STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2011-22

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.: 11-T-024**
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 30, 2011 and issued to the above-captioned taxpayers ("Taxpayers")[1] by the Division of Taxation ("Division") in response to a request for hearing filed with the Division on or about April 6, 2011. A hearing was held on November 7, 2011. The Division was represented by counsel with the Taxpayers representing themselves. The parties 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.*

III. ISSUE

Whether the Taxpayers' refund claim for the calendar year 2006 was timely filed pursuant to R.I. Gen. Laws § 44-30-87.

[1] The taxpayers are a married couple.

IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. She testified that the Taxpayers filed a non-resident 2006 personal income tax return on December 22, 2010. See Division's Exhibit One (1). She testified that there was an overpayment of taxes on said return because taxes had been withheld on two (2) sales by the Taxpayers of Rhode Island real estate in 2006. See Division's Exhibit Four (4) (copies of the withholding forms for the two (2) property sales). She testified that a refund of a claimed overpayment is governed by statute and the Taxpayers' request was untimely. She testified that a refund can be claimed two (2) years from the date of payment which under the statute is deemed to be April 15 following the tax year so in this matter the claim would be limited to two (2) years from April 15, 2007. She also testified that the statute also allows three (3) year from the return was filed which would be December 22, 2010 but that refund is limited to any payments made within the three (3) year period of the filing and no such payments were made.

On cross-examination, testified that R.I. Gen. Laws § 44-30-87(i) states that all tax payments are considered made on the April 15 following the tax year so that the two (2) year period to claim a refund from the date of payment was between April 15, 2007 and April 15, 2009. Thus, she testified the refund request was untimely.

The wife ("Wife") testified on behalf of the Taxpayers. She testified that she and her husband were both diagnosed with cancer in 2006 and treated in 2007 and 2008 and are still not cancer free.[2] She testified it was a hardship handling the mental stress of the cancer and they put all their energies into the diagnoses which caused them to file their

[2] The Division did not dispute that the Taxpayers both were diagnosed with cancer during 2006 and treated during 2007 and 2008. See Taxpayers' Exhibits One (1) and Two (2) (physician letters confirming the cancer diagnosis for both Taxpayers).

return late. She testified they also had deaths in the family during this time period and she suffered from reactive depression because of the cancer. She testified that the Federal Internal Revenue Service ("IRS") gave them a refund for this period. See Taxpayers' Exhibit Three (3) (IRS refund check).

The husband ("Husband") testified on behalf of the Taxpayers. He testified that his Wife handles the taxes but the cancer diagnosis for both of them was too much and they were overwhelmed especially since family members were dying at the time so the tax claim took a back seat to everything else. He testified that he would like some consideration for the human factors and that the IRS considered their hardship and issued a refund.

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). 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 (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.*

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 was deemed paid on the date it was due: April 15, 2007. In addition, R.I. Gen. Laws § 44-30-51[4] 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 § 44-30-52[5] states that tax shall be paid on or 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. Thus, applying the statute results in the following timeline:

1. The Taxpayers' 2006 tax was deemed paid April 15, 2007. 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.

---

[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.

[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.

2. The Taxpayers filed the 2006 Rhode Island return on December 22, 2010 and claimed a refund.

3. December 22, 2010 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 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 Taxpayers have not paid any tax from December 22, 2010 to the present.

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.

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 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).

While both Taxpayers suffered serious health issues, 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. Furthermore, while the Taxpayers argued for some human consideration, an administrative proceeding is not an equitable proceeding and there is no equitable jurisdiction. To find for the Taxpayers on the basis of a fairness argument would be reversible error. *Nickerson v. Reitsma* , 853 A.2d 1202 (R.I. 2004).

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 September 30, 2011, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayers.

2. A hearing in this matter was held on November 7, 2011 with the parties resting on the record.

3. The Taxpayers' 2006 tax payment was due by April 15, 2007 and was deemed paid on that day.

4. The Taxpayers filed their return on December 22, 2010 and claimed a refund for overpayment of tax.

5. 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.

6. 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 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 Taxpayers are not entitled to the refund claimed and the Division properly denied the Taxpayers' claim for the refund.

Date: 12/2/11

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:

X ADOPT
____ REJECT
____ MODIFY

Dated: 12/16/11

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 20th day of December, 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 Linda Riordan, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Gail Belasco