STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2021-08

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

IN THE MATTER OF:	:	
	:	**Case No.: 21-T-133**
Taxpayer.	:	

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 June 17, 2021 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. The parties agreed that this matter could be decided on an agreed statement of facts, agreed exhibits, and briefs. The parties timely filed briefs by September 27, 2021.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 31-36-1 *et seq.*, and 280-RICR-20-00-2 *Administrative Hearing Procedures*.

III. ISSUE

Whether the Taxpayer's four (4) claimed refunds for the payment of tax on fuel purchases should have been denied by the Division.

IV. MATERIAL FACTS

The parties filed an agreed stipulation of facts and exhibits which is summarized as follows:[1]

1. The Taxpayer provides finance and accounting services for the United States Department of Defense ("DOD") with a principal place of business located in

2. The Taxpayer made purchases of fuel between November 30, 2018 and December 31, 2018 and paid motor fuel tax on those purchases. Exhibit One (1) (DOD data sheets for tax period ending December, 2018).

3. The Taxpayer made purchases of fuel between January 1, 2019 and March 31, 2019 and paid the motor fuel tax on those purchases. Exhibit Two (2) (DOD data sheets for tax period January to March, 2019).

4. The Taxpayer made purchases of fuel between April 1, 2019 and June 30, 2019 and paid the motor fuel tax on those purchases. Exhibit Three (3) (DOD data sheets for tax period April to June, 2019).

5. The Taxpayer made purchases of fuel between July 1, 2019 and September 29, 2019 and paid motor fuel tax on those purchases. Exhibit Four (4) (DOD data sheets for tax period July to September, 2019).

6. On March 24, 2020, the Taxpayer made a claim for refund for tax paid on the fuel purchases for the period of November 30, 2018 to December 31, 2018 ("First Refund Claim"). Exhibit Five (5) (Taxpayer Form T-59 and supplemental claim statement).

7. On March 24, 2020, the Taxpayer made a claim for refund for tax paid on the fuel purchases for the period of January 2, 2019 to March 31, 2019 ("Second Refund Claim"). Exhibit Six (6) (Taxpayer Form T-59 and supplemental claim statement).

8. On March 24, 2020, the Taxpayer made a claim for refund for tax paid on the fuel purchases for the period of April 1, 2019 to June 30, 2019 ("Third Refund Claim"). Exhibit Seven (7) (Taxpayer Form T-59 and supplemental claim statement).

9. On March 24, 2020, the Taxpayer made a claim for refund for tax paid on the fuel purchases for the period of July 1, 2019 to September 29, 2019 ("Fourth Refund Claim"). Exhibit Eight (8) (Taxpayer Form T-59 and supplemental claim statement).

10. In total, the Taxpayer made four (4) claims ("Claims") for refund of motor fuel tax paid.

11. By letters dated May 4, May 4, and May 26, 2020, the Division denied the First

[1] For the entire stipulation, see stipulation of facts and exhibits filed on September 1, 2021.

Refund Claim, the Second Refund Claim, and the Third Refund Claim because they were filed outside of the statutory period set forth in R.I. Gen. Laws § 31-36-13. Exhibits Nine (9), (Ten), and 11 (letters from the Division to Taxpayer, respectively).

12. By letter dated April 24, 2020, the Division allowed part of the Fourth Refund Claim as being within the statutory period set forth in R.I. Gen. Laws § 31-36-13 and denied the remaining amount as being outside of the statutory period set forth in R.I. Gen. Laws § 31-36-13. Exhibit 12 (letter from Division to Taxpayer).

13. On June 8, 2020, the Division received four (4) separate requests for hearing from a separate corporate entity, enclosing an "Appeal and Request for Hearing" from the Taxpayer for the First Refund Claim, the Second Refund Claim, the Third Refund Claim, and the partial Fourth Refund Claim. Exhibits 13, 14, 15, and 16 (letters and requests for hearing from Taxpayer to Division).[2]

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.*

[2] The letters requesting a hearing included various attachments that have been admitted elsewhere as exhibits by the parties so that the attachments have not been included in these exhibits.

B. Relevant Statutes

R.I. Gen. Laws § 31-36-13 provides as follows:

> Exemption and reimbursement for sales to United States or outside state – Emergency sales to other distributors. Any person who shall purchase fuels upon which the tax provided in this chapter shall have been paid and shall sell the fuels outside this state or to the United States government, may be reimbursed the amount of the tax in the manner and subject to the conditions provided in this chapter. All claims for reimbursement shall be made under oath to the tax administrator upon forms to be obtained from the tax administrator, within two hundred forty (240) days from the date of the purchase of the fuels, and shall contain any information and proof that the tax administrator may require, that the claimant has paid the tax and that the fuels have been sold by the claimant outside this state or to the United States government. Claims for reimbursement shall be paid by the general treasurer from the general fund upon certification by the tax administrator and with the approval of the controller. However, any distributor shall be exempt from the payment of any tax on fuels sold by the distributor to the United States government or to a person, firm, or corporation who or which shall use the fuel solely for the operation of railroad transportation equipment on fixed rails or tracks, upon the presentation to the tax administrator by the distributor of proof satisfactory to the tax administrator as to the sale. Provided, that any distributor shall be exempt from the payment of any tax on fuels sold by the distributor to another distributor who is registered with the tax administrator.

28 U.S.C. § 2415(a) provides in part as follows:

> Time for commencing actions brought by the United States
> (a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later. ***

C. Arguments

The Division argued that while the Taxpayer purchased the motor fuel and paid the tax, it filed its four (4) denied Claims more than 240 days from the dates of the purchase of fuel so its claims for refund are out-of-time pursuant to R.I. Gen. Laws § 31-36-13. The Division argued the Taxpayer's reliance on 28 U.S.C. § 2415 to argue it has a six (6) year statute of limitations to claim a refund is misplaced as that statute applies to certain Federal cases and not administration actions.

The Taxpayer argued that it is an agency of the United States so it is governed by the six (6) year statute of limitations pursuant to 28 U.S.C. § 2415.

D. Whether the Taxpayer's Claims for Refund are Time Barred

a. <u>R.I. Gen. Laws § 31-36-13</u>

The First Refund Claim, the Second Refund Claim, and the Third Refund Claim were all made over 240 days from the purchases of the fuel by the Taxpayer. It was agreed that the Division partially allowed the Fourth Refund Claim for those claims that fell within the 240 days from the dates of purchase. It was not disputed that the Claims are not within this 240 day statutory period to request a refund. In order to be reimbursed for motor fuel tax paid, such claims must be made within the statutory time period of 240 days. *New England Power Company v. Clark*, A.A. 95-47 (District Court, 6th Div. 2/8/99). As the Claims were made over 240 days from dates of the purchases of fuel, the Claims are out-of-time under R.I. Gen. Laws § 31-36-13.

b. <u>28 U.S.C. § 2415</u>

The Taxpayer did not argue that its Claims were within the 240 day period allowed by the statute to request a refund of the tax paid on motor fuel purchases. Instead, the Taxpayer relied on 28 U.S.C. § 2415 to argue that it has more than 240 days to request a refund. This law applies a six (6) year statute of limitation to the bringing of an action for money damages by the United States or an officer or agency that is founded upon any contract, express or implied in law or fact. The United States Supreme Court has specifically addressed this statute and found that its provisions do not apply to administrative proceedings. Indeed, the Court found that there is nothing in the statute that would indicate it would apply to administrative proceedings. Rather, the statute applies to bringing an action or complaint in a court. *BP America Production Co. v. Burton*, 549 U.S. 84, 91-92 (2006).

The Taxpayer dismissed *BP America*'s holding that the statute only applies to judicial proceedings and argued that since there could be an appeal to a court after the administrative appeal is resolved, the statute would apply to an appeal so that its provisions still loom over the administrative proceedings. The Taxpayer misunderstands the *BP America* findings. An appeal of an administrative action is not an action for money damages that is commenced by the filing of a complaint in court. The statute applies to claims that are commenced in a court. The Supreme Court relied on the statute's use of the terms, "action" and "complaint," to find that the statute refers to judicial actions, e.g. commencing an action in court. *Id.* at 91.

Ignoring the *BP America* holding and the provisions of 28 U.S.C. § 2415, the Taxpayer argued that its request for refund is allowed by *United States v. State of Michigan*, 851 F.2d 803 (6th Cir. 1988) which found that a claim for unjust enrichment is quasi-contract which is synonymous with a "contract implied in law." *Michigan* related to a claim by the United States to recover money. The claim was filed in court as an action by the United States to declare that certain Federal credit unions were federal instrumentalities and thus exempt from state taxation so that taxes paid could be recovered. *Michigan* is not applicable as it was a judicial action commenced in court by the United States to recover money based on a contract implied in law. In contrast, these proceedings are not a judicial proceeding commenced in court by the Taxpayer.

The Taxpayer also argued that *United States v. Summerlin*, 310 U.S. 414 (1940); *United States v. John Hancock Mut. Life Ins. Co.*, 364 U.S. 301 (1980); and *Michigan* supported its argument that it – as an agency of the United States - is not subject to any statute of limitations since the United States is not subject to state statute of limitations. In *United States v. California*, 507 U.S. 746 (1993), the Federal government argued that it was not bound by a state statute of limitations. *California* rejected the Federal government's reliance on *Summerlin* and *John*

Hancock since in those cases, the right at issue was obtained by the government through, or created by, a Federal statute which was not present in *California*.[3]

The Taxpayer relied on pre-*BP America* cases that speak generically of state statutes of limitation not applying to the Federal government. However, those cases relate to when the Federal government has a right of action. Here, the Taxpayer requested tax refunds of tax it paid. There was no right of action on the part of the Federal government to bring a claim in court. Furthermore, *BP America* held that 28 U.S.C. § 2415 does not apply to administrative proceedings. Rather, it applies to actions commenced in court on the basis of contract or implied in law contract. Such facts do not exist here.[4]

The statute by its very terms does not apply to the Taxpayer as this is not a Federal right of action in contract or implied in law or fact contract that the Federal government may bring in court.[5] This relates to an out of time request for a tax refund. The Taxpayer's argument that it has a Federal statutory right to extend its time to claim said refunds is without merit. *BP America*.

E. Conclusion

Based on the foregoing, 28 U.S.C. § 2415 is inapplicable to this administrative claim for tax refunds. The Taxpayer's Claims are barred by R.I. Gen. Laws R.I. Gen. Laws § 31-36-13 as they were made over 240 days from the dates of the purchases of the motor fuel.

VI. FINDINGS OF FACT

1. On or about June 17, 2021, the Division issued the Notice to the Taxpayer.

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[3] Similarly, in *Santiago v. United States*, 884 F.Supp. 45 (D. P.R. 1995), the Court noted that in general the cases cited in that matter to argue that the Federal government enjoys unrestricted freedom from state statute of limitations are those where the United States is enforcing its rights as sovereign pursuant to a particular Federal statute such as in *John Hancock* and *Summerlin*.

[4] The Division argued that the Taxpayer was not an agency of the United States but rather a service contractor. The Taxpayer disagreed and argued it was an agency of the United States. However, assuming, the Taxpayer is an agency of the United States, its requests for refunds do not fall under said Federal law.

[5] Subsection (b) of this law provides a three (3) year statute of limitations for actions in tort. This matter is clearly not an action in tort as well as it not being a Federal right of action to bring in court.

2. The parties agreed that this matter could be decided on an agreed statement of facts, agreed exhibits, and briefs. Briefs were timely filed briefs by September 27, 2021.

3. The First Refund Claim, the Second Refund Claim, and the Third Refund Claim were all made more than 240 days from the dates of the purchase of the motor fuel. The denied part of the Fourth Refund Claim was made more than 240 days from the dates of the purchase of the motor fuel.

4. 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*. and R.I. Gen. Laws § 31-36-1 *et seq*.

2. 28 U.S.C. § 2415 is inapplicable to this administrative proceeding relating to claims for tax refunds.

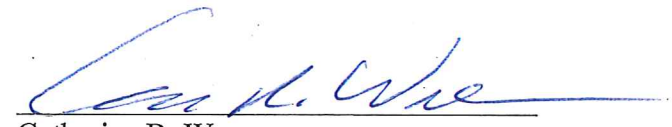
3. Pursuant to R.I. Gen. Laws § 31-36-13, the Taxpayer's four (4) Claims are out-of-time as they were made over 240 days from the dates of the purchase of motor fuel.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 31-36-13, the Taxpayer was not entitled to its four (4) Claims for refund as they were made over 240 days from the dates of purchase of the motor fuel. The Division properly denied the Taxpayer's Claims for refunds.

Date: November 5, 2021



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: 11/12/21

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 § 31-36-9 states in part as follows:
(8) Petition for judicial review; citation and hearing. After a hearing, and provided all taxes, interest, and penalties as determined by the tax administrator have been paid, any person aggrieved by the determination may, within fifteen (15) days from the date of mailing by the tax administrator of the determination, petition the sixth division of the district court, setting forth the reasons why the assessment is alleged to be erroneous and praying relief from it. The clerk of the court shall then issue a citation, substantially in the form provided in § 44-5-26, to summon the tax administrator to answer the petition, and the court shall proceed to hear the petition and to determine the correct amount of the tax, interest, and penalties.

CERTIFICATION

I hereby certify that on the 12th day of November, 2021, a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail, return receipt requested to the Taxpayer's address on file with the Division of Taxation and by electronic delivery to Lenore Montanaro, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Gail Belasco