STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2022-08

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-167**
	:	**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 ("Notice") 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 a prehearing conference scheduled for September 21, 2021, and a hearing was scheduled for November 2, 2021. The Taxpayer requested a continuance of that hearing date, and a new date was scheduled. By letter dated February 1, 2022, the Taxpayer was notified that a full hearing would be held on March 21, 2022. A hearing was held on March 21, 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 March 21, 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 who rested on the record.

[1] Notice of the March 21, 2022 hearing was sent to the Taxpayer by letter dated February 1, 2022, and it was sent by first class and certified mail to the Taxpayer's address on record with the Division. The Taxpayer did not pick up the certified notice. Division's Exhibits Nine (9) (February 1, 2022 letter and print out of the United States Post Office certified mail tracking sheet); and Exhibit One (1) (Taxpayer's request for hearing with his address).

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 2013.

IV. MATERIAL FACTS AND TESTIMONY

Principal Tax Auditor, testified on behalf of the Division. He testified the Division received information from the Federal Internal Revenue Service ("IRS") by which the IRS provided a summary of its audit of the Taxpayer's personal income tax owed for 2013 which showed the Taxpayer's total adjusted gross income. He testified that using this IRS information, the Division prepared a correction notice for the Taxpayer's 2013 Rhode Island income tax return. He testified that in preparing the return for the Taxpayer, the Division applied the standard deduction and one exemption and had the Taxpayer file as married but filing separate. Exhibit 13. He testified that based on this corrected tax return, a notice of assessment was issued to the Taxpayer assessing the Taxpayer for tax, interest, and penalty owed. Exhibit Ten (10). He testified that the amount owed by the Taxpayer has been updated as of date of hearing. Exhibit 11.

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 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;
> (2) Every resident estate or trust required to file a federal income tax return for the taxable year, or having any Rhode Island income for the taxable year, determined under § 44-30-16;
> (3) Every nonresident individual having Rhode Island income for the taxable year, determined under § 44-30-32; and
> (4) Every nonresident estate or trust having items of income derived from Rhode Island sources, determined in accordance with the applicable rules of § 44-30-32 as in the case of a nonresident individual, in excess of its federal exemption.

R.I. Gen. Laws § 44-30-52 provides as follows:

> Time and place for filing returns and paying tax. A person required to make and file a Rhode Island personal income tax return shall, without assessment, notice, or demand, pay any tax due thereon to the tax administrator on or before the date fixed for filing the return, determined without regard to any extension of time for filing the return. The tax administrator shall prescribe the place for filing any return, declaration, statement, or other document and for payment of the tax.

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.

C. Whether the Taxpayer Owes the Assessment for Tax Year 2013

The Notice indicated that the Taxpayer did not file a 2013 Rhode Island income tax return. The Division's exhibits indicated that the Taxpayer had not filed a 2013 Rhode Island income tax return. Exhibits Five (5) and (6) (letters to the Taxpayer from the Division indicating the Division had no record of the Taxpayer filing a 2013 income tax return). It was undisputed that the Taxpayer did not file a 2013 Rhode Island tax return with the Division. The Taxpayer was required by R.I. Gen. Laws § 44-30-51 and R.I. Gen. Laws § 44-30-51 to file a 2013 income tax return. Pursuant to R.I. Gen. Laws § 44-30-83(b)(1)(i),[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 return. Therefore, the Division properly issued the Taxpayer a Notice of Assessment for 2013 based on his federally adjusted income. Pursuant to R.I. Gen. Laws § 44-30-81 and R.I. Gen. Laws § 44-30-84,[3] the

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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;

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[3] 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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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. ***

(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. ***

Division imposed interest for the late payment of the amount owed. Pursuant to R.I. Gen. Laws § 44-30-85,[4] the Division imposed a late payment penalty for the late payment of the amount owed. Exhibits Ten (10) and 11.

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 February 1, 2022, the Taxpayer was notified that a full hearing would be held on March 21, 2022

3. A hearing in this matter was held on March 21, 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.

4. The Taxpayer did not file a 2013 Rhode Island personal income tax return.

5. The facts contained in Section IV and V are incorporated by reference herein.

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[4] 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 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.

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 § 44-30-51 and R.I. Gen. Laws § 44-30-52, the Taxpayer was required to file a 2013 Rhode Island personal income tax return. The Taxpayer did not file a 2013 Rhode Island personal income tax return.

3. Pursuant to R.I. Gen. Laws § 44-30-1 *et seq*., the Taxpayer owes the assessed income tax, interest, and penalty for 2013 as updated in Exhibit 11.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-30-51 and R.I. Gen. Laws § 44-30-52, the Taxpayer failed to file a 2013 Rhode Island personal income tax return. Therefore, pursuant to R.I. Gen. Laws § 44-30-1 *et seq*., R.I. Gen. Laws § 44-30-51, R.I. Gen. Laws § 44-30-52, R.I. Gen. Laws § 33-30-83(b)(1)(i), R.I. Gen. Laws § 44-30-81, 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 income tax and interest and late penalty owed as reflected in Division's Exhibit 11.

Date: April 4, 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: 4/5/22

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 5th day of April, 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