

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2012-09

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

IN THE MATTER OF:

Taxpayers.

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Case No.: 12-T-0019
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 May 9, 2012 and issued to the above captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing filed with the Division. A hearing was held on June 8, 2012. The Division was represented by counsel and the Taxpayer represented herself. 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 Taxpayer's refund claim for the calendar years 2005 and 2006 were timely filed pursuant to R.I. Gen. Laws § 44-30-87.

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. She testified that the Taxpayer's 2005 return was originally filed on July 15, 2006 with the amended return being filed on April 18, 2011 and the Taxpayer's 2006 return was filed on April 15, 2007 with the amended return being filed on April 18, 2011. See Division's Exhibits One (1) through Four (4). She testified that under the relevant statute for refunds, both refund requests were untimely as neither fell under either the statutory two (2) or three (3) year period.

The Taxpayer testified on her behalf. She testified that she filed amended returns in 2011 because she discovered that she could claim the RI Disability Benefit Fund on her Federal return. She testified that she claimed the deduction in 2004 but then was told by a Division employee that could not deduct the fund so she did not in 2005. In 2011, she testified that she spoke to another Division employee who also told her that she could not claim it. She testified that she then spoke to the Federal tax authorities who told her she could make the deduction so she received the wrong information from the State that caused her loss. She testified that she would like to be refunded for the tax years 2005 and 2006.¹ See Taxpayer's Exhibit One (1) (request for refunds).

On questioning from the Taxpayer, testified that it is correct to say that TDI disability cannot be deducted in Rhode Island but it can be deducted as part of Federal itemization of deductions. In rebuttal, also testified that Division employees are instructed not to answer questions about Federal income taxes because the employees represent Rhode Island and want to avoid giving out misinformation on Federal taxes so taxpayers are recommended to ask the Federal IRS.

¹ There was no dispute that she received refunds for refund claims made for later years.

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),² the Taxpayer's 2005 tax was deemed paid on the date it was due: April 15, 2006 and the 2006 tax was deemed paid on the date it was due: April 15, 2007. In addition, R.I. Gen. Laws § 44-30-51³ 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 § 44-30-52⁴ states that tax shall be paid on or before the date fixed

² 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.

³ 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.

⁴ R.I. Gen. Laws § 44-30-52 states in part as follows:

for filing without regard to an extension. In addition, R.I. Gen. Laws § 44-30-87(e)⁵ 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:

1. The Taxpayer's 2005 tax was deemed paid on April 15, 2006. The Taxpayer was 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 Taxpayer filed an amended 2005 Rhode Island return on April 18, 2011 and claimed a refund.
3. April 18, 2011 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.

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.

⁵ 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.

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

6. The Taxpayer is 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 Taxpayer has not paid any tax from April 18, 2011 to the present.

9. The Taxpayer’s 2006 tax was deemed paid on April 15, 2007.

10. The Taxpayer filed an amended 2006 Rhode Island return on April 18, 2011 and claimed a refund.

11. April 18, 2011 is past the two (2) year period from the date the taxes were deemed paid that is allowed for requesting a refund.

12. The Taxpayer is within the three (3) year period to claim a refund.

13. The Taxpayer has not paid any tax from April 18, 2011 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)⁶ are different from the Rhode Island statute. For example, see *Taxation Decision* 2011-15 (8/2/1) (discussing Federal and Rhode Island differences in statutes).

The Taxpayer argued that this it was not fair that she was given the wrong information by the Division. However, the Division's information regarding Rhode Island tax returns was correct. Nonetheless, an administrative proceeding is not an equitable proceeding and there is no equitable jurisdiction. To find for the Taxpayers on

⁶ § 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.

(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 basis of a fairness argument would be reversible error. *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004).

In addition, there was no basis to find that the doctrine of *equitable estoppel* should apply against the Division. The Supreme Court has held as follows:

in an appropriate factual context the doctrine of estoppel should be applied against public agencies to prevent injustice and fraud where the agency or officers thereof, *acting within their authority*, made representations to cause the party seeking to invoke the doctrine either to act or refrain from acting in a particular manner to his [, her, or its] detriment. *Romano v. Retirement Board of the Employees' Retirement System of the State of Rhode Island*, 767 A.2d 35, 39 (R.I. 2001) (citation omitted) (italics in original).

Therefore, for a party to obtain *equitable estoppel* against an agency, it must show that a “duly authorized” representative of the agency made affirmative representations within the scope of his/her authority, that such representations were made to induce the plaintiff’s reliance thereon, and that the plaintiff actually and justifiably relied thereon to its detriment. *Casa DiMario, Inc. v. Richardson*, 763 A.2d 607, 612 (R.I. 2000).

However, a government entity and its representatives do not have “any implied or actual authority to modify, waive, or ignore applicable state law that conflicts with its actions or representations.” See *Romano*, at 40. *Romano* found that the “doctrine of *equitable estoppel* should not be applied against a governmental entity like the board when, as here, the alleged representations or conduct relied upon were *ultra vires* or in conflict with applicable law.” *Id.* at 38. In addition, the party must make a requisite showing that *equitable estoppel* should be applied to prevent fraud and injustice. See *Guilbeault v. R.J. Reynolds Tobacco Company*, 84 F.Supp.2d 263 (D.R.I. 2000) (to prove fraud, plaintiff needs to show that defendant made a false or misleading statement of

material fact that defendant knew to be false and it was made in order to deceive and that plaintiff detrimentally relied on statement).

The Taxpayer made no showing that the Division employee made affirmative representations to her in order to induce her reliance on them. *Equitable estoppel* does not apply.

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).

It is unfortunate the Taxpayer did not realize that while TDI is not deductible in Rhode Island, it is deductible on Federal returns. However, pursuant to the Rhode Island statute, the Taxpayer is out of time on her refund request and there are no statutory exceptions to the time limits.

Based on the forgoing, the Taxpayer does not qualify for her claimed refunds 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 May 9, 2012, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayer in response to her request for a hearing.

2. A hearing in this matter was held on June 8, 2012 with the parties resting on the record.

3. The Taxpayer's 2005 return was due by April 15, 2006 and her tax was deemed paid on that day.

4. The Taxpayer filed an amended return on April 18, 2011 for the year 2005 and claimed a refund for overpayment of tax.

5. The Taxpayer's 2006 return was due by April 15, 2007 and her tax was deemed paid on that day.

6. The Taxpayer filed an amended return on April 18, 2011 and claimed a refund for overpayment of tax.

7. There are no statutory or regulatory exceptions to the statutory time limits for claiming a refund.

8. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayer is not entitled to the claimed refunds.

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 Taxpayer is not entitled to the refunds 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 Taxpayer is not entitled to the refunds claimed and the Division properly denied the Taxpayer's claim for the refunds.

Date: July 12, 2012

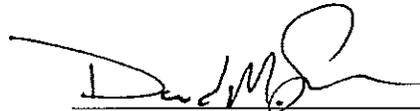

Catherine R. Warren
Hearing Officer

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: 7/18/12


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 July, 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 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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