

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2011-17

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

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IN THE MATTER OF:

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: **Personal Income Tax**   
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Taxpayers.

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**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 14, 2007 and issued by the Division of Taxation (“Division”) to (“Taxpayers”) in response to a request for hearing filed by the Taxpayers with the Division. By agreement of the parties, an agreed statement of fact was filed in lieu of hearing. The parties timely filed briefs by July 31, 2011. The Division was represented by counsel and the Taxpayers were *pro so*.

**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.*, the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*, and the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*.

### III. ISSUE

The parties agreed the issues were as follows: 1) whether the Taxpayers' refund claim is barred by the statutory limitation on refunds set forth in R.I. Gen. Laws § 44-30-87; and 2) whether the State is obligated to affirmatively advise taxpayers, and in particular, advise nonresident individuals who are potential taxpayers, of the statutory limitations for claiming income tax refunds.

### IV. MATERIAL FACTS AND TESTIMONY

The parties agreed to the following facts:

1. At all pertinent times, the Taxpayers were husband and wife residing in Brooklyn, New York.
2. The Division is a state agency charged with the administration and enforcement of all state taxes including, *inter alia*, the personal income tax.
3. On January 2, 2003, the wife, ("Wife"), and her brother, (then with a mailing address in Oregon) sold real estate located in Westerly, Rhode Island, to a limited liability company. Joint Exhibit One (1).
4. As nonresidents, the Wife and her brother were subject to withholding of in Rhode Island personal income tax from the net proceeds derived the sale of the realty. Exhibit Two (2).
5. On March 2, 2007, the Taxpayers filed a joint nonresident Rhode Island personal income tax return with the Division for calendar year ending 2003. Exhibit Three (3).
6. On said return, the Taxpayers declared a Rhode Island income tax liability of (Exhibit Three (3), p. 1, L. 17) and a payment of (*Id.*, at L. 18C) resulting in a claimed overpayment of *Id.*, L. 20. The Taxpayers requested that this overpayment be refunded in cash. *Id.*, at L. 21.
7. Upon desk review, the payment was adjusted to to reflect the Wife's *pro rata* share of the nonresident withholding (Exhibit Four (4), p. 1, L. 18C) resulting in a reduction of the Taxpayers' overpayment to *Id.*, at L. 18H.
8. On June 30, 2007, the Division denied the Taxpayers' 2003 refund claim, as revised, on the grounds it was untimely and the Taxpayers filed a timely request for administrative review on the denial of their refund claim. Exhibits Five and Six (6).

9. The parties requested that administrative (official) notice be taken of the following items pursuant to R.I. Gen. Laws § 42-35-10(d):

- A. Final Administrative Decision & Order 2007-17 dated 06/20/07.
- B. Final Administrative Decision & Order 2007-16 dated 06/20/07.
- C. Final Administrative Decision & Order 2007-15 dated 06/20/07.
- D. Final Administrative Decision & Order 2006-19 dated 11/02/06.
- E. Final Administrative Decision & Order 2006-15 dated 10/04/06.
- F. *Baral v. United States*, 528 US 431 (2000).
- G. General Instructions & Information to 2003 Resident Income Tax Return (Form IT-201-1 pages 1-17 inclusive).
- H. General Instructions & Information to 2003 RI Nonresident Income Tax Return (Form RI-1040NR front cover, pages 1-1 through 1-3 inclusive & rear cover).

## 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) (internal citation omitted). In cases where a statute may contain ambiguous language, the 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**

### **i. The Taxpayers' Arguments**

The Taxpayers argue that their refund request was timely under R.I. Gen. Laws § 44-30-87. The Taxpayers also argue that Rhode Island unlike New York State and the Federal government does not make basic information regarding refund requests available to taxpayers especially non-resident taxpayers<sup>1</sup> and that taxpayers have a reasonable expectation of being presented with information necessary to file their tax returns. The Taxpayers argued that information about Rhode Island tax refunds is not easily found.

### **ii. The Division's Arguments**

The Division argued that pursuant to R.I. Gen. Laws § 44-30-87 (as continuously interpreted in past decisions), the Taxpayers' request for refund was out-of-time. The Division also argued that the Taxpayers' argument that the Division has an affirmative duty to advise taxpayers on Rhode Island tax law and how it varies from other

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<sup>1</sup> The Taxpayers argued that the Division has a special obligation to nonresident taxpayers as they do not reside or vote in Rhode Island so cannot vote out politicians with which they do not agree.

jurisdictions is meritless as in civil matters, private parties are presumed to be knowledgeable of the law and there is no legal duty or constitutional duty resting upon the government to give such notice. In addition, the Division argues that what the taxpayer would consider adequate notice offends sound policy considerations but the Division does issue booklets indicating where further assistance and advice can be found including contacting the Division itself. Finally, the Division argued that the doctrine of *equitable estoppel* is not applicable to this matter.

#### **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),<sup>2</sup> the Taxpayers' tax was deemed paid on the date it was due: April 15, 2004. In addition, R.I. Gen. Laws § 44-30-51<sup>3</sup> states that

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<sup>2</sup> 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.

<sup>3</sup> 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.

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<sup>4</sup> states that tax shall be paid on or before the date fixed for filing without regard to an extension. In this matter, the Taxpayers (more specifically, the Wife and her brother) sold property in Rhode Island and were subject to withholding tax on the net proceeds from the property. The withholding was paid on January 3, 2003. See agreed statement of facts and Exhibit Two (2). Thus, under R.I. Gen. Laws § 44-30-87(i), the tax is deemed to have been paid April 15, 2004.

The Taxpayers argued that they filed their refund request was within three (3) years of the original return and that under a similar statute in New York, they received a refund for a request filed a week apart from their Rhode Island request and there is no reason for Rhode Island and New York to be different. Thus, the undersigned will review the Rhode Island statutory income tax refund requirements and its applicability to the Taxpayers' requests for 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.

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<sup>4</sup> 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.

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

1. The Taxpayers' 2003 tax was deemed paid on April 15, 2004. They 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. On March 2, 2007, the Taxpayers filed a joint nonresident Rhode Island 2004 personal income tax return and claimed a refund.

3. March 2, 2007 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 date of the return being filed.

5. The Taxpayers could file a request for their refund within three (3) years of filing their March 2, 2007 return.

6. 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) years period which are limited to tax paid "during the two (2) years immediately preceding the filing of the claim."

7. The "within" is prospective so that refunds filed in the three (3) period are limited to tax paid within three (3) years of filing of return.

8. The Taxpayers did not pay any tax from March 2, 2007 to March 1, 2010. Therefore, the Division denied their request for a refund.

In their filings, the Taxpayers make reference to both New York and Federal statutes on refund requests. The provisions of Internal Revenue Code Section



6511(b)(2)(A)<sup>5</sup> are different from the Rhode Island statute. However, there is no provision in Rhode Island law for either New York law or Federal law to apply to Rhode Island's statute on timeliness of refunds. Thus, New York and Federal practice is irrelevant to the Rhode Island statute at issue.

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 it chose not to. Indeed, it chose instead to strictly limit the time allowed and the amount of refunds claimed.

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

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<sup>5</sup> § 6511 states in part as follows:

Limitations on credit or refund

(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.

§ 6511(a) only refers to when late claims may be made. Section 6511(b)(2)(A) addresses the issue of the amount that a taxpayer may receive when filing a late refund. Thus, it is in § 6511(b)(2)(A) that the immediately preceding language is put in to explain how much money may be obtained through a refund. Rhode Island chose to put the time limit and amount limit into one (1) section.

Thus, the Federal statute contrasts with the State statute where the three (3) period is "within" rather than "immediately preceding."

not been amended. 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 Taxpayers also argued that the Division interpreted this law erroneously fifteen (15) years ago (based on a conversation the Taxpayer Wife had with an anonymous Rhode Island tax attorney). However, 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 also argued that their refund request should be granted because the Division failed to notify them of the deadlines for obtaining tax refunds. The Division

argued that the Taxpayers failure to know the relevant law is not an excuse for an untimely filing because the ignorance of law is no excuse. There is a presumption in law that people have knowledge of applicable law. See *McElroy v. Hawksley*, 196 A.2d 172 (R.I. 1963). However, the Taxpayers argue that the Division's actions should cause them to receive their requested refund despite their lack of knowledge regarding the State time frame within which to request a refund.

While the Taxpayers framed their argument in terms of due process, the Taxpayers are relying on 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.<sup>6</sup>

In addition, the Taxpayers have not made the requisite showing that *equitable estoppel* should be applied to prevent fraud and injustice. See *Guilbeault v. R.J. Reynolds Tobacco Company*, 84 F.Supp.2d 263 (D.R.I. 2000) (to prove fraud plaintiff needs to show that defendant made a false or misleading statement of material fact that defendant knew to be false and it was made in order to deceive and that plaintiff detrimentally relied on statement). In any event, the Division does not have the power to waive or modify the applicable law and would not be acting within its authority if it tried to do so.

The Taxpayers also argued that the Division unlike New York or the Federal government did not provide them with the information they needed about tax refunds. In other words, the Taxpayers argues that while the Division does provide general information regarding filing tax returns including how to contact the Division,<sup>7</sup> it did not include information relevant to their own situation so there was a due process violation. Taken to its logical extension, the Taxpayers’ argument would result in the Division having to include the entire tax statute in its booklet lest it be found to have violated due process by “selectively” choosing only to notify taxpayers of certain tax laws. In other words, the Taxpayers’ argument would in reality mean that the Division could not provide any general information to taxpayers lest it be accused of being too selective.

A review of the tax booklets reveals that both contain the following statement:

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<sup>6</sup> 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).

<sup>7</sup> Included in the agreed statement of facts and exhibits was a partial copy of the General Instructions and Information for the 2003 Rhode Island nonresident income tax return. The parties requested administrative notice be taken of this document pursuant to R.I. Gen. Laws § 42-35-10(d).

Obviously the foregoing general instructions and the specific instructions for completing the return form(s) which follow will not answer all questions that may arise. If you have any doubt regarding completion of your return, further assistance may be obtained at the Division of Taxation, One Capitol Hill, Providence RI 02908-5801 or by calling Taxpayer Assistance at [omitted]. p. I-3 for 2003 booklet.

In addition, the back of the booklet has a headline, “[w]here to get forms, information and tax assistance” (set forth in bold capitals) and beneath that the Division’s website address, telephone number, opening times, and directions to the Division are listed.<sup>8</sup>

Not only is the tax booklet not an affirmative action by the Division made to induce reliance by the Taxpayers to make a late refund request, the tax booklet like the retirement counselor in *Romano* indicates to taxpayers that they may obtain further information regarding tax returns from the Division. In *Romano*, a retirement counselor gave the plaintiff advice but also told the plaintiff that he could get an advisory opinion from the retirement board. The plaintiff chose not to request an opinion from said board and argued that the counselor’s advice (as well as a general letter from the board’s executive director) were grounds for *equitable estoppel*. For a variety of reasons, the Court found that the counselor’s advice did not and could not constitute a finding for *equitable estoppel*. *Infra*. Like the Division’s tax booklet, the counselor’s advice was not an affirmative representation and the counselor could not waive applicable state law.

While the Division may not have included specific information in its tax booklet regarding the time limits on requesting a refund, there was no showing by the Taxpayers that the Division made affirmative representations to the Taxpayers to induce reliance

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<sup>8</sup> In their brief, the Taxpayers complained that the information regarding Rhode Island tax refunds was not available at the New York Public Library. Separate and apart from the fact that the argument regarding the Taxpayer wife’s conversation with a New York Public Library librarian had not been verified by testimony under cross-examination, the fact is that information regarding the timeliness of Rhode Island tax refunds is available from the Rhode Island Division of Taxation. It would reasonably be expected that the Division would have more information on Rhode Island tax laws than the New York Public Library’s librarian.

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 to them regarding statutory time limits on refunds somehow breached the Division's legal duty. The Taxpayers' "due process"/ *equitable estoppel* arguments are without merit. In addition, equitable principles are not applicable to administrative proceedings. See *Nickerson v. Reitsma*, 853 A.2d 1202 (RI 2004) (Supreme Court vacated a Superior Court order that vacated an agency sanction on equitable grounds).

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 14, 2007, the Division issued a Notice of Hearing and Appointment of Hearing to the Taxpayers in response to their request for hearing.
2. By agreement of the parties, this matter was decided on agreed statements of facts and timely filed briefs.
3. The Taxpayers' tax payment was deemed paid on April 15, 2004. The Taxpayers filed their return on March 2, 2007 and claimed a refund for overpayment of tax.
4. R.I. Gen. Laws § 44-30-87 clearly and unambiguously bars the Taxpayers' claim for refund as untimely. *Infra*
5. 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:

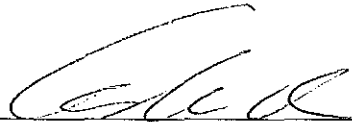
1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-30-1 *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*
2. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayers are not entitled to the claimed refund.

**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 claimed refund and the Division properly denied the Taxpayers' claim for the refund.

Date: September 1, 2011


  
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: September 8, 2011

  
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.**

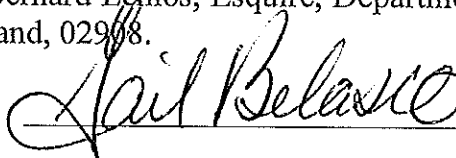
*(a) General.* Any taxpayer aggrieved by the decision of the tax administrator or his or her designated hearing officer as to his or her Rhode Island personal income tax may within thirty (30) days after notice of the decision is sent to the taxpayer by certified or registered mail, directed to his or 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 September, 2011, 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 Bernard Lemos, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

  
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