

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-17

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

IN THE MATTER OF:

Taxpayer.

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**Case No.: 24-T-003
Personal Income Tax**

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 January 31, 2024 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 June 26, 2024. The Division was represented by counsel, and the Taxpayer left and refused to participate. The Division 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

(“Auditor”), Principal Tax Auditor, testified on behalf of the Division. He testified that he reviewed the Taxpayer’s 2020 return after the Taxpayer requested a hearing. He testified that the Taxpayer filed his 2020 Rhode Island resident personal income tax return on

October 14, 2021 and requested a refund. He testified the Taxpayer did not modify his federal adjusted income on his return. He testified that the requested refund was not issued to the Taxpayer as the system flagged the Taxpayer's return for further review. He testified the Division requested further information from the Taxpayer including a copy of his 1099-G since the Division had received a report from the Department of Labor and Training ("DLT") that the Taxpayer received unemployment in 2020. He testified that the Taxpayer did not respond but that DLT's 1099-G for the Taxpayer showed that the Taxpayer received in unemployment in 2020. He testified that since the Division did not receive any further information from the Taxpayer, the Division issued a notice of deficiency to the Taxpayer for income tax owed.

The Auditor testified that the federal government chose to exempt the first received in unemployment compensation in 2020 as taxable income. He testified that R.I. Gen. Laws § 44-30-12(b)(6) includes unemployment compensation as taxable income so that the unemployment received by the Taxpayer in 2020 was added back to the Taxpayer's taxable income. He testified that further adjusted assessments were issued to the Taxpayer such as the Taxpayer failed to include his personal exemption in his return so that was recalculated into the assessment. He testified the Taxpayer requested a hearing but requested the preliminary conference be delayed because he was trying to resolve a federal tax case. He testified that as the matter could not be resolved, it was sent for administrative hearing. Division's Exhibits One (1) (Taxpayer's 2020 return received by Division on October 14, 2021); Two (2) (Division's records on said return); Three (3) (November 5, 2021 Division letter to Taxpayer requesting further information including a copy of the 1099-G); Four (4) (Taxpayer's 1099-G for 2020 showing his unemployment compensation in 2020); Five (5) (January 31, 2022 notice of deficiency); Six (6) (March 3, 2022 notice of assessment); Seven (7) (March 8, 2022 statement of accounts); Eight (8)

(Division's advisory dated March 28, 2021 regarding the taxability of unemployment benefits in Rhode Island for 2020); Nine (9) (Taxpayer's request for hearing); Ten (10) to 13 and 15 (correspondence between Division and Taxpayer); and 14 (May 4, 2023 statement of accounts). The Auditor testified that Division's Exhibit 18 is the statement of accounts for the Taxpayer as of June 24, 2024, and it includes interest and the late filing and late payment penalties pursuant to R.I. Gen. Laws § 44-30-84 and R.I. Gen. Laws § 44-30-85.

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;

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.

(b) Modifications increasing federal adjusted gross income. There shall be added to federal adjusted gross income:

(6) The amount equal to any unemployment compensation received but not included in federal adjusted gross income.

C. Taxpayer's Motion for Summary Judgment

On March 21, 2024, the Taxpayer filed a motion for summary judgment to which the Division objected. In 2021, a federal law entitled the American Rescue Plan Act ("ARPA") was passed in response to the Covid19 pandemic so that the first \$10,200 from unemployment compensation was excluded from federal personal income taxation in 2020. The Taxpayer argued the federal law exempting 2020 unemployment compensation from income tax preempted Rhode Island law on taxing unemployment compensation. The undersigned issued an order ("Order") on

May 14, 2024 denying the Taxpayer's motion for summary judgment. The Order is reincorporated by reference.¹ The parties agreed to schedule the full hearing on June 26, 2024.

D. Taxpayer's Motion for Disqualification of the Hearing Officer and Division's Attorney

On June 25, 2024, the Taxpayer emailed the Tax Administrator a complaint requesting the hearing officer (the undersigned) and the Division's attorney be disqualified. The Tax Administrator forwarded said complaint to the undersigned and the Division's attorney and informed the Taxpayer the adjudication process allowed the Taxpayer to address differences in statutory interpretation and the Division staff were best situated to address those matters and that he should follow the hearing officer's instructions. The Tax Administrator also stated she would forward the complaint to the Assistant Tax Administrator for a separate independent review.²

¹ The Order found as follows:

Finally, the Taxpayer argued that ARPA voided Rhode Island income tax law. A state law is void to the extent it conflicts with a valid federal law. *Edgar v. MITE Corporation*, 457 U.S. 624 (1982) found a state law will be voided if compliance with both the federal and state law is a physical impossibility or if the state law frustrates the purpose of the objectives of the federal law in some substantial way. Here, it is very easy to comply with both laws. Federal law exempted some unemployment compensation from being taxed for federal income tax. Rhode Island law did not for state income tax. Obviously, a taxpayer can pay income tax separately to the federal government and Rhode Island based on their different calculations of what is owed. The Taxpayer argued that Rhode Island's choice to tax unemployment compensation frustrated the purpose of the ARPA, but ARPA made that choice for federal income tax. Rhode Island continuing to tax unemployment compensation for state income tax was not a substantial frustration of the purpose of ARPA as APRA did not address how states should tax unemployment compensation. (pp.7-8).

The motion for summary judgment also cited to Colorado law and a think tank's summary of tax law. Both were rejected in the Order as irrelevant to Rhode Island's own law. See Order.

² The Tax Administrator's email dated June 25, 2024 and sent to the Taxpayer as well as the hearing officer and Division's attorney stated in part as follows:

I am acknowledging receipt of your complaint and attached exhibits. I am forwarding the documents to the Hearing Officer and Mr. _____ for their review and response, as appropriate, within the administrative hearing process.

Given the status of the matter, it is inappropriate for me to respond directly in this context on any of these issues. The administrative adjudication and appeal processes allow a taxpayer to address any differences in statutory and/or regulatory interpretation and any other related issues, including but not limited to the sufficiency of the adjudication process during the course of the hearing. The Division of Taxation staff involved in those proceedings are best situated to discuss and address those issues with the taxpayer/their authorized and/or legal representative.

On the day of the hearing, the Taxpayer appeared. The undersigned indicated to the Taxpayer that she planned to go on the record to hear arguments from the Taxpayer and the Division's attorney regarding the Taxpayer's motion for disqualification. The Taxpayer refused to stay for the hearing and indicated he first wanted to hear from the Assistant Tax Administrator. The undersigned informed the Taxpayer that the motion for disqualification was properly before her, and if he did not stay for the hearing, she would go on the record and review said motion and if appropriate, hold the hearing. The Taxpayer left and did not participate in the hearing. The hearing was opened, and the hearing officer reviewed the Taxpayer's motion on the record and denied said motion prior to hearing testimony.

The basis for the Taxpayer's motion as stated in his motion was as follows:

- (1) Despite requests for modification, Attorney [redacted] omitted in his Objection (sic) any reference whatsoever to [Taxpayer's] cornerstone argument that the Federal exemption provision 26 USC 65 for \$10,200 and the RI Unemployment statute RIGL 44-30-51 are incompatible and therefore Federal tax law preempts RI tax law under the Supremacy Clause of the US Constitution.³ [renumbered in this decision].
- (2) Hearing Office (sic) Warren cleverly failed to specifically reference the Supremacy Clause in her Order while merely citing a leading case, Edgar v. MITE Corp., 457 US 624, 631 and incredibly offered a misleading and prejudicial rationale: "***It is very easy to comply with both laws.*** (bolded in motion). Federal law exempted some unemployment compensation for being taxed for federal income tax. Rhode Island did not for state income tax. Obviously, a taxpayer can pay income tax separately to the federal government and Rhode Island based on their different calculations of what is owed." Ms. Warren misses the point: The issue is not the form for filing taxes, but per

I have also copied Assistant Tax Administrator [redacted] on this matter and she will be independently reviewing the assertions in your complaint as well.

The statute and rules on administrative hearings on tax matters require informational barriers during the audit and adjudication process. This is to preserve my objectivity in decision-making as I may have to accept, reject, or modify the Hearing Officer's recommendation should this matter proceed to hearing and formal decision.

You should follow the hearing schedule and instructions of the Hearing Officer in this matter.

³ [from motion] In fact, DOR Release ADV 2021-28 (Tax Tips: Unemployment Benefits) Exhibit F acknowledges: "Under federal law enacted earlier this year, up to \$10,200 in unemployment benefits for certain taxpayers is excluded from the taxpayer's income for federal tax purposes for the 2020 tax year. **However, federal and Rhode island law are not the same in this regard.** (bolded and italicized in motion). For Rhode island (sic) tax purposes, all unemployment benefits are counted as income."

Edgar, Id., "Compliance with both the Federal and State laws is impossible" due to Rhode Island's modification provision in its unemployment tax statute. Moreover, her Order was filed prematurely on May 14, 2024 six weeks before the scheduled Hearing (sic).

Alleged Violations: This Complaint and Disqualification is permitted under RI Rules of Procedure for Administrative Hearings and references alleged violations of the Rhode Island Taxpayers' Rights 280 RICR20-00-4.2 "To ensure consistent application of the tax law . . ." and the Rhode Island Rules of Professional Conduct, including but not limited to Rule 3.3 Candor Toward the Tribunal, Rule 4.1 Truthfulness in Statements of Others and Rule 8.4 Misconduct Conduct Involving Misrepresentation and Prejudice to the Administration of Justice.

a. Attorney Recusal

The Division's attorney argued that the Taxpayer's motion was based on a differing of opinion on the law, and there was no basis for recusal for either himself or the hearing officer. As to himself, he indicated that he would not recuse himself as there was no reason as the motion related to disagreements over legal arguments.

b. Hearing Officer Recusal

A hearing officer is presumed to be honest, and the person seeking to disqualify the hearing officer must show by the hearing officer's involvement in building one party's adversarial case and/or by special circumstances that the risk of unfairness is intolerably high. As the Rhode Island Supreme Court held,

Finally, contrary to the petitioner's assertion, legally competent evidence likewise supports the Superior Court's determination that DOH's hearing officer was not required to recuse himself from hearing this matter solely because of his employment with DOH. To overcome the presumption in favor of an adjudicator's honesty and integrity, a party claiming bias or some other disqualifying factor must adduce evidence that: (1) the same person(s) involved in building one party's adversarial case is also adjudicating the determinative issues; and/or (2) other special circumstances render the risk of unfairness intolerably high. *See La Petite Auberge, Inc. v. Rhode Island Commission for Human Rights*, 419 A.2d 274, 285 (R.I. 1980).

The Taxpayer's grounds for recusal are a legal disagreement and a disagreement about how the undersigned discussed his arguments in the Order. The Taxpayer objected the Order did not quote the Constitutional supremacy clause⁴ but only cited a United States Supreme Court case interpreting the clause. *Supra*. He objected to the finding that one can comply with both federal and Rhode Island income tax law. For Rhode Island, unemployment compensation is always taxed⁵ and in 2020, the federal government exempted up to \$10,200 in unemployment compensation from being taxed. It is just a different calculation for the federal and Rhode Island income tax. A disagreement over a legal conclusion in an Order does not show bias, lack of truthfulness, or any prejudice. The Taxpayer did not show any grounds for the undersigned to recuse herself. As a result, the motion was denied, and a hearing held.

E. 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. There was no dispute that the Taxpayer had Rhode Island income in 2020. The only dispute was the taxability of the unemployment compensation that the Taxpayer received in 2020.

R.I. Gen. Laws § 44-30-12(b)(6) provides that unemployment compensation is taxable income. While \$10,200 of the Taxpayer's unemployment compensation was exempted from the

⁴ United States Constitution, Article VI, clause 2 states as follows:

Clause 2. Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

⁵ Indeed, in his motion for disqualification, the Taxpayer cited to the Division's advisory issued in 2021 explaining this very difference and how the change in federal law for 2020 income would not change Rhode Island's law.

Taxpayer's 2020 federal adjusted gross income, Rhode Island did not change its law regarding taxing unemployment compensation. The Taxpayer had Rhode Island unemployment in 2020 and by statute that was included in his taxable income.⁶ While the Taxpayer argued in his motion for summary judgment that the federal law exempting some unemployment in 2020 from income tax preempted state law, his argument is without merit. *Supra*. As already found in the Order, the Taxpayer can make two (2) different calculations for federal and state income for 2020 and pay tax on those calculations. Rhode Island law provides that all unemployment compensation is taxable income and that includes any unemployment not included in the federal adjusted gross income for 2020.

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 notice of assessment as of June 24, 2024. Division's Exhibit 18. Pursuant to R.I. Gen. Laws § 44-30-84,⁷ the Division imposed interest on the late payment of the tax owed. Pursuant to R.I. Gen. Laws § 44-30-85,⁸ the Division imposed a late payment and late filing penalty for the tax owed.

⁶ It is noted that the Taxpayer did not include any of his 2020 unemployment compensation on his 2020 Rhode Island personal income tax return. He received more than \$10,200 in unemployment but not only did not include the entire amount of unemployment received in 2020 in his Rhode Island return but did not include the amount of unemployment over \$10,200 on his return. Division's Exhibit One (1).

⁷ 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).

⁸ 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:

This finding is consistent with a prior Division administrative decision on the taxability of 2020 unemployment compensation. See *In the matter of XXXX, Taxpayer* (2022-11) (5/2/22), 2022 WL 1442889 (R.I.Div.Tax.).

VI. FINDINGS OF FACT

1. On or about January 31, 2024, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayer.
2. A hearing was held on June 26, 2024. The Taxpayer left without participating. The Division rested on the record.
3. The Taxpayer received Rhode Island income in 2020. The Taxpayer received unemployment compensation in 2020.
4. The Taxpayer filed a 2020 resident return with the State of Rhode Island.
5. The Taxpayer did not include any of his 2020 unemployment compensation on his 2020 resident return filed with the State of Rhode Island.
6. The Division issued the Taxpayer notices of assessment and statement of accounts in 2022 and 2023. The assessment has been updated as set forth in Division's Exhibit 18.
7. The facts contained in Section IV and V are incorporated by reference herein.

(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.

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 his unemployment compensation including the \$10,200 exempted from his 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 18.

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 § 44-30-84, and R.I. Gen. Laws § 44-30-85, the Taxpayer owes the assessed tax, interest, and penalty as reflected in Division's Exhibit 18.

Date: July 16, 2024



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: 7/22/24


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 23rd day of July, 2024 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 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.

