## STATE OF RHODE ISLAND DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

# STATE OF RHODE ISLAND DEPARTMENT OF REVENUE DIVISION OF TAXATION ONE CAPITOL HILL PROVIDENCE, RHODE ISLAND 02908

IN THE MATTER OF:

Case No.: 22-T-111 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 December 7, 2022 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 March 1, 2023 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing, 1 a hearing was held before the undersigned on March 1, 2022. 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. The Division was represented by counsel who rested on the record.

<sup>&</sup>lt;sup>1</sup> The initial notice scheduled a prehearing conference for January 26, 2023. Said notice was sent by first class and certified mail. Division's Exhibits 12 and 13 (said notice and United States Post Office tracking sheet showing certified mail was unclaimed). The Taxpayer did not appear at the prehearing conference. A notice dated January 26, 2023 scheduling this matter for a full hearing on March 1, 2023 was forwarded to the Taxpayer by first class and certified mail. Said notice indicated to the Taxpayer that a default could be entered against her if she did not appear. Division's Exhibits 15, 16, and 17 (said notice and United States Post Office tracking sheet showing certified mail was unclaimed). The address used by the Division was the Taxpayer's address most recently supplied by the Taxpayer to the Division and used by the Taxpayer in 2022. Division's Exhibit One (1) (Taxpayer's 2020 return filed February 2, 2011 and testimony below.

#### 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 owed the Division's notice of assessment in relation to the Taxpayer's 2020 personal income.

#### IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. He testified that the Taxpayer claimed a credit of on her 2020 income tax return and received a refund of from the Division. Division's Exhibit One (1) (Taxpayer's 2020 return showing refund owed of ). He testified that a Division agent erroneously adjusted the refund owed to the Taxpayer to be an additional . He testified that a check for was erroneously mailed to the Taxpayer and cashed by the Taxpayer. Division's Exhibits Three (3) and Four (4) (March 4, 2021 notice of adjustment and copy of cashed check). He testified that the notice of assessment for the erroneously issued refund of was forwarded by mail to the Taxpayer and was dated February 10, 2022. He testified that the Taxpayer requested a hearing. He testified that he held a preliminary conference with the Taxpayer but was unable to resolve the matter as the Taxpayer claimed she was entitled to the Division's Exhibit Five (5) (notice of assessment dated February 10, 2022). He testified to the specific tax statutes that provide that the Division can recover erroneous refunds and impose late penalty interest and a late penalty on such assessments.

#### V. <u>DISCUSSION</u>

#### 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 the Notice of Assessment

R.I. Gen. Laws § 44-30-1 *et seq*. provides for the payment of personal income tax. The Taxpayer timely filed her 2020 tax return and received a refund of The Division then erroneously issued her a further refund of which it now seeks to recover. Pursuant to R.I. Gen. Laws § 44-30-83(b)(5),<sup>2</sup> an erroneous refund is considered an underpayment of tax and an

<sup>&</sup>lt;sup>2</sup> 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. For this purpose a tax return filed before the due date shall be considered as filed on the due date; and a return of withholding tax for any period ending with or within a calendar year filed before April 15 of the succeeding calendar year shall be considered filed on April 15 of the succeeding calendar year.

<sup>(</sup>b) Exceptions. \*\*\*

assessment of a deficiency arising out of an erroneous refund may be made at any time within three (3) years. The erroneous refund of was forwarded to the Taxpayer on March 4, 2021 and less than a year later the Division issued the notice of assessment dated February 10, 2022 to recover the erroneously issued refund. The Division is within the time limitation of three (3) years to issue an assessment to the Taxpayer for an erroneous refund.

R.I. Gen. Laws § 44-30-83(b)(5) considers an erroneous refund to be an underpayment of tax. Thus, the is considered tax owed by the Taxpayer. Pursuant to R.I. Gen. Laws § 44-30-84, the Division imposed interest on the late payment of the tax owed. Pursuant to R.I. Gen. Laws § 44-30-85, the Division imposed a late payment penalty for the late payment of the tax owed.

Interest on underpayment. – (a) General.

Additions to tax and civil penalties. -(a) Failure to file tax returns or to pay tax. In the case of failure:

<sup>(5)</sup> Recovery of erroneous refund. An erroneous refund shall be considered to create an underpayment of tax on the date made. An assessment of a deficiency arising out of an erroneous refund may be made at any time within three (3) years thereafter, or at any time if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

<sup>&</sup>lt;sup>3</sup> R.I. Gen. Laws § 44-30-84 provides in part as follows:

<sup>(1)</sup> 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).

<sup>&</sup>lt;sup>4</sup> R.I. Gen. Law § 44-30-85 provides in part as follows:

<sup>\*\*</sup> 

<sup>(2)</sup> 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

<sup>(3)</sup> 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.

#### VI. FINDINGS OF FACT

1. On or about December 12, 2022, the Division issued a Notice of Pre-hearing Conference and Appointment of Hearing Officer to the Taxpayer.

2. A hearing in this matter was held on March 1, 2023. The Taxpayer did not appear at hearing. As the Taxpayer was adequately notified of the hearing, a hearing was held with the Division resting on the record.

3. The Taxpayer is in default for not appearing at the hearing.

4. The facts contained in Section IV and V are incorporated 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 § 44-1-1 *et seq.* and R.I. Gen. Laws § 44-30-1 *et seq.* 

2. Pursuant to R.I. Gen. Laws § 44-30-1 *et seq.*, the Taxpayer owes the assessed income tax, interest, and penalty as updated in Division's Exhibit 19.

#### VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows: the Taxpayer owes the assessed income tax, interest, and late payment penalty as set forth in Division's Exhibit 19.

Date: MMh 16, 2023

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**

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.

I hereby certify that on the day of March, 2023 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 Amanda Valentino, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.