

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-01

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

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<b>IN THE MATTER OF:</b>	:	
	:	
	:	<b>Case No.: 21-T-037</b>
	:	<b>Personal Income Tax</b>
<b>Taxpayer.</b>	:	
	:	

**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 February 12, 2021 and issued to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to a request for hearing filed with the Division. A hearing was held on December 5, 2023. The Division was represented by counsel and the Taxpayer was *pro se*. The parties rested on the record.

**II. JURISDICTION**

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-30-1 *et seq.*, and 280-RICR-20-00-2 *Administrative Hearing Procedures*.

**III. ISSUE**

Whether the Taxpayer owes income tax, interest, and penalties for the tax years 2011 and 2012.

**IV. MATERIAL FACTS AND TESTIMONY**

(“Auditor”), Principal Tax Auditor, testified on behalf of the Division. He testified the Division received information from the federal government/IRS that the Taxpayer

filed federal income tax returns for 2011 and 2012. He testified the Taxpayer had not filed a Rhode Island income tax return for either year, so the Division prepared a return for each year based on the IRS information. Division's Exhibit One (1) (initial assessments issued in 2019). He testified the Taxpayer requested a hearing and during the preliminary conference process, the Taxpayer filed income tax returns for 2011 and 2012. Division's Exhibits Two (request for hearing); Eight (8); and Nine (9) (Taxpayer's 2011 and 2012 Rhode Island resident income tax returns received by Division on July 28, 2020). He testified the Taxpayer did not pay the tax owed when he filed his 2011 and 2012 returns. He testified the Division accepted the Taxpayer's filing for 2011 and 2012 and made new assessments based on those two (2) returns, and the assessments include the tax owed, late payment interest, and penalties for late filing and late payment. Division's Exhibit 12 (statement of account for the Taxpayer for 2011 and 2012 as of November 30, 2023).

On cross-examination, the Auditor testified the IRS notified the Division of the Taxpayer's Rhode Island income, and the Division did not know before that the Taxpayer owed tax.

The Taxpayer testified on his behalf. He testified that the week before the hearing, he paid the tax owed for 2011. Taxpayer's Exhibit One (1) (copy of check made out to Division in the amount of tax owed for 2011 and receipt from Division stamped November 27, 2023). He testified that he also paid his taxes owed for 2013, 2014, 2017, 2018, and 2019. Taxpayer's Exhibit Two (2) (copies of checks made out to Division stamped received November 27, 2023 and copy of spreadsheet showing money owed for tax, penalty, and interest for tax years 2011 to 2019).<sup>1</sup> He testified that when he found out that he owed taxes, he tried to resolve the issue. He testified that he had not realized that he would owe tax on gambling winnings. On cross-examination, he testified that he did not pay the tax owed for 2012.

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<sup>1</sup> The record was left open for one (1) week to December 12, 2023 for the Division to confirm receipt of said payments. The Division did not confirm or deny the receipt of the various payments by December 12, 2023.

## 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. **Relevant Statutes**

R.I. Gen. Laws § 44-30-51 provides in part as follows:

Returns and liabilities. (a) General. On or before the fifteenth day of the fourth month following the close of a taxable year, a Rhode Island personal income tax return shall be made and filed by or for:

(1) Every resident individual required to file a federal income tax return for the taxable year, or having Rhode Island income for the taxable year, determined under § 44-30-12, in excess of the sum of his federal personal exemptions.

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.

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.

(b) Exceptions.

(1) Assessment at any time. The tax may be assessed at any time if:

(i) No return is filed;

(ii) A false or fraudulent return is filed with intent to evade tax; or

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### **C. Whether the Taxpayer Owes Tax and Penalties for Tax Year 2016**

R.I. Gen. Laws § 44-30-1 *et seq.* provides for the payment of personal income tax. Pursuant to R.I. Gen. Laws § 44-30-51, a taxpayer is required to file a Rhode Island tax return if the taxpayer was required to file a federal income tax return or had Rhode Island income. The amount of income tax owed to Rhode Island is calculated using a taxpayer's federal gross adjusted income.

The Taxpayer apparently paid what tax he owed for 2011 a week before the hearing. He did not pay the interest and penalties assessed for 2011. The same is true for the other payments that he made for the other years that are not part of this hearing. The Taxpayer does not object to the tax owed but rather objects to the interest and penalties owed. He argued that his payments show that he has good intentions in terms of trying to resolve this matter.

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 the initial notices of assessment for tax owed for 2011 and 2012 based on the IRS information. The Division revised its initial assessments based on the Taxpayer's own filings of his 2011 and 2012 tax returns. In addition to

the tax owed, pursuant to R.I. Gen. Laws § 44-30-84,<sup>2</sup> the Division imposed interest for the late payment of the tax owed. Pursuant to R.I. Gen. Laws § 44-30-85,<sup>3</sup> the Division also imposed a late payment penalty and a late filing penalty.

The Taxpayer does not dispute that he owes tax for 2011 and 2012. While he does not want to pay the interest and penalties owed, those are imposed by statute. Based on the foregoing, the Taxpayer owes the 2011 and 2012 assessments.

## VI. FINDINGS OF FACT

1. On or about February 12, 2021, the Division issued a Notice of Pre-Hearing Conference and Appointment of Hearing Officer to the Taxpayer.

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<sup>2</sup> 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).

<sup>3</sup> 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:

(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.

2. A hearing in this matter was held on December 5, 2023 with the record closing on December 12, 2023.

3. In 2019, the Division issued its initial tax assessments for tax years 2011 and 2012 to the Taxpayer since the Taxpayer had failed to file his 2011 and 2012 income tax returns.

4. In 2020, the Taxpayer filed his 2011 and 2012 income tax returns but he did not pay the tax owed for either year.

5. The Division issued the Taxpayer new assessments based on his 2011 and 2012 returns that he filed in 2020.

6. On November 27, 2023, the Taxpayer apparently paid the 2011 tax owed.

7. 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 § 44-30-1 *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*

2. Pursuant to R.I. Gen. Laws § 44-30-1 *et seq.*, the Taxpayer was required to file a 2011 and 2012 Rhode Island tax return and failed to do so.

3. Pursuant to R.I. Gen. Laws § 44-30-83(b)(1)(i), in 2019, the Division issued assessments for 2011 and 2012.

4. Pursuant to R.I. Gen. Laws § 44-30-83, the Division issued new assessments based on the Taxpayer's filed returns in 2020 for tax years 2011 and 2012.

5. 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 Taxpayer owes tax for 2011 and 2012 as well as interest and penalties.

**VIII. RECOMMENDATION**

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

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 late payment penalties and late filing penalties for 2011 and 2012, and the Taxpayer owes the current assessments as reflected in Division's Exhibit 12.<sup>4</sup> The assessments shall be paid by the 31<sup>st</sup> day after the execution of this decision.

Date: December 21, 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

Dated: 1/5/24

  
Neena S. Savage  
Tax Administrator

<sup>4</sup> Assuming that the Taxpayer paid the tax owed as indicated by his November 27, 2023 receipt, the assessment for 2011 shall be adjusted to reflect the remaining amount owed.

## 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 5<sup>th</sup> day of January 2024 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail to the Taxpayer's address on file with the Division and by electronic delivery to John Beretta, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

  
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