

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2015-17

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

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**IN THE MATTER OF:**

**Taxpayers.**  
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**Case No.: 15-T-0036  
Personal Income Tax**

**DECISION**

**I. INTRODUCTION**

The above-entitled matter came before the undersigned as the result of a Notice of Hearing and Appointment of Hearing Officer dated April 15, 2015 and issued to the above-captioned taxpayers ("Taxpayers") by the Division of Taxation ("Division") in response to a request for hearing. A hearing was held on May 13, 2015. The Division was represented by counsel. The Taxpayers were represented by a certified public accountant. 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.*, the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*.

**III. ISSUE**

Whether the Taxpayers owe additional income tax, interest, and a penalty for the tax year 2010.

#### **IV. MATERIAL FACTS AND TESTIMONY**

Principal Revenue Agent, testified on behalf of the Division. He testified that Rhode Island bases its income tax on a taxpayer's Federally adjusted gross income and that the Taxpayers timely filed their 2010 income tax return based on their Federal income. See Division's Exhibit A (Division's record of Taxpayers' 2010 return). He testified that the Taxpayers were notified by the IRS that the Federal Internal Revenue Service ("IRS") had disallowed a contribution to an individual retirement account ("IRA") for the Taxpayers' 2010 tax year so that that Taxpayers' 2010 Federal income increased. He testified that he believed the Taxpayers received the IRS notification in November, 2013. He testified that when a taxpayer's Federal income changes, a taxpayer is statutorily mandated to file an amended State tax return. He testified that the Taxpayers did not file a 2010 amended return with the State so that when the IRS notified the Division in 2014 of the change to the Taxpayers' Federal income, the Division issued a Notice of Deficiency which adjusted the Taxpayers' 2010 tax owed based on their new income amount and assessed a penalty and interest for the tax owed. See Division's Exhibit B (Notice of Deficiency with calculations for tax owed, interest, penalty). He testified that the Division is statutorily authorized to assess a taxpayer when a taxpayer has not filed a statutorily required amended return. He testified that interest and penalty were statutorily assessed but since the Notice of Deficiency was issued, the interest and late payment interest will have increased. On cross-examination, he testified that R.I. Gen. Laws § 44-30-83 provides that the Division may assess a taxpayer who fails to file an amended return beyond the usual three (3) year limit to assess personal income tax.

## 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). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

### B. **Relevant Statutes**

R.I. Gen. Laws § 44-30-59 provides as follows:

Report of change in federal taxable income. – 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 § 44-30-83 provides in part as follows:

Limitations on assessment. – (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 which is treated in the same manner as if it were a deficiency for federal income tax purposes.

### **C. Whether the Taxpayer Owes Tax and Penalties for Tax Year 2010**

It was undisputed that the IRS notified the Taxpayers that their IRA contribution for their 2010 tax year had been disallowed. As a result, the Taxpayers were required by R.I. Gen. Laws § 44-30-59 to amend their 2010 return as their 2010 income had changed (increased). It was undisputed that the Taxpayers did not file an amended return with the Division reflecting their change in Federal income. Pursuant to R.I. Gen. Laws § 44-30-83(b)(1)(iii), 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 § 44-30-59. Therefore, the Division properly issued the Taxpayers a Notice of Deficiency for additional tax owed for 2010 based on their adjusted income. Pursuant to R.I. Gen. Laws § 44-30-84,<sup>1</sup> the

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<sup>1</sup> 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).

Division imposed interest for the late payment of the tax owed. Pursuant to R.I. Gen. Laws § 44-30-85,<sup>2</sup> the Division imposed a late payment penalty for the late payment of the tax owed.

## VI. FINDINGS OF FACT

1. On or about April 15, 2015, the Division issued a Notice of Hearing and Appointment of Hearing Officer to the Taxpayer.
2. A hearing in this matter was held on May 13, 2015.
3. The Taxpayers did not file an amended 2010 Rhode Island personal income tax return after receiving notice from the IRS of a change to their Federal income for 2010.

## 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 Taxpayers were required to file an amended return. The Taxpayers failed to file an amended 2010 Rhode Island personal income tax return so owe tax on the unreported income, interest, and a penalty.

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<sup>2</sup> 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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(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

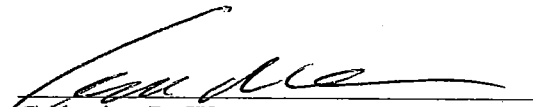
(3) To pay any amount in respect of any tax required to be shown on a return which is not so shown, including an assessment made as a result of mathematical error, within ten (10) days of the date of the notice and demand therefor, unless it is shown that the failure is due to reasonable cause and not 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:

Pursuant to R.I. Gen. Laws § 44-30-59, the Taxpayers failed to file an amended Rhode Island personal income tax return for 2010. Therefore, pursuant to 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 Taxpayers for tax owed and interest and late penalty owed.

Date: May 27, 2015

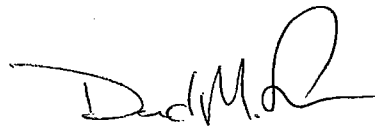
  
Catherine R. Warren  
Hearing Officer

**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: June 2, 2015

  
David Sullivan  
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 30<sup>th</sup> day of June, 2015 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 Taxpayers' representatives' address on file with the Division and by hand delivery to Meaghan Kelly, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

