STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2022-11

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-203**
	:	**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 November 5, 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 held on April 13, 2022. The Division was represented by counsel, and the Taxpayer was *pro se*. 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.*, and 280-RICR-20-00-2 *Administrative Hearing Procedures*.

III. ISSUE

Whether the Taxpayer owes the Division's assessment for tax year 2020.

IV. MATERIAL FACTS AND TESTIMONY

Principal Tax Auditor, testified on behalf of the Division. He testified that he spoke to the Taxpayer regarding her request for hearing and at her preliminary review and is familiar with this matter. He testified that the Taxpayer received unemployment compensation for 2020. He testified that the Federal government chose to exempt the first received in

unemployment compensation in 2020 as taxable income. He testified as to the calculations made in the Taxpayer's 2020 nonresident Rhode Island income tax return and her 2020 Federal return. He testified that R.I. Gen. Laws § 44-30-12(b)(6) includes unemployment compensation as taxable income so that the in unemployment received by the Taxpayer in 2020 that was exempt under Federal law was added back to the Taxpayer's taxable income. He testified that the calculations adding back the to the Taxpayer's income are on her Rhode Island tax return as are the calculations of how the Taxpayer's Rhode Island income was sourced to Rhode Island. Division's Exhibits One (1) (2020 nonresident income tax return; schedule M); Two (2) (2020 Federal return); and Three (3) (notice of assessment dated June 30, 2021). On cross-examination, he testified that he is not aware of the Taxpayer's work situation, but her tax preparer prepared her return based on her W-2 which indicated that she had Rhode Island income.

The Taxpayer testified in her behalf. She testified that she worked for a Rhode Island company and was laid off in May, 2020 due to COVID19. She testified that she lost her job through no fault of her own, and that Rhode Island is preying on those that lost their jobs. She testified that she never left Massachusetts where she lives while working for the Rhode Island company in 2020 (she was always remote) and believes Massachusetts would have exempted the in unemployment compensation. She testified that she filed her 2020 non resident return with Rhode Island but did not pay the tax owed which was indicated on her return. Division's Exhibit One (1). On cross-examination, she testified that she did not physically work in Rhode Island in 2020 but received income from a Rhode Island company. She testified that when she was laid off in 2020, she applied to Massachusetts for unemployment but was told go to Rhode Island, so she received Rhode Island unemployment.

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:
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> (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;
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> ***
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> (3) Every nonresident individual having Rhode Island income for the taxable year, determined under § 44-30-32; and
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> ***

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. However, there also modifications that have to be made to that Federal adjusted gross income. 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.
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> (b) Modifications increasing federal adjusted gross income. There shall be added to federal adjusted gross income:
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> (6) The amount equal to any unemployment compensation received but not included in federal adjusted gross income.

As provided for in R.I. Gen. Laws § 44-30-51(a)(3), nonresident individuals with Rhode Island source income pursuant to R.I. Gen. Laws § 44-30-32 shall file a Rhode Island tax return.

C. Arguments

The Division argued that income from or sourced from Rhode Island is taxable income in Rhode Island and prior to and post COVID19, unemployment compensation was and still is taxable income in Rhode Island. The Division argued that the Federal government can make its own decisions what to tax, and Rhode Island makes its own decision. The Division argued that while the Federal government chose to exempt from unemployment compensation in 2020, Rhode Island did not change its law that taxed unemployment compensation as income.

The Taxpayer argued that it was unfair to tax her on her unemployment when it would not have been taxed in Massachusetts and was not taxed by the Federal government. She argued that Rhode Island was unfair, and it was taxation without representation.

D. Whether the Taxpayer Owes the Assessment for Tax Year 2020

Pursuant to R.I. Gen. Laws § 44-30-51 and R.I. Gen. Laws § 44-30-32, 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. While the Taxpayer was working remotely, she received income from a Rhode Island company so had Rhode Island source income in 2020. This is evidenced by her W-2 and nonresident income tax return. Division's Exhibits One (1); Two (2), and Nine (9) (Division's records of Taxpayer's W-2).[1]

R.I. Gen. Laws § 44-30-12(b)(6) provides that unemployment compensation is taxable income. While of the Taxpayer's unemployment compensation was exempted from her 2020 Federal adjusted gross income, Rhode Island did not change its law regarding taxing unemployment compensation. The Taxpayer received Rhode Island income in 2020. All of her unemployment was sourced to Rhode Island and by statute was included in her taxable income. While the Taxpayer did not like the choice made by the General Assembly in the State of Rhode Island to tax all unemployment as income, the issue is not one of policy but whether under the law the Taxpayer owes tax for her unemployment compensation. The law provides that all unemployment compensation is taxable income and that includes any unemployment not included in the Federal adjusted gross income.

Therefore, the Division properly issued the Taxpayer a notice of assessment for income tax owed for 2020. R.I. Gen. Laws § 44-30-81. The Division has updated the amounts owed in the

[1] Reference was made to an emergency regulation promulgated in relation to withholding for employees working remotely during the COVID19 state of emergency. 280-RICR-22-55-14. However, this regulation is not applicable. The Taxpayer testified that she always worked remotely; though, in 2019 she went to Rhode Island for training. She testified that in 2020 she never went to Rhode Island for her job before being laid off. This emergency regulation was for people who were working in Rhode Island and then due to COVID19 began working remotely. The Taxpayer was already working remotely. However, it should be noted that the emergency regulation continued to treat income of those employees working remotely outside of Rhode Island due to COVID19 for a Rhode Island employer as receiving Rhode Island source income.

notice of assessment as of April 11, 2022. Division's Exhibit Ten (10). Pursuant to R.I. Gen. Laws § 44-30-84,[2] the Division imposed interest on the late payment of the tax owed. Pursuant to R.I. Gen. Laws § 44-30-85,[3] the Division imposed a late payment penalty for the late payment of the tax owed.

VI. FINDINGS OF FACT

1. On or about November 5, 2021, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayer.

2. A hearing was held on April 13, 2022 with the parties resting on the record.

3. The Taxpayer received Rhode Island source income in 2020. The Taxpayer received unemployment compensation in 2020.

4. The Taxpayer filed a 2020 nonresident return with the State of Rhode Island.

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[2] R.I. Gen. Laws § 44-30-84 provides in part as follows:

> Interest on underpayment. – (a) General.
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> (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).

[3] 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.

5. The Taxpayer did not pay the amount indicated that she owed to Rhode Island on her 2020 nonresident return filed with the State of Rhode Island.

6. The Division issued the Taxpayer a notice of assessment dated June 30, 2021 as set forth in Division's Exhibit Three (3). The assessment has been updated as set forth in Division's Exhibit Ten (10).

7. 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 § 44-30-1 *et seq*. and R.I. Gen. Laws § 44-1-1 *et seq*.

2. Pursuant to R.I. Gen. Laws § 44-30-12(b)(6), R.I. Gen. Laws § 44-30-51, and R.I. Gen. Laws § 44-30-52, the Taxpayer was required to pay tax on all of her unemployment compensation including the exempted from her 2020 Federal adjusted gross income.

3. Pursuant to R.I. Gen. Laws § 44-30-1 *et seq*., the Taxpayer owes the assessed income tax, interest, and penalty for 2020 as updated in Division's Exhibit Ten (10).

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-30-12(b)(6), R.I. Gen. Laws § 44-30-51, R.I. Gen. Laws § 44-30-52, R.I. Gen. Laws § 44-30-32, R.I. Gen. Laws § 44-30-84, and R.I. Gen. Laws § 44-30-85, owes the assessed tax, interest, and penalty as reflected in Division's Exhibit Ten (10).

Date: April 28, 2022

Catherine R. Warren
Hearing Office

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: 5/2/2022

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 2nd day of May, 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 electronic delivery to Michael Brady, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

Gail Belasco