STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-10

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

IN THE MATTER OF:	
	Personal Income Tax
	Case No.: 13-T-0190
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 December 4, 2013 and issued to the above-captioned taxpayers ("Taxpayers")[1] by the Division of Taxation ("Division") in response to a request for hearing filed with the Division. A hearing was held on March 12, 2014. The Division was represented by counsel and the Taxpayers were *pro se*. The record was left open until March 18, 2014. The Division rested on the record. The Taxpayers submitted a written closing argument.

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. At hearing, the husband represented the Taxpayers.

III. ISSUE

Whether the Taxpayers' claimed refund claim for the calendar year 2010 was timely filed pursuant to R.I. Gen. Laws § 44-30-87.

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. He testified that the Taxpayers' 2010 resident return was received on August 19, 2013. He testified that for the 2010 tax year, the Taxpayers' return was due on April 15, 2011 and estimated tax payments would be considered to be paid that day. He testified that under the relevant statute there is a two (2) and three (3) year period to request a refund but the Taxpayers' refund request was out-of-time. He testified the Taxpayers did not request an extension of time for filing their return. He testified that a letter was sent to the Taxpayers in December, 2011 indicating that they had made estimated payments but had not filed a return for 2010. See Division's Exhibit One (1) (2010 return) and Two (2) (December, 2011 letter).

The Taxpayers' husband testified on behalf of the Taxpayers. He testified that he objected to the undersigned sitting as hearing officer as she is an employee of the State. He testified that there had been no due process in the seizure of their property (the refund) since no notice was given. He testified that they filed within three (3) years and thought that Rhode Island would respect the Federal extension. He testified that the December, 2011 letter indicated that they had not filed their return but did not state the time limits to request a refund. He testified that the Division's tax booklet states that Rhode Island follows the Federal law which is comparable to Rhode Island law. He testified that there should be a 30 day notice about seizure and it is not only a seizure but an excessive penalty. He testified that it is ridiculous to expect everyone to know the law about 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 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. Arguments

In closing, the Taxpayers argued that the refund denial was a seizure and they had the right to be informed of a seizure of funds 30 days in advance. The Taxpayers argued the hearing officer was biased as a State employee. The Taxpayers argue that they fall under the three (3) year period to claim a refund. The Taxpayers argued that the December 27, 2011 letter did not warn them that their refund could be denied for late filing. The Taxpayers argue that the tax booklet is misleading as it states Rhode Island generally follows Federal law and if the Division had, the Taxpayers would have received their refund. The Taxpayers argued that it is unrealistic to expect people to have a working knowledge of the law. The Taxpayers argued that the Rhode Island tax is based on Federal income so that the Rhode Island return cannot be figured out until the Federal return is completed. The Taxpayers argued that the refund denial is excessive compared to penalties imposed on Taxpayers who file late return or fail to file (5% penalty a month versus 100%). The Taxpayers argued that R.I. Gen. Laws § 44-30-87 is outdated and should provide for notice to be given that the refund could be denied like notice is given to the top 100 delinquent taxpayers that their names will be published. The Taxpayers requested that in light of their unblemished 33 years plus record of filing returns and their arguments that pursuant to R.I. Gen. Laws § 44-30-57, the Division provide them a retroactive extension to allow for their filing by October 15, 2013.

In closing, the Division argued that the loss of refund is not a penalty but rather is a consequence that is set forth in the statute which determines what day prepaid taxes are paid and provides for the periods within which to request a refund and the Taxpayers do not fall under either period.

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 2010 was deemed paid on the date it was due: April 15, 2011. 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)[5] specifically precludes

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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.

[5] R.I. Gen. Laws § 44-30-87(e), states as follows:

any other period of limitations specified in any other laws from being applied to recovery of personal income tax refunds.

ii. Federal Tax Law in Inapplicable

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

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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.

[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.

(b) Limitation on allowance of credits and refunds.--

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(2) Limit on amount of credit or refund.--

(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.

(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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(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).

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 only apply the "immediately preceding" language to the two (2) year time period for a refund request. Unlike the Federal statute, the State statute has different amount limits. That is a clear difference.[7] R.I. Gen. Laws § 44-30-6 does not require that a State statute specifically provide that it is different from Federal law but rather the State statute is to be compared to Federal law and if it clearly different then it is not read as a Federal statute. Clearly means "plainly, understandably. Clearly, definitely, distinctly, evidently imply the way in which something is plainly understood or understandable. Clearly suggests without a doubt or obscurity." *Webster's Unabridged Dictionary*, 2nd edition (2001).[8] In other words, R.I. Gen. Laws § 44-30-6 requires the Federal and State statutes be compared and if the State statute is different on its face then it is clearly different. The law does not need a provision stating specifically that it is to be read differently from Federal law. Since the State law is clearly different from Federal law, there is no reason to apply § 6511 to R.I. Gen. Laws § 44-30-87.

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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.

[8] The Rhode Island Supreme Court has found, "[i]n a situation in which a statute does not define a word, courts often apply the common meaning given, as given by a recognized dictionary." *Defenders of Animals, Inc.*, at 543. So for example in *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673 (R.I. 1980), the Court relied on a dictionary definition in applying the "ordinary meaning" of "must." *Id.*, at 674.

Furthermore, "[w]hen interpreting a statute, our ultimate goal is to give effect to the General Assembly's intent . . . The best evidence of such intent can be found in the plain language used in the statute. Thus, a clear and unambiguous statute will be literally construed." *Martone v. Johnston School Committee*, 824 A.2d 426, 431 (R.I. 2003). The Rhode Island statute clearly states that the time is "within" three (3) years so the clock begins from the date of filing and goes forward. Thus, the statute speaks for itself. The Taxpayers' arguments cannot override 1) the clear meaning of the statute; 2) the clear language of the statute regarding the term "within the three (3) year period"; and 3) the clear intent of the statute to limit the amount and time governing refunds.

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.

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

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

1. The Taxpayers' 2010 tax was deemed paid April 15, 2011. 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 2010 Rhode Island return on August 19, 2013.

3. August 19, 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 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 August 19, 2013 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) (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).

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, 97 (R.I. 2010) (in administrative law "deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency * * * even when the agency's interpretation is not the only permissible interpretation that could be applied." (citations omitted)). While this statute is not ambiguous, the Division is afforded deference for its consistent and uniform interpretation of said statute.

iv. Knowledge of the Law and Equitable Estoppel

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' argument about notification in terms of the December 27, 2011 letter and tax booklet 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.[9]

There was no showing by the Taxpayers that the Division made affirmative representations to the Taxpayers – either by its December, 2011 letter to Taxpayers or the tax booklet - 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

[9] 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).

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.

v. Equitable (Fairness) Argument

In addition, the Taxpayers made equitable (fairness) arguments in arguing that the denial of the refund was unfair in light of the fact that they had an unblemished record of paying their taxes, had not received notice that their refund could be denied, and late filing penalties are lower than a 100% denial of a refund. However, 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).

vi. Seizure

In addition, the Taxpayers argued that this was a seizure matter. This matter is a request for refund which is governed by R.I. Gen. Laws § 44-30-87. The Taxpayers may believe that the statute could be drafted better with a notice provision but the statute does not require an additional notice be given to taxpayers. Rather, the statute itself gives notice in that it provides the time limits for requesting a refund. The consequence for failing to comply with the statutory time limit is a denial of a refund request. It is not a seizure of property.

vii. Notice Provisions

The Taxpayers compared themselves to late filers or the top 100 taxpayers who owe taxes and argued that that the late filer penalties and the top 100 notice provisions should apply to them. The Taxpayers apparently believe it is unfair that those provisions do not apply to refund requests. However, under R.I. Gen. Laws § 44-30-87, similarly situated taxpayers are all treated the same.

The statute clearly sets forth the consequence of filing a late return: a refund request filed more than (2) years from the due date is out-of-time. Thus, a taxpayer has been notified by statute of the consequence and any taxpayer that files more than two (2) years late is not eligible for a refund (unless the three (3) year provision applies).

viii. Hearing Officer Bias

The Taxpayers argued that the undersigned would be biased as the hearing officer is a State employee and was appointed by the Tax Administrator to hear the case. Pursuant to R.I. Gen. Laws § 42-6-8, the Tax Administrator may delegate functions. In this situation, the hearing officer is an employee of the State of Rhode Island but not of the Division of Taxation. However, in determining bias by a hearing officer, employment by an agency, standing alone, does not constitute bias by a hearing officer. *Kent Count Water Authority v. Department of Health*, 723 A.2d 1132 (R.I. 1999). A hearing officer is presumed to be honest and the person seeking to disqualify the hearing officer must show by the hearing officer's involvement in building one party's adversarial case and/or by special circumstances that the risk of unfairness is intolerably high. *Id.* See also *La Petite Auberge, Inc. v. Rhode Island Commission for Human Rights,* 419 A.2d 274 (R.I. 1980). There was no such showing in this matter.

E. Conclusion

The Taxpayers requested a retroactive extension under R.I. Gen. Laws § 44-30-57[10] which is the statute that allows for a six (6) month extension to file a return. That law applies to the time that a tax return is due. The Taxpayers had not requested an extension for the filing of their return

[10] R.I. Gen. Laws § 44-30-57 provides in part as follows:

> Extensions of time. – *(a) General.* Under any regulations that the tax administrator shall promulgate, the administrator may grant a reasonable extension of time for payment of tax or estimated tax, or any installment, or for filing any return, declaration, statement, or other required document. Except for a taxpayer who is outside the United States, no extension for filing any return, declaration, statement, or other document, shall exceed six (6) months.

but even if they had received an extension, it would not change the Rhode Island deadline for filing a refund request. 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. Thus, an extension for filing a refund in Rhode Island does not extend the time to file for a refund in Rhode Island.

The Taxpayers fall under the two (2) year to request a refund. They did not file their tax return requesting a refund in that statutory time period. There are no provisions within the law for any exemptions from its provisions.

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 December 4, 2013, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayers.

2. A hearing was held on March 12, 2014. The record remained opened until March 18, 2014. The Division rested on the record. The Taxpayers filed a written closing argument.

3. The Taxpayers' 2010 tax payment was due by April 15, 2011 and was deemed paid on that day.

4. The Taxpayers filed their 2010 Rhode Island return on August 19, 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 2010 and the Division properly denied the Taxpayers' claim for the refund.

Date: April 28, 2014

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: May 8, 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 8th day of May, 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 Linda Riordan, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Gail Belasco