STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2017-10

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.: 17-T-032**
	:	**Personal Income Tax**
Taxpayer.	:	

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 July 13, 2017 and issued to the above-captioned taxpayers ("Taxpayer")[1] by the Division of Taxation ("Division") in response to a request for hearing. A hearing was held on August 25, 2017. The Division was represented by counsel. The Taxpayer was *pro se*. The record was left open for further argument with the hearing closing on September 8, 2017.

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 claimed refund for the calendar year 2013 was timely filed pursuant to R.I. Gen. Laws § 44-30-87.

[1] While the case caption refers to a married couple, the husband appeared at hearing so for ease of reference, he shall be referred to as the Taxpayer.

IV. MATERIAL FACTS AND TESTIMONY

, Principal Revenue Agent, testified on behalf of the Division. He testified that the Taxpayer's 2013 non-resident income tax return was received by the Division on July 5, 2016. He testified that the Taxpayer's request for refund was out of time pursuant to R.I. Gen. Laws § 44-30-87. See Division's Exhibits A (2013 return) and B (W-2 wage and tax statements for 2013).

The Taxpayer testified on his behalf. He testified that a reasonable person would think the three (3) year period in R.I. Gen. Laws § 44-30-87 would apply to the time allowed for a refund.

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). 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.

B. 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 tax for 2013 was deemed paid on the date it was due, April 15, 2014. In addition, R.I. Gen. Laws § 44-30-51[3] states that Rhode

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[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.

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[4] 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)[5] specifically precludes any other period of limitations specified in any other laws from being applied to recovery of personal income tax refunds.

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.

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[4] 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.

[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.

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

1. The Taxpayer's 2013 tax was deemed paid April 15, 2014. 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 his 2013 Rhode Island return on July 5, 2016.

3. July 5, 2016 is past the two (2) year period from the date the taxes were deemed paid that is allowed for requesting a refund.

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

5. Thus, the Taxpayer may file a request for a refund within three (3) years of filing of the 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 July 5, 2016 to the present.

The Taxpayer argued that the 2013 return was filed within three (3) years of when the return was due so the refund should be granted. See Taxpayer's Exhibit One (1). The Taxpayer relied on a February 10, 2003, Division administrative decision, 2003 WL 584657,[6] in which the Division denied refund requests for tax year 1996 and 1997 that both had been filed on April 11,

[6] Its cite from Lexis is 2003 R.I. Tax LEXIS 8.

2002. The decision indicated that the refund requests should have been received three (3) years from their due dates. Using either a three (3) year or two (2) year calculation from when either return had been due (April 15, 1997 and April 15, 1998 respectively), both refund requests would have been out of time. However, in that situation, the **statutory** time-frame was two (2) years from the due date, but the decision did not fully explain the differences in the statutory limits of either the two (2) or three (3) year period.

A few months later, the Division issued another decision, 2003 R.I. Tax LEXIS 3, regarding personal income tax returns. That decision explicitly explained that the two (2) year period applies from when the tax was deemed due and paid (the April 15 date following the tax year). Another administrative tax decision, 2004 R.I. Tax LEXIS 13, explained both the two (2) year period (from date due) and the three (3) year period (return filed). Many years prior to the February 2003 decision, 1989 R.I. Tax LEXIS 7 denied a refund request on the basis of the three (3) year period and explained that no payment had been made between the actual filing of the return and three (3) years from said date.

Despite the loosely worded February 2003 administrative decision, the statute speaks for itself. As has been explained in detail by numerous decisions, there are two (2) different applicable statutory time frames: two (2) or three (3) years. *Infra*. See also 2007 R.I. Tax LEXIS 13; 2011 R.I. LEXIS 14; and 2016 R.I. Tax LEXIS 9.

In addition, 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. P.L. 1971, ch. 8, art. 1, § 1. 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).

Based on the forgoing, the Taxpayer does not qualify for his claimed refund pursuant to R.I. Gen. Laws § 44-30-87.

VI. FINDINGS OF FACT

1. On or about July 13, 2017, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayer.

2. A hearing was held on August 25, 2017 with the parties resting on the record. The record closed on September 8, 2017.

3. The Taxpayer's 2013 tax payment was due by April 15, 2014 and was deemed paid that day.

4. The Taxpayer filed his 2013 Rhode Island return on July 5, 2016.

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

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-30-1 *et seq*. and R.I. Gen. Laws § 44-1-1 *et seq*.

2. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayer is not entitled to the refund claimed for 2013.

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 refund claimed for 2013 and the Division properly denied the Taxpayer's claim for the refund.

Date: September 19, 2017

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: 9/25/17

Neena S. Savage
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:

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 25th day of September, 2017 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 Michael Tayler, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Gail Belasco