STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-12

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.: 14-T-0026**
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 March 7, 2014 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 May 13, 2014. Both parties were represented and 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 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 return was filed on December 16, 2011 with a payment of He testified the Taxpayers filed an amended return on August 9, 2013 requesting a refund of He testified a partial refund was issued to the Taxpayers which consisted of the amount of their payment made with the initial return filed in December 16, 2011 plus their penalty payment for a total He testified that under the statute the Taxpayers were eligible for this partial refund because they had made a payment within three (3) years of December 16, 2011 but the refund was limited to that payment. See Division's Exhibits One (1) (Taxpayers' 2010 return received December 16, 2011) and Two (2) (Taxpayers' amended 2010 return received August 9, 2013). On cross-examination, Lawlor testified that the 2010 personal income tax instructions do indicate that there is a two (2) or three (3) year period to request a refund. See Taxpayers' Exhibit One (1) (2010 Division tax instructions).

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

The Division relied on R.I. Gen. Laws § 44-30-87 for allowing a partial refund.

The Taxpayers argued that the instructions were clear so that they were relied on so that it was unfair not to receive a full refund since they made payments they could not get back.

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),[1] 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[2] 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[3] 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)[4] specifically precludes any other period of limitations specified in any other laws from being applied to recovery of personal income tax refunds.

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[1] 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.

[2] 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.

[3] 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.

[4] 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.

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.

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 December 16, 2011 and made a payment of plus a penalty payment.

3. The Taxpayers filed an amended 2010 Rhode Island return on August 9, 2103 and requested a refund of

4. August 9, 2013 is past the two (2) year period from the date the taxes were deemed paid that is allowed for requesting a refund.

5. The statute also allows a claim for a refund to be filed within three (3) years from the date of the return being filed.

6. Thus, the Taxpayers may file a request for a refund within three (3) years of filing of the return.

7. The Taxpayers filed their return on December 16, 2011.

8. The Taxpayers were within the three (3) year period to claim a refund when they filed their amended return on August 9, 2013.

9. 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."

10. The Taxpayers paid tax in the amount of plus a penalty on December 16, 2011.

11. Thus, pursuant to the statute, the Taxpayers' refund request is limited to the amounts paid in that three (3) year period from December 16, 2011 to December 16, 2014.

Additionally, 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.

E. Equitable Estoppel

The Taxpayers' argument about notification in term of the tax instructions is an *equitable estoppel* argument since the basis of their argument is that the Division's instructions did not notify them of the consequences of late filing under the applicable statute. The Taxpayers argued that rather than warning a taxpayer, the tax instructions clearly said that there was either a two (2) or three (3) year period to file a refund and did not explicitly point out what was a late filing and what would be the consequence.[5] Thus, the Taxpayers essentially argued that the Division should be 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).

[5] It should be noted that the instructions state that these are "general instructions" and might not answer all questions that arise and that further assistance may be obtained from the Division. See Taxpayers' Exhibit One (1).

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.

There was no showing by the Taxpayers that the Division made affirmative representations to the Taxpayers in the tax instructions 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 in the instructions to them regarding statutory time limits on refunds somehow breached the Division's legal duty.

In addition, 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).

F. Conclusion

Based on the forgoing, the Taxpayers do not qualify for their full 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 March 7, 2014 the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayers.

2. A hearing was held on May 13, 2014. The parties rested on the record.

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 December 16, 2011 and made a payment.

5. The Taxpayers filed an amended 2010 Rhode Island return on August 9, 2103 and requested a refund.

6. The Taxpayers were within the three (3) year period of December 16, 2011 to December 16, 2014 to claim a refund when they filed their amended return on August 9, 2013.

7. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayers are entitled to a partial refund based on the amount of money paid by them to the Division during that three (3) year period.

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 entitled to the partial refund based on the amount of money paid by them to the Division during said three (3) year period.

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 entitled to the partial refund based on the amount of money paid by them to the Division during said three (3) year period. As the partial refund has been paid by the Division to the Taxpayers, the Taxpayers request for a full refund is denied.

Date: May 27, 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: June 13, 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 13th day of June, 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' representative's 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 Belanger

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