STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2017-06

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.: 17-T-012**
	:	**Personal Income Tax**
Taxpayers.	:	

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 February 27, 2017 and issued to the above-captioned taxpayers ("Taxpayers") by the Division of Taxation ("Division") in response to a request for hearing. A hearing was held on March 30, 2017. The Division was represented by counsel. No one appeared for the Taxpayers. The Taxpayers did not contact either the undersigned or the Division. The Taxpayers received notice of the hearing. As the Taxpayers 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 Taxpayers owe additional interest and a penalty for the tax year 2012.

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. He testified that the Taxpayers filed their 2012 RI resident tax return listing their Federal adjusted income. See Division's Exhibit A (Taxpayers' Rhode Island 2012 return). He testified that in 2016 the Division received information that the Taxpayers' 2012 federal tax return had a higher adjusted income than listed on their state return. He testified that the Division issued a Notice of Deficiency to the Taxpayers based on their under-reported income. See Division's Exhibit B (Notice of Deficiency). He testified that the Taxpayers forwarded a check to the Division representing the amount of additional tax owed for 2012, but did not pay the penalty or interest that had also been assessed. See Division's Exhibit C (copy of check). He testified that an assessment was issued to the Taxpayers for the penalty and interest still owed and a result of that assessment, the Taxpayers requested a hearing. See Division's Exhibits D (notice of assessment). He testified that the Taxpayers cancelled the preliminary hearing and the Division was unable to reschedule the preliminary hearing. See Division's Exhibit H, I, J, and K (scheduling 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). 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.

C. Whether the Taxpayers Owes Interest and Penalty for Tax Year 2012

It was undisputed that the Taxpayers owed additional income tax for 2012 and as a result, the Taxpayers were required by R.I. Gen. Laws § 44-30-59 to amend their 2012 return as their 2012 income was higher than the amount listed when they filed their 2012 income tax return. It

was undisputed that the Taxpayers did not file an amended return with the Division reflecting their actual 2012 Federal adjusted gross 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 Taxpayers a Notice of Deficiency for additional tax owed for 2012 based on their Federal adjusted gross income. Pursuant to R.I. Gen. Laws § 44-30-84,[1] the Division imposed interest for the late payment of the tax owed. Pursuant to R.I. Gen. Laws § 44-30-85,[2] the Division imposed a late payment penalty for the late payment of the tax owed. The Taxpayers chose to pay the tax owed but not the interest and penalty. The interest and penalty were added by the Division to the Notice of Deficiency pursuant to statute and this amount is still owed by the Taxpayers.

---

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

> Interest on underpayment. – (a) General.
>
> (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).

[2] 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:
>
> ***
>
> (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
>
> (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 February 27, 2017, the Division issued a Notice of Hearing and Appointment of Hearing Officer to the Taxpayers.

2. A hearing in this matter was held on March 30, 2017. The Taxpayers did not appear. As the Taxpayers were adequately notified of the hearing, a hearing was held with the Division resting on the record. The Taxpayers are in default for failing to appear at the hearing.

3. The Taxpayers did not file an amended 2012 Rhode Island personal income tax return to reflect their actual Federal adjusted gross income in 2012.

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 Taxpayers were required to file an amended return for 2012. The Taxpayers failed to file an amended 2012 Rhode Island personal income tax. The Division issued the Taxpayers a Notice of Deficiency for additional income, interest, and penalty owed. The Taxpayers paid the additional tax owed after they received the Notice of Deficiency, but still owe the interest and late penalty as set forth in the Notice of Assessment. See Division's Exhibit D.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-30-59, R.I. Gen. Laws § 44-30-83(b)(1)(iii), R.I. Gen. Laws § 44-30-84, and R.I. Gen. Laws § 44-30-85, the Division properly assessed the Taxpayers for tax owed and interest and late penalty owed. The Taxpayers paid the tax owed but the interest

and late penalty are still outstanding so that the Taxpayers owe the interest and penalty as set forth in the Notice of Assessment.

Date: April 5, 2017

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: 5/2/17

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 2nd day of May, 2017 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 Taxpayers' address on file with the Division and by hand delivery to Matthew Cate, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

Paul Belusco