

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2011-15

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

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IN THE MATTER OF:	:	
	:	
	:	
	:	Case No.: 11-T-0001
	:	Case No.: 11-T-0002
	:	consolidated
Taxpayers.	:	Personal Income Tax

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**DECISION**

**I. INTRODUCTION**

The above-entitled matters came before the undersigned as the result of a Notice of Hearing and Appointment of Hearing Officer dated January 27, 2011 and issued by the Division of Taxation (“Division”) to \_\_\_\_\_ (“T1”) and a Notice of Hearing and Appointment of Hearing Officer dated January 27, 2011 and issued by the Division to \_\_\_\_\_ (“T2”) (collectively “Taxpayers”) in response to requests for hearing filed by the Taxpayers with the Division. By agreement of the parties, these two (2) matters were consolidated and agreed statements of facts were filed in lieu of hearing. The parties timely filed briefs by June 15, 2011. All parties were represented by counsel.

**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 Taxpayers' refund claim for the calendar year 2004 is barred by R.I. Gen. Laws § 44-30-87.

### IV. MATERIAL FACTS AND TESTIMONY

The parties agreed to the following facts:

For T1:

1. At all pertinent times, T1 were husband and wife residing in Bonita Springs, Florida. They also maintained a seasonal residence in Cranston, Rhode Island.
2. On January 27, 2005, T1 remitted to the Division in estimated taxes and carried over a credit from calendar (tax) year 2003 of for a total of Both sums which totaled were applied as estimated payments towards their state income tax liability for tax year 2004. T1's Joint Exhibit One (1) at p. IT62.
3. T1 was apprised of this outstanding amount on account in a computer generated notice that issued on January 9, 2006 and was mailed to their Florida address. T1's Joint Exhibits One (1) at p. IT58 and Two (2).
4. On February 25, 2008, T1 filed a joint nonresident Rhode Island Personal Income Tax return with the Tax Division for tax year 2004. T1's Joint Exhibit Three (3).
5. On their 2004 return, T1 declared a Rhode Island income tax liability of (T1's Joint Exhibit Three (3), p. 1, l. 17) and a total payment of (*Id.*, at l. 18C), resulting in a claimed overpayment of, *Id.*, at p. 1, l. 20. T1 requested that this overpayment be refunded in cash. *Id.*, at p. 1, l. 21.

For T2:

6. At all pertinent times, T2 were husband and wife residing in Bonita Springs, Florida.
7. During the course of calendar year 2004, T2 claimed a credit carry forward of from tax year 2003 which had been applied as an estimated payment towards tax year 2004. T2's Joint Exhibit One (1) at p. IT62. T2 also paid in estimated taxes towards tax year 2004; said payment being received on January 27, 2005. *Id.*
8. T2 were apprised of this outstanding amount on account in a computer generated notice that issued on January 9, 2006 and was mailed to their Florida address. T2's Joint Exhibits One (1) at p. IT58 and Two (2).

9. On February 25, 2008, T2 filed a joint nonresident Rhode Island Personal Income Tax return with the Tax Division for calendar ending (tax) year 2004. T2's Joint Exhibit Three (3).

10. On their 2004 return, T2 declared a Rhode Island income tax liability of 0 (T2's Joint Exhibit Three (3), p. 1, l. 17) and a total payment of (Id., at l. 18C), resulting in a claimed overpayment of . T2's Joint Exhibit Three (3), p. 1, l. 20. T2 requested that this overpayment be refunded in cash. Id., at p. 1, l. 21.

The parties further agreed that 1) the Division is a state agency charged with the administration and enforcement of all state taxes including, *inter alia*, the Personal Income Tax; 2) that on August 26, 2008, the Division denied T1's and T2's 2004 refund claim on the grounds that they were untimely; 3) that T2 were given further detailed reasons for the denial, and 4) that the Taxpayers were afforded a preliminary conference and as the parties still were in disagreement after said conference, these matters proceeded to a full administrative hearing.

## 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) (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. Arguments**

**i. The Taxpayer's Arguments**

The Taxpayers argued that R.I. Gen. Laws § 44-30-87 is clear and unambiguous and allows them three (3) years from the time their tax return was due (April 15, 2005) to claim a refund. They argued that their claim for a refund – February 25, 2008 – was within three (3) years from April 15, 2005. They argue that if R.I. Gen. Laws § 44-30-87(a) meant to apply the two (2) year time period to late filed returns, it could have easily said so and could have easily applied the three (3) year limitation to those filed on the original due date. The Taxpayers argued that the legislature could not have intended to give someone who timely pays his/her tax a year less to request a refund.

The Taxpayers argued that pursuant to R.I. Gen. Laws § 44-30-6,<sup>1</sup> the Federal interpretation of a very similar statute relating to refunds should apply. Thus, the Taxpayers argued that because they filed their return within three (3) years of the due date as in the Internal Revenue Code 26 USC § 6511,<sup>2</sup> they should receive a refund. The Taxpayers argue while there may be some grammatical differences between the Federal and State provision, the Rhode Island statute is a comparable context and a different

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<sup>1</sup> R.I. Gen. Laws § 44-30-6 states as follows:

Meaning of terms. – Any term used in the Rhode Island personal income tax law shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required. Any reference to the laws of the United States means the provisions of the Internal Revenue Code of 1954, and amendments thereto thereto, and other provisions of the laws of the United States relating to federal income taxes for the same taxable year, except that if this reference should ever be declared unconstitutional then to the provisions that existed on January 1, 1972.

<sup>2</sup> 26 USC § 6511 states in part as follows:

(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.--

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(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.

(B) Limit where claim not filed within 3-year period.--If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

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(c) Special rules applicable in case of extension of time by agreement.--If an agreement under the provisions of section 6501(c)(4) extending the period for assessment of a tax imposed by this title is made within the period prescribed in subsection (a) for the filing of a claim for credit or refund--

(1) Time for filing claim.--The period for filing claim for credit or refund or for making credit or refund if no claim is filed, provided in subsections (a) and (b)(1), shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under section 6501(c)(4).

meaning is clearly not required for the Rhode Island statute so that R.I. Gen. Laws § 44-30-87 should be read to have the same meaning as the Federal statute.

The Taxpayers argued that the preamble to the original 1971 act enacting the Rhode Island personal income tax act stated that in interpreting said act that the U.S. Internal Revenue Code shall be incorporated. Thus, the Taxpayers argue that Division has not shown that the legislature meant for R.I. Gen. Laws § 44-30-87 to have a different meaning from § 6511.

## **ii. The Division's Arguments**

The Division argues that the Taxpayers' taxes were deemed paid on April 15, 2005 pursuant to R.I. Gen. Laws § 44-30-87, R.I. Gen. Laws § 44-30-86, and R.I. Gen. Laws § 44-30-52. The Division argued that while the Division received the Taxpayers' tax credit and cash payment in January, 2005 (see agreed facts, *infra*), those payments are deemed by statute to have been made on April 15, 2005 so that the filing of the tax return in February, 2008 requesting a refund for 2004 is barred as untimely. The Division further argues that statute clearly provides for two (2) different time limits for refund requests by the use of the word "or." The Division argues that the legislature clearly made the two (2) year period mandatory by its use of shall and its provision that no other period of limitations in any other law shall apply (R.I. Gen. Laws § 44-30-87(e)).

The Division rejects the Taxpayers' Federal statute comparison arguing that the Federal statute differs from the later enacted State statute and the State legislature is presumed to know the differences in statutory language when it enacted R.I. Gen. Laws § 44-30-87. The Division argued the Federal statute provides the "look back" clause ("years immediately preceding") for both the two (2) and three (3) year provisions while

the State statute only allows it for the two (2) year period. Thus, the Division argues that Federal statute is not relevant to the interpretation of the State statute especially since the State statute has existed for 40 years without amendment demonstrating that the legislature did not mean for the State statute to be as expansive as the Federal statute. The Division argues that an agency is afforded great deference in interpreting its statutes and its interpretation has been consistent over the years. See *Division's Final Decision* (10/25/85) (denying refund request as untimely under R.I. Gen. Laws § 44-30-87).

#### **D. 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),<sup>3</sup> the Taxpayers' tax was deemed paid on the date it was due: April 15, 2005.<sup>4</sup> In addition, R.I. Gen. Laws § 44-30-51<sup>5</sup> states

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<sup>3</sup> 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.

<sup>4</sup> The Taxpayers did not dispute that due date.

<sup>5</sup> 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.



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<sup>6</sup> states that tax shall be paid on or before the date fixed for filing without regard to an extension. Pursuant to R.I. Gen. Laws § 44-30-86,<sup>7</sup> a tax credit arising from an overpayment in the preceding tax year is treated as an estimated tax for the following tax year and deemed paid on that due date.

The Taxpayers argued that the Federal statute should apply to the Rhode Island statute. However, 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.

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<sup>6</sup> 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.

<sup>7</sup> R.I. Gen. Laws § 44-30-86(c) provides as follows:

(c) Credits against estimated tax. The tax administrator may promulgate regulations providing for the crediting against the Rhode Island personal income tax for any taxable year of the amount determined by the taxpayer or the tax administrator to be an overpayment of the income tax for a preceding taxable year. If any overpayment of the tax is so claimed as a credit against estimated tax for the succeeding taxable year, the amount shall be considered as a payment of the tax for the succeeding taxable year, whether or not claimed as a credit in the declaration of estimated tax for the succeeding taxable year, and no claim for credit or refund of the overpayment shall be allowed for the taxable year for which the overpayment arises.

R.I. Gen. Laws § 44-30-6 provides that the State income tax law shall have the same meaning as the Federal law when used in a “comparable context” unless a “different meaning is clearly required.” Despite the Taxpayers’ argument that there are only grammatical differences between the Federal and State laws, the two (2) statutes contain clear differences. § 6511(a) refers to when late claims may be made and provides for the two (2) and three (3) year time period for claims: two (2) years from the time tax was paid and three (3) years from when a return was filed. § 6511(b)(2)(A) and (B) addresses the issue of the amount that a taxpayer may receive when filing a late refund request. The Federal statute uses “immediately preceding” to explain how much money may be obtained through a refund for both the three (3) and two (2) year time period.

In contrast, Rhode Island chose to only apply the “immediately preceding” language to the two (2) year time period for a refund request. Unlike the Federal statute, the State statute has different amount limits. That is not a grammatical difference but rather a clear difference. Thus, there is no reason to apply § 6511 to R.I. Gen. Laws § 44-30-87. Accordingly, cases on regarding 26 USC § 6511 are not relevant to the clear and unambiguous meaning of R.I. Gen. Laws § 44-30-87. See *Taxation Decision 2008-2* (2/11/08); *Taxation Decision 2007-24* (10/25/07); *Taxation Decision 2007-25* (10/25/07); and *Taxation Decision 2007-14* (6/20/07).

Furthermore, “[w]hen interpreting a statute, our ultimate goal is to give effect to the General Assembly's intent . . . . The best evidence of such intent can be found in the plain language used in the statute. Thus, a clear and unambiguous statute will be literally construed.” *Martone v. Johnston School Committee*, 824 A.2d 426, 431 (R.I. 2003). The statute clearly states that the time is “within” three (3) years so the clock begins from the

date of filing and goes forward. Thus, the statute speaks for itself. The Taxpayers' arguments cannot override 1) the clear meaning of the statute; 2) the clear language of the statute regarding the term "within the three (3) year period"; and 3) the clear intent of the statute to limit the amount and time governing refunds.

Finally, the Taxpayers disagreed with *Taxation's Decision 2007-10 (5/27/07)* which found as follows:

The Taxpayer argued that the time allowed by the Federal government to claim a refund should be applied to Rhode Island. However, there is nothing in Rhode Island statute that applies the federal rules on the timeliness of filing for refund to Rhode Island's timeliness of filing for a refund. The Taxpayer was unable to provide any statutory or regulatory basis for such a claim. Rather, he argued that he felt it was unfair that Rhode Island did not use the federal time limits. The fact is that the federal time limits are different from the Rhode Island time limits. *Id.*, at 13.

The Taxpayers argued that finding contradicted R.I. Gen. Laws § 44-30-6. However, as stated above, the State and Federal statutes are different. The Federal statute provides that both the two (2) and three (3) year periods are "look back" periods as opposed to the State statute which differentiates the limits by a retroactive provision for the two (2) year period and a prospective provision for the three (3) year period. With those clear differences, there is no need to rely on the Federal statute's meaning as the Rhode Island statute has its own clear meaning (which is different from the meaning the Taxpayers ascribed to the statute). Thus, there is no statutory or regulatory requirement to apply Federal limits on refunds to Rhode Island.<sup>8</sup>

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<sup>8</sup> Indeed, Rhode Island further differentiates its time limits by not including extensions in its time calculations which are included in the Federal statute. R.I. Gen. Laws § 44-30-87(e) specifically precludes any other period of limitations specified in any other laws from being applied to recovery of personal income tax refunds. In contrast, § 6511 allows extensions of time for the payment of taxes to be included in calculating the time allowed for filing refund requests. Reading the two (2) statutes as a whole, they are clearly different.

Thus, applying the State statute results in the following timeline:

1. The Taxpayers' 2004 tax was deemed paid on April 15, 2005. They 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.

2. The Taxpayers filed their 2004 Rhode Island returns on February 25, 2008 and claimed a refund.

3. February 25, 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 a return being filed.

5. Thus, the Taxpayers could have filed a request for a refund for their return within three (3) years of filing their return.

6. 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."

7. The Taxpayers argued the Division should follow Federal law as intended by the State legislature and allow a refund for any taxes paid in the prior three (3) years which would include their tax paid on April 15, 2005.

8. However "within" is prospective so that refunds filed in the three (3) period are limited to tax paid within three (3) years of filing said return.

9. There is no evidence that the Taxpayers paid any tax from February 25, 2008 to February 25, 2011. Thus, the Division denied their refund request.

The Taxpayers further argued that the statute as applied is unfair because a taxpayer who paid his or her taxes late could be allowed to obtain a refund. Such an argument is better suited for the legislature who enacted the law. In interpreting a statute, a statute will not be interpreted in such a way that would render it meaningless or that would obtain an absurd result. *Infra*. However, the Taxpayers' hypothetical is not an "absurd" result but rather a hypothetical that they believe is unfair. Under the statute, similarly situated taxpayers are all treated the same. To find that the three (3) year period is a "look back" period because it is hypothetically unfair would contravene the statute as written as well as the intent of the statute which strictly and clearly delineates the time and amounts by which refunds are governed. See *Taxation Decision 2007-25 (10/25/07)*.

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).

Based on a reading of the whole statute, there is no evidence that the legislature actually intended to follow the Federal statute as argued by the Taxpayers. Rather the State statute has not been amended for 40 years, contains clear differences from the Federal statute, and is clear and unambiguous regarding its differing time limits.

Based on the forgoing, the Taxpayers do not qualify for their claimed refund pursuant to R.I. Gen. Laws § 44-30-87. See *Taxation Decision*, 2007-10 (May 10, 2007).

## VI. FINDINGS OF FACT

1. On or about January 27, 2011, the Division issued separate notices of hearing to T1 and T2. By agreement of the parties, the matters were consolidated.

2. By agreement of the parties, this matter was decided on agreed statements of facts and timely filed briefs.

3. T1's and T2's 2004 tax payment was due by April 15, 2005 and was deemed paid on that day. The Taxpayers filed returns on February 25, 2008 and claimed a refund for overpayment of tax.

4. R.I. Gen. Laws § 44-30-87 clearly and unambiguously bars the Taxpayers' claim for refund as untimely. *Infra*

5. 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.*

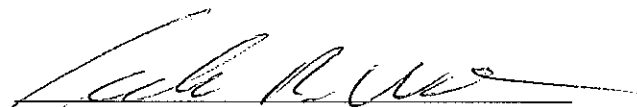
2. Pursuant to R.I. Gen. Laws § 44-30-87(a), the Taxpayers are not entitled to the refund claimed.

**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: 7/26/11

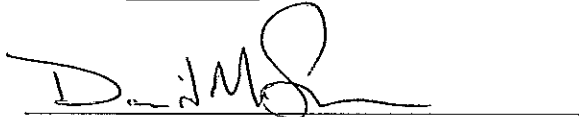
  
Catherine R. Warren  
Hearing Officer

**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: August 2, 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,

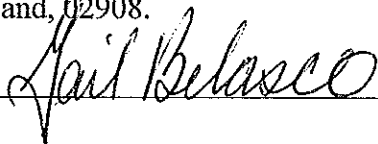
substantially in the form provided in § 44-5-26 to summon the tax administrator to answer the complaint, and the court shall proceed to hear the complaint and to determine the correct amount of the liability as in any other action for money, but the burden of proof shall be as specified in § 8-8-28.

*(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 2<sup>nd</sup> day of August, 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 attorney's address on file with the Division of Taxation and by hand delivery to Bernard Lemos, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

  
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