

BEFORE THE STATE BOARD OF TAX APPEALS
 STATE OF ARIZONA
 100 North 15th Avenue - Suite 140
 Phoenix, Arizona 85007
 602.364.1102

ESTATE OF JAMES A. WALSH ,

Appellant,

vs.

ARIZONA DEPARTMENT OF REVENUE,

Appellee.

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) Docket No. 1467-95-I
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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

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 Arizona, maintained that *Davis* would only apply prospectively; therefore, the Arizona Department of Revenue (the "Department") would issue no refunds under the *Davis* decision. This position was subsequently challenged, and the Court held that the *Davis* ruling applies retroactively. *Harper v. Virginia Dep't of Taxation*, 113 S. Ct. 2510 (1993).

The representative for the Estate of James A. Walsh ("Appellant") sought a refund from the Department for tax paid on retirement income in tax year 1984. Although Appellant has no proof that Mr. Walsh filed a refund claim, Appellant contends that because he was a United States District Court Judge in Arizona from 1952 until his retirement in 1982, it can be assumed that he knew of the *Davis* decision and timely filed a refund claim.

1 The Department searched its records but found no refund claim for tax year 1984; therefore, it
2 denied Appellant's claim. After unsuccessfully protesting the denial to the Department, Appellant now
3 appeals to this Board.

4 DISCUSSION

5 The issue now before the Board is whether Appellant is entitled to a refund of Arizona income tax
6 paid on federal retirement benefits in tax year 1984.

7 A.R.S. § 42-1106 provides that a claim for a tax year must be filed within four years of filing the
8 return for that year. "The failure to begin an action for refund or credit within the time specified . . . is a
9 bar against recovery of taxes by the taxpayer." A.R.S. § 42-1106.C. Further, such a claim must be "in
10 writing" and "shall provide the specific grounds on which the claim is founded." A.R.S. § 42-1118.E.
11 Nothing in either the *Davis* or *Harper* decision precludes the operation of the State's statute of limitations
12 or negates the procedural requirements that must be followed in order to receive a refund.

13 There is no evidence before the Board indicating James A. Walsh filed a refund claim for 1984.
14 Accordingly, the Department properly denied Appellant's claim.

15 CONCLUSIONS OF LAW

16 James A. Walsh did not file a refund claim for 1984; therefore, Appellant is not entitled to the
17 refund claimed. See A.R.S. §§ 42-1106, 42-1118.

18 ORDER

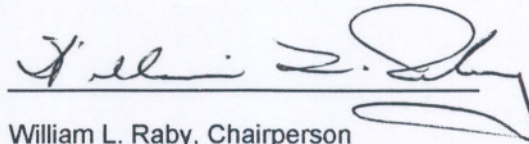
19 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the
20 Department is affirmed.

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

3 DATED this 13th day of January , 2004.

4 STATE BOARD OF TAX APPEALS

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William L. Raby, Chairperson

8 WLR:ALW

9 CERTIFIED

10 Copies of the foregoing
11 Mailed or delivered to:

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13 Representative for the Estate of
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