

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-09

**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:**

**Personal Income Tax  
Case No.: 13-T-0192**

**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 December 16, 2013 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing. A hearing was held on January 21, 2014. The Division was represented by counsel and the Taxpayer was *pro se*. The parties rested on the record.

**II. JURISDICTION**

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-30.3-1 *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 Taxpayer is eligible for the lead abatement tax credit for the tax year 2012 pursuant to R.I. Gen. Laws § 44-30.3-1 *et seq.*

#### IV. MATERIAL FACTS AND TESTIMONY

Principal Revenue Agent, testified on behalf of the Division. She testified that the Taxpayer's request for the lead abatement tax credit ("Credit") was received on May 6, 2013 and the Credit application was due on April 15, 2013. See Division's Exhibit One (1) (Taxpayer's application for said Credit). She testified that the Taxpayer would have been eligible for a credit but was denied for being late. She testified that the Credit request was filed separately from the Taxpayer's 2012 tax return. She testified that the Taxpayer filed an extension for her 2012 income tax return and the tax return was received by the Division on September 27, 2013. See Division's Exhibits Two (2) and Three (3). She testified that there is only a certain amount of money allocated each year for this type of tax credit which is why there is the specific application deadline.

The Taxpayer testified on her behalf. She testified that she realized she was late with her Credit request on the morning of Friday, May 3, 2013 so she hand delivered it to the Division that day. She testified that she did request the application be delivered to a specific auditor which could have caused the date stamp to be Monday, May 6, 2013 rather than Friday, May 3, 2013 but she realizes that either way her Credit application was filed after April 15, 2013.

The Taxpayer testified that the lead abatement work was performed on a rental unit that she owns which is a three (3) family house that has three (3) families with a total of seven (7) children under the age of six (6) with a baby on the way and all families earn under a year so these are the families that would benefit from the lead abatement. She testified that she understood that her request was late but she was looking

for an exception to the law. She testified that it was an unfortunate mistake on her part to file late. She testified that this project took a long time from her purchase of the property in 2010 to the end of 2012 when she usually turns a property around from purchase to rehabilitation to renting in six (6) months. She testified that she left the property empty while she was obtaining grant money for the lead abatement which took three (3) different applications to RI Housing. She testified that in the winter of 2012, she got very sick with mononucleosis<sup>1</sup> and she runs her own business so she cannot take days off so it was a very unfortunate circumstance.

## 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 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 Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998).

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<sup>1</sup> The Taxpayer’s testimony regarding illness is consistent with her submission dated May 8, 2104 and received by the Division on May 14, 2014. See Division’s Exhibit Six (6).

**B. Relevant Statutes**

R.I. Gen. Laws § 44-30.3-6 states in part as follows:

Filing date. – No claim shall be paid or allowed, unless the claim is actually filed with and in the possession of the division of taxation on or before April 15 of the year in which the credit is applied or a rebate granted on taxes accrued in the proceeding calendar year.

R.I. Gen. Laws § 44-30.3-14 states in part as follows:

Extension of time for filing claims. – In case of sickness, absence, or other disability, or if, in his or her judgment, good cause exists, the tax administrator may extend for a period not to exceed six (6) months the time for filing a claim.

**C. Whether the Taxpayer is Entitled to the Credit**

The Taxpayer requested that if the entire pool of money tax credit money for 2012 was not used that she be granted an exemption. The Division relied on R.I. Gen. Laws § 44-30.3-6 to deny the application.

The Taxpayer acknowledged that her Credit application was late (by less than three (3) weeks). Unlike the provisions for requesting a personal income tax refund,<sup>2</sup> R.I. Gen. Laws § 44-30.3-14 provides for an extension of up to six (6) months for the filing of a credit request. Obviously, with a limited pool of money available each year, the legislature wanted to ensure all applications were timely filed.

The Taxpayer filed her Credit application on May 3 or 6, 2013. At that time, the applicable lead abatement regulation was Tax Credits/Deductions Regulation CR 95-08 *Residential Lead Hazard Removal* (“CR 95-08”). CR 95-08 was amended on July 1, 2013 by Personal Income Tax Regulation CR 13-08 *Tax Credits/Deductions - Residential Lead Abatement Income Tax Credit* (“CR 13-08”).

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<sup>2</sup> R.I. Gen. Laws § 44-30-87(e) provides that there can be no extension of the time period allowed for requesting a personal income tax refund.

In addressing the issue of requesting an extension of time for filing a lead abatement tax credit request, Rule 6 of CR 13-08 speaks of filing a request for an extension of time by April 15 of the pertinent year. In contrast, CR 95-08 does not provide such a limit to an extension request. Therefore, in looking at the statute, R.I. Gen. Laws § 44-30.3-14 allows an extension to be granted up to six (6) months for certain reasons. Thus, a tax credit application that is filed late up to six (6) months can be accepted if the taxpayer has reason within R.I. Gen. Laws § 44-30.3-14. Apparently under CR 13-08, such reason must be shown prior to April 15 but in reading the statute in the absence of any regulatory provision, an extension may be granted up to six (6) months whether filed prior to April 15 or within the six (6) months after April 15. The reasons for an extension include sickness, absence, disability, or good cause.

The Taxpayer filed her Credit application within three (3) weeks of April 15, 2013. Based on her testimony regarding sickness, she established a reason within R.I. Gen. Laws § 44-30.3-14 for a three (3) week extension of time for the filing of her Credit application.

## **VI. FINDINGS OF FACTS**

1. On or about December 16, 2013, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayer.
2. A hearing was held on January 21, 2014 with the parties resting on the record.
3. The Credit application for the tax year 2012 was due by April 15, 2013.
4. The Taxpayer filed her Credit application either on May 3 or 6, 2013.

5. R.I. Gen. Laws § 44-30.3-6 provides that the filing date for the lead abatement tax credit is by April 15 of the year following the tax year.

6. R.I. Gen. Laws § 44-30.3-14 provides for an extension of the filing deadline for certain reasons up to six (6) months.

7. CR 95-08 was in effect at the time the Credit application was filed.

8. CR 13-08 took effect on July 1, 2013 after the Credit application was filed.

9. Under CR 95-08, a request for an extension was not due prior to April 15 of the year following the tax year.

### **VII. CONCLUSIONS OF LAW**

Based on the testimony and facts presented:

1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.* and R.I. Gen. Laws § 44-30.3-1 *et seq.*

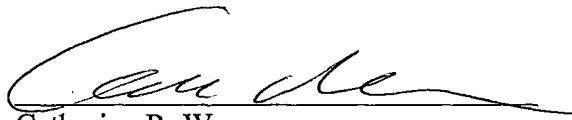
2. Pursuant to R.I. Gen. Laws § 44-30.3-14, the Taxpayer is allowed a three (3) week extension of her Credit application and is entitled to the residential lead abatement credit filed (if there is money available in the pool).<sup>3</sup>

### **VIII. RECOMMENDATION**

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

Pursuant to R.I. Gen. Laws § 44-30.3-14, the Taxpayer is allowed a three (3) week extension of her Credit application and is entitled to the residential lead abatement credit filed (if there is money available in the pool).

Date: 2/18/14

  
Catherine R. Warren  
Hearing Officer

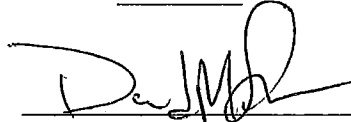
<sup>3</sup> The evidence at hearing was that the Taxpayer would have qualified for the Credit but for the late filing.

**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: 2/28/14

  
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David Sullivan  
Tax Administrator

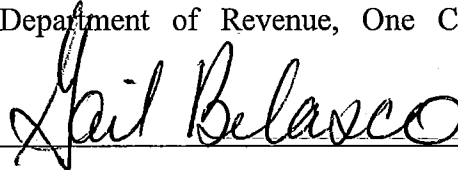
**NOTICE OF APPELLATE RIGHTS**

**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. ANY APPELLATE RIGHTS ARE PURSUANT TO R.I. Gen. Laws § 44-30.3-13 WHICH STATES AS FOLLOWS:**

**R.I. Gen. Laws § 44-30.3-13 Appeals.** – Any person aggrieved by the decision of the tax administrator denying, in whole or in part, relief claimed under this chapter, except when the denial is based upon late filing of claim for relief may appeal the decision of the tax administrator to the sixth (6th) division of the district court by filing a petition within thirty (30) days after the denial.

**CERTIFICATION**

I hereby certify that on the 28th day of February, 2014 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid to the Taxpayer's 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.

  
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Nail Belasco