

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2021-07

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

IN THE MATTER OF:

**Case No.: 21-T-036
2019 Personal Income Tax**

Taxpayer.

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of an Order to Show Cause, Notice of Pre-Hearing Conference and Appointment of Hearing Officer (“Notice”) dated March 1, 2021 and issued to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to a request for hearing. A hearing was held on August 31, 2021.¹ The Division was represented by counsel and the Taxpayer was *pro se*. The parties rested on the record.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-35-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, the 280-RICR-20-00-2, Division of Taxation’s *Administrative Hearing Procedures*, and 220-RICR-50-10-2, Department of Administration’s *Rules of Procedure for Administrative Hearings*

¹ A hearing was initially held on July 19, 2021 on which date the Taxpayer had not appeared despite being notified of the hearing. The Taxpayer contacted the Division that day explaining he thought the hearing had been by telephone rather than in person, so a new hearing date of August 31, 2021 was scheduled, and a hearing held on that date.

III. ISSUE

Whether the Division should have offset the Taxpayer's 2019 personal income tax refund by pursuant to R.I. Gen. Laws § 42-142-7.

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. He testified that he reviewed this matter after receiving the Taxpayer's request for a refund of the offset of the Taxpayer's 2019 personal income tax refund. Division's Exhibits A (Division's February 14, 2020 notice to the Taxpayer of an adjustment to his 2019 refund because of an offset of an outstanding liability to the Department of Corrections) and B (Taxpayer's request for hearing to contest the offset). On cross-examination, he testified that the Division does not verify that offset requests sent by other agencies to the Division are for valid debts owed by taxpayers to those agencies. On re-direct examination, he testified that the Taxpayer's debt is from outside the Division and was not under the Division's oversight. On re-cross examination, he testified that it is his understanding that when an agency requests an offset, the agency sends the name and social security number to the Division to match up with a taxpayer.

Chief of Tax Processing Services, testified on behalf of the Division. He testified that the Division is authorized by R.I. Gen. Laws § 42-142-7 to process offsets. He testified on how the Division receives and processes offsets from government agencies. He testified that the Division has a memorandum of agreement ("MOA") with the Department of Corrections ("DOC") to process offset requests for DOC. Division's Exhibit G (Division's cooperative agreement with DOC effective July 1, 2016 to June 20, 2021). He testified that the Division followed its procedure in offsetting the Taxpayer's 2019 income tax refund. Division's Exhibit D (July 2, 2020 letter from the Division to Taxpayer explaining offset procedures). He

testified that offsets are processed pursuant to statute and the Division is not responsible to validate that a taxpayer owes the debt. He testified that the Division would not have the money to issue a refund of an offset. He testified that the offset statute requires the government agency to inform the debtor of its intent to submit a debt to the Division. On cross-examination, he testified that DOC could use a collection agency to collect debts, but it can also choose to use the statutory offset method.

The Taxpayer testified on his behalf. He testified that when he was sentenced to prison in 1998, the judge imposed Court fees and that time, there were no probation fees. He testified that he was released in December, 2016 and in February, 2017, a judge waived all of his Court fees. Taxpayer's Exhibit One (1). He testified that after he was sentenced, DOC started to impose probation fees. Division's Exhibit E (2013 notice sent by DOC regarding the probation fees established in 2008). He testified he did not owe those fees, and the Division was wrong to offset those fees from DOC. He testified that he did not sign any agreement or contract about Court fees so DOC cannot take his money without his permission. He testified that he was not given a hearing prior to the funds being taken so that violated his due process rights. He testified that the Division should have verified the debt and his money was taken in contravention of the U.S. Constitution. He testified that Exhibit E (notice about probation fees) indicated that one can apply for a waiver of the probation fees, and he eventually obtained a waiver of his probation fees from his probation officer. On cross-examination, he testified that he received one (1) bill for the monthly probation fee, but he did not pay because he knew he was not obligated to pay the fee. He testified he received Exhibit E in 2017. He testified that he received a letter in December, 2019 from DOC stating that he owed _____ in probation fees and that DOC intended to send the debt to the Division in order to collect the money.²

² This letter was not entered into evidence as exhibit; however, the Taxpayer did have the letter at the 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). 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) (citing *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 Statute

R.I. Gen. Laws § 42-142-7 provides as follows:

Collections of debts. (a) For the purpose of this section "governmental entity" means the state, state agency, board commission, department, public institution of higher learning, all political subdivisions of the state, fire districts, and quasi-state agency.

(b) Any governmental entity may contract to allow the tax administrator to collect an outstanding liability owed the governmental entity. In administering the provisions of those agreements, the tax administrator shall have all the rights and powers of collection provided pursuant to title 44 for the collection of taxes and all the rights and powers authorized the governmental entity to which the liability is owed. In addition, the tax administrator shall have all of the rights and powers of collection provided pursuant to title 44 for the collection of taxes including, but not limited to, the right to set-off debts enumerated in chapter 30.1 of title 44 against any amounts collected under the agreements. Subject to subordination to any set-off for past-due child support, the tax administrator shall also have the right to set-off amounts owed to the division of taxation against amounts collected under the agreements.

(c) The tax administrator may charge and retain a reasonable fee for a collection effort made on behalf of a governmental entity. The amount of the fee must be negotiated between the governmental entity and the tax administrator. The debtor must be given full credit toward the satisfaction of the debt for the amount of the fee collected by the tax administrator pursuant to this section.

(d) Governmental entities that contract with the tax administrator pursuant to this section shall indemnify the tax administrator against injuries, actions, liabilities, or proceedings arising from the collection, or attempted collection, by the tax administrator of the liability owed to the governmental entity.

(e) The governmental entity shall notify the debtor of its intention to submit the liability to the tax administrator for collection and of the debtor's right to appeal not less than thirty (30) days before the liability is submitted to the tax administrator for collection.

C. Arguments

The Taxpayer argued that the Division should refund the offset of his tax refund because it was for probation fees that he did not owe. He argued that the Division should have verified the debt, and the Division can refund the fees since it is a division of the State. He argued that the offset took his money without his consent or hearing which violated his constitutional rights.

The Division did not dispute that the Taxpayer did not owe any Court fees.³ The Division argued that the offset was for probation fees for which the Taxpayer was notified by DOC that he owed, and that DOC planned to forward the liability to the Division for collection. The Division argued that the Taxpayer's offset for the probation fees was statutorily authorized and implemented by its MOA with DOC. The Division argued that the Taxpayer's complaints should be directed to the DOC or the courts.

D. Whether Division Properly Offset the Taxpayer's 2019 Tax Refund

Pursuant to R.I. Gen. Laws § 42-142-7, governmental agencies may contract with the Division for the collection of outstanding liabilities to a government agency. DOC has a MOA with the Division for the Division to collect such outstanding liabilities to DOC. Division's

³ See Division's Exhibit F (March 2, 2020 email from DOC to Division explaining that the fees owed by Taxpayer were not Court fees as those had been waived by the Court but rather were probation fees of a month).

Exhibit G. R.I. Gen. Laws § 42-142-7(d) provides that the Division shall be indemnified in such offset agreements against liabilities or proceedings arising from the collection, or attempted collection of the liability owed to a governmental entity.

When the Taxpayer was released from prison in 2016, he was obligated to pay a _____ a month probation fee. The Taxpayer admitted that he received Division's E regarding said fees in 2017 (after he was released from prison), but he did not believe that the fees applied to him.⁴ The Taxpayer admitted that he was notified in December, 2019 by DOC that the DOC planned to forward his probation fee liability to the Division for collection.

DOC forwarded the Taxpayer's outstanding liability for probation fees to the Division for collection. The liability totaled _____.⁵ The Taxpayer was due a _____ tax refund for his 2019 income tax. His refund was offset by the _____ fee offset from DOC so he was only refunded _____ by the Division.⁶ Division's Exhibits D and I (internal Division record of Taxpayer's 2019 filing).

E. Other Considerations

The Taxpayer argued that his due process rights under the U.S. Constitution were violated by the Division and DOC for taking his tax refund without his agreement or a hearing. The Taxpayer testified that he received a letter in December, 2019 from DOC regarding its intent to forward the probation fee debt to the Division. This letter was not in evidence so the undersigned

⁴ While the Division does not have a statutory obligation to verify an outstanding liability from another government entity, it is noted that the Taxpayer argued that the probation fee requirement could not apply to him because it was not in effect when he was sentenced in 1998. The effective date of the probation fees was March 17, 2008 and the fees were apparently instituted by DOC pursuant to R.I. Gen. Laws § 42-56-10(22) (powers of DOC director) and R.I. Gen. Laws § 42-36-38 (assessment of costs). Division's Exhibit E. This is not a situation where DOC tried to collect probation fees from someone on probation prior to March 17, 2008. Rather the probation fees were assessed to the Taxpayer after he was released from prison in 2016 so that he began probation after March 17, 2008. Nonetheless, the Taxpayer's argument that he did not owe these fees is an argument he could have pursued if he appealed pursuant to R.I. Gen. Laws § 42-142-7(e) to DOC when he received the 2019 letter from DOC indicating that it planned to forward the liability to the Division for collection.

⁵ The Taxpayer testified that the December, 2019 letter from DOC indicated that the debt was _____. Presumably from the date of the letter to the date DOC forwarded the outstanding liability to the Division, the Taxpayer continued to accrue the _____ a month probation fee. (This fee has now been waived for the Taxpayer by his probation officer).

⁶ A review of the MOA shows that the collection of probation fees is a fee envisioned be collected by offset.

could not review its contents. However, pursuant to R.I. Gen. Laws § 42-142-7(e), agencies seeking to collect outstanding liabilities must notify an individual of the intent to send the outstanding liability to the Division and give notice of the debtor's right to appeal not less than thirty (30) days before the liability is submitted to the Division for collection. Based on the Taxpayer's testimony, he received notice from DOC of its intent to send his outstanding liability to the Division. However, the undersigned cannot say whether said 2019 DOC letter contained a notice of the Taxpayer's appeal right to DOC pursuant to R.I. Gen. Laws § 42-142-7(e). However, as noted by the Division in its closing, the Taxpayer claimed harm by DOC and if DOC did not notify the Taxpayer of his statutory right of appeal to DOC, he may be able to seek relief in Superior Court. Furthermore, while the Taxpayer argued the Division violated his Constitutional rights, he had a hearing on the Division's offset of his 2019 refund. Finally, pursuant to R.I. Gen. Laws § 42-142-7(d), the Division is indemnified against any error or liability by the DOC.

F. Conclusion

Based on the foregoing, R.I. Gen. Laws § 42-142-7 authorizes agencies to forward outstanding liabilities to the Division for collection by offset. Pursuant to R.I. Gen. Laws § 42-142-7, the Division offset the Taxpayer's 2019 personal income tax refund on request by DOC which represented to the Division that the Taxpayer had an outstanding liability to DOC (for probation fees).

VI. FINDINGS OF FACT

1. On March 1, 2021, the Division issued a Notice to the Taxpayer.
2. The Division offset from the Taxpayer's 2019 personal income tax refund request for

3. The Division and DOC had a MOA for the Division to offset outstanding liabilities owed to DOC.

4. The Taxpayer had his Court fees waived by the Superior Court in 2017.

5. The offset was not for Court fees.

6. The offset represented an outstanding liability claimed by DOC for unpaid probation fees.

7. The Taxpayer requested a hearing, and a hearing was held on August 31, 2021. The Division was represented by counsel and the Taxpayer was *pro se*. The parties rested on the record.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

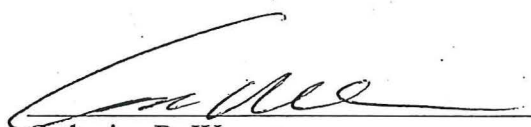
1. R.I. Gen. Laws § 42-142-7 authorizes the Division to offset personal income tax refunds in order for other agencies to collect outstanding liabilities owed by taxpayers to other agencies.

2. The Division offset the Taxpayer's 2019 personal income tax refund pursuant to said statute and the MOA on request by DOC.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows: The Division was authorized by R.I. Gen. Laws § 42-142-7 to process the offset of the Taxpayer's 2019 income tax refund upon request by DOC. There are no grounds for the Taxpayer's appeal so that the appeal is dismissed.

Date: October 7, 2021

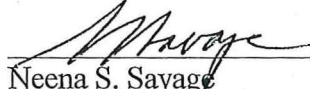

Catherine R. Warren
Hearing Officer

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: 10/7/21



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 R.I. Gen. Laws § 44-30-90 WHICH STATES AS FOLLOWS:

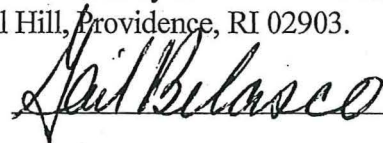
§ 44-30-90 Review of tax administrator's decision. (a) *General.* Any taxpayer aggrieved by the decision of the tax administrator or his or her designated hearing officer as to his or her Rhode Island personal income tax may within thirty (30) days after notice of the decision is sent to the taxpayer by certified or registered mail, directed to his or her last known address, petition the sixth division of the district court pursuant to chapter 8 of title 8 setting forth the reasons why the decision is alleged to be erroneous and praying relief therefrom. Upon the filing of any complaint, the clerk of the court shall issue a citation, substantially in the form provided in § 44-5-26 to summon the tax administrator to answer the complaint, and the court shall proceed to hear the complaint and to determine the correct amount of the liability as in any other action for money, but the burden of proof shall be as specified in § 8-8-28.

(b) *Judicial review sole remedy of taxpayer.* The review of a decision of the tax administrator provided by this section shall be the exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for Rhode Island personal income tax.

(c) *Date of finality of tax administrator's decision.* A decision of the tax administrator shall become final upon the expiration of the time allowed for petitioning the district court if no timely petition is filed, or upon the final expiration of the time for further judicial review of the case.

CERTIFICATION

I hereby certify that on the 7th day of October, 2021 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail, return receipt requested to the Taxpayer's address on file with the Division and by electronic delivery to Michael Brady, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.



Paul Belasco