

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2015-02

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF REVENUE
DIVISION OF TAXATION
ONE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908**

IN THE MATTER OF:

**Personal Income Tax
Case No.: 14-T-064**

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 August 27, 2014 and issued to the above-captioned taxpayers ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing. A hearing was held on December 10, 2014. 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.

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*

¹ The hearing was initially scheduled for October 15, 2014. At that time, the Taxpayer did not appear and requested a continuance. See letter dated October 16, 2014 from the undersigned to the parties. After the December 10, 2014 hearing, the Taxpayer contacted the Division's counsel and the undersigned regarding the fact that he had not appeared for the December hearing. By letter dated December 22, 2014, the Division's attorney notified the Taxpayer that he if he filed a written request to re-open the hearing by January 5, 2015, the Division would not object; otherwise, the Division would request a default judgment be entered for his non-appearance at the December hearing. The Taxpayer did not file a written request to reopen the hearing by January 5, 2015. By letter dated January 7, 2015, the undersigned informed the Taxpayer that if a written request to re-open the hearing was not received by January 20, 2015, a decision would be issued based on the December 10, 2014 hearing. The Taxpayer did not file a written request to re-open the hearing by January 20, 2015 or by the date this decision was signed.

Regulation AHP 97-01, and the Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings.

III. ISSUE

Whether the Taxpayer owes additional income tax and associated penalties for the tax year 2009.

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. He testified that the Taxpayer's 2009 Federal income tax return was changed for unreported income so the Taxpayer should have filed an amended Rhode Island 2009 income tax return. He testified that pursuant to R.I. Gen. Laws § 44-30-59, when a taxpayer's Federal gross income changes, a taxpayer needs to amend his or her Rhode Island income tax return since Rhode Island's income tax is based on the Federal adjusted gross income. He testified that since the Taxpayer did not file an amended Rhode Island return after his Federal income was changed, the Division conducted an audit of the Taxpayer's Rhode Island income and issued a Notice of Deficiency for the unreported income. He testified that pursuant to R.I. Gen. Laws § 44-30-84 and R.I. Gen. Laws § 44-30-85, interest and a late payment penalty were imposed. He testified that a late filing penalty was not imposed as the Taxpayer had timely filed his 2009 return. See Division's Exhibits A and B (Taxpayer 2009 income tax and transaction history records); and C (Notice of Deficiency).

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). 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. Relevant Statute

R.I. Gen. Laws § 44-30-59 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.

C. Whether the Taxpayer Owes Tax and Penalties for Tax Year 2009

It was undisputed that the Taxpayer received notice from the Federal IRS that he had not reported income on his original 2009 Federal income tax return. See Notice of Deficiency. As a result, the Taxpayer was statutorily required to amend his 2009 Rhode Island return. The Taxpayer did not amend his Rhode Island return. The Division issued the

Taxpayer a Notice of Deficiency for additional tax owed for 2009 based on the unreported income. Pursuant to R.I. Gen. Laws § 44-30-84,² the Division imposed interest for the late payment of the tax owed. Pursuant to R.I. Gen. Laws § 44-30-85,³ the Division imposed a late payment penalty for the late payment of the tax owed.

VI. FINDINGS OF FACT

1. On or about August 27, 2014, the Division issued a Notice of Hearing and Appointment of Hearing Officer to the Taxpayer.
2. A hearing in this matter was held on December 10, 2014. The Taxpayer received notice of hearing but did not appear at hearing.
4. The Taxpayer is in default for not appearing at the hearing.
5. The Taxpayer did not file an amended 2009 Rhode Island personal income tax return after receiving notice of a change to his Federal income for 2009.

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).

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:

(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.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

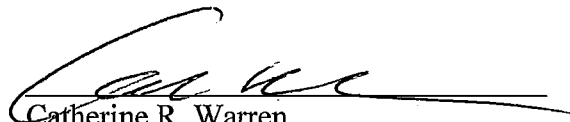
1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-30-1 *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*
2. Pursuant to R.I. Gen. Laws § 44-30-59, the Taxpayer was required to file an amended return and pay the additional tax owed. The Taxpayer failed to file an amended 2009 Rhode Island personal income tax return so owes the tax on the unreported tax and interest and penalties.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-30-59, the Taxpayer failed to file an amended Rhode Island personal income tax return for 2009. Therefore, pursuant to R.I. Gen. Laws § 44-30-59, 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 penalty owed.

Date: 1/28/15

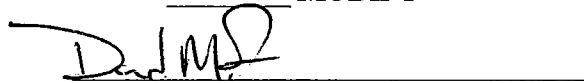

Catherine R. Warren
Hearing Officer

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: 2/3/15


David Sullivan
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 3rd day of February 2015 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 hand delivery to Bernard Lemos, Esquire, Department of Revenue, One Capitol Hill Providence, RI 02903.

Paul Belasco