STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-15

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-0015**
Taxpayer.	:	

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 February 18, 2014 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing filed with the Division. A hearing was held on April 15, 2014. The record was held open to May 19, 2014 for the Taxpayer to make further submissions. The Taxpayer timely made further submissions and the parties rested on written arguments and the record. The Division was represented by counsel and the Taxpayer was *pro se*.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-30-1 *et seq.*, R.I. Gen. Laws § 44-33-1 *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 Taxpayer was a full-time resident of Rhode Island in 2008. Whether the Taxpayer is eligible for the property tax relief ("Credit") pursuant to R.I. Gen. Laws § 44-33-6 and R.I. Gen. Laws § 44-33-15. Whether the Taxpayer owes the second revised Notice of Deficiency issued by the Division.

IV. MATERIAL FACTS AND TESTIMONY

Chief Revenue Agent, testified on the Division's behalf. He testified that the Taxpayer filed a Federal tax return for 2008 using a Rhode Island address. See Division's Exhibit A (Taxpayer's 2008 Federal 1040 dated June 24, 2009). He testified that on the basis of that Federal return, the Division issued a Notice of Deficiency to the Taxpayer for Rhode Island personal income tax, statutory interest, and statutory penalty owed for 2008. See Division's Exhibit B. He testified that the Taxpayer surrendered his Massachusetts license on May 22, 2008 to the Rhode Island Division of Motor Vehicles. See Division's Exhibit C (DMV records). He testified that the Taxpayer registered to vote in Rhode Island in June, 2008. See Division's Exhibit D (Rhode Island voter registration records). He testified that the Division reviewed the Taxpayer's Massachusetts' 2008 tax return (Division's Exhibit F) and on that basis revised the Taxpayer's Rhode Island deficiency notice. See Division's Exhibit G. He testified that he had a preliminary conference with the Taxpayer and determined that the Taxpayer was a part-time resident of Rhode Island in 2008 so that the Taxpayer's Notice of Deficiency was further reduced. See Division's Exhibit J (second revised deficiency dated January 19, 2014 forwarded to Taxpayer). He testified that the Taxpayer never claimed the Credit within the statutory period, never asked for an extension, was not a full-year Rhode Island resident in 2008, and there is no right to appeal a denial of a late claim under R.I. Gen. Laws § 44-33-15.

On cross-examination, testified that the parties did not agree about the Taxpayer's residency in 2008 and there are different factors for determining residency.

The Taxpayer testified on his behalf. He testified that the e-mails between him and the Division show that he did not understand the residency requirements. See the Taxpayer's Exhibits Five (5) and Six (6) (emails). He testified that he believes he should have filed as a full-time Rhode Island resident in 2008 and he would have been eligible for the Credit. He testified that it is unconstitutional to retroactively bar the claim. He testified that he is not requesting a refund but that under R.I. Gen. Laws § 44-30-95, he is requesting to have a zero liability to the Division. He testified that he calculated that if he had filed for the Credit and applied it to his 2008 income, he would have been eligible for a refund but he did not file a request for the Credit. See Taxpayer's Exhibits Three (3) and Four (4) (Taxpayer's calculations if he had filed for the Credit). The Taxpayer submitted exhibits that show he owns a house in Rhode Island, returned a Massachusetts boat registration to Massachusetts on February 19, 2008, registered a boat in Rhode Island on February 28, 2008, used a Rhode Island address in 2008 for health insurance coverage, received a Rhode Island motor vehicle certificate of title on October 11, 2008, opened a bank account in Rhode Island on September 9, 2008, and changed his address for a Massachusetts bank to his Rhode Island address in 2008. See Taxpayer's Exhibit Seven (7).

On cross-examination, the Taxpayer testified that the W-2 for his employment in 2008 lists his Massachusetts address. See Division's Exhibit E. He testified that in an e-mail to the Division he indicated that he lived in Massachusetts from January through March of 2008. He testified he never filed a claim for Credit for 2008.

Additionally, the exhibits show that in 2012, the Taxpayer informed the Division that he purchased a Rhode Island house in 2007 as a summer house and lived in Massachusetts as his

primary residence in 2008. He further informed the Division that he worked in Massachusetts for January through March, 2008 and then was employed as a freelancer until June, 2008 and used his Rhode Island address as a business office. See Division's Exhibits E. In 2013, the Taxpayer informed the Division that his "primary residence" "for all of 2008" was Massachusetts and used his Rhode Island address as an office. See Division's Exhibit I.

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 Statutes

R.I. Gen. Laws § 44-33-1 *et seq*. provides for property tax relief (said Credit) for eligible claimants. R.I. Gen. Laws § 44-33-3 states in part as follows:

Definitions. – As used in this chapter:

(1) "Claimant" means a homeowner or renter, who has filed a claim under this chapter and was domiciled in this state for the entire calendar year for which he or she files a claim for relief under this chapter. In the case of claim for rent constituting property taxes accrued, the claimant shall have rented property during the preceding year for which he or she files for relief under this chapter. Claimant shall not mean or include any person claimed as a dependent by any taxpayer under the Internal Revenue Code of the United States, 26 U.S.C. § 1 et seq. When two (2) individuals of a household are able to meet the qualifications for a claimant, they may determine between themselves as to who the claimant is. If they are unable to agree, the matter is referred to the tax administrator and his or her decision is final. If a homestead is occupied by two (2) or more individuals, and more than one individual is able to qualify as a claimant, and some or all of the qualified individuals are not related, the individuals may determine among themselves as to who the claimant is. If they are unable to agree, the matter is referred to the tax administrator, and his or her decision is final.

R.I. Gen. Laws § 44-33-6 provides as follows:

Filing date. – No claim with respect to property taxes accrued or with respect to rent constituting property taxes accrued shall be paid or allowed, unless the claim is actually filed with and in the possession of the division of taxation on or before April 15 of the year in which the credit is applied or a rebate granted on the property taxes accrued the preceding calendar year.

R.I. Gen. Laws § 44-33-15 provides as follows:

Appeals. – Any person aggrieved by the decision of the tax administrator denying in whole or in part relief claimed under this chapter, except when the denial is based upon late filing of claim for relief or is based upon a redetermination of rent constituting property taxes accrued as not at arms length, may appeal the decision of the tax administrator to the sixth division of the district court by filing a petition within thirty (30) days after the denial.

R.I. Gen. Laws § 44-33-18

Extension of time for filing claims. – In case of sickness, absence, or other disability, or if, in his or her judgment, good cause exists, the tax administrator may extend for a period not to exceed six (6) months the time for filing claim.

C. Arguments

The Taxpayer argued that he was a full-time resident of Rhode Island in 2008 so that he was eligible for the Credit pursuant to R.I. Gen. Laws § 44-33-6. He argued that it is unconstitutional to deny him relief and not provide a right of appeal. He argued that he lived in Rhode Island for over 180 days in 2008.

The Division argued that the Taxpayer filed a Massachusetts resident tax return in 2008 and never filed a Rhode Island tax return for 2008. The Division argued that the Taxpayer cannot be a claimant under R.I. Gen. Laws § 44-33-3(1) because he was not domiciled in Rhode Island for the entire year and never filed a claim. Further, the Division argued that the Taxpayer never filed a claim for Credit, no extension was applicable, and the denial is not appealable.

D. Whether the Taxpayer is Eligible for the Property Relief

Pursuant to R.I. Gen. Laws § 44-33-3(1), a claimant for property relief must be domiciled in Rhode Island for the "entire calendar year." The Taxpayer argued that he lived in Rhode Island for over 180 days in 2008. Presumably, he is referring to R.I. Gen. Laws § 44-30-5;[1] however, that statute refers to a domiciliary of Rhode Island for income tax purposes. The meaning of the R.I. Gen. Laws § 44-33-1(1) is clear. For the purposes of the Credit, a taxpayer must have been domiciled in Rhode Island for the entire year.

The Taxpayer submitted various exhibits intended to show he lived in Rhode Island for the entire 2008 calendar year. His exhibits included the fact that he opened a bank account in

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[1] R.I. Gen. Laws § 44-30-5 states in part as follows:

> "Resident" and "nonresident" defined. – *(a) Resident individual.* A resident individual means an individual:
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> (1) Who is domiciled in this state. In determining the domicile of an individual, the geographic location of professional advisors selected by an individual, including without limitation advisors who render medical, financial, legal, insurance, fiduciary or investment services, as well as charitable contributions to Rhode Island organizations, shall not be taken into consideration.
>
> (2) Who is not domiciled in this state but maintains a permanent place of abode in this state and is in this state for an aggregate of more than one hundred eighty-three (183) days of the taxable year, unless the individual is in the armed forces of the United States.

Rhode Island in September, 2008 and changed addresses to his Rhode Island address in 2008. Such evidence does not show that he was a full-time domicile in Rhode Island in 2008. Instead, he admitted to the Division that he lived part or all of the 2008 year in Massachusetts, filed a Massachusetts 2008 tax return, surrendered his Massachusetts driver's license in May, 2008, and registered to vote in Rhode Island in June, 2008. The evidence at hearing is that the Taxpayer lived at least part of 2008 in Massachusetts. The Taxpayer was not a full-time domicile of Rhode Island in 2008 as required by statute.

R.I. Gen. Laws § 44-33-6 requires that a taxpayer submit the claim by April 15 of the year following the year for which the credit is to be applied. Thus, the Taxpayer should have filed his request for Credit by April 15, 2009 which he did not do. To date, he has not filed a claim for said Credit. The Taxpayer never filed for an extension for cause to file a claim which pursuant to R.I. Gen. Laws § 44-13-18 is due within six (6) months of the time for filing a claim. Thus, if the Taxpayer wanted to file for an extension, he was required to file for an extension of time (for cause) by October 15, 2009. The Taxpayer did not so file.

R.I. Gen. Laws § 44-33-15 specifically denies appeal rights of a denial of a credit request when the basis for the denial is that the request was filed late. Here, the Taxpayer is arguing that he should not have to pay the second revised Notice of Deficiency because he would have been eligible for the Credit for 2008. However, even if he was eligible for the Credit (which he is not), he never filed a claim so that it would be denied for late filing and that cannot be appealed.

The Taxpayer raised constitutional issues regarding the denial of his claim. The general law within the country is that administrative agencies do not have the authority to determine the constitutional challenges but rather an administrative agency is limited to the jurisdiction given it by statute. See *Petruska v. Gannon University*, 462 F.3rd 294 (3rd Cir. 2006); *Finnerty v.*

Cowen, 508 F.2nd 979 (2nd Cir. 1974). The Rhode Island Supreme Court has found the same in several tax appeals from administrative decisions. See *International Packaging Corporation v. Mayer*, 715 A.2d 637 (RI. 1998); *Owners-Operators Independent Drivers Association v. Rhode Island*, 541 A.2d 69 (R.I. 1988). However, under R.I. Gen. Laws § 44-33-1 *et seq.* similarly situated taxpayers are all treated the same. The statute clearly sets forth the requirements needed to file a claim for Credit, the requirements needed to receive the Credit, and the consequence of filing a late claim.

In addition, the Taxpayer made an equitable (fairness) argument in arguing that the denial of the refund was unfair. 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).

E. Conclusion

Based on the forgoing, pursuant to R.I. Gen. Laws § 44-33-1 *et seq.*, the Taxpayer does not qualify for the Credit for 2008. Therefore, the Division properly assessed the Taxpayer as a part-time Rhode Island resident. See Division's J (second revised Notice of Deficiency).[2]

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[2] The Taxpayer seeks relief under R.I. Gen. Laws § 44-30-95(f) which provides as follows:

> R.I. Gen. Laws § 44-30-95 provides in part as follows:
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> General powers of tax administrator. – *(a) General.* The tax administrator shall administer and enforce the Rhode Island personal income tax and is authorized to make any rules and regulations, and to require any facts and information to be reported, that he or she may deem necessary to enforce the tax. The provisions of chapter 1 of this title relating to the tax administrator shall be applicable to the Rhode Island personal income tax.
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> *(f) Small tax balances.* The tax administrator is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the administrator determines under uniform rules prescribed by him or her that the administration and collection costs involved would not warrant collection of the amount due.

However, the Taxpayer did not rely on any Division rule implementing this statute. The undersigned does not have such authority to abate tax owed.

VI. FINDINGS OF FACT

1. On or about February 18, 2014 the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayer.

2. A hearing was held on April 15, 2014. The record was held open to May 19, 2014 for the Taxpayer to make further submissions which the Taxpayer did. The parties rested on written arguments and the record.

3. The Taxpayer lived part of calendar year 2008 in Massachusetts.

4. The Taxpayer was not a full-time domicile of Rhode Island in the calendar year 2008.

5. The Taxpayer did not file a claim for property tax relief for the calendar year 2008 by April 15, 2009.

6. The Taxpayer did not file a request for an extension of time (for cause) to file such a claim for property relief by October 15, 2009.

7. The Taxpayer never filed a claim for property tax relief for the calendar year 2008.

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 § 44-33-1 *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*

2. Pursuant to R.I. Gen. Laws § 44-33-3, the Taxpayer is not a claimant for the purposes of R.I. Gen. Laws § 44-33-1 *et seq.*

3. Pursuant to R.I. Gen. Laws § 44-33-6, the Taxpayer did not file a timely request for said tax Credit for 2008.

4. Pursuant to R.I. Gen. Laws § 44-33-18, the Taxpayer never filed for a timely extension of time (for cause).

5. Pursuant to R.I. Gen. Laws § 44-33-15, if a claim for tax credit is denied for being filed late, there is no right of appeal.

6. The Taxpayer was not eligible for the 2008 tax Credit so that he owes the second revised deficiency for 2008 as a part-time Rhode Island resident.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows:

Pursuant to R.I. Gen. Laws § 44-33-1 *et seq.*, the Taxpayer was not eligible for the property tax relief for calendar 2008 and the Taxpayer owes the second revised Notice of Deficiency as set forth in Division's Exhibit J.

Date: June 16, 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:

X ADOPT
_____ REJECT
_____ MODIFY

Dated: June 23, 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 23rd 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' 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