STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2017-01

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.: 16-T-090**
	:	**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 November 18, 2016 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 December 21, 2016. The Division was represented by counsel. No one appeared for the Taxpayer. The Taxpayer did not contact either the undersigned or the Division. The Taxpayer received notice of the hearing. As the Taxpayer received notice of the hearing, the undersigned held the hearing. The Division rested on the record.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-30-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings.*

III. ISSUE

Whether the Taxpayer is entitled to a refund for her personal income tax for 2015.

IV. MATERIAL FACTS AND TESTIMONY

, Principal Revenue Agent, testified on behalf of the Division. He testified that the Taxpayer timely filed her 2006 income tax return with the Division. He testified that subsequent to said filing, the Taxpayer had her Federal income adjusted by the Federal Internal Revenue Service. He testified that when a taxpayer's Federal income changes, a taxpayer is statutorily mandated to file an amended State tax return. He testified that the Taxpayer did not file a 2006 amended return with the State so that the Division issued a Notice of Deficiency in 2010 which adjusted the Taxpayer's 2006 tax owed to the State based on her new income amount. He testified that the Taxpayer did not contest the Notice of Deficiency and did not pay the new tax assessment or make any arrangement to pay the new tax assessment. He testified that the Taxpayer's refund for 2015 was used pursuant to R.I. Gen. Laws § 44-1-11 to offset the tax still owed for 2006. He testified that the Taxpayer requested a hearing regarding the offset. He testified that at a preliminary conference, the Taxpayer told him that she had been in bankruptcy so that her 2006 taxes had been discharged. See Division's Exhibits B (Division's record of Taxpayer's 2006 income tax filing); C (2010 Notice of Deficiency for 2006 taxes owed); D (Division print-out of Taxpayer's 2015 return); F (notice to Taxpayer of the offset of her 2015 refund); and H (Taxpayer's 2011 discharge in bankruptcy).

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 Statutes

R.I. Gen. Laws § 44-30-59 provides as follows:

> Report of change in federal taxable income. – Subject to regulations of the tax administrator, if the amount of a taxpayer's federal taxable income reported on his or her federal income tax return for any taxable year beginning on or after January 1, 1971, is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report the change or correction in federal taxable income within ninety (90) days after the final determination of the change, correction, or renegotiation, or as otherwise required by the tax administrator, and shall concede the accuracy of the determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within ninety (90) days thereafter an amended Rhode Island personal income tax return and shall give any information that the tax administrator may require.

R.I. Gen. Laws § 44-30-83 provides in part as follows:

> Limitations on assessment. – (a) General. Except as otherwise provided in this section the amount of the Rhode Island personal income tax shall be assessed within three (3) years after the return was filed, whether or not the return was filed on or after the prescribed date. For this purpose a tax return filed before the due date shall be considered as filed on the due date; and a return of withholding tax for any period ending with or within a calendar year filed before April 15 of the succeeding calendar year shall be considered filed on April 15 of the succeeding calendar year.
>
> (b) Exceptions.
>
> (1) Assessment at any time. The tax may be assessed at any time if:
>
> (i) No return is filed;
>
> (ii) A false or fraudulent return is filed with intent to evade tax; or
>
> (iii) The taxpayer fails to file a report, pursuant to § 44-30-59, of a change, correction, or amended return, increasing his or her federal taxable income as reported on his or her federal income tax return or to report a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes.

R.I. Gen. Laws § 44-1-11 provides as follows:

> Refund or credit for overpayments. Whenever an erroneous payment or any payment in excess of the correct amount of any tax, excise, fee, penalty, interest, or other charge is made to the tax administrator, the general treasurer shall, after certification by the tax administrator with the approval of the director of administration, refund the erroneous payment or overpayment, or the tax administrator may credit the erroneous payment or overpayment against any tax then or thereafter due, as the circumstances may warrant.

C. Whether the Division's Offset was Proper

It was undisputed that the Taxpayer was required by R.I. Gen. Laws § 44-30-59 to amend her 2006 return as her 2006 income had changed (increased) after modification to it by the Federal government. It was undisputed that the Taxpayer did not file an amended return with the Division reflecting her change in Federal income. Pursuant to R.I. Gen. Laws § 44-30-83(b)(1)(iii), the three (3) year limit on the Division to assess personal income tax owed by a taxpayer does not apply when a taxpayer has failed to file a report of a change in income pursuant to R.I. Gen. Laws § 44-30-59. Therefore, in 2010, the Division properly issued the Taxpayer a Notice of Deficiency for additional tax owed for 2006 based on her Federally adjusted income. The Taxpayer did not contest the deficiency and did not pay the deficiency.

Apparently the Taxpayer believed that her 2006 taxes owed to Rhode Island had been discharged in bankruptcy. The Division relied on two (2) statutory provisions - 11 USC § 523(a)(1)(B)(i) and 11 USC § 507(a)(8)(A)(ii) - of the United States bankruptcy code to argue that the Taxpayer's 2006 taxes owed had not been discharged in bankruptcy. 11 USC § 523(a)(1)(B)(i) provides that a discharge in bankruptcy does not discharge an individual debtor from a tax debt if the tax return was not filed. In this matter, the Taxpayer was statutorily required to file an amended tax return, but never filed an amended tax return. 11 USC § 507(a)(8)(A)(ii) provides that taxes on income that are assessed within 240 days of filing the petition are given eighth priority in bankruptcy. In this matter, the Notice of Deficiency was issued on August 2, 2010 and the

Taxpayer filed her bankruptcy petition on January 11, 2011 which is approximately 160 days after the tax was assessed. See Division's Exhibits C and H. Thus, the 2006 tax was assessed by the Division within 240 days of the Taxpayer filing her petition in bankruptcy. It should be noted that the Taxpayer's Discharge of Debtor states that debts for most taxes are not dischargeable. See Division's Exhibit H.

Since the Taxpayer owed further taxes for 2006 that were not discharged in bankruptcy, the Division appropriately offset her 2015 refund pursuant to R.I. Gen. Laws § 44-1-11.[1]

VI. FINDINGS OF FACT

1. On or about November 18, 2016, the Division issued a Notice of Hearing and Appointment of Hearing Officer to the Taxpayer.

2. A hearing in this matter was held on December 21, 2016. The Taxpayer did not appear. As the Taxpayer was adequately notified of the hearing, a hearing was held with the Division resting on the record. The Taxpayer is in default for failing to appear at the hearing.

3. The Taxpayer did not file an amended 2006 Rhode Island personal income tax return after the IRS had modified her Federal income for 2006. Therefore, she had an outstanding tax liability for 2006.

4. The Division issued the Notice of Deficiency for the 2006 taxes to the Taxpayer within 240 days of the Taxpayer filing her petition in bankruptcy.

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 § 44-30-1 *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*

[1] It should be noted that the Taxpayer's 2015 refund was less than the Taxpayer's 2006 tax liability so she still has an outstanding balance on the 2006 tax that she owes to the Division.

2. Pursuant to R.I. Gen. Laws § 44-30-59, the Taxpayer was required to file an amended return. The Taxpayer failed to file an amended 2006 Rhode Island personal income tax return. The Taxpayer owed further taxes for 2006 and has not paid this deficiency.

3. The Taxpayer's discharge in bankruptcy did not discharge her 2006 taxes owed.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-1-11, the Division properly offset the Taxpayer's 2015 personal income tax refund for the 2006 personal income tax that the Taxpayer owes to the State of Rhode Island. Therefore, the Taxpayer is not entitled to her 2015 tax refund.

Date: December 29, 2016

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: 1/3/17

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 3rd day of January 17 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 and by hand delivery to Bernard Lemos, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

Jan Belasco