STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2018-10

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.: 18-T-049**
	:	**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 May 24, 2018 and issued to the above-captioned taxpayers ("Taxpayers") by the Division of Taxation ("Division") in response to a request for hearing filed with the Division. A hearing was held on August 30, 2018. Both parties were represented by counsel and 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.*, 280-RICR-20-00-2, Division of Taxation *Administrative Hearing Procedures Regulation*, and 220-RICR-50-10-2, Department of Administration's *Rules of Procedure for Administrative Hearings*

III. ISSUE

Whether the Taxpayers' claimed refund claim for the calendar years 2012 and 2013 should have been denied by the Division.

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified that the Taxpayers filed their 2013 and 2014 Rhode Island resident tax returns on October 17, 2017 and that no extensions were filed for either return. He testified that the 2013 and 2014 returns both had an overpayment claimed as a refund and both were out of time. He testified that the 2013 return was due on April 15, 2014 and the 2014 return was due on April 15, 2015 and both returns were deemed paid on their due dates. He testified that the refund requests were not filed within the two (2) year period for either the 2013 or 2014 return. He testified that both returns were filed on October 17, 2017, so that they were within the three (3) year payment period, but no payments have been made. He testified that neither return attached their W-2's so that the Division verified the withholding paid through Division records.[1] He testified that there was no tax liability for either year. See Division's Exhibits A (2013 return); E (2014 return); C (Division's records for 2013 W-2); F (Division's records for 2014 W-2); J (denial letters); and K (request for hearing).

The husband testified on behalf of the Taxpayers (a married couple). He testified that there was no overpayment since there was no tax liability. For example, he testified that this is not a question of a $10,000 tax liability with a $12,000 payment which would be an overpayment. He testified that since there was no tax liability, there was no overpayment so that the statute of limitation does not apply to the refund requests.

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*

[1] The parties agreed that part of the 2014 withholding payments had been made to Massachusetts so that the 2014 refund request was only for the withholding paid to Rhode Island. See Division's Exhibits G (2014 1099) and F.

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.
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> *(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.

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.
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> *(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 Division relied on R.I. Gen. Laws § 44-30-87 to argue that the Taxpayers' refund requests were out of time.

The Taxpayers relied on R.I. Gen. Laws § 44-30-87(e) to argue that because they did not did not owe tax, there was no overpayment and thus no time limit on their refund requests.

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 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 Taxpayers' tax for 2013 was deemed paid on the date it was due: April 15, 2014 and the Taxpayers' 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. 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) specifically precludes any other period of limitations specified in any other laws from being applied to recovery of personal income tax refunds.

ii. Applying Rhode Island Law to the Taxpayers' Refund Claim

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

1. The Taxpayers' 2013 tax was deemed paid April 15, 2014. The Taxpayers were able to request a refund two (2) years from that date. Any claim for a refund filed in the two (2) year period would be limited to amounts paid in the preceding two (2) years.

2. The Taxpayers filed their 2013 Rhode Island return on October 17, 2017.

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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.

[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.

3. October 17, 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 Taxpayers' 2014 tax was deemed paid April 15, 2015. The Taxpayers were able to request a refund two (2) years from that date. Any claim for a refund filed in the two (2) year period would be limited to amounts paid in the preceding two (2) years.

5. The Taxpayers filed their 2014 Rhode Island return on October 17, 2017.

6. October 17, 2017 is past the two (2) year period from the date the taxes were deemed paid that is allowed for requesting a refund.

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

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

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

10. The statute specifically limits the amount of a refund for those filed in the three (3) year period to the portion of tax paid "within the three (3) year period" as opposed to those requests filed within the two (2) year period which are limited to tax paid "during the two (2) years immediately preceding the filing of the claim."

11. The Taxpayers have not paid any tax from October 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 *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).

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.

iii. Overpayment

The Taxpayers argued that since they did not owe tax, there was no overpayment so that the statute of limitations did not apply. However, pursuant to R.I. Gen. Laws § 44-30-86(b), a

"payment for a year of no liability shall be considered an overpayment." The Taxpayers did not owe tax for either 2013 or 2014. The Taxpayers requested a refund of their overpayment of tax for 2013 and 2014. R.I. Gen. Laws § 44-30-87 governs the time period in which a taxpayer may request an overpayment of tax paid. The time period does not only apply to those who overpaid a tax liability, but includes payment made when there is no tax liability.

E. Conclusion

The Taxpayers fall under the two (2) year period to request a refund. They did not file their 2013 or 2014 tax returns requesting a refund in that statutory time period. Based on the foregoing, the Taxpayers do not qualify for their claimed refunds pursuant to R.I. Gen. Laws § 44-30-87. See *Tax Decision*, 2007-10 (May 10, 2007).

VI. FINDINGS OF FACT

1. On or about May 24, 2018, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayers.

2. A hearing was held on August 30, 2018 with the parties resting on the record.

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

4. The Taxpayers' 2014 tax payment was due by April 15, 2015 and was deemed paid on that day.

5. The Taxpayers did not have tax liability for either 2013 or 2014, but the taxes paid for each year were an overpayment.

6. The Taxpayers filed their 2013 and 2014 Rhode Island returns on October 17, 2017.

7. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayers are 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 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 refund claimed for 2013 and 2014 and the Division properly denied the Taxpayers' claim for refunds.

Date: September 20, 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: 9/24/18

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 24th day September, 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 Taxpayers' attorney'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