

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2020-01

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

IN THE MATTER OF;

Taxpayer.

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**Case No.: 19-T-105
Personal Income Tax**

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Pre-hearing Conference and Appointment of Hearing Officer (“Notice”) dated October 21, 2019 and issued to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to a request for hearing. A hearing was scheduled for January 7, 2020 at which the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing,¹ a hearing was held before the undersigned on January 7, 2020. Pursuant to Section 2.7(G)(3) of the 280-RICR-20-00-2 *Administrative Hearing Procedures* (“Hearing Regulation”), a default judgment may be entered against the party not appearing at hearing.² The Division was represented by counsel and rested on the record.

¹ The Notice was sent to the Taxpayer’s address on record with the Division and used by the Taxpayer when requesting a hearing. The Notice was sent by first class and certified mail. The certified mail was delivered. Department’s Exhibits One (2015 income tax return filed on January 25, 2019 with address); Five (5) (request for hearing with address); and Nine (9) (Notice and print out of United States Post Office certified mail tracking sheet showing delivery). The Taxpayer was sent a further notice of hearing to same address by first class and certified mail which was delivered by certified mail. Department’s Exhibit Ten (10) (November 22, 2019 letter scheduling January 7, 2020 hearing date and United States Post Office certified mail tracking sheet showing delivery).

² The Notice and the November 22, 2019 letter informed the Taxpayer that failure to appear at hearing could lead to a default being entered against him. The Hearing Regulation provides that a defaulted party be given notice of the default by mail and said party may request reinstatement of the matter pursuant to a motion for reconsideration as set forth in the Hearing Regulation.

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 Hearing Regulation, and 220-RICR-50-10-2, Department of Administration's *Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Taxpayer's request for a refund from his personal income tax return for 2015 is timely pursuant to R.I. Gen. Laws § 44-30-87.

IV. MATERIAL FACTS AND TESTIMONY

The Taxpayer's Rhode Island income tax return for the year 2015 requesting a refund was filed with the Division on January 25, 2019. On or about March 13, 2019, the Division issued a letter to the Taxpayer denying his request for a refund and the Taxpayer requested a hearing. See Division's Exhibits One (1) (2015 Rhode Island income tax return filed by Taxpayer on January 25, 2019); Two (2) (Division's denial of refund); and Three (3) (request for hearing).

Principal Revenue Agent, testified on behalf of the Division. He testified that the exhibits entered in evidence are all Division records.

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) (citing *Cocchini v. City of Providence*, 479 A.2d 108 (R.I. 1984)). 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. When Refunds are Allowed

R.I. Gen. Laws § 44-30-87 provides in part 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 § 44-30-87 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),³ the Taxpayer's tax for 2015 was deemed paid on the date it was due: April 15, 2016. In addition, R.I. Gen. Laws § 44-30-51⁴ 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 § 44-30-52⁵ 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)⁶ 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 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

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 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.

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.

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

1. The Taxpayer's 2015 tax was deemed paid April 15, 2016. 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 2015 Rhode Island return on January 25, 2019.

3. January 25, 2019 is past the two (2) year period from the date the tax was 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 January 25, 2019 to the present.

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) (denying refund request as untimely under 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, Taxation's long standing interpretation is entitled to deference. *Trice v. City of Cranston*, 297 A.2d 649 (R.I. 1972).

Based on the foregoing, the Taxpayer does not qualify for his claimed refund 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 October 21, 2019, the Division issued a Notice of Pre-Hearing Conference and Appointment of Hearing Officer.
2. A hearing in this matter was held on January 7, 2020. The Taxpayer received notice of hearing but did not appear at hearing.
3. The Taxpayer is in default for not appearing at the hearing.
4. The Taxpayer's 2015 tax payment was due by April 15, 2016 and was deemed paid that day.
5. The Taxpayer filed his 2015 return on January 25, 2019 and claimed a refund for overpayment of tax.
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 § 44-40-87(a), the Taxpayer is not entitled to the claimed refund.

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

Date: JANUARY 22, 2020


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: 1/23/2020


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 23rd day of January, 2020 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail, return receipt requested to the Taxpayer's address on file with the Division and by hand delivery to Michael Brady, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02903.


