

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2020-09

**STATE OF RHODE ISLAND  
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.: 20-T-013**

**Taxpayers.**

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**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 April 16, 2020 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 December 8, 2020.<sup>1</sup> The Division was represented by counsel and the Taxpayers were *pro se*. The parties 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 *Administrative Hearing Procedures*, 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 year 2015 should have been denied by the Division.

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<sup>1</sup> Due to the COVID19 pandemic, the parties agreed to hold the hearing by telephone.

#### IV. MATERIAL FACTS AND TESTIMONY

, Principal Revenue Agent, testified on behalf of the Division. He testified that the Division received the Taxpayers' 2015 tax return on December 19, 2019. Division's Exhibit B (Taxpayers' 2015 return received on December 19, 2019). He testified that the Taxpayers' 2015 return would have been due on April 18, 2016; though, they requested an extension so it was due by October 17, 2016. He testified that the Taxpayers made estimated payments during 2015. He testified one payment was posted to the husband of the Taxpayers' account but was transferred into the joint Taxpayers' account. Division's Exhibit C (Division's computer records for Taxpayers' 2015 income tax return payments). He testified that after calculating the estimated payments, the withholding, and the tax liability, the Taxpayers overpaid their 2015 tax owed by *Id.*<sup>2</sup>

testified that the Division's computer system generated two (2) letters in 2018 to send to the Taxpayers because while the Division had received 2015 tax payments from the Taxpayers, the Division had not received a 2015 tax return from the Taxpayers. He testified that he assumes the letters were purposely sent prior to the two (2) year statutory period for a refund request. Division's Exhibit A (copy of said letters). He testified that when the Division received the Taxpayers' 2015 return in 2019, it was out of time to receive a refund of their overpayment and the Taxpayers were notified of the denial of their refund request. Division's Exhibit D (notices of denied refund request from November 29, 2019 and January 24, 2020). He testified that there is a two (2) year period and a three (3) year period under R.I. Gen. Laws § 44-30-87 that provides for time to request a refund, and the Taxpayers did not fall under either one.

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<sup>2</sup> The Taxpayers' 2015 return calculated their overpayment as

Division's Exhibit B.

On cross-examination, testified there is no statutory requirement for the Division to inform people when tax is due. He testified the computer system generates letters when tax payments have been received but no corresponding tax returns have been filed. He testified that one of the 2018 letters sent was addressed to the Taxpayers' husband because an estimated payment was initially recorded under the Taxpayers' husband's account number and the other letter sent was addressed to the Taxpayers because another estimated payment was recorded under the joint account number.

The wife of the Taxpayers testified on behalf of the Taxpayers. She testified that she and her husband saw their CPA in August, 2016. She testified that they paid him, and he prepared their 2015 tax return and gave them an envelope to sign and they mailed their tax return. She testified that later in August, 2016, she sent the Division by certified mail payment for the following year's taxes based on what they had learned from their accountant in that August meeting. She testified that the Division makes mistakes because in January of 2020, they got an assessment from the Division for over which she found was a mistake after she spoke to . She testified that her accountant sent a letter to the Division, which apparently the Division never received, indicating that their 2015 tax return was completed, dated, and mailed in August, 2016 and the 2015 return that the Division received in 2019 had a computer generated date of 2019. She testified that they always mail their tax returns and the 2015 return was prepared in August, 2016, and they mailed it in August, 2016. Taxpayers' Exhibit Five (5) (letter). On cross-examination, she testified they never send their tax returns by certified mail because they never have had any issues. She testified that they only send payment checks by certified mail. She testified that they never have had any problems before and have done everything right and have always paid their taxes, so they are surprised about this matter.

The husband of the Taxpayers testified on their behalf. He testified that they have always gone to the accountant and have been filing taxes for 60 years without any problems. He testified that they do not understand the issue because they have provided proof of mailing.

## 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.

**C. 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),<sup>3</sup> the Taxpayers' tax for 2015 was deemed paid on the date it was due: April 15, 2016. In addition, R.I. Gen. Laws § 44-30-51<sup>4</sup> 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<sup>5</sup> states that tax shall be paid on or before the date fixed for filing without

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<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

regard to an extension. In addition, R.I. Gen. Laws § 44-30-87(e)<sup>6</sup> specifically precludes any other period of limitations specified in any other laws from being applied to recovery of personal income tax refunds.

**ii. The Filing of the 2015 Return**

The Division did not receive the Taxpayers' 2015 tax return by April 15, 2016 and did not receive it by April 15, 2018. R.I. Gen. Laws § 44-30-51 requires that tax returns be filed with the Division. While the Taxpayers apparently mailed their 2015 tax return in August, 2016, it was not filed (received) by the Division in 2016. In fact, because the Division had not received the Taxpayers' 2015 tax return, two (2) two letters were computer generated in 2018 that informed the Taxpayers (prior to April 15, 2018) that while 2015 tax payments had been received from them, the Division had not received a 2015 tax return from them. Both letters were addressed to the Taxpayers' address that is the address on their 2015 tax return and on the W-2 for the wife of the Taxpayers. Division's Exhibit C.<sup>7</sup> However, whether the Taxpayers received the 2018 letters or not, the Taxpayers were required to file a 2015 tax return. The wife testified that they did not mail their 2015 return by certified mail. The Taxpayers saw their accountant in August, 2016. Assuming the Taxpayers mailed their 2015 return in August, 2016, the Division did not receive it. The Taxpayers did not have any documentary proof that their 2015 return had been received by

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<sup>6</sup> 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.

<sup>7</sup> During a discussion of the admissibility of said letters, the wife of the Taxpayers indicated that they had received these letters and that she had them in her hand. She did not testify on direct or on cross-examination regarding receipt of the letters. The wife also indicated during the Taxpayers' cross-examination of [redacted] that they did not receive the letters and if they had been sent by certified mail, they would have responded.

the Division. Without documentary proof that the Division received the 2015 tax return in 2016, the Taxpayers cannot show they filed their 2015 tax return at that time. Thus, their 2015 tax return was not filed until December 19, 2019.

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

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

1. The Taxpayers' 2015 tax was deemed paid April 15, 2016. 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 2015 Rhode Island return on December 19, 2019.

3. December 19, 2019 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 Taxpayers may file a request for a refund within three (3) years of filing of the return.

6. The Taxpayers are 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 Taxpayers have not paid any tax from December 19, 2019 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.

**iv. Equity**

The Taxpayers represented that they felt that the denial of their refund request was unfair as they have always paid their taxes, and they mailed their 2015 return on time. Unfortunately for the Taxpayers, the Division did not receive their return in 2016 and did not receive their 2015 return by April 15, 2018. The Taxpayers did not file their 2015 tax return until December, 2019. In terms of the equitable/fairness argument, 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).

**D. Conclusion**

The Taxpayers fall under the two (2) year period to request a refund. They did not file their tax return requesting a refund in that statutory time period. Based on the foregoing, the Taxpayers do not qualify for their claimed refund pursuant to R.I. Gen. Laws § 44-30-87. See *Tax Decision* 2018-05 (June 25, 2018); and *Tax Decision*, 2007-10 (May 10, 2007).

**VI. FINDINGS OF FACT**

1. On or about April 16, 2020, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayers.
2. A hearing was held on December 8, 2020 with the parties resting on the record.
3. The Taxpayers' 2015 tax payment was due by April 15, 2016 and was deemed paid that day.
4. The Taxpayers filed their 2015 return on December 19, 2019 and claimed a refund for overpayment of tax.
5. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayers are 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 Taxpayers are not entitled to their 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 their refund claimed for 2015 and the Division properly denied the Taxpayers' claim for the refund.

*/s/ Catherine R. Warren*

Date: December 29, 2020

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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: 12/29/2020

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*Neena S. Savage*  
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.**

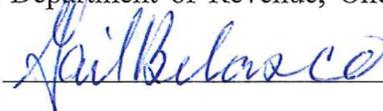
*(a) General.* Any taxpayer aggrieved by the decision of the tax administrator or his or her designated hearing officer as to his or her Rhode Island personal income tax may within thirty (30) days after notice of the decision is sent to the taxpayer by certified or registered mail, directed to his or 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 29<sup>th</sup> day of December, 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 Taxpayers' address on file with the Division of Taxation and by electronic delivery to Lenore Montanaro, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

  
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