

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2012-13

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.: 11-T-0027
:
: Business Corporation 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 November 16, 2011 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to the Taxpayer's request for hearing filed with the Division. The parties agreed to have a decision rendered on stipulated facts, exhibits, and briefs. Both parties were represented by counsel and all briefs were filed by August 10, 2012.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, the Division's *Administrative Hearing Procedures, Regulation AHP 97-01*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*.

III. ISSUE

The parties agreed that the issue is whether the Taxpayer timely filed its tax return with the Division for the June 2005 fiscal year pursuant to R.I. Gen. Laws § 44-11-20, thus entitling them to a full refund for the amount claimed. This creates two sub-issues:

First, when are taxes deemed to have been paid under the RI Business Corporation Tax?

Second, from what date does the (3) year period for claiming a refund under R.I. Gen.

Laws § 44-11-20 begin to run?

IV. MATERIAL FACTS AND TESTIMONY

The parties agreed to the following stipulated facts:¹

1. At all pertinent times, the Taxpayer was a Rhode Island corporation with its principal place of business located at _____ Rhode Island 02903.

2. The Taxpayer was originally chartered in 1979 as _____ Corporation. After a few name changes, it became _____ defined already as "Taxpayer"), incorporated on May 23, 1989. Exhibit One (1).

3. The Division is a state agency charged with the administration and enforcement of all state taxes including, *inter alia*, the Business Corporation Income Tax.

4. The Taxpayer files as a fiscal year taxpayer with a fiscal year ending (hereafter tax year) June 30th.

5. The Taxpayer filed consolidated corporate income tax returns for fiscal year ending June 30, 2005 (tax year ending June 2005) with the federal government, the State of Rhode Island and the State of Minnesota.

6. The Taxpayer's Rhode Island Business Corporation Tax return for tax year ending June 2005 was due on or before the 15th day of the third month after the close of the taxable year, i.e.; September 15, 2005.²

7. The Taxpayer's corporate income tax returns were filed in the name of the Taxpayer and subsidiaries. The subsidiary is _____ ("Subsidiary").

8. The Subsidiary was chartered in Minnesota in 1975 as _____ After a few name changes, it became the Subsidiary on July 25, 1985. Its principal place of business is located in _____ Minnesota. Exhibit Two (2). The Subsidiary was

¹ See joint submission of facts and exhibits.

² See R.I. Gen. Laws § 44-11-3 which states as follows:

Filing of returns – Due date. – A return in the form and containing the information that the tax administrator may prescribe shall be filed with the tax administrator by the taxpayer:

(1) In case the taxable year of the taxpayer is the calendar year, on or before March 15 in the year following the close of the taxable year; and

(2) In case the taxable year of the taxpayer is a fiscal year, on or before the fifteenth (15th) day of the third (3rd) month following the close of the fiscal year.

not and is not registered with the Rhode Island Secretary of State as doing business in Rhode Island.

9. During tax year ending June 2005, the Subsidiary had no income, payroll or property apportioned the State of Rhode Island. Accordingly, it declared no income or loss on the consolidated filing.

10. For tax year ending June 2005, the Taxpayer timely filed for an automatic six (6) month extension of time (Form 7004) in which to file its federal corporation income tax return. The Taxpayer also declared and paid a tentative federal corporate income tax of with the extension form. Exhibit Three (3).

11. The federal extension automatically extended the filing date for the Taxpayer's 2004 US Corporation Income Tax Return (Form 1120) to March 15, 2006.

12. The Taxpayer timely filed an automatic six (6) month extension of time for filing its 2004 State of Minnesota Corporation Franchise Tax. The Taxpayer declared and paid an extension payment of with the extension form Exhibit Four (4).

13. For fiscal year ending June 30, 2005, the Taxpayer timely filed for an automatic six (6) month extension (Form 7004) for filing its 2004 Rhode Island Business Corporation Tax Return (Form RI 1120C). Exhibit Five (5).

14. The Taxpayer declared and paid an extension payment of with its Rhode Island Form 7004. Exhibit Six (6).

15. The RI Form 7004 extension request extended the filing date for the Taxpayer's 2004 Rhode Island Business Corporation Tax return to March 15, 2006.

16. On March 11, 2006, the Taxpayer timely filed its RI Business Corporation Tax Return (Form RI 1120C) for tax year ending June 2005. Exhibit Seven (7).

17. For tax year ending June 2005, the Taxpayer declared on its Form RI 1120C RI taxable income of Exhibit Seven (7), P.1, L.12, and a tax liability of . *Id.* at L. 17. The Taxpayer declared payments of Exhibit Seven (7), P.1, L. 19, which is left a balance due of *Id.* at L. 17. The Taxpayer remitted this sum contemporaneously with filing its 2004 Rhode Island Business Corporation Tax Return. Exhibit Eight (8).

18. On or about January 26, 2009, the Taxpayer filed an Amended US Corporation Income Tax Return (Form 1120X) for tax year ending June 2005 claiming a refund of Exhibit Nine (9).

19. The Taxpayer received plus interest as a result of filing an amended US Corporation Income Tax Return for tax year ending June 2005. Exhibit Ten (10).

20. On or about January 26, 2009, the Taxpayer filed an amended Minnesota Corporation Franchise Tax return (Form M4X) for tax year ending June 2005 claiming a refund of _____, Exhibit 11.

21. The Taxpayer received _____ plus interest as a result of filing as amended Minnesota Corporation Franchise Tax Return for tax year ending June 2005. Exhibit 12.

22. On February 2, 2009, the Taxpayer filed an Amended Rhode Island Business Corporation Tax Return (Form RI 1120X) for tax year ending June 2005 requesting a refund of _____ Exhibit 13.

23. On September 8, 2009, the Division sent a letter to the Taxpayer advising the Taxpayer that its refund claim was denied, in its entirety, on the grounds that the refund claim was untimely. Exhibit 14.

24. On September 23, 2009, the Taxpayer made a timely written request for an administrative hearing in connection with the Division's denial of its claim for a refund.

25. The Taxpayer had an informal preliminary review before a lay conferee in the Division and as a result thereof, on January 20, 2011, the Division sent a letter to the Taxpayer advising it that a partial refund of _____ would issue. Exhibit 16.

26. On February 15, 2011, the Taxpayer again requested an administrative hearing on the denial of refund for the tax year ended June 30, 2005 pursuant to the Division's January 20, 2011 letter to the Taxpayer. Exhibit 17.

27. On March 4, 2011, the Division issued a check to the Taxpayer for representing a refund of _____ plus interest. Exhibit 18.

28. On May 11, 2011, a second preliminary review was held regarding the balance of the Taxpayer's claim for refund of _____

29. On September 12, 2011, the Division sent the Taxpayer a letter indicating that the parties were still in disagreement after the second preliminary review and the matter would be forwarded for formal administrative hearing. Exhibit 19.

30. A Division electronic record denoted "Return Transactions" for the Taxpayer for Year 2005 identifies the _____ as an Extension Payment (EXTPMT) received on September 15, 2005. Exhibit 20.

31. A Division electronic record summarizing the Taxpayer's 2004 Rhode Island Business Corporation Tax Return identifies the _____ as Other Payments. (OTHER PMTS). Exhibit 21.

32. There have been no Administrative Decisions, Declaratory Rulings, or Regulations issued by the Division that specifically address the issue as to when the statute of limitations begins to run for purposes of filing refund claims under R.I. Gen. Laws § 44-11-20 of the Rhode Island Business Corporation Tax.

33. There have been no Administrative Decisions, Declaratory Rulings, or Regulations issued by the Division that specifically address the issue as to when a tax is deemed to have been paid for purposes of filing refund claims under R.I. Gen. Laws § 44-11-20 of the Rhode Island Business Corporation Tax.

34. Pursuant to R.I. Gen. Laws § 42-35-10(4), the parties respectfully request that this forum take administrative notice of the following items:

- Instructions to Form RI 7004 (2005)
- Instructions to Form RI 1120C (2005)
- Regulation CT 00-05 & its predecessor, Regulation CT 88-05
- 26 USC §6511 (a/k/a IRC §6511)
- 26 USC §6513 (a/k/a IRC §6513)
- Sec. 289.40 of the 2006 Minnesota Statutes

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 Statutes

The determination of this matter revolves around R.I. Gen. Laws § 44-11-20 which states in part as follows:

Claims for refund – Hearing upon denial. – (a) Any taxpayer may file a claim for refund with the tax administrator at any time within three (3) years after the tax has been paid, or in the case of a change or correction of its taxable income by any official of the United States government, within three (3) years after receiving notice of the change or correction. If the tax administrator determines that the tax has been overpaid, he or she shall make a refund with interest at the annual rate provided by § 44-1-7.1 from the date of payment.

Other relevant statutory provisions include R.I. Gen. Laws § 44-11-7.1 which states in part as follows:

Limitations on assessment. – (a) General. Except as provided in this section, the amount of the Rhode Island corporate 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.

R.I. Gen. Laws § 44-11-6 states in part as follows:

Determination and payment of tax due – Hearings and redeterminations. – (a) At the time of the filing of the return, the taxpayer shall pay to the tax administrator the amount of the tax as computed by it on the basis of its net income under § 44-11-2(a) or other provision as applicable. As soon as possible after the filing of the return, the tax administrator shall determine the correct tax payable under this chapter by the taxpayer, and if the tax determined shall exceed the amount which the taxpayer has paid at the time of filing its return, the tax administrator shall mail to the taxpayer a notice of the additional tax due indicating the basis on which the tax was determined.

(b) If any taxpayer is not satisfied with the amount of tax determined, the tax administrator, upon being notified, in writing, within thirty (30) days

from the date of the mailing of the notice, shall fix an early date at his or her office when the taxpayer can be heard to show cause why the tax should be changed, and after which the tax administrator may redetermine the amount of that tax.

(c) If it shall appear subsequent to the mailing of any notice that the amount of the tax was erroneously stated, the tax administrator shall mail a corrected notice and fix a day when the taxpayer can be heard.

(d) The additional tax required to be paid by any taxpayer shall be due and payable within thirty (30) days after the mailing of the notice or corrected notice by the tax administrator.

R.I. Gen. Laws § 44-11-19 states as follows:

Supplemental returns – Additional tax or refund. – (a) Any taxpayer which fails to include in its return any items of income or assets or any other information required by this chapter or by regulations prescribed in pursuance of this chapter shall make a supplemental return disclosing these facts. Any taxpayer whose return to the collector of internal revenue, or whose net income returned, shall be changed or corrected by any official of the United States government in any respect affecting a tax imposed by this chapter shall, within sixty (60) days after receipt of a notification of the final adjustment and determination of the change or correction, make the supplemental return required by this section.

(b) Upon the filing of a supplemental return the tax administrator shall examine the return and shall determine any additional tax or refund that may be due and shall notify the taxpayer. Any additional tax shall be paid within fifteen (15) days after the notification together with interest at the annual rate provided by § 44-1-7 from the original due date of the return for the taxable year to the date of payment of the additional tax. Any refund shall be made by the tax administrator together with interest at the annual rate provided by § 44-1-7.1 from the date of payment of the tax to the date of the refund.

C. When are Taxes Deemed to Have Been Paid Under the RI Business Corporation Tax

The source of dispute in this matter is the language within R.I. Gen. Laws § 44-11-20 that allows for three (3) years from when the tax is paid to claim a refund. Neither party disputes the fact that this statute is controlling, but each has a different interpretation of what the statute means by “after the tax has been paid.”

The Taxpayer argues that its 2005 payment (Exhibit Six (6))³ for its 2004 Business Corporation Tax (for tax year ending June, 2005) could not have been the tax paid on the 2005 date because the tax owed had not been calculated at that time and the payment was only of a reasonable estimate of tax owed. Furthermore, the Taxpayer argued that under the statute “the tax” is singular and not plural so there can only be one tax which is when the return is filed and paid. Thus, the Taxpayer argues that its 2005 payment was an estimated payment or an extension payment and not a payment of “the tax.” When the Taxpayer made its 2005 payment, it also filed an automatic extension of time form. On March 11, 2006, the Taxpayer filed its 2004 Business Corporation Tax return and made a payment of See Exhibits Seven (7) and Eight (8). The Taxpayer argues that its payment of the tax was made on March 11, 2006 and the three (3) year period to request a refund began on that date.

On February 2, 2009, the Taxpayer filed an amended 2004 RI business tax return and requested a refund of some of the tax paid. See Exhibit 13. The Division argued that the Taxpayer’s 2005 payment was a payment of tax as was the Taxpayer’s payment on March 11, 2006. The Division allowed a refund of the payment made on March 11, 2006 but denied the rest of the refund request. By letter dated January 20, 2011, the Division stated that the Taxpayer’s refund request was timely for the March 11, 2006 payment but not for the 2005 payment.⁴ See Exhibit 16. The Division’s letter stated that the rest of the refund request was untimely since it was for a payment of tax

³ The check was dated August 15, 2005 though was not processed until September, 2005. See Exhibit Six (6). The parties did not agree and the exhibits do not indicate the exact date of 2005 payment. Clearly, it was made sometime between August 15 and September 15, 2005 and for the purposes of this analysis, the exact date is not necessary.

⁴ Said letter stated that the 2005 amount was paid on September 15, 2005 which was the date by which payment was due. The parties did not agree to a date on which the 2005 payment was made. However, whether the payment was made on August 15, 2005 or September 15, 2005 that does not affect the analysis relating to the three (3) year period.

made more than three (3) years before February 2, 2009. The Taxpayer disagreed with the Division arguing that March 11, 2006 (representing the payment under the extension) is the only applicable date since it is the only date when the tax had been calculated and thus, the only date when the tax could have been paid.

When a statute is clear and unambiguous, the statute must be interpreted literally and words of the statute be given their plain and ordinary meaning. In this matter, the statute clearly states that the time to request a refund runs from when the tax is paid. As discussed below, the Taxpayer's 2005 payment of its estimated tax due constitutes the tax being paid as does the 2006 payment.

Even if a statute does not define every term, that does not make a statute ambiguous. In *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673 (R.I. 1980), the Court relied on a dictionary definition in applying the "ordinary meaning" of "must." *Id.* at 674. As the Court has found, "[i]n a situation in which a statute does not define a word, courts often apply the common meaning given, as given by a recognized dictionary." *Defenders of Animals, Inc.* at 543.

The Taxpayer argues that it is not the meaning of the word "paid" that is the crux of the issue but rather what is meant by "the tax." The *Random House Dictionary* (2nd ed. 1987) defines "tax" as "a sum of money demanded by a government for its support or for specific facilities or services, levied on income, property, sales, etc." There is no dispute that the Taxpayer's business tax is a tax. No one argued that either the 2005 or 2006 payment was for a fee and not for a tax. There is no dispute that the 2005 payment represents a payment. The Taxpayer argues that the Division's position would result in a finding that any payment to the Division by a taxpayer is a tax. That is not the case. The

issue here is the two (2) payments to the Division for the Taxpayer's 2004 business tax. The Taxpayer's position that the tax is singular is correct since there is eventually only one (1) amount owed for the annual business tax by a taxpayer. However, that does not mean that the Taxpayer or a taxpayer cannot make multiple payments for said tax.

The Taxpayer argues that a payment of tax is not made until a return is filed pursuant to R.I. Gen. Laws § 44-11-6 and since it received an extension, it did not pay its tax until March 11, 2006. Said statute states that when a return is filed, a taxpayer should pay the amount of tax as calculated by R.I. Gen. Laws § 44-11-2(a). Regardless of the statute indicating that a return must be filed and the tax paid, the statute does not preclude a payment of the tax being made prior to the return being filed. There is nothing in the statute that makes a distinction between an estimated payment of the tax and a payment of the tax. An estimated payment of tax is still a payment of tax; it just might not be the only payment on a tax or the final payment of a tax. Whether the payment is an estimate of a tax or not, it is still a payment of a tax and after which the taxpayer may be eligible for a refund of tax paid or may need to make a further payment for the tax.

R.I. Gen. Laws § 44-11-6 requires that at the time of filing the taxpayer shall file "the amount of tax as computed" and after the filing, the Tax Administrator shall determine the "correct tax payable" and if the amount due exceeds what was paid the Tax Administrator shall notify the taxpayer of "the additional tax due." Thus, R.I. Gen. Laws § 44-11-6 envisions that upon the filing of the return and payment of the tax, an additional tax payment could be due. In other words, a taxpayer may make multiple payments on the tax if the amount paid with the return is incorrect.

R.I. Gen. Laws § 44-11-6's language is consistent with R.I. Gen. Laws § 44-11-20 which provides for claiming a refund when "the tax has been overpaid." If a taxpayer files a tax payment under R.I. Gen. Laws § 44-11-6 and overpays the tax owed, the taxpayer is permitted to request a refund and interest shall be provided from the date of payment. The Taxpayer argues that its "first" payment is only an estimated payment but conceivably the estimate could be too high and taxpayer would be due a refund after its payment for an extension. In that case, the tax would have been paid by an "estimated" payment of the tax.

The Taxpayer also argues that since the extension form RI 7004 advises that the extension payment is the full amount of the tax reasonably estimated to be due, the payment cannot be considered "the tax" because it is not yet calculated and determined. There is nothing in the statute to support such a reading. The statute clearly refers to the tax being paid whether it is the first or second payment of tax. The statute does not distinguish between various payments of taxes or of due dates.

The Taxpayer raised the issue of due dates since the Division's September 8, 2009 letter states that estimated payments are deemed paid on September 15 so that the time for refund request runs from that date. See Exhibit 14. There is nothing in this statute to support this interpretation.⁵ The Taxpayer argues that this statutory interpretation is still vague so it must be construed against the Division since ambiguous revenue statutes must be resolved in favor taxpayers. *Norberg v. Feist*, 495 A.2d 687 (R.I. 1985). However, the issue in this matter revolves around the actual unambiguous statute and not the Division's letter. The Department's letter discussing the due date has no bearing on this

⁵ While such a policy is not in the statute, it benefits taxpayers who may make an estimated tax payment in July or August by giving them longer than three (3) years from the date of payment to request a refund.

decision which turns on statutory interpretation. R.I. Gen. Laws § 44-11-7.1 provides that a return filed before the due date will be considered to have been filed on the due date but limits such a provision to the purpose of assessing tax within R.I. Gen. Laws § 44-11-7.1. However, R.I. Gen. Laws § 44-11-20 does not use the due date for the time period to make a refund a claim (unlike the personal income tax statute).

The Taxpayer also bases its argument on various Division forms. The Taxpayer relies on line 17 of form RI 1120C (tax return form filed on March 11, 2006) which states, "tax due" to argue that represents the one and only payment of taxes. Form RI 7004 which is filed for an extension has instructions stating for an extension request to be effective, the taxpayer has to make a "[p]ayment of the full amount of the tax reasonably estimated to be due." The general instructions for form RI 1120C also refer to filing the extension form along with a "payment equal to the full amount of tax reasonably estimated to be due" in order to request a continuance. The Division's electronic documents refer to the 2005 payment as other payments ["OTHER PMTS"] and as an extension payment ["EXTPMT"]. The Taxpayer's form RI 1120C designates the 2005 payment as "other payments." See Exhibits Seven (7), 20, and 21.

The Taxpayer argues that the Division did not designate the 2005 payment as tax since the tax due is calculated at the time of filing the return (R.I. Gen. Laws § 44-11-6(a)) so for the purposes of a refund the tax is paid then since the tax owed cannot be calculated until the return is filed. Instructions and electronic designations are not relevant to the issue of statutory interpretation. The instructions require a taxpayer pay a reasonable estimate of its tax in order to obtain an extension. The instructions do not address the issue of the timeliness of refunds and even if they did, the controlling

language would still be statutory. The instructions are consistent with the Division's position in that they speak of a payment of tax that is a reasonable estimate. Just because the payment is an estimated payment of tax does not mean it is not a payment of tax. Basically, the Division's extension form ensures a taxpayer pays at least some of the tax in order to obtain an extension

Despite arguing that the term paid is not the crux of the issue, the Taxpayer deems its 2005 payment a remittance (reply brief) rather than a payment of tax. The term remittance never appears in the statute and indeed "remit" is defined as "to transmit or send (money, a check, etc.) to a person or place, usually in payment." Paid is the past tense of pay and both "paid" and "pay" are defined as "to settle (a debt, obligation, etc.) as by transferring money or goods." See *Random House Dictionary*. There is no dispute that the Taxpayer made a payment to the Division. The Taxpayer paid money to the Division that was an estimate of its tax owed.

R.I. Gen. Laws § 44-11-19 provides that if a supplemental return is filed, interest is charged on the additional tax owed from the original due date but if a refund is owed, interest shall run from the date of payment of the tax to date of refund. The Taxpayer argues that this could cause two (2) calculations to be made for refund interest if two (2) payments were made. Clearly, the statute wants to reduce the Division's payments on refunds by making refunds due from the date paid rather than the original due date. It benefits the Division to have additional payments charged interest from the original due date. The statute chose to treat two (2) classes differently: those owing taxes and those owed a refund. Such treatment does not change the meaning of when the tax is paid.

When the legislature enacts or amends a statute, it is presumed to know the existing relevant statutes. *State v. DelBonis*, 862 A.2d 760 (R.I. 2005). It is also presumed to know how to amend, repeal, and enact legislation. *Brennan v. Kirby*, 529 A.2d 633 (R.I. 1987). In the personal income statute, R.I. Gen. Laws § 44-30-87(i),⁶ a taxpayer's tax is deemed paid on the date it is due (April 15 following the end of the calendar year, see R.I. Gen. Laws § 44-30-51). R.I. Gen. Laws § 44-30-52⁷ 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)⁸ 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.

The business corporation tax was enacted in 1938. The personal income tax statute was enacted in 1971. Various parts of R.I. Gen. Laws § 44-11-1 *et seq.* have been

⁶ 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.

⁷ 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.

⁸ 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.

amended since 1971 including R.I. Gen. Laws § 44-11-20 in 1999. See P.L. 1999 ch. 171 § 1. If the legislature wanted, it could have amended the business corporation statute to be like the personal income tax statute and deem payments made to have been made on a certain day but it has not. Instead, the statute clearly refers to the date the tax was paid. In some cases, a payment is made once but in others, it is made twice.

The Taxpayer argues that the Division's position only allows it 2 1/2 years from the filing of its return to seek a refund which could not be the intent of the refund statute. As the statute is clear and unambiguous, there is no reason to ascertain the intent of the refund statute. However, it clearly allows three (3) years from the date of payment rather than a due date. Pursuant to R.I. Gen. Laws § 44-11-5,⁹ the Tax Administrator is allowed to grant reasonable extensions of time to file returns which is done by form RI 7004. While no regulations were promulgated by the Division, said form allows an automatic extension to be granted conditioned on the payment of the amount of the tax reasonably estimated to be due. The extension still allows a taxpayer to request a refund three (3) years from that estimated payment date and three (3) years from the payment made with its return. The Taxpayer chose to request an extension which is allowed pursuant to the payment of estimated tax. Granting the extension does not run afoul of the three (3) year time limit since if the legislature wanted one (1) date for every taxpayer from which to request a refund, it would have chosen to deem payments to be made on a certain date (like in the personal income tax statute).

The Taxpayer argues it received its refund from the U.S. government but not from Rhode Island which is unfair since the business tax is expressly linked to the Internal

⁹ R.I. Gen. Laws § 44-11-5 states as follows:

Extension of time for filing of returns. – The tax administrator may grant reasonable extensions of time for filing returns under rules and regulations as he or she shall prescribe.

Revenue Code. See R.I. Gen. Laws § 44-11-2. Nonetheless, while the calculations may be interdependent, there is no requirement that a state have the same refund time limits as another state or the Federal government. In fact, R.I. Gen. Laws § 44-11-20 provides a separate three (3) year period to request a refund if a taxpayer receives a change or correction to its taxable income by any official in the US government.

The Taxpayer finds support for its position in many non-Rhode Island cases. The Division points to *American Hoechst v. Norberg*, 462 A.2d 369 (R.I. 1983) in which the Rhode Island Supreme Court when asked to compare another state's statute to a Rhode Island statute found that the other statute was not the same as Rhode Island's but that anyway, the Court was not bound by other jurisdictions. Here, the Taxpayer does not point to any identical (or practically identical) statutes but rather argues by way of analogy to cases interpreting due dates, extension due dates, and final tax reports. Of course, this issue has come up in other statutory contexts in other jurisdictions. For example, it has been found that an estimated tax payment filed along with a request for an automatic extension of time to file a tax return is a payment within the meaning of 26 USC § 6511(a).¹⁰ However, Rhode Island's statute is clear and unambiguous and consideration of other states' statutes – similar or dissimilar - is not relevant.

The Taxpayer also argues that the Division's failure to recognize the tax extension for the refund filing is incorrect in terms of simple practicality. The Taxpayer argues that if the extension is not applicable to the refund filing, then companies who refuse to extend and accept penalties are in a superior position to those who go through the proper

¹⁰ For Federal and state cases on the issue of when a tax is paid, see *What constitutes payment for purposes of commencing limitations period under Internal Revenue Code (26 U.S.C.A. § 6511(a)) for refund of tax overpayments*, 160 A.L.R. Fed. 137 (originally published in 2000) and *Construction and Operation of Statutory Time Limit for Filing Claim for State Tax Refund*, 14 A.L.R.6th 119 (originally published in 2006).

process of getting an extension. This argument is more suited to legislative policy making and does not have a bearing on a clear and unambiguous statute. If a taxpayer chooses to pay penalties instead of filing for an extension that is a taxpayer's choice.

R.I. Gen. Laws § 44-11-20 sets a limit for when a taxpayer can claim a refund. The limit is "three (3) years after the tax has been paid." The statute does not state the tax is deemed paid on the extension date. The statute does not state the tax is deemed paid on the original due date. Rather the statute states that the refund request is limited to three (3) years after the tax is paid. The Taxpayer argues that "the tax" is singular but that does not preclude more than one (1) payment being made on the tax. Indeed, the statute envisions that more than one (1) tax payment could be made on the tax owed by providing for additional tax payments. The Taxpayer made two (2) payments on the tax. It missed the three (3) year limit on the first payment but not on the second. It is attempting to extend the time limit where there is no basis in the statute. *Iselin v. Retirement Board*, 943 A.2d 1045 (R.I. 2008).

VI. FINDINGS OF FACTS

1. On or about November 16, 2011, the Division issued a notice of Hearing and Appointment of Hearing Officer.
2. The parties submitted an agreed statement of facts and exhibits and all briefs were timely filed by August 10, 2012.
3. The facts and exhibits have been agreed upon by both parties and are not disputed.

VII. CONCLUSIONS OF LAW

1. Pursuant to R.I. Gen. Laws § 44-11-20, the refund request runs for three (3) year from after the tax has been paid which was in 2005 and 2006.

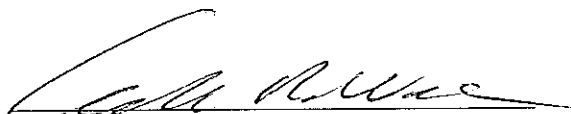
2. Pursuant to R.I. Gen. Laws § 44-11-20, the Taxpayer was out of time to request a refund of its 2005 payment since it was over three (3) years from its 2005 payment when it requested the refund.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-11-20, the Taxpayer was out of time to request a refund of its 2005 payment since it was over three (3) years from its 2005 payment when it requested the refund so that Division properly denied its refund request.

Date: September 28, 2012


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: Oct 4, 2012


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 § 44-11-35 WHICH STATES AS FOLLOWS:

Appeals. – Appeals from administrative orders or decisions made pursuant to any provisions of this chapter shall be to the sixth (6th) division district court pursuant to chapter 8 of title 8. The taxpayer's right to appeal shall be expressly made conditional upon prepayment of all taxes, interest, and penalties unless the taxpayer moves for and is granted an exemption from the prepayment requirement pursuant to § 8-8-26. If the court, after appeal, holds that the taxpayer is entitled to a refund, the taxpayer shall also be paid interest on the amount at the rate provided in § 44-1-7.1.

CERTIFICATION

I hereby certify that on the 5th day of October, 2012, 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 Bernard Lemos, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

