STATE OF RHODE ISLAND **DISTRICT COURT**
PROVIDENCE, Sc. **SIXTH DIVISION**

Robert Schmidt;
Mary Schmidt :
:
v. : **A.A. No. 22-213**
:
Rhode Island Division of Taxation :

JUDGMENT

This cause came before Gorman, J. on Administrative Appeal, and upon review of the record and memoranda of counsel, and a decision having been rendered, it is

ORDERED AND ADJUDGED

The matter is remanded to the Division of Taxation for further proceedings.

Dated at Providence, Rhode Island, this 25th day of April, 2024.

Enter: By Order:

/s/ /s/

STATE OF RHODE ISLAND **DISTRICT COURT**
PROVIDENCE, Sc. **SIXTH DIVISION**

Robert Schmidt;
Mary Schmidt

V. **Case No. 6AA-2022-213**

Rhode Island Division of Taxation

DECISION

GORMAN, J. This case was initiated by appellants seeking to reverse a decision of the Rhode Island Tax Administrator denying their request for an income tax refund. The court has jurisdiction pursuant to Rhode Island General Laws §§8-8-24, 8-8-27 and 44-30-90. The administrative action is subject to *de novo* review. Following the disposition of earlier motions, the matter is now before the court on cross motions for summary judgment. The parties agree that there are no material facts that are contested. The dispute is limited to the single question of how a section of the Rhode Island Tax Code should be interpreted.

PROLOGUE

As noted by the Division of Taxation in its memorandum, in 2019, this court considered issues relating to R.I.G.L §44-30-87(a). In the earlier case, *Marsilia v. Sullivan*, No. 6AA-2014-102, the taxpayers had filed a claim for a refund in connection with their payment of personal income taxes. During conferences with the parties, the court questioned the Tax Division's construction of this section of the tax law, and specifically the provision which limits the amount of any refund.

Following discussions with the court, which focused on the time period covered under the three-year provision of the statute, and, perhaps, because of this court's comments, the parties reached a resolution of the claim. The appeal was voluntarily dismissed, and a draft dismissal order was submitted. However, the original draft included a "CONFIDENTIALITY" clause, which the court considered inappropriate in a court filing.

In a letter dated October 31, 2019, the court explained that while it could not sign the order as drafted, if the parties entered into a separate agreement that requires confidentiality and then sought to voluntarily dismiss the case, the court might have an obligation to dismiss the appeal. In that letter, the court observed that an agreed-upon dismissal would occur before the merits of the claim were reached. The correspondence also noted that the court's comments "may have influenced discussions leading to an agreement." The letter ended with the court expressing a hope that "the Division of Taxation will re-examine its interpretation of the statutes in this case."

I. PROCEDURAL HISTORY AND FACTS

The case currently before the court was filed on October 18, 2022, by taxpayers Robert and Mary Schmidt, appealing from a decision of the Tax Administrator denying their request for an income tax refund. After appellants' initial claim was denied by the Tax Division, the taxpayers sought further administrative review. The dispute was not resolved at a preliminary conference, and a formal administrative hearing was conducted. Following that evidentiary hearing, the refund request was denied by the Hearing Officer.

The Hearing Officer's written decision rejected the taxpayers' argument that a COVID-related extension of time granted by the Internal Revenue Service for filing personal income taxes returns also applied to Rhode Island tax returns. The Schmidts contended that because of the federal extension, their return for 2017 was filed in a timely manner. The Hearing Officer found that the IRS extension did not translate into an extension for Rhode Island state taxpayers. The officer also determined that the extension identified by the taxpayers involved taxes owed for the 2019 and 2020 tax years and would not have any relevance to the 2017 tax year.

As part of the Hearing Officer's decision, she found that the refund request was made within the three-year statutory period permitted for refund claims under Rhode Island Law. Para. No. 6, p. 6, *Final Decision and Order* (September 16, 2022). Notwithstanding that the claim was timely, the Hearing Officer concluded that because the taxpayers did not pay any income taxes in the three years following the date of the request, they were not entitled to a refund. The statute in question is found at Rhode Island General Laws §42-30-87(a). It reads 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 expires later . . . 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.

The findings and conclusion of the Hearing Officer were adopted by the Tax Administrator and became a final administrative ruling. On October 17, 2022, the Schmidts filed an appeal in this court challenging the decision. This was promptly followed by a motion to dismiss.

Up to this point, in the administrative proceeding and when filing the appeal, the taxpayers appeared *pro* se. In filing their appeal, the Schmidts used a preprinted form available in the district court clerk's office. While the form was appropriate, the sections where the claimants were instructed to describe their complaint, they composed a long statement about the IRS rules concerning extensions of time to file taxes because of the COVID pandemic. This obscured their basic claim, which was identified in the first sentence: they alleged that they were improperly denied a tax refund.

On October 19, 2023, counsel entered an appearance for the appellant. On October 31, 2023, following conferences with the court, an Order was entered denying the motion to dismiss, and setting up a briefing schedule for cross motions for summary judgment which both sides agreed to file. Appellants have abandoned the claim that their 2017 return was filed on time, and the refund amount sought has been modified to request $5,673, rather than the figure in the original filing.[1]

[1] The appellants' initial petition requested $3,499 which was based on an estimated tax payment and funds withheld from Ms. Schmidt's wages. However, the documents filed with the tax return also included a W-2 form showing that an additional $2,223.93 was withheld from Mr. Schmidt's wages. The Tax Division consented to the change in the amount claimed.

II. DISCUSSION

A.

Summary judgment is not favored. As a general matter, litigation should proceed to a full hearing or trial on the merits, and when considering summary judgment, the trial judge "must keep in mind that it 'is a drastic remedy which should be cautiously applied.'" *Rustigian v. Celona Co.*, 478 A2d 187, 189 (R.I. 1984)(quoting *Steinberg v. State*, 427 A2d 338, 339-40 (R.I. 1981)(quoting *Ardente v. Horan*, 117 R.I. 254m 256-57, 366 A.2d 162, 164 (1976)). Here, both appellants and appellee have filed motions for summary judgment asking the court to rule on this matter based on the record before it. As is clear from the language of Rule 56(c) of the District Court Civil Rules, when "there is no genuine issue as to any material fact and that a party is entitled to judgment as a matter of law," summary judgment is appropriate.

While sensitive to the fact that a limited number of cases can be decided on a summary basis, here, both parties agree that this appeal is ripe for a dispositive ruling, and the court is satisfied that the agreed-upon facts are sufficient to resolve the dispute. Under these circumstances, summary disposition is not only proper, but required.

The parties agree, and the court understands, that a decision in this case rests on an interpretation of the method used in calculating the three-year period which limits the amount of any tax refund requested under §44-30-87(a). The Tax Division argues that the time would begin with the date the request was made, August 6, 2020, and end on August 5, 2023, three years following the refund claim. Appellants adopt the same starting date, August 6, 2020, but contend that the counting should be backward in time, extending to August 5, 2017, three years preceding the day the refund request was made.

B.

When a court is charged with interpreting a statute, the examination, of course, must begin with the words used in the legislation. If the law is "clear and unambiguous," the court "must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Whittmore v. Thompson*, 139 A3d 530, 540 (R.I. 2016). Both parties contend that this rule of statutory construction applies here, and that it supports their reading of §44-30-87(a). See APPELLANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, at 7, and APPELLEE, RHODE ISLAND DIVISION OF TAXATION'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT, at 6. The court believes that both of these assessments are wrong. The tax statute is not unambiguous, and it is far from pellucid.

Considering the relevant section of the tax code as a whole, there are some portions which are clear. For example, the limit placed on any refund or credit claimed within two years from the time the tax was paid: the recovery "shall not exceed the portion of the tax paid within the two (2) years immediately preceding the filing of the claim." This type of precise language is absent from the part of the section which circumscribes the limits on a refund that comes under a three-year claim. The statute merely states that the "credit or refund shall not exceed the portion of the tax paid within the three (3) year period." The legislation does not identify a particular three years, and because of the wording in the very beginning of the section, one of the normal clues is unavailable.[2]

The parties have offered numerous suggestions to aid the court in construing the tax code. Appellee refers to several rules of judicial construction to support its position. The state contends that the doctrine of *expressio unius est exclusio alterius*, a Latin phrase that translates as "the expression of one thing is the exclusion of the other," shows that the legislature intended that the procedure used to ascertain the limit imposed under the three-year rule should be different than the method of determining the limit pursuant to the two-year part of the statute. Appellee quotes from a Superior Court opinion that states, "'where a [legislature] includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed [the legislature] acts intentionally and purposely in the disparate inclusion or exclusion.'" *Dutchman Dental LLC v. Providence Mut. Fire Ins. Co.*, No. KC-2016-1281, 2020, R.I. Super. LEXIS 23, at *10-11 n.8 (Super Ct. Mar. 11, 2020)(quoting Norman J. Singer & Shambie Singer, *Statutes and Statutory Construction* §47:23 (7th ed. 2014)(quoting *Tarrant Regional Water District v. Herrmann,* 569 U.S. 614,)). Appellee's Memorandum, at 8. The Tax Division reasons that by failing to identify the three years preceding the date of the claim, the legislature intended the three-year limitation to be calculated by considering future events.

[2] In the section under consideration, a three-year period is mentioned in two separate sentences. If the other reference to three years involved a definite time period, the same period could apply to the part spelling out the limitation on the amount allowed. However, the statute states that the right to obtain a credit or refund is within three years "from the time the return was filed." This seems to allow a taxpayer to wait an unlimited time before filing a return. This same wording is found in the Internal Revenue Code, 26 USC 6511, which is examined in greater detail, *infra*, at 10.

Appellee also relies on the longstanding and consistent interpretation of the statute by the agency responsible for administering the tax code. The Tax Division cites the Rhode Island Supreme Court's observation that, "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 interference by the legislature should be accepted as evidence that such a construction conforms to the legislative intent." *Tice v. City of Cranston*, 297 A2d 649, 652 (R.I. 1972). This argument is buttressed by the division's representation that it has consistently interpreted the statute "over the last 50 years" without any effort by the legislature to "correct or clarify" its actions. Appellee Memorandum, at 10. In its Reply Memorandum, the Tax Division appended a number of bills considered by the legislature which sought to amend §44-30-87(a). None of these suggested a modification of the three-year limitation.

In further support of its belief that the Tax Division's interpretation of the code is correct, appellee identifies two District Court cases where denials of refunds under the same statute were upheld: *Ralph N. & Mary O. Shippee v. David M. Sullivan, Tax Administrator*, 6AA-2011-110 (Decided Oct. 29, 2018), and *Curry v. Savage*, 6AA-2016-59 (Order entered March 23, 2020).

Additionally, the Tax Division has cited another jurisdiction where the tax refund under a three-year limitation is more precisely defined by using the same phrase found in the two-year portion of our statute: "If the claim is filed within the three-year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim." N.Y. CLS Tax §687(a). This is offered to establish that legislators know how to draft a law if they intend to have the time calculated by a period that predates the claim. Appellee concludes that because they did not use this more-specific terminology, the Rhode Island legislators wanted the time period to cover three years following the refund request.

In the Division's final effort to persuade the court that its reading of the code is correct, cases are cited which discuss the need for certainty when officials are developing a budget to pay for future activities. In one of the decisions, the court notes that "[i]f we were to allow refunds for taxes voluntarily paid in previous years, it would jeopardize current and future governmental operations because current and future funds might be necessary for the refund. *Mertz v. Pappas,* S.W. 2d 593, 594 (Ark. 1995). This argument suggests that although the legislature was willing to allow a refund for a two-year period preceding the request, a three-year time frame would be too risky and might interfere with budgetary planning.

Appellants, of course, identify reasons why the court must interpret the statute as requiring that the same method must be used when calculating a limiting amount under the three-year part of the statute as that spelled out for the two-year portion of the section, *i.*e, three years preceding the refund claim. They begin by contending that it is unrealistic to believe that any taxes would be paid after the date the refund is sought because the taxpayer has already paid more than was required. Appellants protest that the Tax Division's reading of the code is unreasonable and unfair, that it "creates a trap for the unwary." Appellants' Memorandum, at 8.

It is also significant, the Schmidts argue, that the Rhode Island tax code expressly requires that terms found in the state's personal income tax laws "shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes." §44-30-6. The federal tax code contains a section which closely tracks significant portions of §44-30-87(a). The I.R.S. Code in 26 USC §6511 imposes limits for credits or refunds based on the amount of taxes paid within specified time periods. The wording establishes the same two groups eligible to receive income tax credits or refunds as are found in the Rhode Island Law. The federal statute limits recovery under the three-year category to the amount of taxes paid during the three years "immediately preceding the filing of the claim," 26 U.S.C. §6511(b).

In addition, appellants challenge whether the court should defer to the taxing agency's interpretation of the law. They believe that no deference is appropriate where the language is ambiguous, and they refer to the rule that "doubts concerning the scope and meaning of a tax law are to be resolved in favor of the taxpayer." *Newport Gas Light Company v. Norberg*, 338 A.2d 536, 538 (R.I. 1975). This theme is repeated in *Balmuth v. Dolce for Town of Portsmouth* where the Court reaffirmed that "'taxing statutes are to be strictly construed' with doubts resolved in favor of the taxpayer." *Balmuth v. Dolce for Town of Portsmouth, 182 A.3d 576, 585 (R.I. 2018)* (quoting *Maggiacomo v. Di Vincenzo*, 122 R.I. 615, 618, 410 A.2d 1334, 1333 (1980)(quoting *Van Alen v. Stein*, 119 R.I. 347, 359, 376 A.2d 1383, 1389 (1977): *see also, Inn Group Associates v. Booth*, 593 A.2d 49, 55 (R.I. 1991)(explaining that "[d]oubts as to the construction of [taxing] laws *

* * are to be resolved on favor of the taxpayer," (quoting *Potowomut Golf Club, Inc. v. Norberg*, 114 R.I. 589, 592, 337 A.2d 226, 227 (1975)).

C.

The court has carefully considered all of the arguments made by the parties, and will attempt to address each of them. But, before doing so, some general observations are necessary. The term "canons of construction" is used to describe a set of conventions relied upon by courts when interpreting statutes. They go back at least 400 years in Anglo-American jurisprudence. *See* Bradford C. Mank, *Textualism's Selective Canons of Statutory Construction: Reinvigorating Individual Liberties, Legislative Authority, and Deference to Agencies*, 86 Ky. L.J., 527, 542-3 (1998) (discussing use of canons of construction in sixteenth century English Law). However, these canons have been described by the United States Supreme Court as "simply 'rules of thumb' which will sometimes help courts determine the meaning of legislation," and judges have broad discretion in determining whether to invoke them, as well as to choose which one is applicable in the context of a particular setting. *Varity Corp. v Howe*, 516 U.S. 489, 511 (1996). Some scholars have suggested that courts have merely applied the canon that gave the desired result and ignored any rule which indicated a different meaning. Professor Karl Llewellyn constructed a chart with 28 of the canons, and paired each one with another canon that appeared to be contradictory. 3 Vand. L. Rev. 395.

Notwithstanding the legitimate criticism and distrust expressed by commentators, there are some statutory construction guidelines that are helpful in virtually every context. The most important may be the mandate that the court must interpret the statute to achieve the purpose of the law as intended by the legislature. *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002). A related instruction is that the rules of construction should be employed "'in an effort to glean the intent of the legislature,'" *Town of Burrillville v. Pascoag Apartment Associates, LLC*, 950 A.2d 435, 445 (R.I. 2008)(citing *Tanner v. Town Council of East Greenwich*, 880 A.2d 784,796 (R.I. 2005), and that the court should "not apply a statute in a manner that will defeat its underlying purpose." *Arnold v. Rhode Island Department of Labor and Training Board of Review*, 822 A.2d 164, 169 (R.I. 2003).

One of the arguments offered by the Tax Division to support its version of §44-30-87(a) is that two separate judges in the District Court ruled that the statute limited the time period to the three years after a refund request was filed.

While this court gives great weight to the reasoning expressed in those opinions, the earlier decisions are not binding in the present litigation, and the principle of *stare decisis* does not apply here. In the case of *Forte Brothers, Inc. v. Department of Transportation*, 541 A.2d 1194 (R.I. 1988), the Court said, "we shall not extend the doctrine of law of the case to provide a rule of *stare decisis* regarding decisions of the trial courts as having binding effects upon other members of the same or coordinate trial courts." At 1196.

In the first of the two cases, *Shippee,* the decision appears to be based primarily on the absence of the phrase "immediately preceding" in the three-year part of the statue, while it was present when the two-year time limit was described, coupled with the fact that the Tax Division had uniformly interpreted the code in that manner without interference from the legislature. The *Curry* case involved *pro se* appellants who never filed a response to the Tax Administrator's Motion for Summary Judgment, and the claimants failed to appear for a hearing on the motion. Unlike the *Shippee* matter, where the taxpayers' attorney raised several arguments, including one under the Supremacy Clause, the court in *Curry* was deprived of any suggestion that the agency's interpretation might be flawed.

It further appears that when the judgments were entered, neither of the district court judges were aware of the consequences of the "longstanding" enforcement policy of the Tax Division under the statute. Also, in *Shippee,* a pivotal basis for the decision was a reliance on the *expressio unius est exclusio alterius* canon of construction, a rule that has been the target of special criticism. Professor Reed Dickerson singled it out for reproval:

> Several Latin maxims masquerade as rules of interpretation while doing nothing more than describing results reached by other means. The best example is probably *expressio unius est exclusio alterius*, which is a rather elaborate, mysterious sounding, and anachronistic way of describing the negative implication. Far from being a rule, it is not even lexicographically accurate, because it is simply not true, generally, that the mere express conferral of a right or privilege in one kind of situation implies the denial of the equivalent right or privilege in other kinds. Sometimes it does and sometimes it does not, and whether it does or does not, depends on the particular circumstances of the context. Without contextual support, therefore, there is not even a mild presumption here. Accordingly, this maxim is at best a description, after the fact, of what the court has discovered from context."

Reed Dickerson, *The Interpretation of Statutes* (Little, Brown & Co., Toronto: 1975) at 234-235 (footnotes omitted).

Turning again to the guiding principles of statutory construction, the focus must be on the wording of the statute and the legislative purpose in passing the law. "Where there is a real or seeming ambiguity in a statute" -- and the court is persuaded there is an obvious one here, "it is the duty of the court to ascertain the intention of the legislature from a consideration of the entire statute, keeping in mind its nature, object, language and arrangement." *Zannelli v. DiSandro*, 121 A.2d 652, 655 (R.I. 1956). In the same opinion, the Supreme Court went on to say that "[t]he legislative enactment should be given what appears to be the meaning that is most consistent with its policy or obvious purpose and not a forced construction." *Id.* (citing *Benjamin v. Daneker*, 73 R.I. 117, 120, 53 A.2d 758 (R.I. 1947)).

Even though a court is limited to the language selected by the drafters of the statute, it has considerable flexibility in construing the law where the wording is unclear or is silent. In fact, one decision on statutory construction said, "[a] court need not lie supine in the face of legislative silence or ambiguity." *Kaya v. Partington*, 681 A.2d 256, 262 (R.I. 1996). In that case the Court went on to discuss an earlier decision where the Court "filled in a gap" to cure a defect in the legislation. Similarly, in *Capobianco v. United Wire & Supply Corp.*, the Court found that the facts seemed to present "a classic instance of a legislative oversight," and that the court had "not only the right but the duty" to correct it. *Capobianco v. United Wire & Supply Corp.*, 77 A.2d 474 (R.I. 1950).

In a further effort to understand the tax law, the court relies on two of the statutory canons as its polar star. First, the court must discern the objective of this part of the tax law. The statutory scheme, viewed as a whole, recognizes that there may be some occasions when because of an overpayment or other factors, taxpayers would be entitled to a credit or refund, and the code is structured in a manner that encourages prompt action by the taxing authority when a refund is requested. Section 44-30-88(a) directs that "[i]nterest shall be allowed and paid" on an overpayment of income taxes, and subsection (c) explains that "no interest is allowed if the overpayment is refunded within 90 days". This part of the code can only be construed as contemplating that refunds and credits are authorized and that in normal cases the officials will rule on the request withing three months.

The immediately preceding provision, §44-30-87(a), the section in question here, sets out parameters describing who is eligible for credits or refunds. It also establishes limits on the amount that can be claimed. Therefore, the court concludes that §44-30-87(a), must be interpreted in a way that is consistent with the goal of furnishing taxpayers with a procedure for securing a tax credit or refund, and placing a cap on the amount of the award. Why this part of the code was written without identifying exactly what "three-year period" applied is, at this point, a matter of conjecture. Perhaps the drafters were seeking brevity, although it is more likely just an oversight.[3]

[3] For what it is worth, the court believes that because the related federal tax provisions predate §44-30-87(a), it was probably considered and used as a model. (The relevant federal section was passed in 1958, the state law was adopted in 1971.) Much of the wording in the state law is identical to the IRS code. The most likely explanation is that the drafters were careless in grafting the federal standards onto state law. It is noteworthy that, as the Tax Division points out in its memorandum, New York has a three-year limit provision which specifies that it is the three years "preceding the filing of the claim." The court discovered after further investigation, that several other states have refund laws that used the identical language: "preceding the filing of the claim." *See e. g.*, 30 Del. C8 539(b)(1); 36 M.R.S.A §5278[2];Rev. St.§77-2793(2); N.J.S.A 54A:9-8(a). The court was unable to find *any* state that used the ambiguous language found in §44-30-87(a).

The second touchstone in the court's analysis focuses on the rule of construction which states that "under no circumstances" will a statute be interpreted in a way that would lead to an unreasonable or absurd result. *In Re*: *Kapinow,* 220 A.3d 1231, 1233 (R.I.2019); Cquoting *Mendes v. Factor*, 41 A.3d 994, 1002 (R.I. 2012); and *State v.*, *Menard*, 888 A.2d 57, 60 (R.I. 2005)). In this case, there is no question that the interpretation urged by the Tax Division *could* lead to an absurd result, it actually *has* done so. In its "more than 50 years" of enforcement (Appellee's Memorandum, at 10), there has *NEVER* been a successful claim for a credit or refund under the three-year provision of §44-30-87(a).[4]

Of course, the views of an agency responsible for the enforcement of a law should be given considerable weight. Deference is due to that agency's interpretation of an ambiguous statute unless such interpretation is clearly erroneous or unauthorized. *Unistrant Corp. v. State Department of Labor and Training, 22 A.2d 93, 99 (R.I 2007)*. But the court cannot give "blind obeisance" to the Tax Division's views: "'rather the true measure of a court's willingness to defer to an agency's interpretation of a statute depends, in the last analysis, on the persuasiveness of the interpretation, given all attendant circumstances.'" *Middle Creek Farm, LLC v. Portsmouth Water & Fire District*, 252 A.3.d 745, 753 (R.I. 2024)(quoting *Mancini v. City of Providence,* 155 A.2d 159, 168 (R.I. 2017)). Here, the court must disagree with the Tax Division's construction of the statute based on the consequences of its application. It is difficult to understand

[4] During oral argument on the motions, counsel for the state acknowledged that they knew of no case where a refund request was granted. In the *Marsilia* case, which involved a substantial amount (over $100,000) it is likely that some refund was made, but this amount is unknown to the court and the payment was almost certainly influenced by the court's comments.

the reasons for its interpretation. Logic alone would discourage an approach where the amount of refund would be measured by considering a time stretching into the fairly distant future (three years), when the code anticipates that a decision would be made within 90 days.[5]

It is disappointing that taxing officials continue to enforce the statute in a way that, predictably, will lead to a rejection of the refund request. The Tax Division's institutional memory during the extensive time it has been dealing with the question, must have alerted officials to the fact that no claimant was ever successful. (There is a record of administrative hearing decisions going back at least to 1977). And even when the court focused attention on the issue almost four years ago, and expressly urged the division's attorneys to reconsider their enforcement policy, nothing changed. Unfortunately, the tax code is silent on the duty of the enforcing agency to examine its policies or to revise its views on how a particular law should be construed when, as here, there is substantial evidence that the overall statutory scheme is not working properly.

Because it appears to be the only reasonable interpretation of §44-30-87(a), the court finds that the limit imposed by the statute under the three year part of this section refers to taxes paid during the three years immediately preceding the refund request. The Tax Administrator erred by relying on an incorrect metric when considering appellants' refund request. This resulted in a denial of their claim.

[5] Although the code does not require action on a request within this period, interest accrues after 90 days, and counsel confirmed that decisions under this provision are ordinarily made within a few months.

III. CONCLUSION

For the reasons set forth above, judgment is entered for appellants, and the matter is remanded to the Division of Taxation for further proceedings consistent with the statutory interpretation formulated in this decision.