STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2013-03

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

IN THE MATTER OF:	**Personal Income Tax** **Case No.: 13-T-0038**
Taxpayers.	

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 March 29, 2013 and issued to the above-captioned taxpayers ("Taxpayers")[1] by the Division of Taxation ("Division") in response to a request for hearing filed with the Division. A hearing was held on June 12, 2013. The Division was represented by counsel and the Taxpayers were *pro se*. 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.*, *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-0,* and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings.*

[1] The taxpayers are a married couple.

III. ISSUE

Whether the Taxpayers' claimed carryover for the calendar year 2008 and the Taxpayers' claimed refund claim for the calendar year 2009 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 Taxpayers' 2008 return was filed on June 16, 2011 and the Taxpayers' 2009 return was filed on January 8, 2013. See Division's Exhibits One (1) through Four (4). She testified that under the relevant statute, R.I. Gen. Laws § 44-30-87, the 2008 carryover request and 2009 refund request were untimely as neither fell under either the statutory two (2) or three (3) year period. She testified that the Taxpayers were sent a letter dated December 8, 2010 informing them that the Division had credit or money on account but that a 2008 return has not been filed and the letter was sent within the two (2) year period to claim a refund. She testified that this letter is notated in the Division's records as "letter sent at turnaround." See Division's Exhibit Two (2). She testified that the same notification letter was sent to the Taxpayers on January 7, 2011 for their 2009 return. See Division's Exhibit Four (4).

On cross-examination, testified that the Federal and State laws are different in relation to refunds. She testified that the 2007 payment for taxes was indicated in the system as a late payment. testified that the 2008 return was received in June 16, 2011 but the Taxpayers were not notified until September 25, 2012 that the request was out of time.

The Taxpayers are a married couple of the wife testified on their behalf. She testified that the Division took 15 months to notify them that their 2008 claim for carryover was denied which is too long time and creates a hardship. She also testified that pursuant to R.I. Gen. Laws § 44-30-6, the State statute should be read the same as the Federal statute. She testified that she received her Federal refund for 2008 and 2009.[2]

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.*

[2] The wife also testified about an issue with the 2007 payment. The Taxpayer testified that she had wanted the 2007 refund applied to 2009 as a carryover but they were given it as a refund. She testified that she brought it to the Division and said she wanted it applied to 2009 but it was applied to 2008. However, even if the credit was applied to 2009, the carryover for 2009 would still have been denied as untimely.

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. Arguments

The Taxpayers argued that pursuant to R.I. Gen. Laws § 44-30-6,[3] Rhode Island should follow Federal definitions for income tax since R.I. Gen. Laws § 44-30-87 is not different from the Federal law. The Taxpayers disagreed with *Taxation Decision* 2012-01 (1/19/12) which found that the State and Federal laws are different. The Taxpayers argued that while the Federal and State statute are different since the Federal statute includes the term "immediately preceeding" and the State law does not, the State statute appears to be on "omission" and the State statute does not clearly show that difference was clearly intended.

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[3] R.I. Gen. Laws § 44-30-6 states as follows:

> Meaning of terms. – Any term used in the Rhode Island personal income tax law shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required. Any reference to the laws of the United States means the provisions of the Internal Revenue Code of 1954, and amendments thereto thereto, and other provisions of the laws of the United States relating to federal income taxes for the same taxable year, except that if this reference should ever be declared unconstitutional then to the provisions that existed on January 1, 1972.

The Division's position was that pursuant to R.I. Gen. Laws § 44-30-87, the Taxpayers do not fall under either the two (2) year provision or the three (3) year provision.

D. 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 Taxpayers' tax for 2008 was deemed paid on the date it was due: April 15, 2009 and the Taxpayers' tax for 2009 was deemed paid on the date it was due: April 15, 2010. In addition, R.I. Gen. Laws § 44-30-51[5] 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[6] states that tax shall be paid on

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[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:

or before the date fixed 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.

R.I. Gen. Laws § 44-30-6 provides that the State income tax law shall have the same meaning as the Federal law when used in a "comparable context" unless a "different meaning is clearly required." Federal law, 26 USC § 6511(a)[8] refers to when

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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.

[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.

[8] 26 USC § 6511 states in part as follows:

(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.

(B) Limit where claim not filed within 3-year period.--If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

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late claims may be made for Federal returns and provides for a two (2) and three (3) year time period for claims: two (2) years from the time tax was paid and three (3) years from when a return was filed. § 6511(b)(2)(A) and (B) addresses the issue of the amount that a taxpayer may receive when filing a late refund request. The Federal statute uses "immediately preceding" to explain how much money may be obtained through a refund for both the three (3) and two (2) year time period.

In contrast, Rhode Island chose to only apply the "immediately preceding" language to the two (2) year time period for a refund request. Unlike the Federal statute, the State statute has different amount limits. That is a clear difference.[9] The Taxpayers argued that the State statute did not clearly state that it was to be read differently. However, R.I. Gen. Laws § 44-30-6 does not require that a State statute specifically provide that it is different from Federal law but rather the State statute is to be compared to Federal law and if it clearly different then it is not read as a Federal statute. Clearly means "plainly, understandably. Clearly, definitely, distinctly, evidently imply the way in which something is plainly understood or understandable. Clearly suggests without a

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> (c) Special rules applicable in case of extension of time by agreement.--If an agreement under the provisions of section 6501(c)(4) extending the period for assessment of a tax imposed by this title is made within the period prescribed in subsection (a) for the filing of a claim for credit or refund--
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> (1) Time for filing claim.--The period for filing claim for credit or refund or for making credit or refund if no claim is filed, provided in subsections (a) and (b)(1), shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under section 6501(c)(4).

[9] Indeed, Rhode Island further differentiates its time limits by not including extensions in its time calculations which are included in the Federal statute. R.I. Gen. Laws § 44-30-87(e) specifically precludes any other period of limitations specified in any other laws from being applied to recovery of personal income tax refunds. In contrast, § 6511 allows extensions of time for the payment of taxes to be included in calculating the time allowed for filing refund requests. Reading the two (2) statutes as a whole, they are clearly different.

doubt or obscurity." *Webster's Unabridged Dictionary*, 2nd edition (2001).[10] In other words, R.I. Gen. Laws § 44-30-6 requires the Federal and State statutes be compared and if the State statute is different on its face then it is clearly different. The law does not need a provision stating specifically that it is to be read differently from Federal law.

Since the State law is clearly different from Federal law, there is no reason to apply § 6511 to R.I. Gen. Laws § 44-30-87. Accordingly, cases regarding 26 USC § 6511 are not relevant to the clear and unambiguous meaning of R.I. Gen. Laws § 44-30-87. See *Taxation Decision* 2008-2 (2/11/08); *Taxation Decision* 2007-24 (10/25/07); *Taxation Decision* 2007-25 (10/25/07); and *Taxation Decision* 2007-14 (6/20/07); *Taxation Decision* 2007-10 (5/27/07).

Furthermore, "[w]hen interpreting a statute, our ultimate goal is to give effect to the General Assembly's intent . . . The best evidence of such intent can be found in the plain language used in the statute. Thus, a clear and unambiguous statute will be literally construed." *Martone v. Johnston School Committee*, 824 A.2d 426, 431 (R.I. 2003). The Rhode Island statute clearly states that the time is "within" three (3) years so the clock begins from the date of filing and goes forward. Thus, the statute speaks for itself. The Taxpayers' arguments cannot override 1) the clear meaning of the statute; 2) the clear language of the statute regarding the term "within the three (3) year period"; and 3) the clear intent of the statute to limit the amount and time governing refunds.

The State and Federal statutes are different. The Federal statute provides that both the two (2) and three (3) year periods are "look back" periods as opposed to the

[10] The Rhode Island Supreme 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. So for example 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.

State statute which differentiates the limits by a retroactive provision for the two (2) year period and a prospective provision for the three (3) year period. With those clear differences, there is no need to rely on the Federal statute's meaning as the Rhode Island statute has its own clear meaning. Thus, there is no statutory or regulatory requirement to apply Federal limits on refunds to Rhode Island.

Thus, applying the State statute results in the following timeline:

1. The Taxpayers' 2008 tax was deemed paid April 15, 2009. The Taxpayers were able to request a refund (carryover) 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 their 2008 Rhode Island return on June 16, 2011.

3. June 16, 2011 is past the two (2) year period from the date the taxes were deemed paid that is allowed for requesting a refund (carryover).

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 filing of the 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 June 16, 2011 to the present.

9. The Taxpayers' 2009 tax was deemed paid April 15, 2010. The Taxpayers were able to request a refund (carryover) 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.

10. The Taxpayers filed their 2009 Rhode Island return on January 8, 2013.

11. January 8, 2013 is past the two (2) year period from the date the taxes were deemed paid that is allowed for requesting a refund.

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

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

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

15. The Taxpayers have not paid any tax from January 8, 2013 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. See *Division's Final Decision* (10/25/85) (denying refund request as untimely under R.I. Gen. Laws § 44-30-87). 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, Taxation's long standing interpretation is entitled to deference. *Trice v. City of Cranston*, 297 A.2d 649 (R.I. 1972).

Thus, not only is the Division's long standing interpretation entitled to deference as no changes have been made to the law by the legislature in 30 years, if a statute is considered ambiguous, deference is given to an administrative agency charged with the interpretation and enforcement of the statute. *Auto Body Ass'n of Rhode Island v. Dept. of Bus. Regulation*, 996 A.2d 91, 97 (R.I. 2010) (in administrative law "deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency * * * even when the agency's interpretation is not the only permissible interpretation that could be applied." (citations omitted)). While this statute is not ambiguous, the Division is afforded deference for its consistent and uniform interpretation of said statute.

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 (May 10, 2007).[11]

VI. FINDINGS OF FACT

1. On or about March 29, 2013, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayers.

2. A hearing was held on June 12, 2013 with the parties resting on the record.

3. The Taxpayers' 2008 tax payment was due by April 15, 2009 and was deemed paid on that day.

4. The Taxpayers' 2009 tax payment was due by April 15, 2010 and was deemed paid on that day.

5. The Taxpayers filed their 2008 Rhode Island return on June 16, 2011.

6. The Taxpayers filed their 2009 Rhode Island return on January 8, 2013.

7. There are no Rhode Island statutory or regulatory provisions that provide for applying Federal law to the Rhode Island statute regarding the claiming of late refunds to the filing of Rhode Island tax returns.

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

[11] The Taxpayers argued that the 15 months it took for the Division to notify them that their claim for a carryover for 2008 was denied was too long and created a hardship. (The Taxpayers filed their 2008 return on June 11, 2011 and were notified by letter dated September 25, 2012 that their request for carryover was denied). While 15 months is a long time to notify the Taxpayers, it does not change the analysis of whether their request was timely. Their request was untimely and the Division's response – even if 15 months later - does not change that. Indeed, the Division had notified the Taxpayers prior to the two (2) year period for 2008 and 2009 that the Division had tax payments but no tax returns from the Taxpayers for 2008 and 2009.

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 refunds (carryover) claimed for 2008 and 2009 and the Division properly denied the Taxpayers' claim for the refund.

Date: June 25, 2013

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: 6/26/2013

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 14th day of June, 2013, a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and return receipt requested to the Taxpayers' authorized representative's address on file with the Division of Taxation and by hand delivery to Meaghan Kelly, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Gail Belasco