entitlement to reimbursement for expenses cannot be separated from the responsibility of collecting surcharges because this would result in "benefiting business entities that are not involved in the enterprise being regulated and taxed." Tax Administrator's Memorandum of Law, p. 9.

The plaintiff, on the other hand, contends in its brief that the law defines rental company as "any business entity engaged in the business of renting motor vehicles" in the state. Taxpayer Sherer's Car Rental Inc. Memorandum of Law, p. 6. Sherer's then reasons that because it operated a car rental business in Rhode Island during 2006, it is entitled to recover one half of the surcharges collected when any vehicles it owned were rented during that year. This would reimburse Sherer's for qualifying expenses incurred for the same calendar year. The plaintiff further relies on a 1994 "Special Notice To Motor Vehicle Rental Companies" issued by the state and similar statutes enacted in other jurisdictions to support its contention that the Rhode Island legislation is not limited to the company responsible for collecting a surcharge, but is designed to provide reimbursement to the entity responsible for paying the qualifying state fees and charges; in this instance, the firm owning the vehicles.

The court agrees that by using the word "each" throughout § 31-34.1-2, the statute contemplated that the regulated entities would be examined individually, and treated separately. The inquiry, however, cannot stop there. Implicit in the question presented by the parties, is whether Sherer's continued to be a "rental company" after Vanguard moved into the Warwick location and began its operations. The definitions section of the statute

describes "rental company" as "any business entity engaged in the business of renting motor vehicles in the state (sic) of Rhode Island," § 31-34.1-1(1). (Emphasis added)

After August 1, 2006, Sherer's did not go out of business or end its connection with car rental activities. The parties agree that all the vehicles rented by Vanguard between August 1, 2006 and the end of that year, were owned by plaintiff. During that time, Sherer's vehicles were apparently responsible for generating $286.841.00 in surcharges collected by Vanguard, indicating a significant amount of business over that five month period.[2]

A review of the agreement transferring the rental operations to Vanguard provides further support for considering Sherer's activities to be a small yet integral part of Vanguard's rental business. Paragraph 2.7 states that "SCR [Sherer's Car Rental] retains responsibility for all taxes and fees applicable to vehicle registration occurring prior to the Effective Time [August 1] or otherwise relating to the Business [the car rental operations at Post Road in Warwick] and assessed prior to the Effective Time." This clause in the contract prevented Sherer's from canceling vehicle

[2] Actually, the figures for the last five months of the year reflect an increase when compared to the numbers for the period when Sherer's ran the entire operation – averaging $57,368 per month compared to $46,448.

registrations[3] or taking similar action that might have interfered in Vanguard's ability to continue the business.

Paragraph 3 also anticipates further involvement by Sherer's in connection with the rental business. It appears that before Vanguard could take over some of the concessions and leases held by the plaintiff, it required the consent of the Rhode Island Airport Corporation. The agreement states that "[a]ccordingly, SCR and Mark [Sherer, the president and principal shareholder of SCR stock] agree to cooperate with Vanguard and use their best efforts to take any and all action necessary or desirable to procure the Consent." And in another paragraph, 7.6, the parties say:

> Use of Business Premises. Vanguard agrees that Mark [Sherer] shall have the right to use office space, as designated by Vanguard from time to time, within the real estate premises acquired pursuant to this Agreement for a period of one year following the Effective Time.

In defining the word "engage," *Webster's Third New International Dictionary*, (2002 Edition), p. 751, states that, among other things, it means: "to begin and carry on an enterprise," "to employ or involve oneself" and "to take part: PARTICIPATE." With this description in mind, the court believes that any reasonable analysis of Sherer's conduct requires a finding that it

[3] The record in this case does not disclose whether plaintiff might have been able to recover a portion of the registration fee by canceling the registration before the registration period ended, but the court believes that this is the normal procedure followed by the Division of Motor Vehicles.

was "involved in," or "participated" in the business of renting cars for the entire 2006 calendar year. Any other interpretation would ignore the critical contribution it made – through its vehicles, to the business carried out by Vanguard. Without the plaintiff's participation, Vanguard would have nothing to rent, and no surcharges could be collected and paid to the state. Therefore, under the statute, Sherer's qualifies as a "rental company" for the period from August 1 through December 31, 2006.

Even though it did fall within the definition of a car rental company for all of the tax year in question, this determination does not automatically entitle Sherer's to the refund it requests in this suit. The relevant provision of § 31-34.1-2(b) reads: "[e]ach rental company collecting and retaining surcharge amounts may reimburse itself in accordance with this section from the funds retained." (Emphasis added.) Obviously, Sherer's cannot do this because it did not physically obtain the funds, and these monies are not under its control. The retained surcharges have already been remitted to the state. Given these circumstances, the court must determine whether the clear overall purpose of the legislation – to produce revenue for the state and provide some relief from fees paid to the state by companies involved in the car rental business, requires that this portion of the statute be interpreted

literally, or be construed more broadly to fulfill both objectives of the legislative scheme.

A narrow construction of the statute would place structural limits on companies engaged in the car rental business. If, for example, a firm wished to engage a separate company to handle the bookkeeping, or to deal with other financial aspects of its operations, it would be penalized for doing so. Any separation between the firm responsible for collecting the surcharge, and those actually holding the funds could disqualify businesses intimately involved in the operation from receiving any portion of the retained surcharge. Also, the amount in dispute here is not insignificant. The operations of the car rental business in this case, generated more than $300,000.00 in retained surcharges, and generated an even greater amount in state fees which were "qualifying expenses."

As mentioned above, the court will not disregard the clear meaning of words used in a statute unless it would result in an unjust or absurd result. Under the facts currently before the court, it may be a bit difficult to say that denying the refund sought by Sherer's would be absurd. But it does appear that doing so would be inequitable and clearly be inconsistent with one of the two main objectives of the statute. The court must determine whether these factors permit it to disregard the statutory language indicating that a

car rental company is entitled to reimbursement only if the funds are in its possession.

There are two additional rules of statutory construction that may assist in deciding this dispute. First, if there is an ambiguity in the legislation, revenue statutes are to be construed against the state, Sycamore Properties v. Tabriz Realty, LLC, 870 A.2d 424, 428 (R.I. 2005).[4] Second, "statutes establishing the procedure for the collection of taxes are given a liberal construction." SUTHERLAND STAT. CONST. § 66.05 (5th Ed.) A corollary to the rule relating to procedural statutes is the principle that legislation establishing remedies for taxpayers are to be interpreted to benefit the taxpayer. See id. at § 66.07.

Among other things, § 31-34.1-2(b) describes a process for collecting and distributing the monies generated by the surcharge legislation. This part of the law focuses on procedures to be followed by the businesses affected by the statute, and is where we find the statement that the company collecting the surcharge may "reimburse itself." The lawmakers obviously did not consider it likely that a party other that the entity dealing with the public would actually own the vehicles. The mandated method of

[4] The tax statute now under consideration is clearly a revenue producing enactment.

reimbursement apparently worked without difficulty for more than 10 years, until this refund suit.

The Tax Division argues, and the court agrees, that similar statutes found in other jurisdictions are not controlling authority in deciphering the meaning of Rhode Island laws. However, a review of the approaches used in other states sometimes provide insights for the court. Our rental surcharge law has many of the same provisions[5] found in a South Carolina statute enacted two years before § 31-34.1-2 was passed. The South Carolina legislation refers not just to the rental company, but expressly identifies "the vehicle owner, rental vehicle owner, or the rental company engaged in the business" of renting the vehicles. The foreign statute further provides:

> Surcharges collected pursuant to this section may be used only by the vehicle owner, rental vehicle owner, or the rental company for reimbursement of the amount of personal property taxes imposed and paid upon those vehicles . . . .

Code of Laws of South Carolina 1976, § 56-31-50. The South Carolina law has no procedure for handling surcharge funds if they are collected by a company other than the firm responsible for paying the personal property

[5] There are some fundamental differences in the two laws. The most significant being that the South Carolina statute allowed reimbursement only for personal property taxes paid on the vehicles, and the state received the amount left over after the reimbursement.

taxes on them. However, only the entity paying these taxes would be entitled to these monies, and the amount in excess of the property taxes must be remitted to the state. The statute does not provide that the company collecting the surcharge may "reimburse itself."

Shortly after the surcharge legislation became law, the Rhode Island Department of Administration sent out a "SPECIAL NOTICE TO MOTOR VEHICLE RENTAL COMPANIES" advising them that the surcharges could be used only for reimbursement of fees and taxes "actually paid by the vehicle owner or rental company." Plaintiff contends that this special advisory shows that the state officials responsible for enforcing the tax laws believed that the owner of the rented vehicles would be eligible for reimbursement even if it were not a "rental company." The Tax Administrator points out that the special notice was not a "regulation," and, therefore, should not be given any weight.

Because the language in the definition section of the statute is sufficient to find that Sherer's is a "rental company," the notice was not considered in resolving that issue. The advisory, however, is evidence of the state's interest in assuring that only the entity which actually paid the qualifying taxes and fees benefited from the surcharge funds retained by the

company collecting them. This is unsurprising, given the goals of the legislation and is entirely consistent with the language of the statute.

Based on all the circumstance in this case, the court is persuaded that the reference in the surcharge legislation to a company "reimbursing itself" should not be interpreted to disqualify plaintiff from recovering the funds sought in this suit.[6] To rule otherwise would thwart one of the principal objectives of the statute. It would also result in a greater tax payment to the state than is contemplated under the statute. While disagreeing with plaintiff's characterization of the additional revenue as a "windfall," and recognizing the state's pressing need for funds during these bleak economic times, allowing the taxing authority to retain the funds in this case would be inconsistent with the overall statutory scheme.

[6] The statute certainly does not prohibit the plaintiff from being reimbursed, it merely establishes a procedure for a rental company to keep some of the funds it collects.

II. CONCLUSION

Based on the court's finding that Sherer's was a "rental company" under the statute during all of the 2006 calendar year, and a determination that it is not disqualified from being reimbursed in the amount of $143,420.96 from surcharges imposed and collected during the period from August 1 through December 31, 2006, judgment in that amount is entered for the plaintiff.

ENTERED:

___/s/_____
Walter Gorman
Associate Judge (Ret.)

November 8, 2011