

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-25

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

IN THE MATTER OF:

Taxpayer.

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Case No.: 14-T-050
Personal Income Tax.

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 June 11, 2014 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 September 15, 2014. The Division was represented by counsel and the Taxpayers (a married couple) were represented by the husband ("Husband"). 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 *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Taxpayers' request for a modification of income for tax year 2011 should be allowed.

IV. MATERIAL FACTS

Chief Revenue Agent, testified on behalf of the Division. He testified that the Taxpayers' 2011 (Rhode Island resident) tax return included [redacted] for net modifications from Schedule M for the Federal adjusted gross income. See Division's Exhibit One (1) (Taxpayers' 2011 income tax return).¹ He testified that the sum of [redacted] was included on the Taxpayers' Federal 2011 tax return under Schedule A and labeled "repayment of income." See Division's Exhibit Four (4) (Taxpayers' Federal 2011 income tax return with Schedule A). He testified that Rhode Island law no longer allows for deductions in Rhode Island so that a taxpayer can only take a standard deduction on a State income tax return. He testified that the Federal government allows a taxpayer to deduct for the repayment of income. He testified that the Taxpayers owe tax to Rhode Island because the [redacted] modification was not allowed. See Division's Exhibit Five (5) (tax, interest, penalty owed)

The Husband testified on behalf of the Taxpayers. He testified that previously his wife received a long-term disability payment which provided that the disability payment would be reduced once her social security payment was finalized. He testified that after the social security payment was finalized, it was determined that his wife owed the long-term disability company [redacted] because of the social security payments. See Taxpayers' Exhibit A, B, and C (long-term disability payment options, check, confirmation letter).

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.

¹ Line Two (2) of the a Rhode Island tax return is under line One (1). Line One (1) is for a taxpayer's Federal AGI (Adjusted Gross Income). Line Two (2) states as follows: "Net Modification to Federal AGI (if no modification, enter zero on this line) from RI Schedule M, Line 3."

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

In closing, the Division argued that as of 2011, Rhode Island no longer allows itemized deductions so that the Taxpayer’s characterized as repayment of income on the Taxpayers’ Federal return is not allowed under R.I. Gen. Laws § 44-30-2.6. The Taxpayers argued that their modification is a repayment of income that they had already received and taxed so that Rhode Island is taxing that income again. The Taxpayers argued that the double taxation was unconstitutional. The Taxpayers argued that they were not trying to claim a deduction – e.g. to lessen the amount owed – but are only trying to reduce their income by the amount of this repayment. In rebuttal, the Division agreed that all the other statutory itemized deductions are for expenses and that the Taxpayers’ modification is not an expense but that with the change in law, the modification to Rhode Island income is not allowed to be deducted.

C. Relevant Statutes

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.

(c) *Modifications reducing federal adjusted gross income*. There shall be subtracted from federal adjusted gross income:

(6) Amounts deemed taxable income to the taxpayer due to payment or provision of insurance benefits to a dependent, including a domestic partner pursuant to chapter 12 of title 36 or other coverage plan.

R.I. Gen. Laws § 44-30-2.6 is the statute that sets forth what is considered Rhode Island taxable income and the rate of tax. It became effective on January 1, 2011. R.I. Gen. Laws § 44-30-2.6(c)(2)(N)(3)(B)(I) and (III) provides as follows:

(B) Deductions:

(I) Rhode Island Basic Standard Deduction.

Only the Rhode Island standard deduction shall be allowed in accordance with the following table:

Filing status: Amount

Single \$7,500

Married filing jointly or qualifying widow(er) \$15,000

Married filing separately \$7,500

Head of Household \$11,250

(III) In the case of any taxpayer whose adjusted gross income, as modified for Rhode Island purposes pursuant to § 44-30-12, for the taxable year exceeds one hundred seventy-five thousand dollars (\$175,000), the standard deduction amount shall be reduced by the applicable percentage. The term "applicable percentage" means twenty (20) percentage points for each five thousand dollars (\$5,000) (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds one hundred seventy-five thousand dollars (\$175,000).

D. Whether the Taxpayers can modify their 2011 Income

R.I. Gen. Laws § 44-30-12 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 § 44-30-12(c)(6) allows a taxpayer to modify his or her Federal adjusted gross income by amounts deemed taxable income due to payment of insurance benefits to a dependent. The Taxpayers' repayment of income from insurance proceeds does not fall under that allowed modification.

R.I. Gen. Laws § 44-30-2.6 clearly provides that only the Rhode Island standard deduction shall be allowed on tax returns. The statute is clear and unambiguous. The statute does not allow the Taxpayers to modify their income by deducting their repayment of income received.

E. Constitutional Issue

The Taxpayers brought up the issue of constitutionality of what it termed double taxation of the However, the determination of unconstitutionality of a statute is not an issue that is properly before an administrative agency but is properly brought in Court. *See Easton's Point Association et al v. Coastal Resources Management Council et al.*, 522 A.2d 199 (R.I. 1987).

F. Equity (Fairness) Argument

The Taxpayers also indicated that the double taxation was not fair. However, 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).

G. Penalty and Interest

Based on the Division's computer system print-out (Division's Exhibit Five (5)), the Division imposed interest on the deficiency for underpayment and late payment (fail to file) pursuant to R.I. Gen. Laws § 44-30-84.² The Division also imposed penalties but it unclear to the undersigned on which statutory bases the penalties were imposed. See Division's Exhibit Five (5). R.I. Gen. Laws § 44-30-85(a)³ provides penalties be imposed for willful neglect but

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).

(b) *Estimated tax.* If an individual fails to file a declaration of estimated Rhode Island personal income tax as required by § 44-30-55, or to pay any installment of the tax as required by § 44-30-56, the individual shall pay interest at the annual rate provided by § 44-1-7 for the period the failure continues, until the fifteenth day of the fourth month following the close of the taxable year. The interest in respect of any unpaid installment shall be computed on the amount by which his or her actual payments and credits in respect of the tax are less than eighty percent (80%) of the installment at the time it is due. Notwithstanding the foregoing, no interest shall be payable if one of the exceptions specified in 26 U.S.C. § 6654(d)(1) or (2) would apply if the exceptions referred to the corresponding Rhode Island tax amounts and returns.

³ R.I. Gen. Laws § 44-30-85 states 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.

(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

excludes penalties for reasonable cause. R.I. Gen. Laws § 44-30-85(b)⁴ provides penalties for a negligence.

VI. FINDINGS OF FACT

1. On or about June 11, 2014, the Division issued a Notice of Hearing and Appointment of Hearing Officer.
2. A hearing was held on September 15, 2014 with the parties resting on the record.
3. The Taxpayers requested a modification of their 2011 income based on their repayment of _____ that had been previously received as a long-term disability payment.
4. R.I. Gen. Laws § 44-30-2.6 only allows a standard deduction be used for Rhode Island personal income tax returns.
5. 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 to deduct (modify) their repayment of _____ (long-term disability payment) on their 2011 resident Rhode Island income.

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.

(b) Negligence. If any part of a deficiency is due to negligence or intentional disregard of the Rhode Island personal income tax law or rules or regulations under this section (but without intent to defraud), five percent (5%) of that part of the deficiency shall be added to the tax.

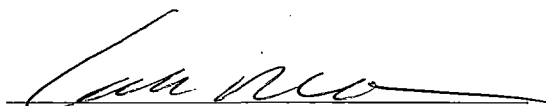
⁴ *Id.*

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 deduct (modify) their repayment of (long-term disability payment) on their 2011 resident Rhode Island income. The Division properly denied the Taxpayers' request for deduction (modification) and properly issued a notice of deficiency for the taxes and interest owed without including the requested deduction. However, the undersigned would recommend the Division revisit the issue of reasonable cause and willful neglect – if those are the statutory bases for the penalties - in the penalty statute of R.I. Gen. Laws § 44-30-85(a) in order to determine whether those penalties (failure to pay and failure to file) apply.

Date: October 7, 2014



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: 10/29/14


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 30th day of October, 2014 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' representative's address on file with the Division and by hand delivery to Linda Riordan, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

