STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2022-06

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-168**
	:	**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 dated August 18, 2021 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing. The Taxpayer did not appear for prehearing conferences scheduled for September 21, 2021 and December 7, 2021. By letter dated January 11, 2022, the Taxpayer was notified that a full hearing would be held on February 17, 2022. A hearing was held on February 17, 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 February 17, 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 and rested on the record.

[1] The notice for the initial September 21, 2021 prehearing conference was sent by first class and certified mail to the Taxpayer to the address on record with the Division. The certified mail was delivered. Division's Exhibit Ten (10) (said notice and print out of the United States Post Office certified mail tracking sheet). The full hearing was rescheduled for February 17, 2022 at which time the Taxpayer did not appear. Notice of the February 17, 2022 hearing was sent to the Taxpayer by letter dated January 11, 2022, and it was sent by first class and certified mail to the Taxpayer's address on record with the Division. The Taxpayer received the certified notice. Division's Exhibit 11 (January 11, 2022 letter and print out of the United States Post Officer certified mail tracking sheet).

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.*, and the Hearing Regulation.

III. ISSUE

Whether the Taxpayer owes the Division's assessment for tax year 2016.

IV. MATERIAL FACTS AND TESTIMONY

, Principal Tax Auditor, testified on behalf of the Division. He testified that the Division's assessment is based on what is referred to as a federal audit change. He testified the Taxpayer filed her 2016 income tax return in 2017. He testified that the Taxpayer had earned zero income under her federal return, so that the Division refunded the Taxpayer her withholding tax, and the Rhode Island earned income tax credit. He testified that the Rhode Island earned income tax is a tax break for low to moderate income taxpayers and is based on the federal earned income tax credit as it is a percentage of the federal earned income tax credit. He testified that subsequent to the Division issuing a refund to the Taxpayer, the IRS adjusted the Taxpayer's federal income to disallow the earned income tax. He testified that the Division reviewed the Taxpayer's return, and as that federal credit was no longer allowed, the Taxpayer was no longer allowed to claim that same credit in Rhode Island. He testified that by statute, the Taxpayer was required to file an amended return, but she did not so that the Division issued a notice of assessment to the Taxpayer for the earned income credit and interest and penalty. He testified that the Taxpayer requested a hearing. Division's Exhibits One (1) (Taxpayer's 2016 personal income tax return); Three (3) (notice of assessment dated April 1, 2020); Five (5) (Taxpayer's request for hearing); Six (6) (scheduling preliminary review); Seven (7) (second scheduling of preliminary review); Eight (8) (third scheduling of preliminary review); Nine (9) (May 30, 2021 letter to

Taxpayer advising matter would be sent to administrative review as was unable to hold preliminary review); and 12 (statement of account of what Taxpayer owes as of February 17, 2022).

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 § 44-30-59 provides in part follows:

> (a) Subject to regulations of the tax administrator, if the amount of a taxpayer's federal taxable income reported on his or her federal income tax return for any taxable year beginning on or after January 1, 1971, is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report the change or correction in federal taxable income within ninety (90) days after the final determination of the change, correction, or renegotiation, or as otherwise required by the tax administrator, and shall concede the accuracy of the determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within ninety (90) days thereafter an amended Rhode Island personal income tax return and shall give any information that the tax administrator may require.

R.I. Gen. Laws § 44-30-2.6(a) provides that Rhode Island taxable income means federal taxable income. Thus, the State's income tax is based on a taxpayer's federal adjusted gross income. R.I. Gen. Laws § 44-30-2.6(c)(2)(N) provides that a taxpayer who is entitled to a federal earned income credit shall be allowed a Rhode Island earned income credit equal to 25% of the federal earned income credit.

C. Whether the Taxpayer Owes the Assessment for Tax Year 2016

It was undisputed that the IRS disallowed the Taxpayer's 2016 federal earned income credit. As a result, the Taxpayer was no longer entitled to the State's earned income tax credit as the State's earned income tax credit is based on a taxpayer receiving the federal earned income tax credit. R.I. Gen. Laws § 44-30-2.6(c)(2)(N). The Taxpayer was required by R.I. Gen. Laws § 44-30-59 to amend her State 2017 return as her 2016 income had changed (earned income credit disallowed). It was undisputed that the Taxpayer did not file an amended return with the Division reflecting her change in federal income. Pursuant to R.I. Gen. Laws § 44-30-83(b)(1)(iii),[2] 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 report of a change in income pursuant to R.I. Gen. Laws

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[2] R.I. Gen. Laws § 44-30-83 provides in part as follows:

(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

(iii) The taxpayer fails to file a report, pursuant to § 44-30-59, of a change, correction, or amended return, increasing his or her federal taxable income as reported on his or her federal income tax return or to report a change or correction that is treated in the same manner as if it were a deficiency for federal income tax purposes.

§ 44-30-59.[3] Therefore, the Division properly issued the Taxpayer a Notice of Deficiency for the return of the earned income tax credit for 2016 based on her federally adjusted income. Pursuant to R.I. Gen. Laws § 44-30-81 and R.I. Gen. Laws § 44-30-84,[4] the Division imposed interest for the late payment of the amount owed. Pursuant to R.I. Gen. Laws § 44-30-85,[5] the Division imposed a late payment penalty for the late payment of the amount owed.

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[3] The Taxpayer filed her 2016 tax return in 2017 but the actual date is not in the record. The initial notice of assessment was issued on April 1, 2020 so the assessment could have been made within the three (3) period. However, if it was not, the Taxpayer's failure to amend her 2016 tax return makes the three (3) year period inapplicable.

[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).
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> ***
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> (d) Payment within ten (10) days after notice and demand. If notice and demand is made for payment of any amount, and the amount is paid within ten (10) days after the effective date of the notice and demand under § 44-30-81(b), interest under this section on the amount so paid shall not be imposed for the period after the date of the notice and demand

R.I. Gen. Laws § 44-30-81 provides in part as follows:

> Notice of deficiency.
>
> (a) General. If upon examination of a taxpayer's return the tax administrator determines that there is a deficiency, the administrator may mail a notice of deficiency to the taxpayer at his or her last known address in or out of this state. ***
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> (b) Notice of deficiency as assessment and demand for tax. After thirty (30) days from the mailing of a notice of deficiency, the notice shall be an assessment and a notice and demand for tax to be paid at the place and time specified in the notice, together with interest, additions to tax, and civil penalties stated in the notice. ***

[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:
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> ***
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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
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> (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

VI. FINDINGS OF FACT

1. On or about August 18, 2021, the Division issued a Notice of Pre-Hearing Conference and Appointment of Hearing Officer to the Taxpayer.

2. By letter dated January 11, 2022, the Taxpayer was notified that a full hearing would be held on February 17, 2022

3. A hearing in this matter was held on February 17, 2022. The Taxpayer did not appear. As the Taxpayer was adequately notified of the hearing, a hearing was held with the Division resting on the record. The Taxpayer is in default for failing to appear at the hearing.

3. The Taxpayer did not file an amended 2016 Rhode Island personal income tax return after the IRS disallowed her federal earned income tax credit.

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 § 44-30-59, the Taxpayer was required to file an amended return. The Taxpayer failed to file an amended 2016 Rhode Island personal income tax return accounting for the fact that IRS disallowed the federal earned income tax credit.

3. The Taxpayer owes the amount of the earned income tax credit, interest, and a penalty.

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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.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-30-59, the Taxpayer failed to file an amended Rhode Island personal income tax return for 2016 accounting for the disallowance of her 2016 federal earned income tax. Therefore, pursuant to R.I. Gen. Laws § 44-30-1 *et seq.*, R.I. Gen. Laws § 44-30-59, R.I. Gen. Laws § 33-30-83(b)(1)(iii), R.I. Gen. Laws § 44-30-84, and R.I. Gen. Laws § 44-30-85, the Division properly assessed the Taxpayer for amount of the earned income tax and interest and late penalty owed as reflected in Division's Exhibit 12.

Date: March 8, 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: 3/8/22

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 8th day of March, 2022 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 and by hand delivery to Michael Brady, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

Gail Belasco