STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-11

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

IN THE MATTER OF:	:	**23-T-007**
	:	**sales tax refund**
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 dated January 19, 2023 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 stipulated facts, agreed exhibits, and briefs. The parties agreed to a briefing schedule, and all briefs were timely filed by March 25, 2024.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, and 280-RICR-20-00-2 *Administrative Hearing Procedures.*

III. ISSUE

The parties agreed that there were two (2) issues for determination:

1. Whether the Division properly denied the Taxpayer's sales tax refund claims in part because portions of said claim were untimely under R.I. Gen. Laws § 44-19-26. Specifically, whether the waiver that the Taxpayer signed during the audit held open the period in which to file said refund claim.

2. Whether the Division properly denied the Taxpayer's sales tax refund claim in part because the Taxpayer paid sales tax to its vendor instead of the state.

IV. MATERIAL FACTS AND TESTIMONY

The parties filed an agreed statement of facts and exhibits ("ASOF") which is summarized as follows:[1]

1. The Taxpayer is a domestic for profit corporation that was organized under the laws of Rhode Island and qualified to do business in Rhode Island. Its principal place of business is in Rhode Island. Exhibit One (1) (Secretary of State certified business filings).

2. The Division is a state agency charged with the administration and enforcement of all state taxes including the sales and use tax.

3. The Taxpayer was under audit for sales and use tax by the Division for the period September 1, 2016 through August 31, 2019 ("Audit Period"). During the audit, the Taxpayer signed a "Waiver Sales and Use Tax" on October 4, 2019 ("Waiver"). The Waiver allowed the Taxpayer to "waive the period of limitation prescribed by Section 44-19-13" and "such notice of determination, were it not for this waiver, would have been mailed on or before 10/20/2019." Exhibit Two (2) at 19.

4. The Taxpayer received credit for any erroneously paid tax during the Audit Period up to the amount assessed that month.

5. On January 12, 2021, the Division received via e-mail a Claim for Refund ("Claim") from the Taxpayer dated January 8, 2021, seeking a refund of sales tax of a certain amount for the Audit Period. Exhibit Two (2) at 14. The Division received a copy of the Claim by mail on January 26, 2021.

6. The Claim related to what the Taxpayer believes is an overpayment of sales and use tax on fixed asset purchases that were reviewed as part of the audit. There are sixteen (16) vendors and 102 invoices in total. The Taxpayer's basis for the Claim is that the purchased items were not used in Rhode Island.

7. The total sales tax the Taxpayer initially believed it overpaid to vendors ("Sales Tax Claim") and the total use tax the Taxpayer believed was self-assessed in error ("Use Tax Claim") are delineated in Exhibit Four (4) at 1. The Division further categorized the Sales Tax Claim into the timely amount paid and the untimely amount paid to the vendor. *Id.* The Use Tax Claim involved transactions that occurred on or before December 1, 2016. *Id.* at 3-4.

8. On January 4 and January 24, 2022 the Division sent a letter to the Taxpayer denying its Claim in full. Exhibit Three (3).

[1] See partial stipulation of facts and exhibits filed on November 21, 2023.

9. On February 18, 2022, the Taxpayer filed a request for hearing with the Division regarding the Claim. Exhibit Five (5). A preliminary conference was held on June 7, 2022 which did not resolve this matter so it was forwarded for an administrative hearing.

10. After the preliminary conference, the Taxpayer modified its Claim by adjusting certain items. Exhibit Four (4) at 1, and 3-4. The Division further categorized the Sales Tax Claim into the timely amount paid to the vendor and the untimely amount paid to the vendor. *Id.*

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 will "give the words their plain and ordinary meaning." *Hough v. McKiernan*, 108 A.3d 1030, 1035 (R.I. 2015) (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. 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. *Hough*; and *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998).

B. Relevant Statutes

Pursuant to R.I. Gen. Laws § 44-18-18, Rhode Island imposes a sales tax of 7% on gross receipts of a retailer. Pursuant to R.I. Gen. Laws § 44-18-20, a complementary use tax is imposed on the storage, use or consumption of tangible personal property. Pursuant to R.I. Gen. Laws § 44-18-19, the retailer is responsible for the collection of sales tax.

R.I. Gen. Laws § 44-19-13 provides in part as follows:

Notice of determination. (a) The tax administrator shall give to the retailer or to the person storing, using, or consuming the tangible personal property a written notice of his or her determination. Except in the case of fraud, intent to evade the provisions of this article, failure to make a return, or claim for additional amount pursuant to §§ 44-19-16 — 44-19-19, every notice of a deficiency determination shall be mailed within three (3) years after the fifteenth (15th) day of the calendar month following the month for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period expires later, unless a longer period is agreed upon by the tax administrator and the taxpayer.

R.I. Gen. Laws § 44-19-25 provides as follows:

Claims for refund — Hearing — Judicial review. Every claim for a refund shall be made in writing, in a form, and stating information that the tax administrator may require. Within thirty (30) days after disallowing any claim in whole or in part, the tax administrator shall give notice of his or her decision to the claimant. Any person aggrieved by the decision may, within thirty (30) days from the date of the mailing by the tax administrator of notice of the decision, request a hearing and the tax administrator shall, as soon as practicable, set a time and place for the hearing. After the hearing, if the taxpayer is aggrieved by the decision of the tax administrator, the taxpayer may petition the sixth (6th) division of the district court for relief from the decision of the tax administrator. No petition may be made under this section with respect to a re-determination as to which a petition has been made under § 44-19-18. The court shall proceed in the manner provided in §§ 44-19-18 and 44-19-19, and may confirm the decision of the tax administrator or order a refund or credit as provided in § 44-19-19. A party aggrieved by a final order of the court may seek review of the order in the supreme court by writ of certiorari in accordance with the procedures contained in § 42-35-16.

R.I. Gen. Laws § 44-19-26 provides as follows:

Payment of refunds. Whenever the tax administrator determines that any person is entitled to a refund of any moneys paid by a person under the provisions of chapters 18 and 19 of this title, or whenever a court of competent jurisdiction orders a refund of any moneys paid, the general treasurer shall, upon certification by the tax administrator and with the approval of the director of administration, pay the refund from any moneys in the treasury not appropriated without any further act or resolution making appropriation for the refund. No refund is allowed unless a claim is filed with the tax administrator within three (3) years from the fifteenth (15th) day after the close of the month for which the overpayment was made, or, with respect to determinations made under §§ 44-19-11 — 44-19-14, within six (6) months from the date of overpayment, whichever period expires later.

C. Arguments

The parties' arguments will be discussed in greater detail below. Briefly, the Division argued the Taxpayer's claim for refund for tax it paid directly to the Division is untimely, and the statute of limitations waiver signed by the Taxpayer for the audit does not extend the time to request a refund. It argued the Taxpayer's claim for refund of tax paid to vendors is entirely barred as the Taxpayer did not actually pay the tax, and that some of the Taxpayer's claim for tax paid to vendors is also barred because that claim was untimely. The Taxpayer argued that the time to file a refund was extended as it filed a waiver of statute of limitations during the audit. The Taxpayer argued that it can file a claim for tax paid to a vendor as it is an erroneous payment, and the statute does not require the vendor to file the claim.

D. Whether the Division Properly Denied the Refund Request

a. Applicability of Waiver

On October 4, 2019, the Taxpayer signed a "waiver sales and use tax" form (Exhibit Two (2)) which provided as follows:

> The undersigned, in consideration of the Tax Administrator allowing it to have an extension of time for the purpose of assembling such records, information and other data which it deems necessary for the purpose of assisting in the determination of the correct amount of any taxes which it may owe under the provisions of Chapters 44-18 and 44-19, does hereby waive the period of limitation prescribed by Section 44-19-13.
>
> The taxpayer acknowledges that such notice of determination, were it not for this waiver would have been mailed on or before 10/20/2019.
>
> NOTE: WAIVER MUST BE SIGNED AND DATED PRIOR TO THIS DATE
>
> Pursuant to this waiver, the taxpayer consents that such notice, when thereafter mailed, shall have the same force and effect as though it were mailed within the time prescribed it section 44-19-13.
>
> It is agreed that the State shall not be barred from asserting its claim for taxes covering the period from 09/01/2016 through 08/31/2019.

The form then has the name of the Taxpayer and federal identification number with the name and title of the person "authorized to execute this waiver of the statute of limitations." It is signed by that person. It is not signed by the Division.

Except for certain exemptions, R.I. Gen. Laws § 44-19-13(a) provides as follows:

> [E]very notice of a deficiency determination shall be mailed within three (3) years after the fifteenth (15th) day of the calendar month following the month for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period expires later, unless a longer period is agreed upon by the tax administrator and the taxpayer.

Under R.I. Gen. Laws § 44-19-13(a), the Division would have had to send its notice of deficiency determination of any taxes owed to the Taxpayer after its audit by October 20, 2019. The Audit Period was for September 1, 2016 through August 31, 2019 so three (3) years from 2019 would have been in 2022 but three (3) years from 2016 was in 2019. By signing the Waiver, the Taxpayer agreed - as provided by statute - to extend the period allowed for the Division to send its notice of deficiency. The Waiver stated that taxes may be owed under "Chapters 44-18 and 44-19." Those statutes relate to the liability, computation, enforcement, and collection of sales and use tax. The Taxpayer was under a sales and use tax audit and by signing the Waiver, the period for it to be assessed was extended past the three (3) year period provided by statute. By signing the Waiver, the Taxpayer consented that whenever the notice of deficiency was mailed, it would be treated as if mailed within the time prescribed by R.I. Gen. Laws § 44-19-13(a). In other words, the Taxpayer agreed that it would not assert a statutory time argument under R.I. Gen. Laws § 44-19-13(a) against any sales and use deficiency assessment that arose out of the audit.

There is nothing in the statute or the Waiver that indicates and/or provides that the signing of such a waiver extends the time for a taxpayer to request a refund of either sales or use tax paid.

The Division's regulation, 280-RICR-20-00-4 *Taxpayer Rights and Responsibilities*, addresses the rights and responsibilities of taxpayers under the administration of Rhode Island's tax laws. The Taxpayer argued that §4.2 of said regulation provides that tax forms and information are to be "written in plain language." The Taxpayer argued that if the Waiver is "solely to apply to only tax amounts due, the language should state that clearly on the form and it does not." Taxpayer's brief at 6. A review of the Waiver showed that it only speaks of tax amounts due. It clearly states that the extension is for the "determination of the correct amount of any taxes which it [The Taxpayer] may owe under the provisions of Chapters 44-18 and 44-19, [and Taxpayer] does hereby waive the period of limitation prescribed by Section 44-19-13." The Waiver stated the date that the deficiency notice would have had to be mailed by but for the Waiver. The Waiver stated that by signing the Waiver, the deficiency would be treated as being mailed within the statutory time period. And the Taxpayer agreed it could not assert an argument that any deficiency was time barred pursuant to R.I. Gen. Laws § 44-19-13(a).

The Taxpayer argued that the Waiver was unclear because it could apply to overpayments as it speaks of "amount of any taxes which it may owe." It argued that any amount could be an underpayment or overpayment as it is a determination of the correct amount of tax owed. However, contrary to the Taxpayer's assertion, that is not a plain reading of the form. The form is waiving the time period of R.I. Gen. Laws § 44-19-13(a) which falls under the enforcement and collection of sales and use tax. That statute provides the time period for when the Division can assess tax owed. Indeed, the statute excludes certain assessments – fraud, failure to file returns – from the three (3) year period. The form speaks of taxes that may be owed "under the provision of Chapters 44-18 and Chapter 44-19." In arguing that taxes owed could mean a correct determination of taxes owed whether it is an underpayment or overpayment, the Taxpayer ignored

the rest of the sentence. The sentence in the Waiver is that the Division is making a determination of whether any taxes under those chapters are owed.[2]

The Taxpayer also argued that "notice of determination" is not defined by statute, and it is unclear that it only relates to underpayments. The Taxpayer argued that when reading R.I. Gen. Laws § 44-19-13 and R.I. Gen. Laws § 44-19-26 together, they imply that a determination is issued for any type of tax determination (over or underpayment) and the latter statute details how a payment for a refund is made. The Taxpayer argued that there is nothing in a published document to substantiate that the term "notice of determination," applies "exclusively to underpayments." Taxpayer's reply brief at 4. The Taxpayer asserted that the Waiver also applies to overpayments so that it must extend the time for a refund request of an overpayment.

However, the Taxpayer failed to consider R.I. Gen. Laws § 44-19-11 which explains what a deficiency determination is as follows:

> Deficiency determinations — Interest. If the tax administrator is not satisfied with the return or returns or the amount of tax paid to the tax administrator by any person, the administrator may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one or for more than one month. The amount of the determination, exclusive of penalties, bears interest at the annual rate provided by § 44-1-7 from the fifteenth day (15th) after the close of the month for which the amount, or any portion of it, should have been paid until the date of payment.

A determination of deficiency is authorized to be made by the Division under R.I. Gen. Laws § 44-19-11. The Division is to determine the "amount required to be paid" by a taxpayer, and one (1) or more deficiency determinations can be "made of the amount due" and interest shall

[2] The Taxpayer argued that in administrative decision 2001 WL 1602875 (R.I.Div.Tax.), the taxpayer signed such a waiver and while it lost the case on the merits, the Division never contested the statute of limitations because a valid waiver had been executed. There is nothing in that decision to support the Taxpayer's conclusion. The decision only addressed the refund request on the merits. It noted a waiver was signed, but it never addressed the statute of limitations in any fashion let alone the effect the waiver may have on the statute of limitations.

be imposed. The next statutory provision in that chapter is R.I. Gen. Laws § 44-19-12,[3] and it provides what penalties can be imposed when a deficiency determination is made.

Following the provision about issuing a deficiency determination and then the provision of what penalties can be imposed, the next provision is R.I. Gen. Laws § 44-19-13 which provides how long the Division has to issue a "deficiency determination." Thus, R.I. Gen. Laws § 44-19-11 explains what, how, and why the Division can issue a "deficiency determination." R.I. Gen. Laws § 44-19-12 provides what penalties shall be imposed with a "deficiency determination." R.I. Gen. Laws § 44-19-13(a) provides the time period for issuing a "deficiency determination."

Contrary to the Taxpayer's arguments, the statute explains what a deficiency determination is and R.I. Gen. Laws § 44-19-13(a) itself limits the issuance of a deficiency determination to a three (3) year period except in certain cases. By statute, a deficiency determination is not a notice to a taxpayer about an overpayment of taxes. Rather the Division has determined that a taxpayer owes tax. In other words, the amount of tax paid or not paid by a taxpayer was deficient. The Division assesses the taxpayer for what tax is owed, the deficient amount.

The statute is clear that a deficiency determination is an assessment to a taxpayer by the Division of an amount of tax that the Division believes a taxpayer owes ("the amount required to be paid"). It is not for an overpayment.

The Taxpayer argued that there is nothing to indicate the Waiver limits the right for the Taxpayer to seek an overpayment for which it is due. However, the Waiver does not limit the right

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[3] R.I. Gen. Laws § 44-19-12 provides as follows:

> Pecuniary penalties for deficiencies. If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of the provisions of this chapter and chapter 18 of this title, a penalty of ten percent (10%) of the amount of the determination is added to it. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade the provisions of this chapter or chapter 18 of this title, a penalty of fifty percent (50%) of the amount of the determination is added to it.

to request a refund. The three (3) year period to request a refund is unchanged by the Waiver. The Taxpayer apparently wants to make forms more complicated by adding extraneous information. The information about the refund period is not in the form because the form only relates to waiving the Division's three (3) year limit to issue a determination that a taxpayer owes sales and use tax. There is nothing in statue or regulation that allows an extension of time for a refund request. The statute allows a waiver of the statute of limitations. There is no statutory authority to change the time in which to request a refund for sales and use tax.

Despite the Taxpayer's assertion that the Waiver was not clear, it is hard to imagine how much clearer it could be. The Waiver waived the statutory time period of three (3) years for the Division to mail a notice of deficiency that would have had to be sent by October 20, 2019. Thus, the Taxpayer agreed in the Waiver that a determination of any sales and use tax owed could be mailed after that date. It does not do anything else.

To argue that the Waiver should also speak of refund requests could also mean that the form would need to include a whole litany of things that it does not affect. The fact is the Waiver is authorized by statute, and it only affects the statute of limitations. That is the plain reading of the form. To assume otherwise, is to make assumptions without any basis in the form, statute, or regulation. The Taxpayer may want to think the Waiver extends the refund request time but precisely because the form does not say that it does is the reason to know that it does not as there is no other statutory or regulatory provisions to support such an argument.

Indeed, the Waiver form also does not say that a statute of limitation waiver does not affect any interest or penalty that can be imposed by the Division. However, a taxpayer cannot then assume that because the Waiver did not include information about interest or penalties that interest and penalties cannot be imposed. That is what the Taxpayer is arguing: because no reference is

made to what the Waiver does not affect, it must change other parts of the statute, e.g. time for refunds, imposition of penalties, interest, etc.

The Taxpayer argued that other states provide waivers with different and better information. However, other states have different laws. For example, the Taxpayer provided a copy of a statute of limitations waiver from Pennsylvania that stated that signing the waiver also extended the period for requesting a refund and cited to the applicable Pennsylvania statute. Obviously, Pennsylvania's waiver would be different from Rhode Island's waiver since its laws are different from Rhode Island. The Taxpayer may like other states' laws and forms better but that does not change what Rhode Island law provides, and what the Waiver stated.

Finally, the Taxpayer raised the fact that the personal income tax statue allows an extension of time for refund requests. R.I. Gen. Laws § 44-30-87(b) extends the time for a taxpayer to request a refund of personal income tax if there has been an agreement by the taxpayer and the Division pursuant to R.I. Gen. Laws § 44-30-83(b)(2) to extend the period for an assessment.[4] Obviously, the Taxpayer's refund is not under the personal income tax statute, so those statutory provisions are inapplicable.

However, when the legislature enacts or amends a statute, it is presumed to know the existing relevant statutes. *State v. DelBonis*, 862 A.2d 760 (R.I. 2005). It is also presumed to

[4] R.I. Gen. Laws § 44-30-87(b) provides as follows:

> Limitations on credit or refund ***
> (b) Extension of time by agreement. If an agreement under § 44-30-83(b)(2) extending the period for assessment of tax is made within the period prescribed in subsection (a) of this section for the filing of a claim for credit or refund, the period for filing a claim for credit or refund, or for making credit or refund if no claim is filed, shall not expire prior to six (6) months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension of it thereof. The amount of the credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection (a) of this section if a claim had been filed on the date the agreement was executed.

know how to amend, repeal, and enact legislation. *Brennan v. Kirby*, 529 A.2d 633 (R.I. 1987). The personal income tax provision was enacted in 1971. P.L. 1971, ch. 8, art. 1, § 1. R.I. Gen. Laws § 44-19-26 was enacted in 1947. While there have been changes to that statute, there have been no substantive changes since 1947. See below. Not only has the legislature chosen not to enact a statute providing for an extension of time refund requests for sales and use tax, it specifically chose to make such a provision for personal income tax. In other words, if the legislature wanted to allow the signing of the sales and use waiver to extend the time to request a refund request, it would do so, but has chosen not to.

b. Claims for Tax Paid by Taxpayer

As the Waiver does not change the statutory period for a Taxpayer to request a refund, any request by the Taxpayer for a sales or use tax refund filed after the three (3) year period is barred by R.I. Gen. Laws § 44-19-13(a). The Taxpayer filed its request for an overpayment of use tax paid to the Division on January 12, 2021 for payments it made before December 1, 2016. See ASOF. Thus, the Taxpayer's Use Tax Claim was filed out of time, and the Division properly denied that request for refund.

c. Claims for Tax paid by Taxpayer to Vendors

1. Timely

Pursuant to R.I. Gen. Laws § 44-18-6[5], the Taxpayer is a corporation and is considered a person under the statute. R.I. Gen. Laws § 44-19-26 provides that payments of refunds are made to "any person is entitled to a refund of any moneys paid by a person under the provisions of chapters 18 and 19 of this title." In other words, a person is entitled to refund of money paid by

[5] R.I. Gen. Laws § 44-18-6 provides as follows:

> Person defined. "Person" includes any individual, partnership, association, corporation, estate, trust, fiduciary, limited liability company, limited liability partnership, or any other legal entity.

that person. The statute provides any person – including corporations – can be paid a refund of sales or use tax moneys paid by "a person." The Taxpayer would have that mean that the person requesting a refund need not be the person that paid the tax.

When the statutory language is clear and unambiguous, words are given their plain and ordinary meaning. *Hough.* Here, the statute states any person is entitled to a refund paid by a person. In other words, the taxes were paid by the person requesting the refund.

However, if the statute is considered ambiguous, the Rhode Island Supreme Court has found as follows:

> "The plain meaning approach, however, is not the equivalent of myopic literalism, and it is entirely proper for us to look to the sense and meaning fairly deducible from the context." *National Refrigeration, Inc.,* 88 A.3d at 1156 (quoting *Peloquin v. Haven Health Center of Greenville, LLC,* 61 A.3d 419, 425 (R.I.2013)). "Therefore we must consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." *Id.* (quoting *Peloquin,* 61 A.3d at 425). However, "under no circumstances will this Court construe a statute to reach an absurd result." *Id.* (quoting *Peloquin,* 61 A.3d at 425). *Western Reserve Life Assurance Co. of Ohio v. ADM Associates,* LLC, 116 A.3d 794, 798 (R.I. 2015)

Furthermore, the "interpretation of an ambiguous statute 'is grounded in policy considerations and [the Court] will not apply a statute in a manner that will defeat its underlying purpose.'" *Hough,* at 1035 (internal citation omitted). Indeed, the "ultimate goal is to give effect to the purpose of the act as intended by the Legislature." *Id.* (internal citations omitted). "Therefore, '[w]e must determin[e] and effectuat[e] that legislative intent and attribut[e] to the enactment the most consistent meaning.'" *Id.* (internal citations omitted).

The statutory provisions allowing for a request for a refund and the payment of the refund provides that taxpayers who have overpaid taxes can be repaid for the overpayment. The people who paid are entitled to a refund of overpaid taxes.

If a person requested a refund of taxes paid by someone else, the Division could not discuss that information with the person requesting the refund due to confidentiality requirements. Pursuant to R.I. Gen. Laws § 44-58-6,[6] sales and use return information is confidential. The Division cannot disclose confidential tax information to an entity or person about another entity or person. Also, if the requestor has not paid the tax to the Division, it would not be refunded taxes that it paid. If the requestor who paid the tax requested a refund, but a refund had somehow already been given to the non-tax paying requestor, that would upend the refund process.

There is nothing in the statute that speaks of third parties requesting refunds. Here, the Taxpayer argued that an entity can obtain a refund of tax that an entity paid to a third party for which it could be that the third party remitted the tax to the Division and then the third party requested a refund, but the Division could not discuss that with the non-paying requestor. The inability of the Division to track various requests from different parties with an interest in a tax paid because of confidentiality would result in an unworkable system and would be an unreasonable result.

The Taxpayer argued that contrary to the Division's argument that chaos and improper disclosure of tax information would result if third parties were allowed to file refund claims, other states allow third party claims and cited to those states' statutes. But a review of those states' statutes show that they expressly allow a third party to file and require a process to avoid such

[6] R.I. Gen. Laws § 44-58-6 which is part of the Streamlined Sales Tax System statute provides as follows:

> Confidentiality of taxpayer information. Return information submitted to any party or parties acting for and on behalf of the state shall be treated as confidential taxpayer information. Disclosures of confidential taxpayer information necessary under the provisions of this chapter shall be pursuant to a written agreement entered into between the tax administrator and the party or parties. The party or parties shall be bound by the same requirements of confidentiality as the tax administrator under the provisions of chapters 18 and 19 of this title.

improper disclosure and to avoid double payment.[7] The Taxpayer pointed out that some states expressly require the vendor to assign the right to claim the refund for purchases. The Taxpayer also cited to states where the law requires vendors to file for the refund. While the Taxpayer's round up of other state laws is interesting in terms of any future drafting of taxing statutes, the issue before the undersigned is the Rhode Island statute as written. The Taxpayer argued that other states have clear forms about the third party requests, but that is because the other states have different laws that provide for such claims. Again, the issue is not what the Taxpayer thinks Rhode Island law should be, but what it is.

In 2007, Rhode Island adopted the Streamlined Sales and Use Tax Agreement by R.I. Gen. Laws § 44-18.1-1 *et seq*. The Taxpayer argued in its brief (p. 13) that this statute provides the "first course" of remedy is for a purchaser seeking over collected sales tax, but the statute provides that "[n]othing in this section shall either require a state to provide, or prevent a state from providing, a procedure by which a purchaser may seek a refund directly from the state arising out of sales or use taxes collected in error by a seller from the purchaser." R.I. Gen. Laws § 44-18.1-26(B).[8] Thus, the statute provides that each state can decide its procedure for requesting a refund.

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[7] For example, Colo. Rev. Stat. § 39-26-703 has a specific exemption that allows a seller to be reimbursed the tax from the tax authority upon showing proof that it paid or reimbursed the purchaser for the tax collected. Similarly, Mo. Rev. Stat. § 144.190 provides specific steps if the purchaser requests a refund of tax paid rather than the seller. And so on.

[8] The entire R.I. Gen. Laws § 44-18.1-26 provides as follows:

> Customer refund procedures. (A) These customer refund procedures are provided to apply when a state allows a purchaser to seek a return of over-collected sales or use taxes from the seller.
>
> (B) Nothing in this section shall either require a state to provide, or prevent a state from providing, a procedure by which a purchaser may seek a refund directly from the state arising out of sales or use taxes collected in error by a seller from the purchaser. Nothing in this section shall operate to extend any person's time to seek a refund of sales or use taxes collected or remitted in error.
>
> (C) These customer refund procedures provide the first course of remedy available to purchasers seeking a return of over-collected sales or use taxes from the seller. A cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

The Taxpayer then provided citations to other state laws that have authorized a procedure by which a purchaser may seek a refund directly from the state for sales or use tax collected in error by a seller. Again, those other states and their laws are not relevant to Rhode Island law. Rhode Island has not chosen to provide "a procedure by which a purchaser may seek a refund directly from the state" arising out of erroneously collected sales tax by a seller. The Taxpayer may wish that Rhode Island has enacted those type of laws, but again it has not. The fact that other states have has no bearing on Rhode Island law as it is.

As there are no statutory provisions in Rhode Island that specifically allow a person who did not pay the sales or use tax to request the tax refund, to allow such a process would be inconsistent with the statutory provisions and intent of the sales and tax refund process.[9]

In addition, an agency's acquiescence to a continued practice is entitled to great weight in determining legislative intent. R.I. Gen. Laws § 44-19-26 was enacted in 1947. P.L. 1947, ch. 1887, art. 2, § 46. In the 1956 reenactment, the first sentence of the first paragraph was turned into R.I. Gen. Laws § 44-19-24, and the second paragraph was turned in R.I. Gen. Laws § 44-19-25. In 1988, as noted in the history of the section in the 1988 reenactment, the 1988 reenactment made several changes to the words "said" and "such" throughout the section. Thus, in the first

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> (D) In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller: (i) uses either a provider or a system, including a proprietary system, that is certified by the state; and (ii) has remitted to the state all taxes collected less any deductions, credits, or collection allowances.

[9] A recent Rhode Island Supreme Court case, *Apex Oil Company, Inc. v. State of Rhode Island*, 297 A.3d 96 (2023), found that under a different statute, R.I. Gen. Laws § 31-36-13 (motor fuel tax), a taxpayer who had not paid the original tax to the Division had standing to appeal the denial of its refund request. In that matter, the Division imposed tax on the seller ("Seller") of gasoline to Apex, and Apex reimbursed the Seller for the tax pursuant to a contract between the Seller and Apex that provided Apex would reimburse the Seller for any taxes imposed. Apex filed with the Division a request for a refund of the tax it paid to the Seller under the contract between the Seller and Apex. The Court found that in that situation, Apex had standing to file the appeal; however, the statute in that case is not the statute in this matter, and the facts are unique to the sale of gasoline at sea coupled with a contractual reimbursement and not applicable to this matter.

sentence of the statute, "such person" was changed to "a person" so that instead of it reading "any person is entitled to a refund of any moneys paid by such person," it reads "any person is entitled to a refund of any moneys paid by a person." There was also an implied amendment in P.L. 1951 ch. 2727, art 1 when there was a change in titles from a director of finance (in 1947) to director of administration (1951).

The change from "such" to "a" was discussed in an administrative decision 2006 WL 4452848 (R.I.Div.Tax.) in which the decision officially noticed the pre and post 1988 versions of R.I. Gen. Laws § 44-19-26. The decision noted that it was "the longstanding policy of the department to only allow refunds to those who actually paid the tax." *Id.*[10] The decision discussed whether the change from "such" to "a" person would then "allow someone other than the person who paid the tax to collect a refund on that tax." The decision concluded that change made no difference to the statute. *Id.* Furthermore, the notes to the 1988 reenactment indicated that it was more stylistic to change "such" and "said."

While "a person" clearly refers to the person who paid the tax, 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, the Division's long standing interpretation is entitled to deference. *Trice v. City of Cranston*, 297 A.2d 649 (R.I. 1972).

Thus, not only is the Division's long standing interpretation of the statute entitled to deference as no substantive changes have been made to the law by the legislature in over 75 years, if a statute is considered ambiguous, deference is given to an administrative agency charged with

[10] It is noted that this position is not a policy, but a legal position based on the statute. As noted in 2006, it was a long standing position. And furthermore, as discussed in this decision, the statute has not been changed otherwise.

the interpretation and enforcement of the statute. *Auto Body Ass'n of Rhode Island v. Dept. of Bus. Regulation*, 996 A.2d 91 (R.I. 2010). While this statute is not ambiguous, the Division is afforded deference for its consistent and uniform interpretation of said statute without interference from the legislature for over 75 years. Thus, the Taxpayer cannot request a refund for tax it did not pay.

2. Untimely

Even if the Taxpayer was allowed to file a refund request for tax it paid to a vendor, those claims that were deemed untimely (ASOF) would be barred by R.I. Gen. Laws § 44-19-13(a) as the Waiver did not extend the time for the Taxpayer to file a sales or use tax refund request. Thus, the Taxpayer's Sales Tax Claims for refund that were deemed untimely by the Division are also statutorily barred as out of time, and the Division properly denied that request for refund.

d. Various Equitable Arguments

The Taxpayer argued that during a sales and use tax audit, the Division allows tax liabilities found during an audit to be offset by overpayments owed regardless of the date of invoices so that its out of time refund request should be allowed. The Division agreed that liabilities are allowed to be offset by overpayments during an audit but argued that is pursuant to the audit process and not the refund process.[11] The Taxpayer's position was that since offsets are allowed during an audit, the statute limiting refund requests should not apply as that is somehow fairer. The Taxpayer missed the mark in that the audit process is separate from the statutory process for refund requests. An audit reviews underpayments and overpayments and balances them out. It has nothing to do with the refund request made under the statute and which may be made by a taxpayer regardless of whether a sales and use audit occurred or not. This argument is without merit.

[11] Indeed, the parties agreed in the ASOF that happened during this audit. This apparently routinely happens during audits. For example, administrative decision 2000 WL 994476 (R.I.Div.Tax.).

The Taxpayer also looked outside of Rhode Island to argue that it should be allowed the refund due to equitable recoupment. *Young v. United States*, 1999 WL 132431 (Dt. Ct. N.D. OH, not reported in F.Supp.2d). Equitable recoupment is defined by *Black's Law Dictionary* (11th ed. 2019) as a "doctrine allowing a taxpayer to offset previously overpaid taxes against current taxes due, even though the taxpayer is time-barred from claiming a refund on the previous taxes."[12] Thus, like during the audit period, a taxpayer can offset liabilities with overpayments regardless of the statute of limitations. The *Young* case is not only not based on Rhode Island law, but actually applied the doctrine so that a taxpayer's counterclaim was not barred by the statute of limitations because it was brought as a result of a suit brought by the United State. In other words, the United States sued a taxpayer for taxes owed, and the Court found that the taxpayer could counterclaim that it could offset the amount owed despite not having filed a timely refund request. Those are not the facts in the matter. The Taxpayer filed an out of time refund request and requested a hearing when the refund request was denied.

The Taxpayer asserted that it could not pursue its sales tax refund request with the vendor because the vendor would need a level of assurance with a Rhode Island resale certificate, and it was unclear if the Taxpayer had acceptable documents to present to the vendor. There were no factual agreements by the parties or any evidence on the record as to what the vendors would want or might want and when or how they would obtain those from the Taxpayer in order to process a reimbursement to the Taxpayer. The Taxpayer also argued that it took the Division one (1) year to deny its refund request so that there was no prompt acknowledge of the request. Taxpayer's brief at 6.

[12] *Black*'s also further defines equitable recoupment as a "doctrine allowing the government to offset taxes previously uncollected from a taxpayer against the taxpayer's current claim for a refund, even though the government is time-barred from collecting the previous taxes."

A theme of the Taxpayer's arguments is that it is somehow unfair and inequitable to apply a uniform statutory time period to a request a refund against it to bar its claim for a refund. Notwithstanding the lack of merits of those arguments, equitable principles are not applicable to an administrative procedure. *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004) (Supreme Court vacated a Superior Court order that had vacated an agency sanction on so-called "inherent equitable powers"). Thus, even if equitable recoupment or other equitable arguments applied, they are not applicable to administrative proceedings.

VI. FINDINGS OF FACT

1. On or about January 19, 2023, the Division issued a Notice of Pre-Hearing Conference and an Appointment of Hearing Officer to the Taxpayer.

2. The parties agreed that this matter could be decided on stipulated facts, agreed exhibits, and briefs. The parties agreed to a briefing schedule, and all briefs were timely filed by March 25, 2024.

3. The facts contained in Sections I, IV, and V 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.*, R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-18-1 *et seq.*, and 280-RICR-20-00-2 *Administrative Hearing Procedures*

2. Pursuant to R.I. Gen. Laws § 44-19-26, the Taxpayer is not entitled to its Claim for refund that includes its sales tax payments to the Division and its sales tax payments to vendors.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § § 44-19-26, the Taxpayer is not entitled to its Claim for refund that includes its sales tax payments to the Division and its sales tax payments to vendors, so the Division was correct in denying said refund request.

Date: April 29, 2024

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: 4/30/24

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 R.I. Gen. Laws § 44-19-18 WHICH PROVIDES AS FOLLOWS.

> Appeals. Appeals from administrative orders or decisions made pursuant to any provisions of this chapter are to the sixth (6th) division district court pursuant to chapter 8 of title 8. The taxpayer's right to appeal under this chapter is expressly made conditional upon prepayment of all taxes, interest, and penalties, unless the taxpayer moves for and is granted an exemption from the prepayment requirement pursuant to § 8-8-26.

CERTIFICATION

I hereby certify that on the 30th day of April, 2024, a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and by electronic delivery to the Taxpayer's representative's address on file with the Division of Taxation and by electronic delivery to Matthew Cate, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Gail Belasco