

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2011-20

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:

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Taxpayers.  
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Personal Income Tax  
Case No.: 11-T-021

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 September 14, 2011 and issued to the above captioned taxpayers (“Taxpayers”)<sup>1</sup> by the Division of Taxation (“Division”) in response to a request for hearing filed with the Division on or about August 31, 2011. A hearing was held on November 1, 2011. The Division was represented by counsel and the Taxpayers were represented by their certified public accountant and who appeared on their behalf. 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*.

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<sup>1</sup> The taxpayers are a married couple.

### III. ISSUE

Whether the Taxpayers' refund claim for the calendar year 2007 was timely filed pursuant to R.I. Gen. Laws § 44-30-87.

### IV. MATERIAL FACTS AND TESTIMONY

The parties stipulated to the following facts:

1. The Taxpayers' 2007 non-resident personal income tax return was filed on September 8, 2008. See Division's Exhibit One (1).
2. The Taxpayers' amended 2007 personal income tax return was filed on October 12, 2010 and from that return, a refund was requested.

Principal Revenue Agent, testified on behalf of the Division. She testified that the Taxpayers had an overpayment on their amended return and not their original return. She testified that the Division denied that the Taxpayers' request for refund as being untimely under the statute. She testified that under the statute, there is two (2) years from the date of payment to seek a refund. She testified that she was not sure if the Taxpayers filed a request for an extension but if they had, the two (2) year period does not include any extension time. She testified there is a three (3) year period from the date of filing but refunds are limited to any amount paid within that three (3) year period. She testified that the Taxpayers are still within the three (3) year period from October 12, 2010 but no tax was paid in that period. She testified that the Federal rules include the extension time in the time to request a refund.

The Taxpayers did not present any testimony. However, they argued that their taxes were paid in 2008 under a valid extension request and then in 2010, they filed an amended return and requested a refund. They argued that they paid their tax on time with

a valid extension so should have the same rights to a refund as someone who pays their taxes late. The Taxpayers argued that they are being punished for paying taxes on time rather than filing an estimated tax return and then filing a late amended return. Additionally, the Taxpayers argued that the Division does not warn a taxpayer that the extension does not extend the two (2) year date to request a refund. Finally, the Taxpayers argued that the intent of Rhode Island law is to be similar to Federal law so that the extension time should be included in the two (2) year period.

In closing, the Division argued that the Division's position is supported by statute.

## 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). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). 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) (citing *Cocchini v. City of Providence*, 479 A.2d 108 (R.I. 1984)). 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 § 44-30-87(a) states as follows:

Limitations on credit or refund. – (a) *General.* Claim for credit or refund of an overpayment of tax shall be filed by the taxpayer within three (3) years from the time the return was filed or two (2) years from the time the tax was paid, whichever of these periods expires the later, or if no return was filed by the taxpayer, within two (2) years from the time the tax was paid. If the claim is filed within the three (3) year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three (3) year period. If the claim is not filed within the three (3) year period, but is filed within the two (2) year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two (2) years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim has been filed on the date the credit or refund is allowed.

**C. When Refunds are Allowed**

R.I. Gen. Laws § 44-30-87 provides different time periods within which a refund is allowed. A refund may be claimed within three (3) years of filing a return. If a claim is made within the three (3) year period, the amount of credit cannot exceed the amount of tax paid within that three (3) year period. A claim may be filed within two (2) years from the time the tax was paid. If a claim is made within the two (2) year period, the amount of refund may not exceed the portion of tax paid during the two (2) years preceding the filing of the claim.

Pursuant to R.I. Gen. Laws § 44-30-87(i),<sup>2</sup> the Taxpayers' tax was deemed paid on the date it was due: April 15, 2008. In addition, R.I. Gen. Laws § 44-30-51<sup>3</sup> states that Rhode Island personal income tax returns are to be filed by April 15 after the close of the taxable year. R.I. Gen. Laws § 44-30-52<sup>4</sup> states that tax shall be paid on or before the date fixed for filing without regard to an extension. In addition, R.I. Gen. Laws § 44-30-87(e)<sup>5</sup> specifically precludes any other period of limitations specified in any other laws from being applied to recovery of personal income tax refunds. Thus, an extension of time for the filing of an income tax return filed in Rhode Island does not affect the time frame within which a taxpayer must file a request for refund in Rhode Island

Thus, applying the statute results in the following timeline:

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<sup>2</sup> R.I. Gen. Laws § 44-30-87(i) states as follows:

(i) *Prepaid income tax.* For purposes of this section, any income tax withheld from the taxpayer during any calendar year and any amount paid as estimated income tax for a taxable year is deemed to have been paid by the taxpayer on the fifteenth day of the fourth month following the close of his or her taxable year with respect to which the amount constitutes credit or payment.

<sup>3</sup> 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.

<sup>4</sup> R.I. Gen. Laws § 44-30-52 states in part 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.

<sup>5</sup> R.I. Gen. Laws § 44-30-87(e), states as follows:

(e) *Failure to file claim within prescribed period.* No credit or refund shall be allowed or made, except as provided in subsection (f) of this section, after the expiration of the applicable period of limitation unless a claim for credit or refund is filed by the taxpayer within that period or unless the tax administrator determines under subsection (f) of this section that the taxpayer has made an overpayment. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of Rhode Island personal income tax.

1. The Taxpayers' 2007 tax was deemed paid on April 15, 2008. The Taxpayers were able to request a refund two (2) years from that date. Any claim for a refund filed in the two (2) year period would be limited to amounts paid in the preceding two (2) years.

2. The Taxpayers filed an amended 2007 Rhode Island return on October 12, 2010 and claimed a refund.

3. October 12, 2010 is past the two (2) year period from the date the taxes were deemed paid that is allowed for requesting a refund.

4. The statute also allows a claim for a refund to be filed within three (3) years from the date of the return being filed.

5. Thus, the Taxpayers may file a request for a refund within three (3) years of the filing of the amended return.

6. The Taxpayers are within the three (3) year period to claim a refund.

7. The statute specifically limits the amount of a refund for those filed in the three (3) year period to the portion of tax paid "within the three (3) year period" as opposed to those requests filed within the two (2) year period which are limited to tax paid "during the two (2) years immediately preceding the filing of the claim."

8. The Taxpayers have not paid any tax from October 12, 2010 to the present.

Pursuant to the tenets of statutory construction, a statute must be examined in its entirety and words be given their plain and ordinary meaning. *Infra*. The State statute states that the beginning of the three (3) year period is when the return was filed and that the time period is *within* three (3) years from when the return was filed. This

unambiguous prospective application is further clarified by the fact that the statute clearly delineates that the two (2) year claim period refers to the period immediately preceding the filing date. Indeed, when reviewing the statute in its entirety and applying the plain meaning of the language, it is clear that the legislature intended to strictly limit the time to claim a refund and amounts of refunds. The legislature could have chosen to make the three (3) year period like the two (2) year period but chose not to. Indeed, it chose instead to strictly limit the time allowed and the amount of refunds claimed.

It should be noted that the Federal rule is different from the rule in Rhode Island and does not apply to Rhode Island. The provisions of Internal Revenue Code Section 6511(b)(2)(A)<sup>6</sup> are different from the Rhode Island statute. For example, see *Taxation Decision 2011-15 (8/2/1)* (discussing how the Federal statute is different from Rhode Island statute).

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<sup>6</sup> § 6511 states in part as follows:

Limitations on credit or refund

(a) Period of limitation on filing claim. Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

(b) Limitation on allowance of credits and refunds.

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(2) Limit on amount of credit or refund.

(A) Limit where claim filed within 3-year period. If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

§ 6511(a) only refers to when late claims may be made. Section 6511(b)(2)(A) addresses the issue of the amount that a taxpayer may receive when filing a late refund. Thus, it is in § 6511(b)(2)(A) that the immediately preceding language is put in to explain how much money may be obtained through a refund. Rhode Island chose to put the time limit and amount limit into one (1) section.

Thus the Federal statute contrasts with the State statute where the three (3) period is "within" rather than "immediately preceding."



The Taxpayers further argued that the statute as applied is unfair because a taxpayer who paid his or her taxes late could be allowed to obtain a refund. Such an argument is better suited for the legislature who enacted the law. In interpreting a statute, a statute will not be interpreted in such a way that would render it meaningless or that would obtain an absurd result. *Infra*. However, the Taxpayers' hypothetical is not an "absurd" result but rather a hypothetical that they believe is unfair. Under the statute, similarly situated taxpayers are all treated the same. See *Taxation Decision* 2011-15 (8/2/11); *Taxation Decision* 2007-25 (10/25/07).

Furthermore, while the Taxpayers argued that this was a matter of fairness, an administrative proceeding is not an equitable proceeding and there is no equitable jurisdiction. To find for the Taxpayers on the basis of a fairness argument would be reversible error. *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004).

Finally, an agency's acquiescence to a continued practice is entitled to great weight in determining legislative intent. R.I. Gen. Laws § 44-30-87 was enacted in 1971 and has not been amended. While the three (3) year period clearly refers to the period from the date of filing, it is a well-recognized principle that a longstanding, practical and plausible interpretation given a statute of doubtful meaning by those responsible for its implementation without any interference by the Legislature should be accepted as evidence that such a construction conforms to the legislative intent. Thus, if it was found that the statute was unclear, the Division's long standing interpretation is entitled to deference. *Trice v. City of Cranston*, 297 A.2d 649 (R.I. 1972).

Based on the forgoing, the Taxpayers do not qualify for their claimed refund pursuant to R.I. Gen. Laws § 44-30-87. See *Tax Decision*, 2007-10 (5/10/07).

## VI. FINDINGS OF FACT

1. On or about September 14, 2011, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayers in response to their request for a hearing filed on or about August 31, 2011.

2. A hearing in this matter was held on November 1, 2011 with the parties resting on the record.

3. The Taxpayers' 2007 non-resident return was due by April 15, 2008 and their tax was deemed paid on that day.

4. The Taxpayers filed an amended return on October 12, 2010 for the year 2007 and claimed a refund for overpayment of tax.

5. No Rhode Island statutory or regulatory provisions apply Federal rules regarding the claiming of late refunds to the filing of Rhode Island tax returns.

6. Rhode Island law provides that an extension of time to file a tax return is not included in the calculations for when tax is deemed paid and tax is deemed paid on the April 15 following the tax year.

7. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayers are not entitled to the claimed refund.

## 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.*

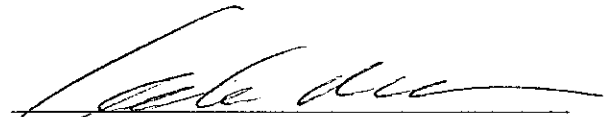
2. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayers are not entitled to the refund claimed.

**VIII. RECOMMENDATION**

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

Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayers are not entitled to the refund claimed and the Division properly denied the Taxpayers' claim for the refund.

Date: 11/15/11

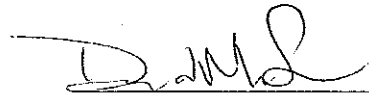
  
Catherine R. Warren  
Hearing Officer

**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: 11/16/11

  
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,

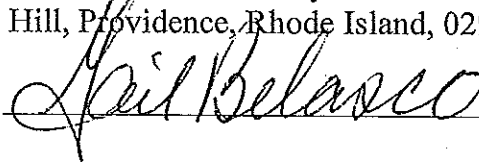
substantially in the form provided in § 44-5-26 to summon the tax administrator to answer the complaint, and the court shall proceed to hear the complaint and to determine the correct amount of the liability as in any other action for money, but the burden of proof shall be as specified in § 8-8-28.

(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 16th day of November, 2011, 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 authorized representative's address on file with the Division of Taxation and by hand delivery to Linda Riordan, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

  
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