STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2020-03

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.: 19-T-113**
	:	**Personal Income Tax**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Pre-Hearing Conference and Appointment of Hearing Officer ("Notice") dated November 19, 2019 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 February 24, 2020. The Division was represented by counsel and the Taxpayers (a married couple) were represented by one of the spouses. The parties 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 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 Division was correct in disallowing the Taxpayers' request to modify their Federal adjusted gross income for tax year 2017.

IV. MATERIAL FACTS

The parties agreed to the following: The Taxpayers timely filed their 2017 income tax return with Rhode Island. In determining their State income tax liability, the taxpayers claimed a modification of $ that decreased their Federal adjusted gross income. This decreasing modification was denoted in "Section 179 depreciation." $ of this modification was attributable to the annual licensing fee issued by the State of Rhode Island to medical cannabis cultivators. Section 179 depreciation refers to a section of the Internal Revenue Code that allows for a certain amount of assets purchased by a taxpayer to be deducted entirely as a business expense in a year they are placed in service rather than to depreciate and deduct the asset's cost in installments over a period of years. Inquiry disclosed that the Taxpayers could not claim the $ business expense as a deduction on the Federal income tax return for 2017 since cannabis cultivation expenses are not allowable for Federal income tax purposes. As a result of the disallowance of the modification, the Division disallowed the decreasing modification for the Taxpayers' Rhode Island income tax return for 2017. This disallowance increased the Taxpayers' State income tax liability and reduced their overpayment so they only received a partial refund.

At hearing, the Taxpayers only sought an adjustment of $ representing the cost of the cannabis cultivation license. See Taxpayers' Exhibit One (1).

See Division's Exhibits One (1) (Taxpayers' 2017 return); Two (2) (Division's inquiry to Taxpayers regarding claimed depreciation); Three (3) (Taxpayers' response detailing cannabis cultivation business expenses including licensing fee); Four (4) (Division notice to Taxpayers that decreasing modification is disallowed and that the refund request is reduced); Five (5) (partial refund check issued to Taxpayers); and Seven (7) (Taxpayers' request for hearing).

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) (citing *Cocchini v. City of Providence*, 479 A.2d 108 (R.I. 1984)). 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). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. Arguments

The Division does not dispute that the Taxpayers paid a licensing fee for cannabis cultivation and that this activity is allowed by State law. However, the Division argued that since cannabis cultivation is unlawful under Federal law, such expenses cannot be deducted for Federal income purposes and since Rhode Island's income tax computation is based on a taxpayer's Federal adjusted gross income, such a deduction is not allowed for Rhode Island income. The Division argued that there is no Rhode Island statute that allows for this type of deduction. The

Division argued that this kind of deduction cannot be created out of equity and the remedy is legislative and not administrative.

The Taxpayers argued that while there is no specific law in Rhode Island that allows for this deduction and their ultimate remedy is legislative, they are asking for an equitable adjustment for the modification.

C. Whether the Taxpayers can modify their 2017 Income

R.I. Gen. Laws § 44-30-12[1] provides that Rhode Island personal income for tax purposes is considered to be a taxpayer's Federal adjusted gross income for Federal income tax purposes. R.I. Gen. Laws § 44-30-2.6 sets forth what is considered Rhode Island taxable income and the rate of tax. It provides that "[o]nly the Rhode Island standard deduction shall be allowed in accordance with the following table." [A table is provided for filing status and income]. R.I. Gen. Laws § 44-30-12(c) provides for specific "[m]odifications reducing federal adjusted gross income" but these do not include any cannabis cultivation business expenses. As the Taxpayers acknowledged, there is no specific provision within Rhode Island law that provides for the deduction of business expenses and/or the licensing fee for cannabis cultivation.

It was undisputed that the Taxpayers' cannabis cultivation business fees cannot be deducted for Federal income purposes so cannot be used to adjust their Federal income. There is no Rhode Island statute that allow for the deduction of cannabis business cultivation fees.

The Taxpayers requested an equitable adjustment for their cannabis cultivation licensing fee. Such a request would require a finding that it was unfair or inequitable that a taxpayer could not deduct cannabis cultivation fees from his or her income. However, even if such a finding was made,

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[1] R.I. Gen. Laws § 44-30-12 provides in part as follows:

> Rhode Island income of a resident individual. – *(a) General.* The Rhode Island income of a resident individual means his or her adjusted gross income for federal income tax purposes, with the modifications specified in this section.

equitable principles are not applicable to administrative proceedings. Thus, to find for the Taxpayers on the basis of a fairness argument would be reversible error. *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004) (Supreme Court vacated a Superior Court order that vacated an agency sanction on equitable grounds).

VI. FINDINGS OF FACT

1. On or about November 19, 2019, the Division issued the Notice.

2. A hearing was held on February 24, 2020 with the parties resting on the record.

3. The Taxpayers requested a modification of their 2017 income based on their $ cannabis cultivation licensing fee.

4. The facts contained in Sections IV and V are reincorporated by reference herein.

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 § 44-30-12 and R.I. Gen. Laws § 44-30-2.6, the Taxpayers are unable modify their 2017 Federal adjusted income with their $ cannabis cultivation licensing fee for the purpose of Rhode Island income.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-30-12 and R.I. Gen. Laws § 44-30-2.6, the Taxpayers are unable to modify their 2017 Federal adjusted income with their $ cannabis cultivation licensing fee. The Division properly disallowed the Taxpayers' request to modify their Federal adjusted gross income for tax year 2017.

Date: March 16, 2020

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: 3/19/2020

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 19th day of March, 2020 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 Taxpayers' address on file with the Division and by electronic delivery to Bernard Lemos, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

Gail Belasco