STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2016-01

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

IN THE MATTER OF:	:	
	:	**Case No.: 15-T-0010**
	:	**personal income tax**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to a Notice of Hearing and Appointment of Hearing Officer ("Notice") issued on January 28, 2015 to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to the Taxpayer's request for hearing. The parties agreed that a decision would be made on an agreed statement of facts and agreed to exhibits and written briefs. All briefs were timely filed by December 30, 2015. 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 § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-30-1 *et seq.*, the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*.

III. ISSUE

The parties agreed that the issue is whether the Taxpayer was permitted to offset his 2011 and 2012 personal income tax liability by his carry forward credit amounts obtained pursuant to the Historic Homeownership Assistance Act.

IV. MATERIAL FACTS AND TESTIMONY

The parties agreed to the following facts:[1]

1. The Taxpayer was a Rhode Island resident for tax years 2011 and 2012.

2. The Taxpayer submitted two (2) applications to the Rhode Island Historic Preservation and Heritage Commission ("RI HPHC") for rehabilitation improvements made to his residence. He submitted an application in November, 2006 and an application in June, 2011 both of which were reviewed by the RI HPHC. See Exhibit A.

3. The Taxpayer represents that he submitted such applications in order to receive a credit to offset personal income tax liabilities pursuant to the Historic Homeownership Assistance Act. See R.I. Gen. Laws § 44-33.1-1 *et seq*.

4. In accordance with R.I. Gen. Laws § 44-33.1-1 *et seq*., the RI HPHC presented the Taxpayer with RI Form 715 entitled "Historic Preservation Residential Credit Certificate of Credit Allowed." The certificate for the November, 2006 application was signed by the RI HPHC on December 7, 2006 for work that was completed on August 20, 2006. The certificate for the June, 2011 application was signed by the RI HPHC on June 29, 2011 for work that was completed on April 17, 2010. See Exhibit B.

5. The Division represents that it did not have any authority with regard to the issuance of such certificates; nor was the Division notified of the issuance of such certificates. The certificates were issued on RI HPHC letterhead with no representative from the Division signing or certifying such. See Exhibit B.

6. In 2010, the Taxpayer filed a RI Personal Income Tax return claiming in Historic Homeownership Assistance Credits and was permitted to use such credit in tax year 2010 to offset his RI personal income tax liability. See Exhibit C.

7. In 2010 the General Assembly passed P.L. 2010, Ch. 20, § 1, which amended the Rhode Island Personal Income Tax (R.I. Gen. Laws § 44-30-2.6) and only permitted nine (9) specific credits to be used as an offset to the RI Personal Income Tax. The amendment was effective January 1, 2011. See P.L. 2010, Ch. 20, § 1 Section (E) Credits Against Tax.

[1] See the parties' agreed to statement of facts.

8. As a result of the 2010 amendment to the Personal Income Tax, the Taxpayer was no longer able to offset the Rhode Island Personal Income Tax by the credit obtained via the Historic Homeownership Assistance Act.

9. In June of 2011, the Tax Division notified the RI HPHC of the change in the law. See Exhibit D.

10. The Division revised the personal income tax forms for tax years 2011 and beyond to reflect the change in law. There were no lines to allow a deduction for any credit other than the nine (9) specific credits permitted to offset the personal income tax pursuant to the 2010 public law. In particular, there was no line to allow a credit/deduction for Historic Homeownership Assistance Act credits. See Exhibit E.

11. In March of 2014, the Taxpayer filed amended RI Resident Income Tax Returns for tax years 2011 and 2012 claiming Historic Homeownership Assistance Credits as offsets to his personal income taxes for those years. On April 12, 2014, the Division notified the Taxpayer disallowing the claim for the Historic Homeownership Assistance Act credits and denying the Taxpayer's claims for refunds on the amended 2011 and 2012 returns. See Exhibits F and G.

12. On April 21, 2014, the Taxpayer requested a hearing on the Division's denial of credits/refunds. The Division afforded the Taxpayer an informal conference, but the matter was not resolved. On January 17, 2015, the Division notified the Taxpayer that the matter was being forwarded for an administrative hearing. See Exhibits H, I, and J.

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, 1049 (R.I. 1994). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). 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, 457 (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

P.L. 2010, ch. 20 § 1 amended R.I. Gen. Laws § 44-30.2-6[2] in relation to credits that can be claimed as follows:

> (E) Credits against tax.
>
> (I) Notwithstanding any other provisions of Rhode Island Law, for tax years beginning on or after January 1, 2011, the only credits allowed against a tax imposed under this chapter shall be as follows:
>
> (a) Rhode Island Earned Income Credit: Credit shall be allowed for earned income credit pursuant to subparagraph 44-30-2.6(c)(2)(N).
>
> (b) Property Tax Relief Credit: Credit shall be allowed for property tax relief as provided in § 44-33-1 *et seq.*
>
> (c) Lead Paint Credit: Credit shall be allowed for residential lead abatement income tax credit as provided in § 44-30.3-1 *et seq.*
>
> (d) Credit for income taxes of other states. Credit shall be allowed for income tax paid to other states pursuant to § 44-30-74.
>
> (e) Historic Structures Tax Credit: Credit shall be allowed for historic structures tax credit as provided in § 44-33.2-1 *et seq.*
>
> (f) Motion Picture Productions Tax Credit: Credit shall be allowed for motion picture production tax credit as provided in § 44-31.2-1 *et seq.*
>
> (g) Child and Dependent Care: Credit shall be allowed for twenty-five percent (25%) of the federal child and dependent care credit allowable for the taxable year for federal purposes; provided, however, such credit shall not exceed the Rhode Island tax liability.
>
> (h) Tax credits for contributions to Scholarship Organizations: Credit shall be allowed for contributions to scholarship organizations as provided in § 44-62 *et seq.*
>
> (i) Credit for tax withheld. Wages upon which tax is required to be withheld shall be taxable as if no withholding were required, but any amount of Rhode Island personal income tax actually deducted and withheld in any calendar year shall be deemed to have been paid to the tax administrator on behalf of the person from whom withheld, and the person shall be credited with having paid that amount of tax for the taxable year beginning in that calendar year. For a taxable year of less than twelve (12) months, the credit shall be made under regulations of the tax administrator.

[2] The citation apparently is R.I. Gen. Laws § 44-30-2.6(c)(C)(E) but there are two subsections E's listed in the statute back to back. The relevant part of the statute is the subsection (E) entitled "Credits Against Tax."

(j) Stay Invested in RI Wavemaker Fellowship: Credit shall be allowed for stay invested in RI wavemaker fellowship program as provided in § 42-64.26-1 *et seq.*

(k) Rebuild Rhode Island: Credit shall be allowed for rebuild RI tax credit as provided in § 42-64.20-1 et seq.

(l) Rhode Island Qualified Jobs Incentive Program: Credit shall be allowed for Rhode Island new qualified jobs incentive program credit as provided in § 44-48.3-1 *et seq.*

(2) Except as provided in section 1 above, no other state and federal tax credit shall be available to the taxpayers in computing tax liability under this chapter.

C. Arguments

The Taxpayer argued that the 2010 amendment impaired his contractual rights in violation of the U.S. and R.I. constitutions as he had a contract with Rhode Island through his two (2) RI HPC certificates. The Taxpayer also argued that the 2010 amendment was unconstitutional on due process and equal protection grounds. The Taxpayer also argued that the amendment is vague and that there is a bias against the retroactive applicability of laws and that he had relied on the law to purchase the credits.[3] The Taxpayer also raised an equitable argument.

The Division argued the 2010 amendment provided that as of January 1, 2011, the credit provided for in R.I. Gen. Laws § 44-33.1-1 et *seq.* was no longer permitted as an offset for Rhode Island personal income tax. The Division argued that statutes are presumed valid and constitutional.

D. Whether the Division was Right to Disallow the Claimed Credits for 2011 and 2012

1. The 2010 Amendment is not Vague or Ambiguous

Tax benefits such as exemptions or credits do not arise by implication but must be established by express statutory provisions. *R.I. Recreational Bldg. Authority v. East Greenwich*, 505 A.d 1139 (R.I. 1986). The Taxpayer argued the amendment is vague as it is unclear whether

[3] The Taxpayer represented in his briefs that he did not use all of his credits prior to the change in the law because his personal income taxes were not large enough to absorb all the forward-carried historic homeowner credits before their expiration.

previously existing credits would be recognized after the amendment even if new credits are not recognized. The statute provides that notwithstanding any other provision of Rhode Island law, the only credits allowed to be taken on or after January 1, 2011 are those listed below. The historic homeowner tax is not one of those listed in the amendment. Such a credit was provided for in R.I. Gen. Laws § 44-33.1-1 *et seq.*, but since it is not listed in the 2010 amendment it no longer is applicable. The amendment clearly states that any other statutory provisions are no longer are applicable on or after January 1, 2011. The amendment limits credits to "only" those listed in the amendment. The amendment further states in subsection (2) that except for those provided credits, no other state or federal credits are available to taxpayers computing tax liability under this chapter. The 2010 amendment clearly only allows certain credits to be taken after January 1, 2011. It did not provide that old credits could be carried forward. It purposely provided that any other previously available credits would no longer be available by indicating that notwithstanding any other provision of law, only those listed below would be available for credit. The statute is clear and unambiguous.

2. Retroactivity

The Taxpayer argued that the 2010 amendment has a retroactive effect because he relied on the statute (R.I. Gen. Laws § 44-33.1-1 *et seq.*) to obtain credits that were then disallowed. However, the statute did not go back in time to disallow credits that the Taxpayer or any taxpayer used prior to January 1, 2011. Rather the statute - on a go forward basis - provided that effective on January 1, 2011, there were certain credits that would be allowed to be used and other credits that would not be allowed to be used. While the 2010 amendment no longer allowed for the credits that the Taxpayer had available, the amendment did not take away the Taxpayer's pass usage of credits but only prohibited the usage of credits going forward. There is no retroactive applicability of the 2010 amendment.

3. The Constitutionality of a Statute is not Determined at the Administrative Level

The Taxpayer argued that the 2010 amendment was unconstitutional because of due process and equal protection of the law. 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). The Rhode Island Supreme Court has agreed in taxation cases. See *International Packaging Corporation v. Mayer*, 715 A.2d 637 (RI. 1998); *Dart Industries v. Clark*, 657 A.2d 1062 (R.I. 1995); and *Owners-Operators Independent Drivers Association of America v. Rhode Island*, 541 A.2d 69 (R.I. 1988). In these tax cases, the Rhode Island Supreme Court has never found that the initial determination of constitutionality of a statute should be made at the administrative level. Rather as *Owners-Operators* found, the proper procedure is that claims must begin at the administrative level and on appeal, the District Court has jurisdiction to decide all claims related to the underlying matter such as the constitutionality of a statute. It should be noted that statutes are presumed valid and constitutional.

4. Whether There is a Constitutional Bar to Denying the Taxpayer's Requested Historic Tax Credit

Separately from the unconstitutionality argument, the Taxpayer argued that the Federal and State constitutions preclude giving the 2010 amendment effect since the amendment to the historic ownership tax credit program impaired its right to contract under the U.S. and State constitutions. The Rhode Island Supreme Court has found that the same analysis applies for both Federal and State constitutional claims regarding the impairment of contracts. See *Brennan v. Kirby*, 529 A.2d 633 (R.I.1987). That case held as follows:

> The Contract Clause of the United States Constitution, as well as the Rhode Island Constitution, limits the power of this state to modify its own contracts and to

regulate private contracts. (footnote omitted). *United States Trust Co. of New York v. New Jersey,* 431 U.S. 1 . . . (1977) . . . .

> As a prerequisite to embarking upon an application of contract clause analysis, it is necessary for us to determine whether § 30-21-3 created a valid contractual relationship between the parties. The Supreme Court has steadfastly adhered to the principle that absent a clear indication by the Legislature that it intended to bind itself contractually by passing an enactment, the presumption pervades that "[the] law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise." *Dodge v. Board of Education of Chicago,* 302 U.S. 74, 79. . . (1937). The party asserting the creation of a statutory contract bears the weighty burden of overcoming this presumption, *id.,* and the court for its part will be cautious in identifying a contract within the language of the statute and in defining the parameters of any contractual obligation it might detect. *National Railroad Passenger Corp. v. Atchison, Topeka & Santa Fe Railway Co.,* 470 U.S. 451, 466 . . . (1985).
>
> The court looks first to the statutory language in determining whether a particular statute gives rise to a contractual obligation. *Dodge,* 302 U.S. at 78 . . . If the language of the statute provides for the execution of a written contract on behalf of the state then clearly a binding obligation is created; however, absent an adequate expression of actual intent to bind the state, the court will not be so quick to construe a statute as a private contract to which the state is bound as a party. *National Railroad Passenger Corp.,* 470 U.S. at 466-67. . . *Brennan*, at 638-639.

Thus, in order to prevail on its constitutional arguments, the Taxpayer must overcome the presumption that the historic tax credit program was not intended to create a private contractual right. The presumption is that State statutes "do not of their own force create a contract with those whom the state benefits." *Parella v. Retirement Board of Rhode Island*, 173 F.3d 46, 60 (1st Cir. 1999) (citation omitted). Furthermore, the Contract Clause does not generally prohibit States from repealing or amending statutes or even enacting statutes with retroactive effects. *United States Trust Company v. New Jersey*, 431 U.S. 1 (1977).

In this matter, the Taxpayer argued that the purpose part of R.I. Gen. Laws § 44-33.1-1 ("purpose of this chapter is to (provide) income tax credit for the maintenance or rehabilitation of historic residences") and the description of the credit in R.I. Gen. Laws § 44-33.1-3 ("[a]ny taxpayer . . . may claim an income tax credit of up to 20%") and an explanation of when the credit

can be taken in R.I. Gen. Laws § 44-33-4 as well as the description of the agency responsible for developing the forms to claim the credit in R.I. Gen. Laws § 44-33.1-5 all serve to create a contract between the Taxpayer and the State. However, this statutory language merely explained the purpose of the credit and described when and how a credit could be taken. Such language does not demonstrate an intent to bind the State to a contract. For example, there is no provision of a written contract in relation to these tax credits. Thus, the historic homeowner tax credit law created no contract between a taxpayer and the State. Rather the statute was one of many tax statutes that provide tax credits to those who qualified for such tax credits.[4] The 2010 statutory amendment eliminated the ability of a taxpayer to use the historic homeownership credit to offset personal income tax. The Taxpayer's Federal and State constitutional arguments are without merit.

5. Promissory Estoppel is not Applicable

The Taxpayer raised the issue of promissory estoppel on the basis of his contract claim. As there was no contract between the State and the Taxpayer, such an argument is without merit.[5]

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[4] Indeed, as the Division pointed out the Taxpayer received a certificate indicating the amount of credit allowed from the RI HPHC. See Exhibit B. This is not a contract.

[5] The Taxpayer apparently did not raise the issue of *equitable estoppel*. However, it should be noted that 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).

In addition, 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). 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. In this matter, there was no evidence of a government representative making any kind of representations to the Taxpayer to induce reliance. Furthermore, the Taxpayer has 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). Finally, 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).

VI. FINDINGS OF FACT

1. A Notice was issued on January 28, 2015 by the Division to the Taxpayer in response to his request for a hearing.

2. The parties agreed that a decision would be made on an agreed statement of facts and agreed to exhibits and written briefs. All briefs were timely filed by December 30, 2015.

3. The facts contained in Sections IV and V are reincorporated 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 § 44-30-1 *et seq.*, the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*.

2. Pursuant to R.I. Gen. Laws § 44-30-2.6 (as amended by P.L. 2010, ch. 20, § 1) historic homeownership tax credits cannot be used to offset personal income tax liability on or after January 1, 2011.

VIII. RECOMMENDATION

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

Based on R.I. Gen. Laws § 44-1-1 *et seq.* and R.I. Gen. Laws § 44-30-2.6, the Division was correct to deny the Taxpayer's claimed credits for 2011 and 2012.

Date: February 2, 2016

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: 2/11/16

Neena S. Savage
Acting 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 WHICH STATES AS FOLLOWS:

R.I. Gen. Laws § 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 17th day of February, 2016 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 Taxpayer's address on file with the Division of Taxation and by hand delivery to Meaghan Kelly, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02908.

Gail Belasco