STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-03

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-0172**
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 11, 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 December 16, 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.*

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

III. ISSUE

Whether the Taxpayers claimed carryover for the tax year 2009 can be allowed as timely filed pursuant to R.I. Gen. Laws § 44-30-87 and if so, whether it be applied to their 2011 return.

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. She testified that she reviewed the Taxpayers' 2009, 2010, and 2011 Rhode Island resident personal income tax returns. She testified that the 2009 return was signed by the Taxpayers on July 3, 2013 and was received by the Division on July 8, 2013 and the return indicated that an extension had been filed.

testified that when the Division switches over the computer for the new tax year, the Division issues a "turn-around letter" to all taxpayers for which the Division has received tax payments but no return. She testified that such a letter was forwarded to the Taxpayers about their 2009 return on January 7, 2011. See Division's Exhibit A (blank form copy of the turnaround letter) and B (Taxpayers' transaction page in Division's computer system).

testified that the Taxpayers' 2009 return indicated that there was carryover of but the request that it be carried over to the 2010 return was denied as untimely. She testified that the personal income statute applies two (2) different time periods for claming a refund and neither applied to the Taxpayers so the 2009 carryover request was deemed out-of-time. She testified that since the 2009 return was out-of-time, the Division corrected the Taxpayers' 2010 return since the 2010 had claimed the 2009 carryover. She testified that since the Division had not received the 2009 return at the

time the 2010 return was filed, the 2010 return was corrected by disallowing the carryover credit. See Division's Exhibit G. (internal Division correction to 2010 correction). She testified that when the 2010 return was corrected for the carryover request, the 2010 return had a zero balance so the denial of the 2009 carryover did not affect any liability in 2010.

testified that the Division's Exhibit G (2010 internal correction screen) contains an "error code" which is noted as "ERR CD" of "ESTPAY CARYOV." She testified that the error code of "ESTPAY CARYOV" automatically generates a letter to a taxpayer that the Division does not have a taxpayer's estimated payments and this will affect carryover. She testified that this automatically generated letter was sent to the Taxpayers on or about November 17, 2011 and notified the Taxpayers that there was an issue with the carryover claimed for the 2010 return. See Division's Exhibits H (copy of the ESTPAY CARYOV form letter) and G (screen shot with date letter sent).

testified that the Taxpayers' 2011 return was filed on October 11, 2012 and included the as carryover (See Division's Exhibit I) but the Division picked up that request and denied it as out of time and issued a Notice of Deficiency for interest, and late filing and late payment penalties. See Division's Exhibit J.

The husband testified on the Taxpayers' behalf. He testified that he had an issue with his 2007 return in which he had a carryover of but was notified that he owed that amount. He testified that he forwarded several letters to the Division regarding this issue. See Taxpayer's Exhibits Two (2) (March 28, 2011 letter), Three (3) (June 15, 2011 letter), Four (4) (June 27, 2011 letter), and Five (5) (October 25, 2011 letter). He testified that by letter dated September 7, 2012, the Division informed him that he would

be credited for the for 2007 to 2008. See Taxpayers' Exhibit One (1) (September 7, 2012 letter from Division). He testified that he held off filing his 2009 return because he was trying to resolve the issue because he wanted to use it as credit. He testified that he filed the 2009 return in June, 2011 though he had filed his Federal 2009 return in October 2010. See Taxpayer's Exhibit Three (3) (June 15, 2011 letter indicating he filed the 2009 return). He testified that he did not receive notice abut the 2009 turnaround letter or the 2010 correction letter. (Division's Exhibits B and H). He testified that if he had received the November, 2011 letter about the correction to the 2010 return, he would have addressed it.

On cross-examination, the husband testified that the 2009 return was dated July 3, 2013 because he had not kept a copy of the signed 2009 return sent to the Division in 2011. He testified that when he received a call from Collections in the Summer of 2013 about the 2009 return, he (they) signed it and dated it and sent it to the Division.

On rebuttal, testified that the had been filed untimely but since no turnaround letter was issued that for year to any taxpayer, the Taxpayer was given credit for that year.

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. Arguments

The Taxpayers relied on the June 15, 2011 letter indicating that the 2009 return was timely in 2011 and argued that they should receive carryover credit. The Division relied on R.I. Gen. Laws § 44-30-87 that the 2009 return was out-of-time so the claimed credit was unavailable in 2011.

D. 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 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.

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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.

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.

The Division did not receive a 2009 return from the Taxpayers until July, 2013. The Taxpayers argued that they filed their 2009 return in June, 2011. The Taxpayers had a copy of their June, 2011 letter indicating the filing of the 2009 return but did not have a copy of the 2009 return signed and dated in June, 2011. The Division notified the Taxpayers by letter in November, 2011 regarding the carryover issue and if that letter had been received by the Taxpayers, the Taxpayers would have realized that the Division did

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[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.

not have the 2009 return. Unfortunately for the Taxpayers, the undersigned must rely on the written and signed documents.

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 July 8, 2013.

3. July 8, 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.

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

7. The Taxpayers have not paid any tax from July 8, 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 Division imposed interest on the deficiency pursuant to R.I. Gen. Laws § 44-30-84. The Division imposed penalties for failure to file return and failure to pay tax pursuant to R.I. Gen. Laws § 44-30-85(a) which provides penalties will be imposed for willful neglect but excludes penalties for reasonable cause. R.I. Gen. Laws § 44-30-85(b) provides for a negligence penalty but pursuant to testimony and the Notice of Deficiency, no negligence penalty was assessed. See Department's Exhibit J.

Based on the forgoing, the Taxpayers do not qualify for their claimed 2009 carryover pursuant to R.I. Gen. Laws § 44-30-87. See *Tax Decision*, 2007-10 (5/10/07).

VI. FINDINGS OF FACT

1. On or about October 11, 2013, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayers.

2. A hearing was held on December 16, 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 July 8, 2013. The Taxpayers forwarded a letter on June 15, 2011 indicating that they were filing their 2009 return but have no signed or dated copy of said return from 2011. The only signed and dated copy of the Taxpayers' 2009 return was dated July 3, 2013 by the Taxpayers and received by the Division on July 8, 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 and owe the deficiency. See Division's Exhibit J.

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.*

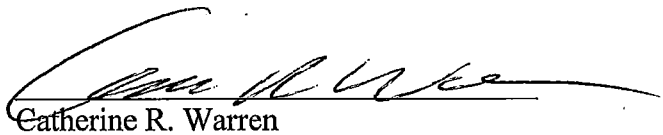
2. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayers are not entitled to the refund claimed and owe the deficiency.

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 carryover and the Taxpayers owe the deficiency (tax and interest). However, the undersigned would recommend the Division revisit the issue of reasonable cause and willful neglect in the penalty statute of R.I. Gen. Laws § 44-30-85(a) in order to determine whether those penalties (failure to pay and failure to file) apply.

Date: 12/31/13



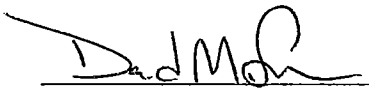
Catherine R. Warren
Hearing Officer

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
__X__ MODIFY

Dated: JAN 15, 2014



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 15th day of ~~December~~ January, ~~2013~~ 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.

Gail Belasco

MODIFICATION OF DECISION

Based on the recommendation of the Hearing Officer, and my review of the file, I have decided to modify the Hearing Officer's Recommended Decision as follows. Because there is sufficient evidence in the record to support the assertion that this taxpayer mistakenly believed he filed his 2009 return on June 15, 2011, the taxpayer has shown reasonable cause, and his actions do not rise to the level of willful neglect. Therefore, the failure to file penalty and failure to pay penalty imposed under Rhode Island General Laws § 44-30-85(a) shall be waived. The taxpayer is responsible for tax and interest on the deficiency amount in accordance with the Hearing Officer's decision.

David M. Sullivan, Tax Administrator