

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2015-13

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

IN THE MATTER OF:

**Case No.: 15-T-008
Personal Income Tax**

Taxpayer.

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 23, 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 March 16, 2015. The Division was represented by counsel and the Taxpayers (a married couple) were represented pursuant to a power of attorney by their son ("Son"). 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 the 2013 personal income tax, interest, and penalty assessed by the Division.

IV. MATERIAL FACTS

Principal Revenue Agent, testified on behalf of the Division. He testified that the Taxpayers filed a tax return for 2013 and took the standard Rhode Island deduction and also included estimated interest for late payment of taxes. He testified that Rhode Island law changed in 2011 so that it was no longer possible to take itemized deductions such as a medical deduction which are available for federal returns. Therefore, he testified that the Taxpayers were no longer able to deduct the Son's father's nursing home care costs. He testified a Notice of Deficiency was sent to the Taxpayers for 2013 deficiency which represented the tax, underestimated interest, the late payment interest, and the late payment penalty owed. See Division's Exhibits One (1) (Taxpayers' 2013 Rhode Island resident return) and Two (2) (Notice of Deficiency).

The Son testified on behalf of the Taxpayers. He testified that prior to 2011, his parents were able to take a medical deduction for nursing home care. He testified that he does not dispute that the tax law was changed but he believes that the change is unfair. He testified that his now-deceased father is being taxed on income that went directly to the nursing home. He testified that when the tax law was changed the Department of Human Services ("DHS") reacted to assist similarly situated Taxpayers and offered a credit for the tax owed on future payments to nursing homes. See Taxpayers' Exhibit One (1) (Executive Office of Health and Human Services memorandum re: credit dated March 12, 2012). However, he testified that his father passed away so is not eligible for the DHS credit since there are no more payments to be made to the nursing home and the tax is now due. He testified that he thinks the law was changed without people realizing the effect on the elderly.

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 § 44-30-12 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.

The statute then provides for what can be subtracted from federal adjusted gross income. It does not provide that medical care (nursing home) costs can be subtracted from federal adjusted gross income. See R.I. Gen. Laws § 44-30-12(c).

R.I. Gen. Laws § 44-30-2.6 is the statute that sets forth what is considered Rhode Island taxable income and the rate of tax. It became effective on January 1, 2011. R.I. Gen. Laws § 44-30-2.6(c)(2)(N)(3)(B)(I) and (III) provides as follows:

(B) Deductions:

(I) Rhode Island Basic Standard Deduction.

Only the Rhode Island standard deduction shall be allowed in accordance with the following table:

Filing status: Amount

Single \$7,500

Married filing jointly or qualifying widow(er) \$15,000

Married filing separately \$7,500

Head of Household \$11,250

(III) In the case of any taxpayer whose adjusted gross income, as modified for Rhode Island purposes pursuant to § 44-30-12, for the taxable year exceeds one hundred seventy-five thousand dollars (\$175,000), the standard deduction amount shall be reduced by the applicable percentage. The term "applicable percentage" means twenty (20) percentage points for each five thousand dollars (\$5,000) (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds one hundred seventy-five thousand dollars (\$175,000).

C. Whether the Taxpayers can Deduct Nursing Care from their 2013 Income

The Taxpayers did not dispute the law changed so that medical care can no longer be deducted. R.I. Gen. Laws § 44-30-12 provides that Rhode Island personal income for tax purposes is considered to be a taxpayer's Federal adjusted gross income for Federal income tax purposes. R.I. Gen. Laws § 44-30-2.6 clearly provides that only the Rhode Island standard deduction shall be allowed on tax returns. The statute is clear and unambiguous. The statute does not allow the Taxpayers to deduct the father's nursing home costs.

D. Penalty and Interest

The Division imposed interest on the tax owed and late payment interest pursuant to R.I. Gen. Laws § 44-30-84.¹ The Division also imposed a late payment penalty. See Division's

¹ R.I. Gen. Laws § 44-30-84 provides in part as follows:

Exhibit Two (2) (Notice of Deficiency). R.I. Gen. Laws § 44-30-85(a)² provides penalties be imposed for willful neglect for failure to pay but excludes penalties for reasonable cause.³

VI. FINDINGS OF FACT

1. On or about January 23, 2015, the Division issued a Notice of Hearing and Appointment of Hearing Officer.
2. A hearing was held on March 16, 2015 with the parties resting on the record.
3. The Taxpayers appealed a Notice of Deficiency for personal tax, interest, and penalty owed for their 2013 income.

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).

(b) *Estimated tax.* If an individual fails to file a declaration of estimated Rhode Island personal income tax as required by § 44-30-55, or to pay any installment of the tax as required by § 44-30-56, the individual shall pay interest at the annual rate provided by § 44-1-7 for the period the failure continues, until the fifteenth day of the fourth month following the close of the taxable year. The interest in respect of any unpaid installment shall be computed on the amount by which his or her actual payments and credits in respect of the tax are less than eighty percent (80%) of the installment at the time it is due. Notwithstanding the foregoing, no interest shall be payable if one of the exceptions specified in 26 U.S.C. § 6654(d)(1) or (2) would apply if the exceptions referred to the corresponding Rhode Island tax amounts and returns.

² R.I. Gen. Laws § 44-30-85 states 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:

(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.

(b) *Negligence.* If any part of a deficiency is due to negligence or intentional disregard of the Rhode Island personal income tax law or rules or regulations under this section (but without intent to defraud), five percent (5%) of that part of the deficiency shall be added to the tax.

³ R.I. Gen. Laws § 44-30-85(b) provides penalties for a negligence; however, it does not appear a negligence penalty was assessed

4. R.I. Gen. Laws § 44-30-2.6 only allows a standard deduction be used for Rhode Island personal income tax returns so that the father's nursing home costs could not be deducted for the 2013 income tax return.

5. The facts contained in Sections IV and V are reincorporated 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 and R.I. Gen. Laws § 44-30-2.6, the Taxpayers are unable to deduct nursing home costs for the father on their 2013 resident Rhode Island income.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-30-12 and R.I. Gen. Laws § 44-30-2.6, the Taxpayers are unable to deduct nursing home costs for the father on their 2013 resident Rhode Island income so owe the tax and interest as assessed by the Division. However, the undersigned would recommend the Division revisit the issue of reasonable cause and willful neglect in the penalty statute of R.I. Gen. Laws § 44-30-85(a) in order to determine whether the penalty (late payment) applies.

Date: 4/15/15

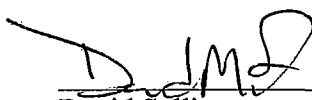

Catherine R. Warren
Hearing Officer

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 Taxpayers' representative's address on file with the Division and by hand delivery to Meaghan Kelly, Esquire and Bernard Lemos, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.

Gail Belasco