STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2019-01

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.: 18-T-118**
	:	**Personal Income Tax**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Pre-hearing and Appointment of Hearing Officer ("Notice") dated December 11, 2018 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing. A hearing was scheduled for January 9, 2019 at which time the Taxpayer did not appear at the hearing. Since the Taxpayer was adequately noticed of hearing,[1] a hearing was held before the undersigned on January 9, 2019. Pursuant to Section 2.7(G)(3) of the 280-RICR-20-00-2 *Administrative Hearing Procedures* ("Hearing Regulation"), a default judgment may be entered against the party not appearing at hearing.[2] The Division was represented by counsel and rested on the record.

[1] The Notice was sent to the address on record with the Division and the address used by the Respondent when he requested a hearing. The Notice was sent to both addresses by first class and certified mail. Neither Notices mailed by first class mail were returned. The certified mail for the address on record was returned to the Division. The certified mail sent to the address used by the Taxpayer to request an appeal was not returned to the Division and instead the Taxpayer did not pick it up. See Department's Exhibits Five (5) (request for hearing) and 13 (print out of United States Post Office certified mail tracking sheets).

[2] The Notice informed the Taxpayer that failure to appear at hearing could lead to a default being entered against him. The Hearing Regulation provides that a defaulted party be given notice of the default by mail and said party may request reinstatement of the matter pursuant to a motion for reconsideration as set forth in the Hearing Regulation.

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 Hearing Regulation, and 220-RICR-50-10-2, Department of Administration's *Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Taxpayer owes income tax, interest, and penalties for the tax year 2011.

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. He testified that the Division received information via the Federal government that the Taxpayer had Rhode Island income in 2011 but that the Taxpayer had not filed a 2011 Rhode Island return. He testified that the Taxpayer used a Rhode Island address in 2011. He testified that a Notice of Assessment of the tax owed with interest and penalties imposed was issued to the Taxpayer. He testified that the Taxpayer requested a hearing but did not appear at the scheduled preliminary conference and did not respond to attempts to reschedule the preliminary conference. See Division's Exhibits One (1) (Division's internal records for Taxpayer's 2011 income); Two (2) (Division's 2011 Rhode Island return created for Taxpayer); Three (3) (Department of Motor Vehicle records showing that the Taxpayer had a car registered in Rhode Island in 2011); Four (4) (Notice of Assessment issued on June 4, 2018 for the 2011 tax year); Five (5) (request for hearing with return address on envelope); Six (6) and Seven (7) (statement of accounts sent to Taxpayer showing 2011 Rhode Island tax liability); Eight (8) through Eleven (11) (correspondence scheduling and attempting to reschedule preliminary conference); 12 (Notice); and 13 (certified mail tracking showing that the Notice sent by certified mail to Taxpayer's address used to appeal had not been picked up).

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 Interest and Penalties for Tax Year 2011

R.I. Gen. Laws § 44-30-1 *et seq*. provides for the payment of personal income tax. It was undisputed that the Taxpayer was a Rhode Island resident in 2011 and received income in 2011 and owed taxes in Rhode Island in 2011 and did not file a Rhode Island tax return for 2011. Therefore, the Division properly issued the Taxpayer a Notice of Assessment for the income tax owed for 2011. Pursuant to R.I. Gen. Laws § 44-30-84,[3] the Division imposed interest on the late payment

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[3] 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).

of the tax owed. Pursuant to R.I. Gen. Laws § 44-30-85,[4] the Division imposed a late filing penalty and a late payment penalty for the late payment of the tax owed.

VI. FINDINGS OF FACT

1. On or about December 11, 2018, 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 9, 2019. 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 a 2011 personal income tax return for taxes owed in 2011.

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[4] 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.

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.*, R.I. Gen. Laws § 44-1-1 *et seq.*, and the Hearing Regulation.

2. The Taxpayer owed tax for the calendar year 2011 so owes the tax, interest, and penalties as assessed by the Division.

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 2011. 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 the late payment and late filing penalty for 2011.

Date: January 18, 2015

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: 1/22/19

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 23rd day of January, 2019 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 Matthew Cate, Esquire, Department of Revenue, One Capitol Hill, Providence, R.I. 02903.

Gail Belasco