STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2017-03

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.: 16-T-094**
	:	**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 December 13, 2016 and issued to the above-captioned taxpayer ("Taxpayer")[1] by the Division of Taxation ("Division") in response to a request for hearing. A hearing was held on January 23, 2017. 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.*

[1] While the case caption refers to a married couple, it is the wife's income at issue so she shall be referred to as the Taxpayer.

III. ISSUE

Whether the Taxpayer owes additional income tax, interest, and a penalty for the tax year 2011.

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. He testified that the Division learned that the Taxpayer had unreported Rhode Island income related to wages and unemployment for 2011 because the Taxpayer had additional income reported on her Federal return that was not reported to Rhode Island. He testified that the Taxpayer did not file an amended return with the Division for the 2011 tax year. He testified that the Division notified the Taxpayer several times of her tax deficiency for the tax year of 2011. See Division's Exhibits A (2015 Notice of Deficiency); B (2016 Notice of Assessment); and C (2016 Statement of Accounts). He testified that the Taxpayer requested a hearing to dispute the Division's tax assessment. He testified that the Division scheduled a preliminary review which was continued twice at the Taxpayer's request and then the Taxpayer did not respond to rescheduling the preliminary review so a hearing was scheduled. See Division's Exhibits D (request for hearing); E (scheduling preliminary review); F (second scheduling of preliminary review); G (third scheduling of preliminary review); and H (follow-up letters).

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.
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> (b) Exceptions.
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> (1) Assessment at any time. The tax may be assessed at any time if:
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> (i) No return is filed;
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> (ii) A false or fraudulent return is filed with intent to evade tax; or
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> (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.

C. Whether the Taxpayer Owes Tax and Penalties for Tax Year 2010

It was undisputed that the IRS notified the Taxpayer that certain wage and unemployment was taxable for her 2011 tax year. As a result, the Taxpayer was required by R.I. Gen. Laws § 44-30-59 to amend her 2011 return as her 2011 income had changed (increased). 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, the Division properly issued the Taxpayer a Notice of Deficiency for additional tax owed for 2011 based on her Federally adjusted income. Pursuant to R.I. Gen. Laws § 44-30-84,[2] the Division imposed interest for the late payment of the tax owed. Pursuant to R.I. Gen. Laws § 44-30-85,[3] the Division imposed a late payment penalty for the late payment of the tax owed.

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[2] R.I. Gen. Laws § 44-30-84 provides in part as follows:

> Interest on underpayment. – (a) General.
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> (1) If any amount of Rhode Island personal income tax, including any amount of the tax withheld by an employer, is not paid on or before the due date, interest on the amount at the annual rate provided by § 44-1-7 shall be paid for the period from the due date to the date paid, whether or not any extension of time for payment was granted. The interest shall not be paid if its amount is less than two dollars ($2.00).

[3] R.I. Gen. Law § 44-30-85 provides in part as follows:

> Additions to tax and civil penalties. – *(a) Failure to file tax returns or to pay tax.* In the case of failure:
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> (2) To pay the amount shown as tax on the personal income tax return or the employer's withheld tax return on or before the prescribed date for payment of the tax (determined with regard to any extension of time for payment) unless it is shown that the failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on the return five-tenths percent (0.5%) of the amount of the tax if the failure is for not more than one month, with an additional five-tenths percent (0.5%) for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate; or
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> (3) To pay any amount in respect of any tax required to be shown on a return which is not so shown, including an assessment made as a result of mathematical error, within ten (10) days of the date of the notice and demand therefor, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in the notice and demand five-tenths percent (0.5%) of the amount of the tax if the failure is for not more than one month, with an additional five-tenths percent (0.5%) for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate.

VI. FINDINGS OF FACT

1. On or about December 13, 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 January 23, 2017. 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 2011 Rhode Island personal income tax return after receiving notice from the IRS of a change to her Federal income for 2011.

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.*

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 2011 Rhode Island personal income tax return so owes tax on the unreported income, interest, and a penalty.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-30-59, the Taxpayer failed to file an amended Rhode Island personal income tax return for 2011. Therefore, pursuant to R.I. Gen. Laws § 44-30-59, R.I. Gen. Laws § 33-30-83(b)(1)(iii), R.I. Gen. Laws § 44-30-84, and R.I. Gen. Laws § 44-30-85, the Division properly assessed the Taxpayer for tax owed and interest and late penalty owed.

Date: 2/20/17

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: 2.24.17

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 24th day of February, 2017 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 Michael Taylor, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.