STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-01

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

IN THE MATTER OF:	:	
	:	**Personal Income Tax**
	:	**Case No.: 13-T-0175**
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 dated October 18, 2013 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 November 21, 2013. The Division was represented by counsel and the Taxpayers were *pro se*.[1] 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.*, *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 Taxpayers claimed refund for the tax year 2009 was timely filed pursuant to R.I. Gen. Laws § 44-30-87.

[1] The taxpayers are a married couple and the husband represented them at hearing.

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. She testified that the Taxpayers' 2009 personal income tax return was received by the Division on April 2, 2013. She testified that the Taxpayers estimated their refund request at ; though, the Division calculated the refund should have been for . See Division's Exhibits One (Taxpayers' 2009 non-resident return filed April 2, 2013) and Three (3) (Division's internal correction to said return). However, she testified that no refund was issued because the request was out of time pursuant to the statute. She testified the Taxpayers' tax payments were considered paid under the statute on April 15, 2010 so that two (2) year period for requesting a refund from that date would have ended on April 15, 2012.

The husband testified on Taxpayers' behalf. He testified the statute is ambiguous and it is unclear about the two (2) and three (3) year period. He testified that the Federal government and Massachusetts gave refunds for the same refund request. He testified that the 2009 non-resident return instructions prepared by the Division do not indicate the time period needed to request a return but the 2012 instructions do contain such language. See Taxpayers' Exhibits One (1) (partial 2009 instructions) and Two (2) (partial 2012 instructions).

On rebuttal, testified that that the Federal personal income tax regulations allow three (3) years from the date when a return is due and also allow for the extension period in granting a refund. She testified that Rhode Island has a different law. She testified that the personal income tax instructions do not include all the laws

regarding personal income tax but rather include brief discussions and the full instructions include a telephone number to call for more information.

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). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). 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

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 2009 was deemed paid on the date it was due: April 15, 2010. 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

[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.

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)[5] 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 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.

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[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.

[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.

R.I. Gen. Laws § 44-30-6 provides that the State income tax law shall have the same meaning as the Federal law when used in a "comparable context" unless a "different meaning is clearly required." Federal law, 26 USC § 6511(a)[6] refers to when late claims may be made for Federal returns and provides for a two (2) 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. § 6511(b)(2)(A) and (B) addresses the issue of the amount that a taxpayer may receive when filing a late refund request. 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

[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.
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> (b) Limitation on allowance of credits and refunds.--
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> ***
>
> (2) Limit on amount of credit or refund.--
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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.
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> (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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> ***
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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).

only apply the "immediately preceding" language to the two (2) year time period for a refund request.[7]

The State and Federal statutes are different. The Federal statute provides that both the two (2) and three (3) year periods are "look back" periods as opposed to the State statute which differentiates the limits by a retroactive provision for the two (2) year period and a prospective provision for the three (3) year period. With those clear differences, there is no need to rely on the Federal statute's meaning as the Rhode Island statute has its own clear meaning. Thus, there is no statutory or regulatory requirement to apply Federal limits on refunds to Rhode Island.

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

1. The Taxpayers' 2009 tax was deemed paid April 15, 2010. 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 2009 Rhode Island return on April 2, 2013.

3. April 2, 2013 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.

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[7] Indeed, Rhode Island further differentiates its time limits by not including extensions in its time calculations which are included in the Federal statute. 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. In contrast, § 6511 allows extensions of time for the payment of taxes to be included in calculating the time allowed for filing refund requests. Reading the two (2) statutes as a whole, they are clearly different.

6. The Taxpayers are within the three (3) year period to claim a refund.

7. The Taxpayers have not paid any tax from April 2, 2013 to the present.

Finally, 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 R.I. Gen. Laws § 44-30-87). 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).

The Taxpayers also argued that their refund request should be granted because the Division failed to notify them of the deadlines for obtaining tax refunds. There is a presumption in law that people have knowledge of applicable law. See *McElroy v. Hawksley*, 196 A.2d 172 (R.I. 1963). The Taxpayers's argument about notification is an *equitable estoppel* argument since the basis of their argument is that the Division's failure to notify them of the applicable statute should result in the Division being estopped from asserting the statutory time limits to requesting a refund. In terms of *equitable estoppel*, the Rhode Island Supreme Court has held that,

> in an appropriate factual context the doctrine of estoppel should be applied against public agencies to prevent injustice and fraud where the agency or officers thereof, *acting within their authority*, made representations to cause the party seeking to invoke the doctrine either to act or refrain from acting in a particular manner to his [, her, or its] detriment. *Romano v. Retirement Board of*

the Employees' Retirement System of the State of Rhode Island, 767 A.2d 35, 39 (R.I. 2001) (citation omitted) (italics in original).

For a party to obtain *equitable estoppel* against a government entity, it must show that a "duly authorized" representative of the government entity made affirmative representations, that such representations were made to induce the plaintiff's reliance thereon, and that the plaintiff actually and justifiably relied thereon to its detriment. *Casa DiMario, Inc. v. Richardson*, 763 A.2d 607 (R.I. 2000). See also *El Marocco Club, Inc. v. Richardson*, 746 A.2d 1228, 1234 (R.I. 2000) ("key element of an estoppel is intentionally induced prejudicial reliance.") (internal citation omitted). However, "neither a government entity nor any of its representatives has any implied or actual authority to modify, waive, or ignore applicable state law that conflicts with its actions or representations." See *Romano*, at 39-40.[8]

While the Division may not have included specific information in its tax booklet regarding the time limits on requesting a refund, there was no showing by the Taxpayers that the Division made affirmative representations to the Taxpayers to induce reliance thereon regarding their late request for a refund. Furthermore, the Division cannot waive the applicable tax return refund law. *Equitable estoppel* arguments relating to the late filing of personal income tax refund requests have been previously rejected by the Division. See *Tax Decision* 2009-03 (March 23, 2009) and *Tax Decision* 1995-21 (September 19, 1995). There is no basis in law for the Taxpayers' argument that the Division's failure to give advance notice to them regarding statutory time limits on refunds somehow breached the Division's legal duty. In addition, equitable principles are not applicable to administrative

[8] Moreover, "any party dealing with a municipality 'is bound at his own peril to know the extent of its capacity.'" *Casa DiMario*, at 612 (internal citation omitted). Furthermore, "'[a]s a general rule, courts are reluctant to invoke estoppel against the government on the basis of an action of one of its officers.'" *Id.* (internal citation omitted).

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).

Based on the forgoing, the Taxpayers do not qualify for their 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 18, 2013, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayers.

2. A hearing was held on November 21, 2013 with the parties resting on the record.

3. The Taxpayers' 2009 tax payment was due by April 15, 2010 and was deemed paid on that day.

4. The Taxpayers filed their 2009 Rhode Island return on April 2, 2013.

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 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 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 2009 and the Division properly denied the Taxpayers' claim for the refund.

Date: 12/26/13

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: 1/13/14

David Sullivan
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 13th day of January, 2014, 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' address on file with the Division of Taxation and by hand delivery to Meaghan Kelly, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Jeri Belasco