

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2015-12

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

IN THE MATTER OF:

Taxpayer.

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**Personal Income Tax
Case No.: 15-T-0011**

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 January 28, 2015 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 March 30, 2015. The Division was represented by counsel. No one appeared for the Taxpayer. The Taxpayer received notice of the hearing.¹ As the Taxpayer received notice of the hearing, the undersigned held the hearing.

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*.

¹ The hearing was initially scheduled for March 2, 2015. Prior to the hearing, the Taxpayer contacted the Division’s attorney and the undersigned by email regarding his various tax issues that did not relate to the scheduled hearing. The Taxpayer did not show up on March 2, 2015. A hearing was then scheduled on March 30, 2015 and the Taxpayer was notified of the new date. This time the Taxpayer emailed the Division’s counsel and undersigned indicated that he would be filing for bankruptcy but provided no proof of such a claim and did not show up at the scheduled hearing. Therefore, a hearing was held.

III. ISSUE

Whether the Taxpayer owes additional income tax and associated interest and penalties for the tax year 2010.

IV. MATERIAL FACTS AND TESTIMONY

Chief Revenue Agent, testified on behalf of the Division. He testified that the Division disallowed the withholding tax claimed by the Taxpayer on his 2010 personal income tax return. He testified that the Taxpayer listed three (3) companies on his return but there was no evidence that the companies ever filed withholding tax. He testified that a Notice of Deficiency was issued for the Taxpayer for additional tax owed for 2010 because the withholding tax claim was disallowed. See Division's Exhibits A (Taxpayer's 2010 personal income tax return) and B (Notice of Deficiency for 2010 tax year). He testified that the Division attempted to obtain copies of W-2's for the three (3) companies whose withholding taxes were claimed by the Taxpayer but the Taxpayer did not provide any W-2's that documented the claimed withholding tax. See Division's Exhibit D (June 6, 2014 Division letter to Taxpayer).

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 Statute

R.I. Gen. Laws § 44-30-74 provides as follows:

Credit for tax withheld. – Wages upon which tax is required to be withheld shall be taxable as if no withholding were required, but any amount of Rhode Island personal income tax actually deducted and withheld in any calendar year shall be deemed to have been paid to the tax administrator on behalf of the person from whom withheld, and the person shall be credited with having paid that amount of tax for the taxable year beginning in that calendar year. For a taxable year of less than twelve (12) months, the credit shall be made under regulations of the tax administrator.

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

It is undisputed that the Taxpayer provided no documentation of the withholding tax that he claimed pursuant to R.I. Gen. Laws § 44-30-74. Without any proof of the claimed withholding tax, the Division properly disallowed the claim and issued a Notice of Deficiency for additional taxes owed for tax year 2010. Pursuant to R.I. Gen. Laws § 44-30-84,² the Division imposed interest for 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.

² 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).

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:

VI. FINDINGS OF FACT

1. On or about January 28, 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 March 30, 2015. The Taxpayer received notice of hearing but did not appear at hearing.
4. The Taxpayer is in default for not appearing at the hearing.
5. The Taxpayer did not document his claimed withholding tax for his 2010 personal income tax return.

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 § 44-30-74, the Taxpayer did not document the claimed withholding tax so owes the tax, interest, and penalty as assessed by the Division.


VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-30-74, the Taxpayer did not document the claimed withholding so therefore, pursuant to R.I. Gen. Laws § 44-30-74, R.I. Gen. Laws § 44-30-84, and R.I. Gen. Laws § 44-30-85, the Division properly assessed the Taxpayer for tax owed and interest and late penalty owed.

(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.

Date: 4/15/15

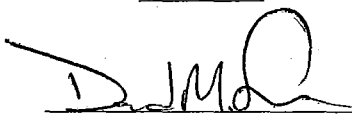

Catherine R. Warren
Hearing Officer

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: 4/17/15


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 17th day of April, 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 Taxpayer's addresses on file with the Division and by hand delivery to Bernard Lemos, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

Neil Belasco