STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2018-06

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

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| **IN THE MATTER OF:** | : | |
| | : | **Case No.: 18-T-017** |
| | : | **personal income tax** |
| **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 ("Notice") dated February 22, 2018 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 April 23, 2018. The Division was represented by counsel and the Taxpayer was *pro se*. The Division timely submitted a brief by May 18, 2018. The Taxpayer did not file a brief.

## 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.*, 280-RICR-20-00-2, *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-0,* and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings.*

## III. ISSUE

Whether the Taxpayer's claimed refunds for the calendar years 2011, 2012, and 2014 should have been denied by the Division.

## IV. MATERIAL FACTS AND TESTIMONY

Chief Revenue Agent, Personal Income Tax, testified on behalf of the Division. He testified that he reviewed the Taxpayer's returns from 2011 to 2014. He testified that the refund requests for the years 2011, 2012, and 2014 were denied as being out of time, and the 2013 refund was erroneously refunded. He testified that R.I. Gen. Laws § 44-30-89(f) allows for an extension of time to file a personal income tax return based on a military service member being deployed to combat. He testified that this statutory provision applied to the Taxpayer's 2011 and 2012 returns so extended the time for the Taxpayer's returns being due those years. He testified that the 2011 return would have been originally due on April 17, 2012, but the Taxpayer was demobilized on August 24, 2013 so under the federal statute, he had 180 days plus the Rhode Island statutory time to file which was 108 days (January 1, 2012 to the April 17, 2012 due date) to file from the date of demobilization. Therefore, he testified that for the 2011 return, the two (2) year period resulted in a due date of June 9, 2014. He testified that again for the 2012 return, the Taxpayer's the demobilization date was August 24, 2013. He testified that adding the federal statutory time of 180 days plus the Rhode Island time allowed for filing in 2013 of the 2012 return (January 1, 2013 to April 15, 2013) of 105 days, the two-year period resulted in a due date to June 5, 2014.

testified that the 2011 and 2012 returns were both filed on April 15, 2017. He testified that under R.I. Gen. Laws § 44-30-87, a taxpayer also has three (3) years from the date of filing but refunds are limited to payments made then. He testified that for the three (3) year period

of April 15, 2017 and April 15, 2020, no payments so far have been paid. He testified that the two (2) year period starts from when the return is deemed due: June 9, 2014 for the 2011 return or June 5, 2014 for the 2012 return. He testified that two (2) years from those dates would be June 9, 2016 for 2011 and June 5, 2016 for 2012. He testified that the 2011 and 2012 returns were both filed more than two (2) years from the June, 2014 due dates.

testified that the 2014 return was due on April 15, 2015 and was filed on October 11, 2017 which was past the two (2) year period from the due date which would have been April 15, 2017. He testified that for the 2014, the Taxpayer was not subject to any extension of time, because he was not on active combat under the IRS publication or the State statute. He testified that he does not know of any federal or State law that allows for an extension for active duty or mobilization that is not for a combat zone. See Division's Exhibits A (2011 resident income tax return); E (2012 resident income tax return); M (2014 resident income tax); C (timeline for 2011, 2012, 2014 refund request denials created by the Division); B, F, and N (W-2's for 2011, 2012, 2014); H, I, J, K, L, and O (correspondence between Division and Taxpayer); P, Q, and R (Department of Defense Taxpayer records); T (Division's denial of refund requests); and U (Taxpayer's request for hearing).

The Taxpayer testified on his behalf. He testified that none of the Division's prior administrative decisions on personal income tax refunds that he received from the Division spoke of deployment. He testified that the IRS Publication 3 (pages 25, 26)[1] does not differentiate between the type of mobilizations. He testified that in 2015, he was mobilized in Fort Bragg, but he had been told in 2014, he might go to the Ukraine and spend time in Germany. He testified that while he did not go to the Ukraine, he was preparing to mobilize, so he could not unbox everything.

[1] Administrative notice was taken of IRS Publication 3 (2011) (pp. 8-10; 22-26); (2012) (pp. 8-10; 22-25); and (2014) (pp. 8-10; 22-26) combat zone extension.

See Taxpayer's Exhibit One (2015 orders). He testified that the federal government gave refunds for 2011, 2012, and 2014, and he believes that was because of continuous military service since 2011. He testified that he does not understand since a mobilization is a mobilization, and he had back to back mobilizations. He testified that soldiers are not mobilized like they used to be so there is less time to catch up. See Taxpayer's Exhibit Two (2) (Taxpayer's letters of explanation for the late 2011 and 2012 returns) (same as Division's Exhibit O). He testified that he is not sure why the federal government would refund his money when Rhode Island would not. On cross-examination, he testified that he was not in the combat zone in 2014. He testified that he assumes the federal rules are different for the income returns. He testified his returns were detailed such as including a short sale so could not be completed quickly.

In response, testified that he does not know why the IRS would have approved the federal refunds.

## 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 State and Federal Statutes and Regulations**

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.

R.I. Gen. Laws § 44-30-89 provides in part as follows:

> Administrative petition.
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> *(a) Petition for redetermination of a deficiency.* Within thirty (30) days, or one hundred fifty (150) days if the notice is addressed to a person outside of the United States, after the mailing of the notice of deficiency under § 44-30-81, the taxpayer may file an administrative petition with the tax administrator for a redetermination of the deficiency. The petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of § 44-30-87(g).
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> *(f) Related federal determination.* Consideration may be given to a federal determination relating to issues raised in a case before the tax administrator.

*Personal Income Tax Regulation* PIT 01-10 *Extension of Time to File* provides in Section III that taxpayers outside the United States will receive special status for extension of time for filing Rhode Island tax returns if granted a special federal extension. The combat zone deployment is a special extension of time for filing Rhode Island tax returns. Thus, pursuant to R.I. Gen. Laws

§ 44-30-89(f), the Division applies federal provisions for filing tax returns by military personnel when serving in a combat zone.

The Division did not dispute that the Appellant served in combat zones from January, 2011 through August, 2012 (Dijoubiti) and August, 2012 through August, 2013 (Saudi Arabia) as defined by IRS Publication 3 (2011 and 2012). Both 2011 and 2012 IRS Publication 3 provide as follows:

> A combat zone is any area the President of the United States designates by Executive Order as an area in which the U.S. Armed Forces are engaging or have engaged in combat. An area usually becomes a combat zone and ceases to be a combat zone on the dates the President designates by Executive Order. *Id.* at p. 9.

IRS Publication 3 further provides that the deadline for filing returns is automatically extended by 180 days if the taxpayer serves in the Armed Forces in a combat zone. IRS Publication 3 (2011 and 2012) at p. 24. IRS Publication 3 also then provides that in addition to the 180 days, the deadline is further extended "by the number of days left for [the taxpayer] to take action with the IRS when [the taxpayer] entered the combat zone." *Id.* This time refers to January 1 of the year following the tax year to the tax return's due date (April 15). The Taxpayer does not dispute that his last day in a combat zone was August 23, 2013 which would then be the date from which the extension of time (as provided for in IRS Publication 3) would be calculated.

In 2014, the Taxpayer was stationed at different times in Germany as well as various places within the United States. None of those places are considered to be combat zones pursuant to IRS Publication 3.

### C. When Refunds are Allowed

#### i. Federal Provisions and Timelines

It was undisputed that the Taxpayer was serving in combat zones during the years 2011 and 2012. He was demobilized on August 23, 2013 and at that time the 180 days' extension plus the regular time to file a return is to be applied to when the returns are due. For 2011, the due date

was June 9, 2014 and for 2012, it was June 5, 2014. See Division's Exhibit C (timeline for refund requests). His 2014 return was due on April 15, 2015 as he was not serving in a combat zone.

**ii. The Time Periods to Request a Refund**

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 2011 was deemed paid on the date it was due: June 9, 2014, his tax for 2012 was deemed paid on the date it was due: June 5, 2014, and his tax for 2014 was deemed paid on the date it was due: April 15, 2015. In addition, R.I. Gen. Laws § 44-30-51[3] states that Rhode Island personal income tax returns are to be filed by April 15 after the close of the taxable year, but in this matter for 2011 and 2012, the combat zone extension of time applies. R.I. Gen. Laws § 44-30-52[4] states that tax shall be paid on or before the

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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:
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> (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:

> 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.

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.

### iii. Applying Rhode Island Law to the Taxpayers' Refund Claim

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

1. The Taxpayer's 2011 tax was deemed paid on June 9, 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 2011 Rhode Island return on April 15, 2017.

3. April 15, 2017 is past the two (2) year period from the date the taxes were deemed paid that is allowed for requesting a refund.

4. The Taxpayer's 2012 tax was deemed paid on June 5, 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.

5. The Taxpayer filed his 2012 Rhode Island return on April 15, 2017.

6. April 15, 2017 is past the two (2) year period from the date the taxes were deemed paid that is allowed for requesting a refund.

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[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.

7. The Taxpayer's 2014 tax was deemed paid on April 15, 2015. 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.

8. The Taxpayer filed his 2014 Rhode Island return on October 11, 2017.

9. October 11, 2017 is past the two (2) year period from the date the taxes were deemed paid that is allowed for requesting a refund.

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

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

12. The Taxpayer is within the three (3) year period to claim a refund for the 2011, 2012, and 2014 return.

13. 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."

14. The Taxpayer has not paid any tax from April 15, 2017 to the present and has not paid any tax from October 11, 2017 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.

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. See *Division's Final Decision* (10/25/85) (refund request denied as untimely pursuant to said statute). 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).

**D. Federal Returns**

The Taxpayer brought up that he had received his federal tax returns for the years at issue. However, federal law regarding refunds is different from Rhode Island law. Federal law, 26 USC § 6511(a)[6] refers to when late claims may be made for federal returns and provides for a two (2)

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[6] 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.--

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. 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. See *Taxation Decision* 2008-2 (2/11/08). This may be the reason the Taxpayer received his federal refunds, but it is not known why he did. However, there is no statutory or regulatory requirement to apply federal limits on refunds to Rhode Island.

**E. Equity**

The Taxpayer argued that in 2014, he was told he might go to the Ukraine, and while he did not go, he prepared to go. He argued that while he was not in a combat zone, he was on active duty and on continuous deployment. His argument is essentially one of equity (fairness) arguing that it would be fairer to treat all deployments the same and not differentiate for combat zone deployments. See Division's Exhibit O and Taxpayer's Exhibit Two (2) (Taxpayer's letter acknowledging the late filings, but explaining why). However, equitable principles are not applicable to administrative

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(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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(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--

(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).

proceedings. See *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004) (Supreme Court vacated a Superior Court order that vacated an agency sanction on equitable grounds).

**F. Conclusion**

The Taxpayer falls under the two (2) year period to request refunds for 2011, 2012, and 2014. He did not file his tax returns in time to claim a refund for 2011 and 2012 even applying the combat zone extension of time for filing for those two (2) years. He did not file the 2014 return requesting a refund in the statutory time period. Based on the foregoing, the Taxpayer does not qualify for his claimed refunds pursuant to R.I. Gen. Laws § 44-30-87.

## VI. FINDINGS OF FACT

1. On or about February 22, 2018, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayers.

2. A hearing was held on April 23, 2018. The Division timely filed a brief by May 18, 2018.

3. Applying the extension of time for filing due to combat zone deployments, the Taxpayer's 2011 tax was deemed paid on June 9, 2014 and his 2012 tax was deemed paid on June 5, 2014. He filed his 2011 and 2012 tax returns on April 15, 2017.

4. The Taxpayer's 2014 tax was deemed paid on April 15, 2015. He filed his 2014 tax return on October 11, 2017.

5. 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.

6. 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 for 2011, 2012, and 2014.

## 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 for 2011, 2012, and 2014 and the Division properly denied the Taxpayer's claim for the refunds.

Date: June 27, 2018

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: 6/27/18

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:**

**§ 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 June, 2018, 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 Matthew Cate, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Gail Belasco