

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2023-04

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

IN THE MATTER OF:

Taxpayer.

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**Case No.: 22-T-100
hard to dispose material tax**

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Pre-Hearing Conference and Appointment of Hearing Officer (“Notice”) dated November 15, 2022 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 remote hearing was held on April 20, 2023 with the parties resting on the record.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-44-1 *et seq.*, and 280-RICR-20-00-2 *Administrative Hearing Procedures*.

III. ISSUE

Whether the Division correctly denied the Taxpayer’s refund request for its payment of its hard to dispose material tax for 2018.

IV. MATERIAL FACTS AND TESTIMONY

Revenue Agent II, testified on behalf of the Division. He testified that the Taxpayer paid a hard to dispose tax in August, 2018 and requested a refund in September, 2021. He testified that the general tax statute and the more specific hard to dispose tax statute both provide for a three (3) year period to request a refund of tax paid. He testified that since the Taxpayer requested the refund more than three (3) years after payment, the refund requested was denied by the Division as untimely. Division's Exhibits Two (2) (Taxpayer's hard to dispose material tax return dated August 9, 2018); Three (3) (August 9, 2018 return with check for payment received August 21, 2018); Four (4) (Taxpayer's September 8, 2021 letter requesting refund); Five (5) (Form HTDT-5 claim for refund of the hard to dispose material tax dated September 13, 2021); Six (6) (amended tax return for 2018 filed September 13, 2021); Seven (7) (September 13, 2021 Division letter denying refund request); and Eight (8) (Taxpayer's request for hearing on denial dated September 22, 2021).

Tax Audit Manager, testified on behalf of the Taxpayer. He testified that he does not disagree with the Division in terms of the facts. He testified that he discovered the error on September 3, 2021 and sent the refund request on September 8, 2021. He testified the country shut down due to the Covid19 pandemic so that an extension should be given for those three (3) weeks because of extenuating circumstances. He testified that a check for _____ was sent in 2018 when the tax is usually about _____, and that error was not caught in time because of Covid19. Division's Exhibit Four (4) (September 8, 2021 letter requesting refund indicating that working from home for Covid19 delayed the discovery of the overpayment).

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 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).

B. **Relevant Statutes and Regulations**

R.I. Gen. Laws § 44-44-1 *et seq.* provides for the taxation of beverage containers, hard-to-dispose material, and litter. It is the Taxpayer’s payment of this tax for which it requests a refund. In terms of refunds, R.I. Gen. Laws § 44-44-19 provides in part as follows:

Payment of refunds. Whenever the tax administrator shall determine that any beverage wholesaler or hard-to-dispose material wholesaler or hard-to-dispose material retailer or person or litter control participation permittee is entitled to a refund of any moneys paid under the provisions of this chapter, or whenever a court of competent jurisdiction orders a refund of any moneys paid, the general treasurer shall, upon certification by the tax administrator, pay the refund from any moneys in the litter control account or hard-to-dispose material account other than those moneys already appropriated for the administration of the taxes and programs entitled by this chapter and § 37-15-13; provided, that no refund shall be allowed unless a claim for a refund is filed with the tax administrator within three (3) years from the date the overpayment was made. Every claim for a refund shall be made in writing, shall be in a form, and shall present only information that the tax administrator may, by regulation, require.

C. Whether the Taxpayer's Refund Claim was Properly Denied

The Division argued that the Taxpayer's payment was made in 2018 so before the Covid19 pandemic, and nonetheless, there are no statutory provisions to extend the time to request refunds.

The Taxpayer argued that it made a mistake and discovered the error on September 3, 2021 and made the refund request on September 8, 2021. The Taxpayer argued that with the Covid19 shutdowns, the Division should allow the refund as it was only three (3) weeks late.

The Taxpayer argued there were extenuating circumstances for its late refund request due to Covid19. However, the tax was paid in August, 2018, and the Covid19 pandemic began in the United States in March, 2020 so more than one (1) year after the payment of the tax. Nonetheless, in terms of an equitable/fairness argument, 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). Furthermore, the statute does not provide for any kind of exemptions. Rather the statute allows for a three (3) year period from the date of the overpayment to request a refund. The Taxpayer filed its request for refund of its overpayment more than three (3) years after the overpayment was made. Pursuant to R.I. Gen. Laws § 44-44-19, the Taxpayer does not qualify for the claimed refund.

VI. FINDINGS OF FACT

1. On or about November 15, 2022, the Division issued the Notice to the Taxpayer.
2. The Taxpayer paid the hard to dispose tax on August 21, 2018.
3. By letter dated September 8, 2021, the Taxpayer requested a refund for its hard to dispose tax paid on August 21, 2018.
4. A hearing was held on April 20, 2023 with the parties resting on the record.
5. The facts contained in Section IV are incorporated by reference herein.

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 § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-44-1 *et seq.*, and 280-RICR-20-00-2 *Administrative Hearing Procedures*.
2. Pursuant to R.I. Gen. Laws § 44-44-19, the Taxpayer was not entitled to its refund claim as it was out of time.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-44-19, the Taxpayer was not entitled to its refund claim as it was out of time, and the Division properly denied the refund request.

Date: May 24, 2023


 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: 5/25/2023


 Neena S. Savage
 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 THE FOLLOWING STATUTE WHICH STATES AS FOLLOWS:

R.I. Gen. Laws § 44-44-21. Judicial review. Appeals from administrative orders or decisions made pursuant to any provisions of this chapter shall be to the sixth division district court pursuant to chapter 8 of title 8. The taxpayer's right to appeal under this section shall be expressly made conditional upon prepayment of all taxes, interest and penalties, unless the taxpayer moves for and is granted an exemption from the prepayment requirement pursuant to § 8-8-26.

CERTIFICATION

I hereby certify that on the 25th day of May, 2023, a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and by electronic delivery to the Taxpayer's representative's address on file with the Division of Taxation and by electronic delivery to Amanda Valentino, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.


