STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2018-03

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-088**
	:	**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 10, 2016 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing. The parties agreed to have a decision issued on an agreed statement of facts and briefs. Briefs were filed by November 15, 2017 with the record closing on January 20, 2018. The Division was represented by counsel and the Taxpayer was *pro se*.

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 the Division's assessed income tax, interest, and a penalty for the tax year 2012.

IV. MATERIAL FACTS AND TESTIMONY

1. The Taxpayer was a Rhode Island resident for tax year 2012.

2. Pursuant to R.I. Gen. Laws § 44-30-51, a resident individual having RI income is required to file a tax return "[o]n or before the fifteenth day of the fourth month following the close of a taxable year."

3. R.I. Gen. Laws § 44-30-2.6 was amended in 2011 for tax periods beginning January 1, 2011 through December 31, 2011, and thereafter, "Rhode Island Taxable Income" means federal adjusted gross income as determined under the Internal Revenue Code, 26 U.S.C. 1 *et seq.*, and as modified for Rhode Island purposes pursuant to R.I. Gen. Laws § 44-30-12 less the amount of Rhode Island Basic Standard Deduction allowed pursuant to R.I. Gen. Laws § 44-30-2.6(c)(3)(B), and less the amount of personal exemption allowed pursuant to R.I. Gen. Laws § 44-30-2.6(c)(3)(C).

4. Itemized deductions and many Federal tax credits are no longer permitted in Rhode Island beginning with tax years 2011.

5. The Taxpayer filed a RI Resident Return (RI 1040) for tax year 2012 with the Division on or about January 10, 2014. Joint Exhibit One (1). The 2012 tax return reported the Taxpayer's Federal Adjusted Gross Income.

6. The Taxpayer underreported Rhode Island Adjusted Gross Income in the amount of $

7. The 2012 tax return filed by the Taxpayer claimed RI 2012 Modified Adjusted Gross Income in a certain amount representing wages from the Taxpayer's employer. Joint Exhibit One (1), line three (3).

8. The 2012 tax return filed by the Taxpayer resulted in a claimed overpayment of $ Joint Exhibit One (1), line 17.

9. In 2013, the Taxpayer withdrew from the Federal Nurse Corps Loan Repayment Program and returned all money received in 2012 from the program plus all taxes withheld, totaling over $

10. The United States Department of Health and Human Services issued a corrected Wage and Tax Statement (W-2c) for tax year 2012 representing repayment of 2012 wages in 2013 by the Taxpayer. Joint Exhibit Two (2).

11. On or about April 15, 2016, the Division, based upon information received from the Federal/State Matching Program, determined the Taxpayer owed additional tax in the amount of $ based on unreported income in the form of unreported wages.

12. On her 2013 Federal income tax return, the Taxpayer took a corresponding Federal tax credit the amount of $ for the income not reported on her 2012 State tax return. The IRS does not allow a taxpayer to file an amended 2012 return for 2012 returned income. See IRS Publication 525 Section entitled "Repayments." The Taxpayer must take a credit or itemized deduction in the following year. In this case, the Taxpayer took a credit in 2013 on her 2013 Federal return. Joint Exhibit Three (3), Line 71. This credit is not allowed under R.I. Gen. Laws § 44-30.2.6 beginning for tax periods beginning January 1, 2011 through December 31, 2011.

13. On April 15, 2016, the Division sent a Notice of Deficiency to the Taxpayer notifying her of the additional tax due as a result of the underreported income. Joint Exhibit Four (4). The Taxpayer timely requested administrative review of the Notice of Deficiency. In order to avoid further accrual of interest, the Taxpayer paid the full amount of the Notice of Deficiency. This matter is now a claim for refund.

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 § 44-30-12 defines Rhode Island income as Federal Adjusted Gross Income and provides for limited deductions. R.I. Gen. Laws § 44-30-2.6 which became effective on

January 1, 2011 sets forth what is considered Rhode Island taxable income and the rate of tax. Neither statute provides for tax credits like the Federal rules do for the returned income.

C. Arguments

The Division argued that due to amendments in 2011 of R.I. Gen. Laws § 44-30-2.6, itemized deductions and many Federal tax credits are no longer permitted in Rhode Island. The Division argued that while the Taxpayer was able to claim a credit for the repayment of income adjustment on her Federal return, she was not allowed to under Rhode Island law. The Division argued the Taxpayer should have filed an amended 2012 return to report the increase in her 2012 income. The Division argued that the Taxpayer owes the tax assessed on the Taxpayer's increased 2012 income as well as the interest and penalty.

The Taxpayer argued that she was informed by the Division that she could not file an amended return as she had not filed an amended 2012 Federal return since Federal rules require that returned income is to be treated as a credit the following years. [See agreed statement of facts above].[1] The

---

[1] The Taxpayer submitted emails dated January 19, 2016 between her and the personal income tax section of the Division in which she was told that as she could not file an amended Rhode Island 2012 return since she did not file an amended 2012 Federal return. The Taxpayer filed copies of these emails with her brief. While the emails were not included in the agreed exhibits, the Division did not object to them being considered as part of the brief. Presumably the Division in its emails was referring to R.I. Gen. Laws § 44-30-59 which requires that a taxpayer file an amended Rhode Island return if the taxpayer's Federal income reported on his or her Federal income tax return is changed or corrected by the Internal Revenue Service. Said statute 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.

The Taxpayer's Federal income increased for 2012, but she took that as a tax credit in 2013 and did not change her 2012 Federal income tax return so that she did not have a change in her 2012 Federal income tax return to report to Rhode Island.

Taxpayer argued there was no avenue available to her to account for returned income as she could not take a credit on her 2013 Rhode Island income tax return or file an amended Rhode Island return for 2012.

D. Whether the Taxpayer owes the Tax Assessed

The parties agreed that the Taxpayer had unreported income in the form of unreported wages for 2012. It is this unreported income on which the Taxpayer owes tax. Unfortunately for the Taxpayer, the rules for taking a tax credit for the type of additional income she received in 2012 are different for the Federal government and Rhode Island. The Taxpayer argued that Rhode Island denies taxpayers a means of accounting for returned state income and the Division is collecting tax from taxpayers on money that belongs to another party. The Taxpayer argued that the differences in approach on how to account for returned credit were unfair. However, equitable principles are not applicable to an administrative procedure. See *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004) (Supreme Court vacated a Superior Court order that had vacated an agency sanction on so-called inherent equitable powers). Thus, the Taxpayer owes tax on the additional income that was underreported in 2012.

D. Penalty and Interest

The Division imposed a late payment interest pursuant to R.I. Gen. Laws § 44-30-84.[2] The Division also imposed a late payment penalty. See Exhibit Four (Notice of Deficiency). R.I. Gen.

---

[2] 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).
> ***
> *(b) Estimated tax.* If an individual fails to file a declaration of estimated Rhode Island personal income tax as required by § 44-30-55, or to pay any installment of the tax as required by § 44-30-56, the

Laws § 44-30-85(a)[3] provides penalties be imposed for willful neglect for failure to pay but excludes penalties for reasonable cause.[4] See Exhibit Four (4).

VI. FINDINGS OF FACT

1. On or about November 10, 2016, the Division issued a Notice of Hearing and Appointment of Hearing Officer to the Taxpayer.

2. This matter was decided on an agreed statement of facts and exhibits and briefs with the record closing on January 18, 2018.

3. The Taxpayer had unreported income for Rhode Island for 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*.

---

individual shall pay interest at the annual rate provided by § 44-1-7 for the period the failure continues, until the fifteenth day of the fourth month following the close of the taxable year. The interest in respect of any unpaid installment shall be computed on the amount by which his or her actual payments and credits in respect of the tax are less than eighty percent (80%) of the installment at the time it is due. Notwithstanding the foregoing, no interest shall be payable if one of the exceptions specified in 26 U.S.C. § 6654(d)(1) or (2) would apply if the exceptions referred to the corresponding Rhode Island tax amounts and returns.

[3] R.I. Gen. Laws § 44-30-85 states 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:

***

(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.

(b) Negligence. If any part of a deficiency is due to negligence or intentional disregard of the Rhode Island personal income tax law or rules or regulations under this section (but without intent to defraud), five percent (5%) of that part of the deficiency shall be added to the tax.

[4] R.I. Gen. Laws § 44-30-85(b) provides penalties for a negligence; however, it does not appear a negligence penalty was assessed.

2. Pursuant to R.I. Gen. Laws § 44-30-1 *et seq.*, the Taxpayer owes tax on her unreported income for 2012.

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 owes the assessed tax on her unreported 2012 Rhode Island income. However, the undersigned recommends the Division revisit the issue of reasonable cause and willful neglect in the penalty statute of R.I. Gen. Laws § 44-30-85(a) in order to determine whether the penalty (late payment) applies. This matter became a refund request as the Taxpayer paid the full amount of the Notice of Deficiency so the Division shall determine if the penalty should be refunded.

Date: 2/13/18

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: 2/13/18

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 14th day of February, 2018 a copy of the above Decision and Notice of Appellate Rights were sent by electronic delivery and first class mail (overseas) 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.

Gail Belasco