

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2011-02

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.: 09-T-0013
Taxpayer.	:	
	:	
	:	

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to a Notice of Hearing and Appointment of Hearing Officer (“Notice”) that was issued on June 11, 2009 to the above-captioned (“Taxpayer”) by the Division of Taxation (“Division”) in response to the Taxpayer’s request for hearing. The hearing was initially scheduled for July 27, 2009. The Taxpayer lives in California and indicated it would be a hardship for him to travel to Rhode Island. Therefore, on July 21, 2009, the undersigned informed the parties that if they entered into an agreed statement of facts, a decision could be rendered on a written record. Having not been able to reach an agreement with the Taxpayer, the Division contacted the Taxpayer on March 15, 2010 in regard to withdrawing the appeal. The Taxpayer did not respond. Therefore, on April 30, 2010, the undersigned informed the parties that if the Taxpayer did not confirm by May 14, 2010 that he was pursuing the appeal, the matter would be dismissed. On May 2, 2010, the Taxpayer responded that he had not withdrawn his appeal. Thus, the undersigned set a deadline for the agreed statement of facts by May 17, 2010; otherwise, the matter would be set down for hearing.

That deadline was extended to May 24, 2010 and then to July 2, 2010. As the parties could not agree to an agreed statement of facts, the matter was set down for hearing on December 1, 2010. The Taxpayer received notice of hearing and responded that he would not be attending. A hearing was held on December 1, 2010 at which the Taxpayer did not appear despite adequate notice. 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.*, 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

Whether the Taxpayer's refund claim for the calendar year 2005 was timely filed pursuant to R.I. Gen. Laws § 44-30-87.

IV. MATERIAL FACTS

Principal Revenue Agent, testified on behalf of the Division. She testified the Taxpayer filed a 2005 non-resident return with Rhode Island in 2008 that was signed by the Taxpayer on June 12, 2008 and was received by the Division on June 16, 2008. See Division's Exhibit One (1) and Two (2). She testified that the Taxpayer's 2005 income tax would be due by April 15, 2006. She testified that therefore pursuant to R.I. Gen. Laws § 44-30-87, the Division denied the Taxpayer's request for refund of the taxes as being out of time.

The Division submitted its proposed agreed statement of facts sent on July 4, 2009 to the Taxpayer and the Taxpayer's reply to which the Division represented it could

not agree as it contained the Taxpayer's argument. See Division's Exhibits Four (4) and Five (5) respectively.

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, 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**

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),¹ the Taxpayer's tax was deemed paid on the date it was due: April 15, 2006. In addition, R.I. Gen. Laws § 44-30-51² 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 § 44-30-52³ states that tax shall be paid on or before the

¹ 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.

² 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.

³ R.I. Gen. Laws § 44-30-52 states in part as follows:

date fixed for filing without regard to an extension. Thus, applying the statute results in the following timeline:

1. The Taxpayer's 2005 tax was deemed paid April 15, 2006. The Taxpayer was 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 Taxpayer filed the 2005 non-resident Rhode Island return on June 16, 2008 and claimed a refund.

3. June 16, 2008 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 Taxpayer may file a request for a refund within three (3) years of filing of the return.

6. The Taxpayer is within the three (3) year period to claim a refund.

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

8. The Taxpayer has not paid any tax from June 16, 2008 to the present.

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.

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.

It should be noted that the Federal rule is different from the rule in Rhode Island and does not apply to Rhode Island. The provisions of Internal Revenue Code Section 6511(b)(2)(A)⁴ are different from the Rhode Island statute.

⁴ § 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.

(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.

Based on Division's Exhibit Five (5), the Taxpayer apparently argued that the Division illegally denied his refund. The Taxpayer apparently argued that since he lived outside of Rhode Island and performed his duties outside of Rhode Island for a Rhode Island based company, he did not owe any income tax. The Taxpayer argued that the Rhode Island company illegally withheld Rhode Island tax. However, the issue is solely whether the Taxpayer made a timely request for a refund on his 2005 non-resident return. Under the applicable statute, he did not.

There are no provisions in the statute that provide for any exemptions from the time limits set by statute. Indeed, the statute already has a built-in extension for requesting refunds in that refunds are allowed to be requested either two (2) or three (3) years from the date the tax is deemed paid or the return is filed respectively. While the Taxpayer apparently argued that this was a matter of fairness, an administrative proceeding is not an equitable proceeding and there is no equitable jurisdiction. To find for the Taxpayer on the basis of a fairness argument would be reversible error. *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004).

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. 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

§ 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."

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 Taxpayer does not qualify for his 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 June 11, 2009, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayer.
2. A hearing in this matter was held on December 1, 2010. The Division rested on the record at the hearing.
3. The Taxpayer was notified of the hearing date and did not appear.
4. The Taxpayer's 2005 tax payment was due by April 15, 2006 and was deemed paid on that day.
5. The Taxpayer filed the return on June 18, 2008 and claimed a refund for overpayment of tax.
6. There are no Rhode Island statutory or regulatory provisions that provide for any exemptions for any reason from the Rhode Island statute regarding the claiming of late refunds to the filing of Rhode Island tax returns.
7. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayer is 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 Taxpayer is not entitled to the refund claimed.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayer is not entitled to the refund claimed and the Division properly denied the Taxpayer's claim for the refund.

Date: 1/18/11


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: FEB 4, 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 4th day of February, 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 Taxpayer's address on file with the Division of Taxation and by hand delivery to Michael Canole, Chief, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Neil Belasco