

BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
Bank of America Tower
101 North First Avenue - Suite 2340
Phoenix, Arizona 85003
(602) 528-3966

LAURENCE L. ALLRED,)	
Appellant,)	Docket No. 1427-95-I(FR)
vs.)	
ARIZONA DEPARTMENT OF REVENUE,)	NOTICE OF DECISION:
Appellee.)	FINDINGS OF FACT AND
)	<u>CONCLUSIONS OF LAW</u>

The State Board of Tax Appeals, having considered all evidence and arguments presented, and having taken the matter under advisement, finds and concludes as follows:

FINDINGS OF FACT

Laurence L Allred ("Appellant") paid Arizona income tax on federal retirement benefits for tax years 1984 through 1988. Appellant filed an amended return for tax year 1984 claiming a refund of the tax for that year. The Arizona Department of Revenue ("the Department") accepted the return as a valid refund claim for 1984. In March 1994, Appellant filed a protective claim form that applied to tax paid on pension contributions by current federal employees, not retirees.

Appellant now seeks a refund of the tax paid in 1985 through 1988. The Department searched its records but found no written refund claim for these years. Therefore, the refund was denied. After unsuccessfully protesting the denial to the Department, Appellant now appeals to this Board.

DISCUSSION

On March 28, 1989, the U.S. Supreme Court held that an income tax exemption granted to a state's own retirees, but not extended to federal retirees, violates the intergovernmental immunity doctrine as codified in 4 U.S.C. § 111. *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803 (1989). Prior to *Davis*, Arizona fully taxed federal pension income while exempting State retirement benefits, but in 1989 the State amended its statutes to comply with the *Davis* ruling. A number of states, including

1 doctrine as codified in 4 U.S.C. § 111. *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803 (1989). Prior
2 to *Davis*, Arizona fully taxed federal pension income while exempting State retirement benefits, but
3 in 1989 the State amended its statutes to comply with the *Davis* ruling. A number of states, including
4 Arizona, maintained that *Davis* would only apply prospectively; therefore, the Department would issue no
5 refunds under the *Davis* decision. This position was subsequently challenged, and the Court held that
6 the *Davis* ruling applies retroactively. *Harper v. Virginia Dep't of Taxation*, 113 S. Ct. 2510 (1993).

7 In the 1989 Arizona individual income tax instruction booklet, the Department provided a "Notice
8 to Federal Retirees" and a claim form for tax years 1985 through 1988. Federal retirees who had paid
9 Arizona income tax on their retirement benefits could fill out the form and submit it to the Department in
10 order to preserve their rights to a potential refund of the tax. By the time the booklet was published,
11 claims for years prior to 1985 were barred by the statute of limitations. See A.R.S. § 42-1106. After the
12 *Davis* decision was issued, taxpayers had until April 17, 1989 to file a timely refund claim or amended
13 return for tax year 1984. The Department issued press releases which were disseminated through
14 various newspapers and television newscasts in an attempt to notify all federal retirees of the impending
15 deadlines, even though the Department had no absolute duty to do so.

16 The issue now before the Board is whether Appellants are entitled to a refund for Arizona income
17 tax paid on federal retirement benefits in tax years 1985 through 1988. Appellants bear the burden of
18 proof. See A.A.C. R16-3-118.

19 A.R.S. § 42-1106 provides that a claim for a tax year must be filed within four years of filing the
20 return for that year. "The failure to begin an action for refund or credit within the time specified . . . is a
21 bar against recovery of taxes by the taxpayer." A.R.S. § 42-1106.C. Further, such a claim must "be in
22 writing and . . . state the specific grounds on which it is founded." A.R.S. § 42-1118.E.

23 Nothing in either the *Davis* or *Harper* decision precludes the operation of the State's statute of
24 limitations or negates the procedural requirements which must be followed in order to receive a refund.
25 A 1993 income tax ruling issued by the Department explains that only those federal retirees "who filed
26 timely amended returns, claims for refunds, or the protective claims for refund included in the
27 instructions to the 1989 income tax return" are entitled to relief. ITR 93-15 (July 23, 1993).

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1 The 1984 amended return filed by Appellants specifically applied to tax year 1984 only and the
2 Department properly accepted it as a valid return for that year. The protective claim form filed by
3 Appellants in 1994 for tax years 1985 through 1988 was well outside of the statute of limitations;
4 therefore, the Department properly denied the refund for these years.

5 CONCLUSIONS OF LAW

6 Appellants failed to file a timely written claim for tax years 1985 through 1988; therefore, the
7 refund was properly denied. See A.R.S. §§ 42-1106, 42-1118.


8 ORDER

9 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the
10 Department is affirmed.

11 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,
12 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

13 DATED this 19th day of September, 2000.

14 STATE BOARD OF TAX APPEALS

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16 _____
17 Stephen P. Linzer, Chairman

18 SPL:ALW
19 CERTIFIED

20 Copies of the foregoing
21 mailed or delivered to:

22 Martin Hernandez, Sr., E.A.
23 7602 West Indian School Rd., Suite C-6
24 Phoenix, Arizona 85033

25 Patrick Irvine
26 Chief Counsel
27 Civil Division, Tax Section
28 1275 West Washington Street
Phoenix, Arizona 85007