STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2018-08

**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:** | : | **Personal Income Tax** |
| | : | **Case No.: 18-T-027** |
| **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 ("Notice") dated February 26, 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 10, 2018. The Division was represented by counsel and the Taxpayer was *pro se*. The parties timely submitted briefs by June 29, 2018.

## 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*.

## III. ISSUE

Whether the Taxpayer's claimed refund claim for the calendar year 2014 should have been denied by the Division.

## IV. MATERIAL FACTS AND TESTIMONY

Chief Revenue Agent, testified that the Taxpayer's 2014 non-resident return was received by the Division on September 13, 2017 and was dated September 4, 2017. He testified that the return had been due by April 15, 2015 and there was an overpayment. He testified that pursuant to the relevant statute, the Taxpayer was out of time to request a refund. He testified that the statutory three (3) year period did not apply as there had been no payments made from time the return was filed until the present. He testified that the Taxpayer was beyond the statutory two (2) year period dating from April 15, 2015. He testified that there are no exceptions to the time limitation for a refund. He testified that the Taxpayer's information about his military records did not impact the time allowed for a refund. He testified that because of the Military Relief Act, the Taxpayer's residency is determined by the Department of Defense in its form DD2058 which designated Rhode Island as the Taxpayer's state of residency. He testified that if one enters the military in Rhode Island, that is the person's residency until the Department of Defense gives the person an exit or a new one. On cross-examination, he testified that he is familiar with Rhode Island's income tax instructions which mention an extension if no amount is due and if a taxpayer files an extension and sends it in, but it does not extend the deadline for filing a refund request.

The Division did not dispute that the Taxpayer is a non-resident of Rhode Island. The Division did not dispute that the Taxpayer lives in Connecticut or has a Connecticut address.

The Taxpayer testified on his behalf. He testified he had zero income from Rhode Island in 2014. He testified that the Department of Defense erroneously paid his withholding to Rhode Island. He testified that he is a legal resident of Connecticut. He testified that he is not a legal resident of Rhode Island according to the 2014 Rhode Island non-resident tax instructions for personal income tax. He testified that under the Military Relief Act, service pay can only be

subject to income tax by the state by which he or she is a legal resident. He testified that the only military record that he has not been able to correct is the military pay record, but he is trying to change the DD2058 form. See Exhibit G attached to the Taxpayer's brief.[1] He testified that an extension is allowed because there was no payment. He testified that a reasonable person would not understand the different time periods in the refund statute. He testified that he enlisted in the military in Rhode Island, but that everything else but the DD2058 form goes to his Connecticut address. The Taxpayer testified that he paid Rhode Island income tax in 2015 and 2016 and received refunds.

On cross-examination, the Taxpayer testified that his W-2 for 2014 lists Rhode Island as his residency. See Division's Exhibit B. He testified that he could own property in a different state and still have a different state of residency in the military. He testified that he did not know if he filed an extension.

In response, Lebeuf testified that the 2014 W-2 was issued in January of 2015 and Rhode Island accepted that payment and the military did the withholding.

## 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

[1] The Taxpayer attached many items to his brief which had not been admitted as exhibits. Exhibit G apparently is from a military human resources' manager indicating that the Taxpayer has tried to update form DD2058, but it has not been updated despite all of the Taxpayer's other military records now using the Connecticut address.

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.

R.I. Gen. Laws § 44-30-86 provides in part as follows:

> Overpayment. *(a) General.* The tax administrator within the applicable period of limitations may credit an overpayment against any liability of the taxpayer in respect of the Rhode Island personal income tax, and the balance shall be refunded by the general treasurer. A payment for a year of no liability shall be considered an overpayment. Any refund under this section shall be made only upon a certificate of the tax administrator approved by the director of administration. In no case shall the filing of a protest constitute a condition to a later credit or refund of Rhode Island personal income tax.
>
> *(b) Excessive withholding.* If the amount allowable as a credit for tax withheld from the taxpayer exceeds his or her tax to which the credit relates, the excess shall be considered an overpayment and shall be adjusted or refunded in any manner and time that the tax administrator may prescribe.
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> ***

*(d) Assessment and collection after limitation period.* If any amount of tax is assessed or collected after the expiration of the period of limitation properly applicable thereto, the amount shall be considered an overpayment.

### C. Arguments

The Taxpayer argued that Rhode Island did not have the taxing authority or jurisdiction to impose income tax on him. The Taxpayer argued that he is not a Rhode Island resident, but a Connecticut resident so is not subject to Rhode Island personal income tax. The Taxpayer argued that since Rhode Island does not offer any options when withholding taxes are forwarded to the wrong state, the filing time frame does not apply. The Taxpayer argued that he has created a domicile in Connecticut since 2001. The Taxpayer argued that he has tried to correct his DD2058 form. He argued that Military Relief Act provides that servicemembers' pay can only be subject to income tax by their state of residence. He argued that pursuant to R.I. Gen. Laws § 44-30-32,[2] he cannot be taxed in Rhode Island as he is not a domiciliary. He requested a refund of the entire withholding tax on the basis that he does not owe Rhode Island any tax.

The Division argued that pursuant to R.I. Gen. Laws § 44-38-87, the Taxpayer's request for refund was out-of-time. The Division did not dispute that the Taxpayer was a resident of Connecticut, but argued that he still owed tax to Rhode Island and paid tax as a non-resident.

### D. When Refunds are Allowed

#### i. 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

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[2] R.I. Gen. Laws § 44-30-32 provides in part as follows:

Rhode Island income of a nonresident individual. *(d) Military pay.* Compensation paid by the United States for service in the armed forces of the United States, performed by an individual not domiciled in this state, shall not constitute income derived from Rhode Island sources.

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),[3] the Taxpayer's tax for 2014 was deemed paid on the date it was due: April 15, 2015. In addition, R.I. Gen. Laws § 44-30-51[4] 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[5] states that tax shall be paid on or before the date fixed for filing without regard to an extension.[6] In addition, R.I. Gen. Laws § 44-30-87(e)[7] specifically precludes any

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[3] 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.

[4] 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.

[5] 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.

[6] The Taxpayer raised the issue of an extension, but did not know if he filed an extension. Nonetheless, the statute provides that an extension does not change when tax is deemed paid. Therefore, it does not change the date for filing a refund request. See also *Personal Income Tax Regulation* PIT 01-10 *Extension of Time to File* as well as the 2014 RI-1040NR Instructions. See Taxpayer's Exhibit One (1) (Division's 2014 non-resident return filing instructions).

[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.

other period of limitations specified in any other laws from being applied to recovery of personal income tax refunds.

### ii. Domicile and other Arguments

A taxpayer may live in another state and still be domiciled in Rhode Island and owe income tax to Rhode Island. The Taxpayer argued that he is not a resident of Rhode Island and does not owe Rhode Island taxes. He argued that he no longer is a Rhode Island domicile and that while DD2058 may say Rhode Island is his residency, he is not domiciled in Rhode Island so cannot be taxed in Rhode Island.[8] The Taxpayer also made various arguments that Rhode Island has no jurisdiction to tax him and no authority to tax him.

Even accepting for the sake of argument that the Taxpayer was able to prove that he is no longer a domicile of Rhode Island or that Rhode Island could not tax him, he is still requesting an overpayment of tax. His request for the entire withholding tax is a request for an overpayment of tax. Pursuant to R.I. Gen. Laws § 44-30-86(b), a "payment for a year of no liability shall be considered an overpayment." Thus, even if it was determined that the Taxpayer was not a domiciliary of Rhode Island[9] or that he could not be taxed by Rhode Island for any other reason and had no tax liability, the statutory time frame to request the refund of the entire withholding tax still applies.[10]

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[8] The seminal Rhode Island case on domiciliary for tax purposes is *DeBlois v. Clark*, 764 A.2d 727 (R.I. 2001). See also *Administrative Tax Decision*, 2015-07 (3/10/16) and *Administrative Tax Decision,* 2014-18 (9/12/14).

[9] The Taxpayer attached many items to his brief purporting to show that he is no longer a domiciliary of Rhode Island. These items had not been entered as exhibits at hearing. However, the determination of whether he is or is not a domiciliary of Rhode Island is not necessary to this decision.

[10] In contrast to the statutory provision to request personal income tax refunds, the tax statute provides a different mechanism to request a refund in the business corporation tax statute. R.I. Gen. Laws § 44-11-20 provides "[a]ny taxpayer may file a claim for refund with the tax administrator at any time within three (3) years after the tax has been paid." *International Packaging Corp. v. Mayer*, 715 A.2d 636 (R.I. 1998) held that R.I. Gen. Laws § 44-1-11 was not the appropriate statute to request a refund, but rather the business corporation taxpayer should have availed itself of R.I. Gen. Laws § 44-11-20. Similarly, regardless of the arguments for the refund, the limit to claiming an overpayment is to be found in the personal income tax statute of R.I. Gen. Laws § 44-30-87.

### iii. Equity

In addition, the Taxpayer also made an equitable (fairness) argument in arguing that the denial of the refund was unfair since the Department of Defense paid the wrong withholding tax and he has tried to fix the DD2058 form. However, equitable principles are not applicable to administrative 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).

### iv. Applying Rhode Island Law to the Taxpayer's Refund Claim

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

1. The Taxpayer's 2014 tax was deemed paid 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.

2. The Taxpayer filed his 2014 Rhode Island return on September 13, 2017.

3. September 13, 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 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 for the 2014 return from September 17, 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 *Administrative Tax 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).

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 (R.I. 2010). While this statute is not ambiguous, the Division is afforded deference for its consistent and uniform interpretation of said statute.

**E. Conclusion**

The Taxpayer falls under the two (2) year period to request a refund. He did not file a tax return requesting a refund in that statutory time period. Based on the foregoing, the Taxpayer does not qualify for his claimed refund pursuant to R.I. Gen. Laws § 44-30-87. See *Administrative Tax Decision*, 2017-10 (9/25/17) and *Administrative Tax Decision*, 2007-10 (5/10/07).

## VI. FINDINGS OF FACT

1. On or about February 26, 2018, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayer.

2. A hearing was held on April 10, 2018. The parties timely filed written closing arguments by June 29, 2018.

3. The Taxpayer's 2014 tax payment was due by April 15, 2015 and was deemed paid on that day.

4. The Taxpayer filed his 2014 Rhode Island return on September 13, 2017.

6. 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*.

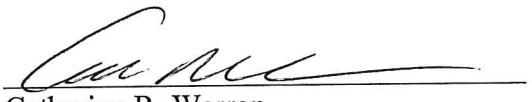
2. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayer is not entitled to the refund claimed.

## 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 2014 and the Division properly denied the Taxpayer's claim for the refund.

Date: August 1, 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: August 1, 2018

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 1ST day of August, 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