

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2025-03

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

IN THE MATTER OF:	:	
	:	
	:	Case No.: 23-T-010
	:	personal income tax
	:	
Taxpayers.	:	
	:	

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to a Notice of Pre-Hearing Conference and Appointment of Hearing Officer (“Notice”) issued on January 24, 2023 to the above-captioned taxpayer (“Taxpayer”)¹ by the Division of Taxation (“Division”). A hearing was held on December 6, 2024. The Division was represented by counsel, and the Taxpayer was *pro se*. The parties rested on the record.²

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 owed Rhode Island income tax for 2017.

¹ While _____ argued that he did not owe any income tax and was not and should not be called a taxpayer, this decision refers to him as the “Taxpayer” for ease of reference.

² The record was reopened for the sole purpose of replacing the Taxpayer’s Exhibit C which is an attachment to Taxpayer’s Exhibit One (1). The parties then both provided arguments on the relevance of the revised exhibit.

IV. MATERIAL FACTS AND TESTIMONY

(“Auditor”), Principal Tax Auditor, testified on behalf of the Division. He testified he obtained information from the LexisNexis database showing that in 2017, the Taxpayer owned Rhode Island property, was registered to vote in Rhode Island, and had a Rhode Island driver's license. Division’s Exhibit’s Two (2) (Taxpayer’s records). He testified pursuant to R.I. Gen. Laws § 44-30-51, all Rhode Island residents have to file income tax returns. He testified the due date for the 2017 income tax filing would usually have been April 15, 2018, but as that was a weekend, the due date was April 17, 2018. He testified the Taxpayer did not file a Rhode Island income tax return for 2017 and had no withholding taken out and made no payments for that year.

The Auditor testified that a LLC (limited liability company) is a pass through entity whereby its income, losses, or liabilities pass through to the members or partners based on the percentage owned. He testified the Division determined the Taxpayer owed income tax based on income the Taxpayer received from a LLC of which he was the only member. He testified the Division made this determination based on said LLC’s 1120S form filed with Rhode Island that also included the 1120S form the LLC filed with the federal government. Division’s Exhibits Three (3) and Four (4) (1120S forms). He testified the Taxpayer was a 100% member of the LLC (“Taxpayer’s LLC”). He testified the Taxpayer’s ownership percentage is included on the K1 form included in the Taxpayer’s State and federal 1120S filings. Division’s Exhibit One (1) (Taxpayer’s LLC records with Secretary of State’s office); Three (3); and Four (4).

The Auditor testified that based on that 2017 income for the pass through entity for which the Taxpayer was the only member, the Division prepared a notice of deficiency for the Taxpayer since he was a non-filer in 2017. He testified the notice of deficiency was forwarded to the Taxpayer, and it set out the income tax, penalties, and interest owed. He testified that 30 days after

the notice of deficiency was forwarded to the Taxpayer, a notice of assessment was forwarded to the Taxpayer. Division's Exhibits Five (5) (notice of deficiency dated June 30, 2022); and Six (6) (notice of assessment). He testified the amount of tax and the late filing and late payment penalties owed did not change but interest had accrued from when the notice of assessment was sent. He testified the Taxpayer requested a hearing on the assessment. He testified the Taxpayer did not pay the assessment, so he obtained a statement of accounts for what is the Taxpayer's current amount owed. Division's Exhibit Seven (7) (statement of accounts dated October 10, 2024).

The Division called the Taxpayer to testify. The Taxpayer testified that he was born in Rhode Island, but he refused to answer questions about where he resided in 2017 and whether he was the sole owner of the Taxpayer's LLC and had "no comment" about the filing and the content of the 1120S forms and K1 forms.

On the Taxpayer's own direct examination, the Taxpayer testified that he was making a special appearance because he denied the Division has jurisdiction over him. He testified he is not a United States citizen and not a United States taxpayer, and that he rescinded all past signatures and contracts which he explained in his "declaration" that he filed the day before the hearing. Taxpayer's Exhibit One (1) (his declaration with attachments including copy of his United States of America passport and submissions thereto). He testified the U.S. Department of State has affirmed he is not a U.S. citizen. He testified he has a United States passport. He testified that he felt working is a right and the government cannot tax a right, so he looked into the matter. He testified that Rhode Island taxes income based on a taxpayer's federal obligations, and since he has no federal obligations, he does not owe Rhode Island tax. On cross-examination, he testified that his passport states his nationality is the United States of America, but he signed an application for the passport indicating that he is not.

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 Statutes³

R.I. Gen. Laws § 44-30-2.6 provides in part as follows:

Rhode Island taxable income — Rate of tax. (a) “Rhode Island taxable income” means federal taxable income as determined under the Internal Revenue Code, 26 U.S.C. § 1 et seq., not including the increase in the basic, standard-deduction amount for married couples filing joint returns as provided in the Jobs and Growth Tax Relief Reconciliation Act of 2003 and the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), and as modified by the modifications in § 44-30-12.

R.I. Gen. Laws § 44-30-12 provides in part as follows:

(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:

³ These were the versions in 2017.

R.I. Gen. Laws § 44-30-51 states in parts as 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.

C. Arguments

The Division argued the Taxpayer was a resident of Rhode Island in 2017 and earned Rhode Island income in 2017 and owes the assessed Rhode Island income tax, penalties, and interest.

The Taxpayer argued that he was confused with his prior filings and did not understand the law. He argued he relies on his declaration of his federal nontaxpayer status and is looking for his rights to be protected.

D. The Internal Revenue Code

Prior to the hearing, the Taxpayer filed a motion for summary judgement which was denied on February 24, 2024 (“First Order”). He then filed a motion for reconsideration of that denial which was denied on July 2, 2024 (“Second Order”). The orders found that as a matter of law, the Taxpayer’s arguments that he is not subject to federal income tax were without merit. The Orders found as a matter of law, the Taxpayer is subject to federal income tax which is the basis of Rhode Island’s income tax assessment, and that he cannot deny that he owed Rhode Island income tax on the argument that he is not subject to federal income tax.

In those prior motions, the Taxpayer made various arguments that he was not subject to the Internal Revenue Code (“IRC”) so that he did not owe Rhode Island income tax. He argued the IRC only taxed residents of Washington, D.C. as the IRC only defined the United States to mean Washington, D.C. He argued the IRC only taxed income of public officials. His various arguments

were rejected in both orders based on the IRC and case law.⁴ At hearing, he again argued that federal income tax only falls on public officials, foreign sourced income, foreign sourced income, etc. As the First Order discussed, the various arguments submitted by the Taxpayer in his motion for summary judgment and now at hearing are not supported by statute and case law and have been declared frivolous. 26 U.S.C. § 6702.⁵ The First Order and Second Order are incorporated by reference.

In his declaration, the Taxpayer refers to himself as a nontaxpayer under *Economy Plumbing and Heating Co. v. U.S.*, 470 F.2d 585 (Ct. Cl. 1972). This is a misreading of the case which is about a breach of contract claim where property of one was seized by the government for the nonpayment of taxes by another. The Court discussed when a taxpayer has the right to request a refund of taxes as opposed to someone who had not paid taxes, e.g a nontaxpayer. It is not about some kind of status conferred on people by virtue of claiming the IRC does not apply to them.

⁴ See for example, *Sims v. United States*, 359 U.S. 108, 111 (1959); *United States v. Condo*, 741 F.2d 238, 239 (9th Cir. 1984); *In re Becraft*, 885 F.2d 547, 500 (9th Cir. 1989); and *LaRue v. United States*, 959 F. Supp. 959, 961-962 (C.D. Ill. 1997).

⁵ *Frivolous Positions*, 2010-17 I.R.B. 609 Notice 2010-33 (IRS NOT); 2010 WL 1347082. This notice provides in part as follows:

This notice lists positions identified as frivolous for purposes of section 6702(c) of the Code. Notice 2008-14 modified and superseded.

(3) A taxpayer's income is excluded from taxation when the taxpayer rejects or renounces United States citizenship because the taxpayer is a citizen exclusively of a State (sometimes characterized as a "natural-born citizen" of a "sovereign state"), that is claimed to be a separate country or otherwise not subject to the laws of the United States. This position includes the argument that the United States does not include all or a part of the physical territory of the 50 States and instead consists of only places such as the District of Columbia, Commonwealths and Territories (e.g., Puerto Rico), and Federal enclaves (e.g., Native American reservations and military installations), or similar arguments described as frivolous in Rev. Rul. 2004-28, 2004-1 C.B. 624, or Rev. Rul. 2007-22, 2007-1 C.B. 866.

(7) Only certain types of taxpayers are subject to income and employment taxes, such as employees of the Federal government, corporations, nonresident aliens, or residents of the District of Columbia or the Federal territories, or similar arguments described as frivolous in Rev. Rul. 2006-18, 2006-1 C.B. 743.

E. The Taxpayer's Citizenship Status is Irrelevant

Pursuant to the first clause of the 14th amendment to the United States Constitution, “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” The Taxpayer was born in Rhode Island which is part of the United States. Taxpayer’s Exhibit One (1) (copy of Taxpayer’s birth certificate). Pursuant to the U.S. Constitution, the Taxpayer is a citizen of the United States.

The Taxpayer’s made many arguments that he was not a United States citizen. He testified that when he applied for an American passport, he also included an explanation of why he was not a citizen and since the passport was issued, the United States Department of State must agree with him. The Taxpayer provided a copy of said submission that he made with his passport application. While he stated in this submission that he had a Rhode Island driver’s license and was born in Rhode Island, he stated he was not claiming any rights under the 14th amendment. His submission also stated he was providing his social security number under protest. Obviously, despite what he wrote in his submission about his view of his citizenship status, he was issued a passport stating he was a citizen of the United States of America because he qualified as a United States citizen. The Taxpayer may make declarations about himself and what he perceives as his citizenship status,⁶ but at the end of the day, the Taxpayer holds a passport from the United States of America because under the U.S. Constitution, he is a citizen of the United States of America. The United States government does not issue American passports to people who are not American citizens. The Taxpayer did not provide any proof that he has lost his American citizenship or renounced it pursuant to 8 U.S.C. § 1481.

⁶ The Taxpayer stated he was a non-statutory *de jure* American citizen by virtue of his Rhode Island state nationality and citizenship.

The Taxpayer's citizenship argument is separate from the Taxpayer's view of the IRC and who or what income are taxed by the IRC. His arguments about the IRC ignored the general applicability of 26 U.S.C. § 1 that tax is imposed on taxable income with more specific provisions about how and what income is included in the IRC. Even if someone is not a United States citizen, it does not follow that person will not have to pay federal income tax on income earned in the United States. Indeed, people who are not American citizens can be subject to the IRC.⁷ Whether someone owes federal income tax is not dependent on someone's citizenship status.

It is clear that under the IRC and case law, the Taxpayer is subject to paying federal income tax whether an American citizen or not. Nonetheless, as discussed below, whether the Taxpayer is a United States citizen or not and whether he paid any federal income tax is irrelevant to the fact the Taxpayer owes Rhode Island income tax.

F. Whether the Taxpayer Owes Rhode Island Income Tax

In 2017, the Taxpayer was a resident of Rhode Island. He owned property in Rhode Island. He voted in Rhode Island. He held a Rhode Island driver's license. Division's Exhibit Two (2). In 2017, the Taxpayer received income from his Rhode Island LLC as evidenced by his federal and State 1120S filings. Division's Exhibits Three (3) and Four (4).

The Taxpayer now disavows his signatures on all United States, Rhode Island, and commercial forms. In his declaration, he states that he revokes all of those signatures and rescinds them under his equitable rights. Presumably, the Taxpayer is now arguing that he did not file and did not intend to file the 1120S forms for his LLC. Even assuming the Taxpayer no longer signed those forms, it does not change the fact his LLC earned money in 2017 and the Taxpayer, a resident of Rhode Island, earned money from that Rhode Island LLC. Claiming that he should not have filed it

⁷ E.g. 26 U.S.C. § 1441 (withholding of tax on nonresident alien); and 26 C.F.R. § 1.6012-1 (federal income tax return to be filed by resident of United States even if not a citizen).

or did not sign it, does not change the fact the Taxpayer earned money from that pass through entity, his LLC, in 2017. He provided no evidence that he did not earn any Rhode Island income in 2017. He provided no evidence the Division's calculation of his 2017 federal AGI (if he had filed a federal income tax return) and Rhode Island income tax owed by statute was inaccurate. He may regret he filed the 1120S but whether he did or not, the LLC earned money and thus, he did too.⁸

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. The statute does not require that a taxpayer be required to file a federal income tax return **and** have Rhode Island income. Rather, the statute provides that either situation requires the filing of a Rhode Island income tax return.

As discussed above, the Taxpayer denied he was required to file a federal income tax on a variety of grounds that have no merit. However, even assuming the Taxpayer was not required to file a federal income tax return, the Taxpayer still had Rhode Island income in 2017 from his LLC. Thus, under R.I. Gen. Laws § 44-30-51, the Taxpayer was required to file a 2017 return because he had Rhode Island income.

Pursuant to R.I. Gen. Laws § 44-30-2.6(a), the Rhode Island income tax statute uses a taxpayer's federal adjusted gross income ("AGI") to determine tax owed to Rhode Island. The statute does not mandate that a federal return has to have been filed, but just that the federal AGI is the basis for Rhode Island income tax. The statute defines Rhode Island taxable income to be federal taxable income under the IRC as modified by Rhode Island law.

⁸ The Taxpayer's assertion that he revoked his signature and that this somehow negates the income he earned from the LLC is without merit. His claim to have revoked his signatures is not grounded in any legal basis. His argument appears to be that his signatures somehow gave consent for him to be a federal and state taxpayer but that he is equitably rescinding that status by revoking his signatures. However, the issue of whether he is a taxpayer is not via a consented to contract (filing the forms) but whether the income he earned is subject by law to tax.

Presumably, the majority of taxpayers in Rhode Island file a federal income tax return and use the federal AGI from their federal income tax return on their Rhode Island income tax return. Nonetheless, even if a taxpayer has not filed a federal return, a taxpayer still can pay Rhode Island taxes on the basis of what would be the federal AGI. The Division is empowered by R.I. Gen. Laws § 44-30-82⁹ to estimate a taxpayer's taxable income from any available information when a taxpayer fails to file a personal income tax return. Here, the Division based its determination on the Taxpayer's 1120S form. In some situations, the Division may make determinations for Rhode Island income tax owed on information other than a filing with the Division.

Therefore, the Division properly issued the Taxpayer a notice of assessment to the Taxpayer for the income tax owed for 2017. See R.I. Gen. Laws § 44-30-81. The Division has updated the amounts owed in the statement of accounts as of October 10, 2024. Division's Exhibit Seven (7). Pursuant to R.I. Gen. Laws § 44-30-84,¹⁰ the Division imposed interest on the late payment of the tax owed. Pursuant to R.I. Gen. Laws § 44-30-85,¹¹ the Division imposed a late filing penalty and a late payment penalty for the late payment of the tax owed.

⁹ R.I. Gen. Law § 44-30-82 provides in part as follows:

Assessment date.

(b) Failure to file return. If a taxpayer fails to file any required Rhode Island personal income tax return, the tax administrator is authorized to estimate the taxpayer's Rhode Island taxable income and tax thereon from any available information, and notwithstanding the restrictions of § 44-30-81(c) the tax, additions to tax, civil penalties, and interest shall be deemed to be assessed on the date of mailing to the taxpayer of notice of the assessment.

¹⁰ 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).

¹¹ 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:

VI. FINDINGS OF FACT

1. On or about January 24, 2023, 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 December 6, 2024. The Division was represented by counsel. The Taxpayer was *pro so*. The parties rested on the record.
3. 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 penalties for 2017 as updated in Division's Exhibit Seven (7) and any further updates. Payment shall be made by the 31st day after the execution of this decision.

(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;

(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.

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 and late filing penalty for 2017 as set forth in Division's Exhibit Seven (7) and any further updates. Payment shall be made to the Division by the 31st day after the execution of this decision.

Date: January 8, 2025


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: 1/9/25


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 10th day of January, 2025 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 the Taxpayer and John Beretta, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903


