STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2022-04

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

IN THE MATTER OF:	:	**Case No.: 21-T-186**
	:	**personal income tax**
Taxpayers.	:	

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 September 10, 2021 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 January 14, 2022 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 January 14, 2022.[2] 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

[1] The initial notice scheduled a prehearing conference for October 21, 2021 and indicated that a default could be entered against the Taxpayer if he did not appear. Said notice was sent by first class and certified mail. The Taxpayer received a copy of said notice. Division's Exhibit Nine (9) (said notice with United States Post Office tracking sheet showing certified mail was delivered). The Taxpayer did not appear at the prehearing conference. A notice dated December 2, 2021 scheduling this matter for a full hearing by telephone on January 14, 2022 was forwarded to the Taxpayer by first class and certified mail. This notice again indicated to the Taxpayer that a default could be entered against him if he did not appear. The Taxpayer received a copy of the December 2, 2021 notice. Division's Exhibit Ten (10) (December 2, 2021 notice with United States Post Office tracking sheet showing certified mail was delivered). The address used by the Division was the Taxpayer's address most recently supplied by the Taxpayer to the Division. Division's Exhibits Six (6) (Taxpayer's payment coupons) and Seven (7) (Taxpayer's request for hearing).
[2] Due to the Covid19 pandemic, the hearing was held by telephone.

not appearing at hearing.[3] The Division was represented by counsel who 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 Hearing Regulation, and 220-RICR-50-10-2, Department of Administration's *Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Taxpayer owed Rhode Island income tax for 2018.

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. He testified that the Taxpayer filed a 2018 form 1040 Rhode Island resident income tax return with the Division on April 15, 2019. He testified that the Taxpayer filed as married but separate but did not include any dollar items on the return. Division's Exhibit One (1). He testified the Taxpayer filed another 2018 1040 Rhode Island income tax return dated December 9, 2019 which took the standard deduction and indicated a request for a refund but indicated a federal adjusted income of zero dollars. Division's Exhibit Two (2) (amended 2018 return filed December 9, 2018). He testified that based on these returns, the Division requested further information from the Taxpayer regarding his return. Division's Exhibit Three (3) (January 14, 2021 letter from Division to Taxpayer requesting a copy of his federal 2018 tax return and W-2). He testified the Taxpayer provided a W-2, a 1099, a 1099(G), and a 1099 interest form to the Division. Division's Exhibit Four (4).

[3] The Notice informed the Taxpayers that failure to appear at hearing could lead to a default being entered. The Hearing Regulation provides that a defaulted party be given notice of the default by mail and said party may request reinstatement of the matter pursuant to a motion for reconsideration as set forth in the Hearing Regulation.

He testified the Division used the information from the submitted documents and totaled the Taxpayer's income and applied the standard deduction, the Taxpayer's married but separate status, his withholding, and calculated the Taxpayer's tax due for 2018. He testified that a notice of deficiency for the tax owed, interest, and late penalty was forwarded to the Taxpayer. Division's Exhibits 11 and 12 (May 10, 2021 notice of deficiency and June 25, 2021 notice of assessment). He testified the Taxpayer requested a hearing. He testified that the Taxpayer apparently believed that under the U.S. Constitution, he was not subject to income tax, so the appeal was forwarded directly to administrative hearing rather than holding a preliminary conference. Division's Exhibits Seven (7) and Eight (8). .

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. Whether the Taxpayer Owes Income Tax

R.I. Gen. Laws § 44-30-1 *et seq*. provides for the payment of personal income tax. It was undisputed at hearing that the Taxpayer was a Rhode Island resident in 2018 and received income in 2018 and owed income tax in Rhode Island in 2018. The Taxpayer lived in Rhode Island and received Rhode Island income. The Taxpayer initially filed a Rhode Island income tax return on April 15, 2019 and then filed an amended Rhode Island income tax return on December 9, 2019. The Taxpayer did not appear at hearing to explain what he meant by his statements in his tax return filings or request for hearing whereby he seemed to indicate that he believed the Social Security Administration was responsible for any taxes, and that he had not been paid any income from a trade or business. It is unclear how the Taxpayer's statements relate to the Rhode Island income tax statute which provides that the amount of income tax owed is calculated using a taxpayer's federal gross adjusted income and provides for the Division to collect state 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. Pursuant to R.I. Gen. Laws § 44-30-6, the term "income" as used in the federal income tax law is deemed to be the same in Rhode Island. Income is very broadly defined and includes wages. *Commissioner of Internal Revenue v. Kowalski*, 434 U.S. 77, 82-83 (U.S. 1977); *Commissioner of Internal Revenue v. Glenshaw Glass Co.*, 348 U.S. 426 (1955); and *Coleman v. Commissioner of Internal Revenue*, 791 F.2d 68 (7th Cir. 1986). The Taxpayer provided no evidence that he did not earn any Rhode Island income or that he did not owe income tax in Rhode Island or that he is somehow exempt from paying income tax to Rhode Island.

Therefore, the Division properly issued the Taxpayer a notice of assessment for the income tax owed for 2018. See R.I. Gen. Laws § 44-30-81. The Division has updated the amounts owed in the notice of assessment as of January 13, 2022. Division's Exhibit 13. Pursuant to R.I. Gen. Laws § 44-30-84,[4] the Division imposed interest on the late payment of the tax owed. Pursuant to R.I. Gen. Laws § 44-30-85,[5] the Division imposed a late filing penalty and a late payment penalty for the late payment of the tax owed.

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[4] 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).

[5] 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;
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> (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.

VI. FINDINGS OF FACT

1. On or about September 10, 2021, 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 January 14, 2022. 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:

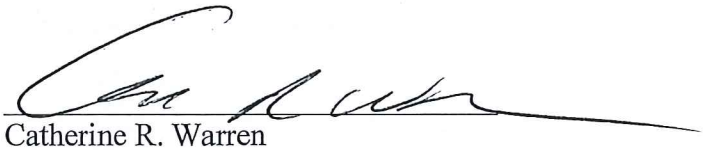
1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq*. and R.I. Gen. Laws § 44-30-1 *et seq*.

2. Pursuant to R.I. Gen. Laws § 44-30-1 *et seq*., the Taxpayer owes the assessed income tax, interest, and penalty for 2018 as updated in Exhibit 13.

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 for 2018 as set forth in Division's Exhibit 13.

Date: January 27, 2022



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: 1/20/2022

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.

CERTIFICATION

I hereby certify that on the 28th day of January, 2022 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 Taxpayers' address on file with the Division and by electronic delivery to Michael Brady, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

Gail Belanoco