STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2017-08

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-021**
	:	**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 1, 2017 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 2, 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.*

III. ISSUE

Whether the Taxpayer owes income tax, interest, and a penalty for the tax year 2013.

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. He testified that the Taxpayer's 2013 income tax return was due on April 15, 2014 and was filed on May 9, 2016 at which time the Taxpayer had an outstanding tax liability. He testified that the Taxpayer did not remit a payment and had no withholding for 2013. He testified that a Notice of Deficiency for the outstanding tax, late payment, late filing, and interest was issued and then a Notice of Assessment was issued after the Deficiency was not paid. He testified that the Taxpayer requested a hearing but did not respond to attempts to schedule a preliminary conference. See Division's Exhibits A (2013 income tax return); C (2016 Notice of Deficiency); D (2016 Notice of Assessment); E (request for hearing); G-H (correspondence attempting to schedule preliminary conference); and K (assessment as of June 2, 2017).

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

R.I. Gen. Laws § 44-80-1 *et seq.* provides for the payment of personal income tax. The Taxpayer collected unemployment in 2013 (see Division's Exhibit A) and in filing her tax return owed a tax liability. She did not pay the tax liability. Therefore, the Division properly issued the Taxpayer a Notice of Deficiency and Notice of Assessment for the income tax owed for 2013. Pursuant to R.I. Gen. Laws § 44-30-84,[1] the Division imposed interest on the late payment of the tax owed. Pursuant to R.I. Gen. Laws § 44-30-85,[2] the Division imposed a late filing penalty and a late payment penalty for the late payment of the tax owed.

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[1] 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).

[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:
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> (1) To file the Rhode Island personal income tax return or the employer's withheld tax return on or before the prescribed date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, an addition to tax shall be made equal to five percent (5%) of the tax required to be reported if the failure is for not more than one month, with an additional five percent (5%) for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate. For this purpose, the amount of tax required to be reported shall be reduced by an amount of the tax paid on or before the date prescribed for payment and by the amount of any credit against the tax which may properly be claimed upon the return;
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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 May 1, 2017, the Division issued a Notice of Hearing and Appointment of Hearing Officer to the Taxpayer.

2. A hearing in this matter was held on June 2, 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 filed her 2013 Rhode Island personal income tax return late and owed tax.

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. The Taxpayer owed tax for the calendar year 2013 so owes the tax, interest, and penalties.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-30-1 *et seq*., the Taxpayer owed personal income tax for 2013. Therefore, pursuant to R.I. Gen. Laws § 44-30-1 *et seq*., 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 payment and late filing penalty owed.

Date: June 13, 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: 7.24.2017

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 July 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 Ann Marie Maccarone, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

Gail Belasco