

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

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EDMUND D. and KATHLEEN KAHN,

Appellants,

vs.

ARIZONA DEPARTMENT OF REVENUE,

Appellee.

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)  
) Docket No. 1824-00-1  
)  
)  
) NOTICE OF DECISION:  
) FINDINGS OF FACT AND  
) CONCLUSIONS OF LAW  
)

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

Edmund D. and Kathleen Kahn ("Appellants," with the singular referring to Edmund D. Kahn) were Arizona residents and filed a joint Arizona income tax return for tax year 1996. The return included a \$5,000 subtraction from income for military pension payments made to Appellant from the United States Navy.

Pursuant to an exchange of information agreement with the Internal Revenue Service ("IRS"), the Arizona Department of Revenue (the "Department") learned that the IRS had adjusted Appellants' 1996 federal return. Upon examining the Arizona return for this year, the Department discovered the subtraction claimed for a military pension was double (i.e., \$5,000) the amount expected (i.e., \$2,500). Thereafter, the Department issued an assessment conforming to the IRS adjustment and disallowing the \$5,000 subtraction. After unsuccessfully protesting the assessment to the Department, Appellants now timely appeal to this Board.<sup>1</sup>

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<sup>1</sup> Mr. Raby, a current member of the Board, recused himself and did not participate in the deliberation or decision concerning this case.



1 determined that as co-owners of the pension, married individual taxpayers each receive the pension;  
2 therefore, each is entitled to the \$2,500 subtraction. See, e.g., *Sandell v. Arizona Dep't of Rev.*, No.  
3 1625-96-1 (Oct. 14, 1997); *Stewart v. Arizona Dep't of Rev.*, No. 1608-96-1 (Oct. 14, 1997).<sup>3</sup> Accordingly,  
4 the Board concludes that Appellants are entitled to a total \$5,000 subtraction for 1996.

5 CONCLUSIONS OF LAW

6 Appellants are each entitled to the \$2,500 subtraction, for a \$5,000 total subtraction, for tax year  
7 1996.

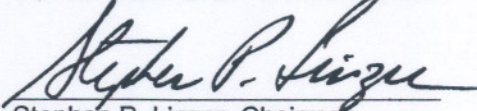
8 ORDER

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

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

13 DATED this 27<sup>th</sup> day of July, 2000.

14 STATE BOARD OF TAX APPEALS

15   
16 Stephen P. Linzer, Chairman

17  
18 SPL:ALW  
CERTIFIED

19 Copies of the foregoing  
20 mailed or delivered to:

21 Edmund D. and Kathleen Kahn  
22 5363 East Pima, Suite 200  
Tucson, Arizona 85712

23 Christine Cassetta  
24 Assistant Attorney General  
Civil Division, Tax Section  
1275 West Washington Street  
Phoenix, AZ 85007

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28 <sup>3</sup> Although the Arizona Tax Court subsequently ruled in favor of the Department on this issue, the non-appealable small claims decision is not judicial precedent and is not authority that binds the Board. *Arizona Dep't of Rev. v. Stewart*, TX97-0066 (Tax Court, 1999).