

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-07

**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-0167**

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 September 6, 2013 and issued to the above-captioned taxpayers¹ (“Taxpayers”) by the Division of Taxation (“Division”) in response to a request for hearing. A hearing was held on January 8, 2014. The Taxpayers did not appear. As the Taxpayers had been adequately notified of the hearing by first class mail,² the hearing went forward. The Division 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*.

¹ The Taxpayers are a married couple.

² The undersigned hearing officer notified the Taxpayers by first class mail dated December 17, 2013 and sent to the Taxpayers’ address on record with the Division.

III. ISSUE

Whether the Taxpayers claimed refund (carryover) for the tax year 2007 was timely filed pursuant to R.I. Gen. Laws § 44-30-87 and whether the Taxpayers owed the assessed tax, interest, and penalties for tax year 2008.

IV. MATERIAL FACTS AND TESTIMONY

Supervising Revenue Officer, testified on behalf of the Division. She testified that the Taxpayers had contacted Collections to request a payment plan for their taxes and were informed that in order to receive a payment plan for outstanding taxes, they needed to file their 2007 and 2008 tax returns. See Division's Exhibit A.

Principal Revenue Agent, testified on behalf of the Division. She testified that the Taxpayers came in person to the Division in April, 2013 and were assisted in preparing their returns for both years based on IRS transcripts provided by the Taxpayers. See Division's Exhibit B (IRS transcripts). She testified that the Taxpayers had not filed a 2007 return and there was an overpayment of taxes for 2007 of which the Taxpayers requested a refund but it was denied as out-of-time. See Division's Exhibits C (2007 return) and E (2007 out-of-time denial letter). She testified that their 2008 return had a tax liability so that the Taxpayers requested the 2007 carryover be applied to the 2008 return; however, since the 2007 request for carryover (refund) was out-of-time, it could not be applied to the Taxpayers' 2008 deficiency. See Division's Exhibit's F (2008 return). She testified that the Division issued a deficiency for 2008 to the Taxpayers for the tax owed, interest, and late penalties. See Division's Exhibit H.

The Taxpayers' 2007 and 2008 returns were filed on April 10, 2013. See Division's Exhibits C and F.

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 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 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 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. 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),³ the Taxpayers' tax for 2007 was deemed paid on the date it was due: April 15, 2008 and their tax for 2008 was deemed paid on the date it was due: April 15, 2009. In addition, R.I. Gen. Laws § 44-30-51⁴ 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 § 44-30-52⁵ states that tax shall be paid on or

³ 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.

⁴ 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.

⁵ 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.

before the date fixed for filing without regard to an extension. In addition, R.I. Gen. Laws § 44-30-87(e)⁶ specifically precludes any other period of limitations specified in any other laws from being applied to recovery of personal income tax 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. 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' 2007 tax was deemed paid on April 15, 2008. 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 2007 Rhode Island return on April 10, 2013.

⁶ 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.

3. April 10, 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 Taxpayers have not paid any tax from April 10, 2013 to the present.

Finally, 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).

Based on the forgoing, the Taxpayers do not qualify for their 2007 claimed carryover (refund) pursuant to R.I. Gen. Laws § 44-30-87. See *Tax Decision*, 2007-10 (May 10, 2007). Therefore, they cannot apply the requested carryover from 2007 to their 2008 return. As there was a tax liability for 2008 (See Division's Exhibit F (2008

return)), the Taxpayers owe the taxes assessed for 2008 as well as late payment interest,⁷ a late filing penalty,⁸ and a late payment penalty.⁹ See Division's Exhibit H.

VI. FINDINGS OF FACT

1. On or about September 6, 2013, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayers.
2. A hearing was held on January 8, 2014 with the Division resting on the record.
3. The Taxpayers' 2007 tax payment was due by April 15, 2008 and was deemed paid on that day.

⁷ R.I. Gen. Laws § 44-30-84 states in part as follows:
Interest on underpayment.

(a) General.

(1) If any amount of Rhode Island personal income tax, including any amount of the tax withheld by an employer, is not paid on or before the due date, interest on the amount at the annual rate provided by § 44-1-7 shall be paid for the period from the due date to the date paid, whether or not any extension of time for payment was granted. The interest shall not be paid if its amount is less than two dollars (\$2.00).

⁸ R.I. Gen. Laws § 44-30-85 states in part as follows:
Additions to tax and civil penalties.

(a) Failure to file tax returns or to pay tax. In the case of failure:

(1) To file the Rhode Island personal income tax return or the employer's withheld tax return on or before the prescribed date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, an addition to tax shall be made equal to five percent (5%) of the tax required to be reported if the failure is for not more than one month, with an additional five percent (5%) for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate. For this purpose, the amount of tax required to be reported shall be reduced by an amount of the tax paid on or before the date prescribed for payment and by the amount of any credit against the tax which may properly be claimed upon the return.

⁹ R.I. Gen. Laws § 44-30-85 states in part as follows:
Additions to tax and civil penalties.

(a) Failure to file tax returns or to pay tax. In the case of failure:

(2) To pay the amount shown as tax on the personal income tax return or the employer's withheld tax return on or before the prescribed date for payment of the tax (determined with regard to any extension of time for payment) unless it is shown that the failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on the return five-tenths percent (0.5%) of the amount of the tax if the failure is for not more than one month, with an additional five-tenths percent (0.5%) for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate.

4. The Taxpayers filed their 2007 Rhode Island return on April 10, 2013.
5. The Taxpayers filed their 2008 Rhode Island return on April 10, 2013 and owed taxes for 2008.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

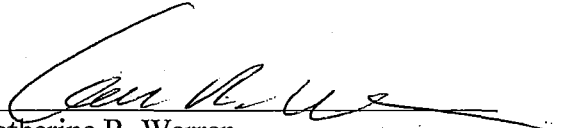
1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-30-1 *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*
2. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayers are not entitled to the claimed carryover (refund) from 2007 so that it cannot be applied to their 2008 tax liability.

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 carryover (refund) claimed for 2007 and the Division properly denied the Taxpayers' claim for the carryover to be applied to the 2008 liability. Pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-30-1 *et seq.*, R.I. Gen. Laws § 44-30-84, and R.I. Gen. Laws § 44-30-85, the Division properly assessed the income tax owed for 2008, interest owed,¹⁰ and penalties owed by Taxpayers.

Date: February 4, 2014


Catherine R. Warren
Hearing Officer

¹⁰ The amount of interest will have increased between the May 4, 2013 (Division's Exhibit H) and this decision. The Division will issue a revised Notice of Deficiency current with this decision.

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: FEB 11, 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 11th day of February, 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

Neil Belasco