

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2015-03

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

IN THE MATTER OF:

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**Case No.: 14-T-0087
withholding**

Taxpayer.

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to a Notice of Hearing and Appointment of Hearing Officer (“Notice”) that was issued on November 25, 2014 to (“Taxpayer”) by the Division of Taxation (“Division”) in response to the Taxpayer’s request for hearing filed with the Division. A hearing was held January 9, 2015 with the Division represented by counsel and the Taxpayer represented by a corporate officer. 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.*, *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 Taxpayer can receive a refund of interest and penalties already paid on its 2009 withholding tax assessment (that it is not disputing).

IV. MATERIAL FACTS

Principal Revenue Agent, testified on behalf of the Division. He testified that the Division conducted an audit of the Taxpayer and a discrepancy was found for 2009 between the total amount of withholding tax withheld by the Taxpayer and the amount of withholding tax submitted by the Taxpayer to the Division. He testified that more withholding tax was withheld by the Taxpayer than was submitted to the Division. See Division's Exhibits C and D. He testified that a Notice of Deficiency was issued in 2013 to the Taxpayer for 2009 withholding tax which represented the amount of the discrepancy. See Division's Exhibit B (Notice of Deficiency). He testified that pursuant to R.I. Gen. Laws § 44-30-84, interest was imposed on the tax owed and pursuant to R.I. Gen. Laws § 33-30-85, late filing and late payment penalties were imposed.

The Taxpayer's owner ("Owner") testified on behalf of the Taxpayer. He testified that the Taxpayer's failure to submit its entire withholding tax for 2009 was only discovered by the Division in 2013. He testified that the Taxpayer had paid its entire 2009 withholding tax to its payroll company but the payroll company went into bankruptcy and had not paid the entire amount to the Division. He testified that the Taxpayer's proof of claim in the payroll company's bankruptcy was filed in 2010 and did not include the 2009 withholding tax because the Taxpayer did not know then that the payroll company had not transmitted the withholding tax to the Division. See Taxpayer's Exhibit C (Taxpayer's 2010 proof of claim). He testified that when the Taxpayer did have notice of tax problems, it always followed up with its payroll company. See Taxpayer's Exhibit D (Taxpayer's 2010 facsimile to the payroll company forwarding a 2010 Division tax notice). The Owner testified that the Taxpayer had its sales permit and liquor licenses cleared for 2010, 2011, and 2012 whereby the Division provided letters of good standing

that the Taxpayer was up to date with its tax payments. The Owner testified that it is unfair to receive notice in 2013 for the non-payment of 2009 taxes and have to pay the tax twice (to the payroll company and the Division) and have to pay interest for 3½ years and penalties.

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, 457 (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) (internal citation omitted). In cases where a statute may contain ambiguous language, the 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 Taxpayer has paid the 2009 withholding tax, interest, and penalties. The Taxpayer does not dispute that it owed said tax but argued that it should receive a refund of its payment of the interest and penalties because it is unfair that it has to pay interest for over three (3) years.

The Division argued that pursuant to R.I. Gen. Laws § 44-30-76,¹ employers are obligated to withhold tax and while it is unfortunate that the payroll company did not do what it should do, the obligation rests with the Taxpayer. The Division argued that pursuant to R.I. Gen. Laws § 44-30-83,² it was within the three (3) year period to collect the 2009 withholding tax. The Division argued that the Taxpayer cannot rely on the tax clearances it received because at those times the Division was not aware of the 2009 withholding deficiency.

C. Whether Interest and Penalties are Owed

Pursuant to R.I. Gen. Laws § 44-30-84,³ the Division imposed interest on the withholding assessment. Pursuant to R.I. Gen. Laws § 44-30-85,⁴ the Division imposed penalties for late

¹ R.I. Gen. Laws § 44-30-76 provides in part as follows:

Employer's liability for withheld taxes – Violations – Penalties. – (a)(1) Every employer required to deduct and withhold Rhode Island personal income tax is hereby made liable for the tax. In addition, any amount of Rhode Island personal income tax actually deducted and withheld shall be held to be a special fund in trust for the tax administrator. No employee shall have any right of action against his or her employer in respect to any moneys deducted and withheld from his or her wages and required to be paid over to the tax administrator in compliance or in intended compliance with this law.

(2) For purposes of this section the term "employer" includes an officer or employee of a corporation, including a dissolved corporation, or a member or employee of a partnership, if the officer, employee, or member is under a duty to deduct and withhold Rhode Island personal income tax.

² 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.

³ R.I. Gen. Laws § 44-30-84 states in part as follows:

(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).

⁴ R.I. Gen. Laws § 44-30-85 states in part as follows:

(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

filing and late payment. R.I. Gen. Laws § 44-30-85(a)(1) and (2) provides that a late filing and late payment penalty respectively shall be imposed unless it is shown the late filing and late payment are due to reasonable cause and not willful neglect. The Taxpayer demonstrated that it had paid the withholding tax to the payroll company but the payroll company failed to transmit the entire amount. The Taxpayer has paid that missing amount to the Division. It is the Taxpayer's obligation and not a payroll company's obligation to ensure payment of withholding tax to the Division. However, the late filing and late payment of the 2009 withholding tax was not due to actions on the part of the Taxpayer as it demonstrated it had tried to make payments but its payroll company went into bankruptcy and failed to make the payments. The Taxpayer was not willfully neglectful of its obligations to pay the withholding tax.

Based on the forgoing, the Taxpayer owes the statutory interest but the penalties are struck since reasonable cause was shown by the Taxpayer for the late filing and late payment.

VI. FINDINGS OF FACT

1. This matter came before the undersigned as a result of a Notice of Hearing and Appointment of Hearing Officer.
2. A hearing was held on January 9, 2015. The parties rested on the record.
3. The 2009 withholding tax assessment was not disputed. The Taxpayer sought a refund of penalties and interest paid on the tax assessment.

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.

4. The facts contained in Section 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.*

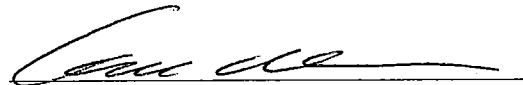
2. Pursuant to R.I. Gen. Laws § 44-30-84, the Taxpayer owed the interest on the tax assessment. Pursuant to R.I. Gen. Laws § 44-30-85, the Taxpayer does not owe the assessed penalties.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-30-84, the Taxpayer owes the interest on the tax assessment. Pursuant to R.I. Gen. Laws § 44-30-85, the Taxpayer does not owe the penalties and the penalties shall be refunded.

Date: 2/12/15

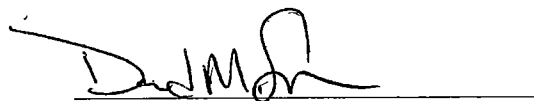

Catherine R. Warren
Hearing Officer

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: 2/24/15


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 THE FOLLOWING WHICH STATES AS FOLLOWS:

R.I. Gen. Laws § 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 24 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 Taxpayer's address on file with the Division of Taxation and by hand delivery to Meaghan Kelly, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

