STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2019-05

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.: 19-T-042**
	:	**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 ("Notice") dated May 7, 2019 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 August 8, 2019. 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.[1] 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.*, 280-RICR-20-00-2, Division of Taxation's *Administrative Hearing Procedures*, and 220-RICR-50-10-2, Department of Administration's *Rules of Procedure for Administrative Hearings.*

III. ISSUE

Whether the Taxpayer owes the income tax, interest, and penalties for tax year 2010.

[1] See Division's Exhibit S (U.S. Post Office tracking showing delivery of certified mail of Notice to the Taxpayer).

IV. MATERIAL FACTS AND TESTIMONY

, Principal Revenue Agent, testified on behalf of the Division. He testified that the Division issued an income tax deficiency for the year 2010 to the Taxpayer after the Division ascertained the Taxpayer received Rhode Island source income in 2010 based on 1099's and W-2's and that the Taxpayer had not filed for 2010 in Rhode Island. He testified that the Division prepared an income tax return for the Taxpayer as a single filer with a standard deduction using said income information. He testified that the Division determined the amount of tax owed as well as the interest and late filing and late payment penalties owed. He testified that the Notice of Deficiency listed the Rhode Island sources of income. See Division's Exhibits A (Notice of Deficiency dated February 12, 2018) and B (current balance due as of August 8, 2019).

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." *Balmouth v. Dolce for Town of Portsmouth*, 794 A.3d 576, 580 (R.I. 2018) (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 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 § 44-30-82 provides in part as follows:

> Assessment date. (a) *General.* ***
>
> (b) *Failure to file return.* If a taxpayer fails to file any required Rhode Island personal income tax return, the tax administrator is authorized to estimate the taxpayer's Rhode Island taxable income and tax thereon from any available information, and notwithstanding the restrictions of § 44-30-81(c) the tax, additions to tax, civil penalties, and interest shall be deemed to be assessed on the date of mailing to the taxpayer of notice of the assessment.

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. ***
>
> (b) Exceptions.
>
> (1) Assessment at any time. The tax may be assessed at any time if:
>
> (i) No return is filed;
>
> ***

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

It was undisputed that the Taxpayer had Rhode Island source income for the 2010 tax year but did not file a Rhode Island income tax return for 2010. As a result, pursuant to R.I. Gen. Laws § 44-30-82, the Division determined the Taxpayer's taxable income on the available income information and assessed tax, penalties, and interest. Pursuant to R.I. Gen. Laws § 44-30-83(b)(1)(i), 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 return. Therefore, the Division properly issued the Taxpayer a Notice of Deficiency for tax owed for 2010 based on his Rhode Island source income. Pursuant to R.I. Gen. Laws § 44-30-84,[2] the Division imposed interest for 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.
>
> (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

Pursuant to R.I. Gen. Laws § 44-30-85,[3] the Division imposed a late payment penalty and a late filing penalty of the tax owed.

VI. FINDINGS OF FACT

1. On or about May 7, 2019, the Division issued a Notice of Hearing and Appointment of Hearing Officer to the Taxpayer.

2. A hearing on this matter was held on August 8, 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.

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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:

(a) *Failure to file tax returns or to pay tax.* In the case of failure:

(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;

(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.

3. The Taxpayer did not file a 2010 Rhode Island personal income tax return when he had Rhode Island source income in 2010.

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 § 44-30-82, the Division prepared a 2010 return for the Taxpayer. The Taxpayer owes tax on the Rhode Island source income, and interest, and penalties.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-30-82, R.I. Gen. Laws § 44-30-83, R.I. Gen. Laws § 44-30-84, and R.I. Gen. Laws § 44-30-85, the Division properly assessed the Taxpayer for tax owed, interest, late payment penalty, and late filing penalty owed.

Date: September 17, 2019

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: 9/17/19

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 17th day of September, 2019 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 Taxpayer's address on file with the Division and by electronic delivery to Bethany Whitmarsh, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

Gail Bulasco