

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-17

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.: 14 -T-0036
: Personal Income Tax
:
:

Taxpayer.

:

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Hearing and Appointment of Hearing Officer dated May 14, 2014 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 June 18, 2014. The Division and Taxpayer both were represented and the parties rested on the record.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-30.3-1 *et seq.*, *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-0*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Taxpayer is eligible for the property tax relief for tax year 2012 pursuant to R.I. Gen. Laws § 44-33-1 *et seq.*

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. He testified that the Taxpayer filed a 2012 resident return indicating a taxable Federal adjusted gross income ("AGI") of _____ and received a refund from Rhode Island of _____ which included _____ for the property tax relief ("Credit"). Division's Exhibit Two (2) (Taxpayer's 2012 1040). He testified that in 2012, the Taxpayer received a gross distribution of _____ from an annuity. Division's Exhibit Three (3). He testified that the Taxpayer's 1040H form filed to request the Credit listed a total household income of _____ which included her Federal AGI, non-taxable interest, and social security which allowed her to receive the Credit. Division's Exhibit One (1) (Taxpayer's 2012 1040H). He testified that the Federal AGI did include part of her annuity in the amount of _____ *Id.* (box 2A on form). He testified that the Taxpayer also received a non-taxable amount from her annuity which was in the amount of _____ *Id.* (box 5 on form). He testified that the non-taxable amount from the annuity was not included by the Taxpayer in her 1040H filed to request the Credit. He testified that the non-taxable annuity income should have been included in the 1040H based on the definition of income contained in the property tax relief statute and that would make her ineligible for the Credit. He testified that a Notice of Deficiency was issued to the Taxpayer for the Credit given plus interest and penalty. Division's Exhibit Five (5) (Notice of Deficiency). On cross-examination, he testified that the non-taxable annuity distribution of _____ was from the Taxpayer's contribution to the annuity that was returned to the Taxpayer. See Division's Exhibit Three (3) (letter regarding Taxpayer's purchase of annuity). He testified that the Division would not have picked up this issue before because Federal returns were not accessible but now the Division is able to review Federal returns and find the source of income.

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 Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or 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 Supreme Court has consistently held that legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998).

B. **Relevant Statutes**

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

Definitions. – As used in this chapter:

(6) "Household income" means all income received by all persons of a household in a calendar year while members of the household.

(7) "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code of the United States, 26 U.S.C. § 1 et seq., and all non-taxable income including, but not limited to, the amount of capital gains excluded from adjusted gross income, alimony, support money, non-taxable strike benefits, cash public assistance and relief (not including relief granted under this chapter), the gross amount of any pension or annuity (including Railroad Retirement Act (see 45 U.S.C. § 231 et seq.) benefits, all payments received under the federal Social Security Act, 42 U.S.C. § 301 et seq., state unemployment insurance laws, and veterans' disability pensions (see 38 U.S.C. § 301 et seq.), non-taxable interest received from the federal government or any of its instrumentalities, workers' compensation, and the gross amount of "loss of time" insurance. It shall not include gifts from nongovernmental sources, or surplus foods or other relief in kind supplied by a public or private agency. For the purpose of this chapter, the calculation of "income" shall

not include any deductions for rental losses, business losses, capital losses, exclusion for foreign income, and any losses received from pass-through entities.

R.I. Gen. Laws § 44-33-9 provides for the computation of the Credit based on income and to be eligible, a taxpayer cannot have a total household income above \$30,000.

C. Arguments

The Division argued that income is defined in R.I. Gen. Laws § 44-33-3(7) and includes more than just Federal AGI such as annuities since the intent of the statute is to give a tax credit.

The Taxpayer argued that the Division included the return of the Taxpayer's own capital contribution which is not a benefit. The Taxpayer argued that the law is not specific enough and this is her money and if she never had the money, she would not have appealed.

D. Whether the Taxpayer is Entitled to the Credit

The statute clearly includes non-taxable income as part of income for the purposes of R.I. Gen. Laws § 3-33-3. The statute include non-taxable income including but not limited to the amount of capital gains excluded from AGI, alimony, and the gross amount of any pension or annuity benefits. The Taxpayer argues that the annuity payment at issue was not a benefit but a return of capital. However, the statutory definition does not make the distinction that the Taxpayer makes that if the annuity benefit is from a payment (purchase) by the payee, it is not included in the definition of income but if the annuity benefit was from a source other than the payee, it would be included in the statutory definition of income. The statute is clear and unambiguous: non-taxable annuity benefits (payments) are included in the definition of income.

The statute chose not to define income as the Federal AGI. This is obviously because the Credit is to be based on a household's actual income rather than adjusted income. The legislature chose to provide property tax relief for those whose actual income is less than

\$30,000. Thus, the definition includes a variety of non-taxable money sources to be considered income for the purposes of the Credit since the purpose of the Credit is to give relief to those whose actual income is under \$30,000. Thus, the statute does not distinguish among sources of income as it considers any money received – whether taxable or not – to be income for the purposes of calculating the Credit.

The Taxpayer argued that the statute is not specific enough. However, it specifically includes non-taxable annuity benefits regardless of who bought or provided the annuity. The reason being, of course, is that regardless of how the annuity was purchased, a person who receives a payment (benefit) from the annuity received income (money) for that year. The Taxpayer received money in 2012 that under the statute is considered income. It was not income for the purposes of paying income tax but for the purposes of being eligible for a Credit, it was income.

V. FINDINGS OF FACTS

1. On or about May 14, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayer.
2. A hearing was held on June 17, 2014 with the parties resting on the record.
3. The Taxpayer received a non-taxable annuity payment of _____, for 2012.
4. In her application for the Credit, the Taxpayer listed her income for 2012 as \$29,621 and did not include the non-taxable annuity payment of _____.

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.* and R.I. Gen. Laws § 44-30.3-1 *et seq.*

2. Pursuant to R.I. Gen. Laws § 44-33-3(7) the non-taxable annuity payment should have been included in the calculation of the Taxpayer's income for the purpose of determining eligibility for the Credit for 2012.

4. If the Taxpayer's non-taxable annuity payment is included in the calculation for determining income for the Credit, the Taxpayer's income is over \$30,000 for 2012.

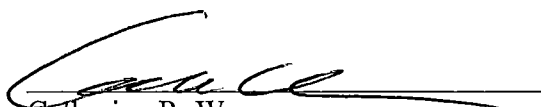
5. Since the Taxpayer's income was over \$30,000 for the purposes of determining eligibility for the Credit, the Taxpayer was not eligible for the Credit she received for 2012.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-33-3(7), the Taxpayer's non-taxable annuity payment of \$17,424.12 in 2012 should have been included in her calculation for determining her income in order to determine eligibility for Credit so that the Credit should have been denied. Thus, the Division properly issued the Notice of Deficiency for the repayment of the erroneously granted credit for 2012.

Date: 6/24/14



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: 6/26/2014


David Sullivan
Tax Administrator

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. ANY APPELLATE RIGHTS ARE PURSUANT TO R.I. Gen. Laws 44-33-15 WHICH STATES AS FOLLOWS:

§ 44-33-15 Appeals. – Any person aggrieved by the decision of the tax administrator denying in whole or in part relief claimed under this chapter, except when the denial is based upon late filing of claim for relief or is based upon a redetermination of rent constituting property taxes accrued as not at arms length, may appeal the decision of the tax administrator to the sixth division of the district court by filing a petition within thirty (30) days after the denial.

CERTIFICATION

I hereby certify that on the 26th day of June, 2014 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid to the Taxpayer's address on file with the Division of Taxation and by hand delivery to Linda Riordan, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

