

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

WILLIAM L.¹ and NORMA RABY

Appellants,

vs.

ARIZONA DEPARTMENT OF REVENUE,

Appellee.

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)
) Docket No. 1823-00-1
)
)
) 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

William L. and Norma Raby ("Appellants") were Arizona residents and filed a joint Arizona income tax return for tax year 1994. The return included a \$2,500 subtraction attributable to State of Arizona pension income paid to William L. Raby. In 1999, Appellants filed an amended return for tax year 1994, claiming a \$5000 subtraction for the pension income and requesting a refund. The Arizona Department of Revenue (the "Department") reviewed the amended return and discovered that the subtraction claimed was double (i.e., \$5,000) the amount expected (i.e., \$2,500). The Department denied the refund request. After unsuccessfully protesting the refund denial to the Department, Appellants now timely appeal to this Board.

DISCUSSION

The Department does not dispute the fact that the pension income at issue is community property. The issue before the Board is whether Appellants are each entitled to a \$2500 subtraction for the pension income received solely by William L. Raby.

A.R.S. § 43-1022(2) provides that "[i]n computing Arizona adjusted gross income, the following amounts shall be subtracted from Arizona gross income:

¹ Mr. Raby is currently a member of the Board. He recused himself and did not participate in the Board's deliberations or decision concerning this case.

1 2. Benefits, annuities and pensions in an amount totaling not more than
2 two thousand five hundred dollars received from one or more of the
3 following:

4 (b) The state retirement system

5 The Department contends that only William L. Raby, as an employee-participant in the State of
6 Arizona retirement plan, *received* pension income. Therefore, according to the Department, Appellants
7 are entitled to only one subtraction of \$2,500 per tax year.²

8 The Department cites its administrative regulation A.A.C. R15-2-1022.01, which provides that
9 "[a]n individual is allowed to subtract up to \$2500.00 per taxable year from Arizona gross income for
10 income received from sources as delineated in A.R.S. § 43-1022(2)(a) and (b) The amount allowed
11 as a subtraction is calculated *per individual*. The allowable subtraction for a married-filing joint return
12 when both spouses receive income from one or more such sources is determined based upon the actual
13 amount of income which is *received by each individual* but not to exceed \$2500.00 *per individual*."
14 (Emphasis added.)

15 The Department essentially views Appellants' marital community as a single "individual," where
16 property acquired during the marriage, including the pension at issue, belongs to neither the husband nor
17 the wife, but to the community. However, the definition of the term "individual" under the taxing statutes
18 is "a natural person" and does not include a marital community. See A.R.S. § 43-104(12). Under a more
19 current interpretation of Arizona community property law, Appellants, as individuals – not the marital
20 community – jointly own property acquired during their marriage. See, generally, *Mortensen v. Knight*,
21 81 Ariz. 325, 305 P.2d 463 (1956). In previous cases involving the same issue, the Board has
22 determined that as co-owners of the pension, married individual taxpayers each *receive* the pension;
23 therefore, each is entitled to the \$2,500 subtraction. See, e.g., *Sandell v. Arizona Dep't of Rev.*, No.
24 1625-96-I (Oct. 14, 1997); *Stewart v. Arizona Dep't of Rev.*, No. 1608-96-I (Oct. 14, 1997).³ Accordingly,
25 the Board concludes that Appellants are entitled to a total \$5,000 subtraction for 1994.

26 ² The Department contends that had Appellants filed separately, each could claim only one half, or \$1,250, of the
27 subtraction per tax year.

28 ³ 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).

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CONCLUSIONS OF LAW

Appellants are each entitled to the \$2,500 subtraction, for a \$5,000 total subtraction, for tax year 1994.

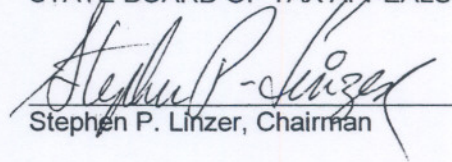
ORDER

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

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

DATED this 13th day of June, 2000.

STATE BOARD OF TAX APPEALS


Stephen P. Linzer, Chairman

SPL:ALW
CERTIFIED

Copies of the foregoing
mailed or delivered to:

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² 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).