

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2012-12

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

IN THE MATTER OF:

Taxpayers.

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Case No.: 12-T-0021
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 August 22, 2012 and issued to the above captioned taxpayers¹ ("Taxpayers") by the Division of Taxation ("Division") in response to a request for hearing filed with the Division. A hearing was held on September 5, 2012. The Division was represented by counsel and the Taxpayers represented themselves. 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' refund claims for the calendar years 2006 and 2007 were timely filed pursuant to R.I. Gen. Laws § 44-30-87.

¹ The Taxpayers are a married couple.

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. She testified that the Taxpayers filed their 2006 personal income tax return on November 7, 2007 and the return indicated that a balance was due which was paid by the Taxpayers. She testified that the Division received a request for a refund of an overpayment for 2006 in April, 2011.² She testified that she reviewed the Taxpayers' 2006 return which showed the Taxpayers' tax preparer had not taken a credit for the 2006 withholding tax. See Division's Exhibit One (1) (2006 return and W-2 for the Taxpayers' wife). testified that the Taxpayers' 2007 income tax return was filed on February 24, 2011 and there was an overpayment of tax for which the Taxpayers requested a refund. See Division's Exhibit Two (2) (2007 return). She testified that both refund requests were out-of-time based on the relevant statute, R.I. Gen. Laws § 44-30-87. testified that the Division has no records of an amended 2006 return or 2007 return being filed before February 24, 2011.

The Taxpayer³ testified on the Taxpayers' behalf. She testified that she understood that they were out of time but their tax preparer had indicated to them that their amended 2006 return and 2007 return were filed electronically with the Division in April, 2008. See Taxpayers' Exhibits One (1) through Four (4) (letters and receipts from tax preparer to Taxpayers). The Taxpayer testified that she tried to contact the tax preparer for more records but the office is now closed.

In response, testified that if the tax preparer had actually submitted those documents in 2008, the Taxpayers would have been timely for refunds.

² The letter from the Taxpayers to the Division in April, 2011 requesting the 2006 refund was dated April 16, 2011 and received by the Division on April 20, 2011.

³ The wife.

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) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. **Relevant Statute**

R.I. Gen. Laws § 44-30-87(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),⁴ the Taxpayer's 2006 tax was deemed paid on the date it was due: April 15, 2007 and the 2007 tax was deemed paid on the date it was due: April 15, 2008. In addition, R.I. Gen. Laws § 44-30-51⁵ 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 § 44-30-52⁶ states that tax shall be paid on or before the date fixed

⁴ 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.

⁵ 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.

⁶ 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

for filing without regard to an extension. In addition, R.I. Gen. Laws § 44-30-87(e)⁷ specifically precludes any other period of limitations specified in any other laws from being applied to recovery of personal income tax refunds. Thus, applying the statute results in the following timeline:

1. The Taxpayers' 2006 tax was deemed paid on April 15, 2007. 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. On April 20, 2011, the Taxpayers requested a refund for their 2006 return.

3. April 20, 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 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.

5. On February 24, 2011, the Taxpayers filed their 2007 return and requested a refund for its 2007 return.

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.

⁷ 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.

6. February 24, 2011 is past the two (2) year period from the date the taxes were deemed paid that is allowed for requesting a refund.

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

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

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

10. 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."

11. The Taxpayers have not paid any tax from February 24, 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.

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).

The Taxpayers understood that their refund requests were out-of-time. Unfortunately for the Taxpayers, their tax preparer erroneously filed their 2006 return without taking credit for the withholding tax and then their amended 2006 return and 2007 return were not filed in 2008 as claimed by their tax preparer. Unfortunately for the Taxpayers, 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). It is unfortunate that the Taxpayers apparently received misleading tax preparation advice but pursuant to the Rhode Island statute, the Taxpayers are out of time on their refund requests and there are no statutory exceptions to the time limits.

Based on the forgoing, the Taxpayers do not qualify for their 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 August 22, 2012, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayers in response to their request for a hearing.

2. A hearing in this matter was held on September 5, 2012 with the parties resting on the record.

3. The Taxpayers' 2006 return was due by April 15, 2007 and was deemed paid on that day.

4. The Taxpayers' 2006 return was filed on November 7, 2011 and the withholding tax was not deducted so that the Taxpayers overpaid the tax.

5. The Taxpayers requested a refund of the 2006 overpayment on April 20, 2011.

6. The Taxpayers' 2007 return was due by April 15, 2008 and the tax was deemed paid on that day.

7. The Taxpayers filed their 2007 return on February 24, 2011 and claimed a refund for overpayment of tax.

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

9. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayers are not entitled to either 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.*

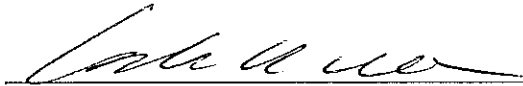
2. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayers are not entitled to the refunds claimed.

VIII. RECOMMENDATION

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

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

Date: September 26, 2012

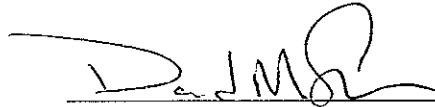

Catherine R. Warren
Hearing Officer

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: Sept 28, 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 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 28th day of September, 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.

