

1 1989, Bohn, et al filed an amended and restated refund claim that asserted a class refund claim on behalf
2 of *all* retired federal employees for the years 1984 through 1988. Bohn, et al was simultaneously
3 pursuing a refund claim in the Arizona Tax Court and included this claim filed with the Department in a
4 second amended complaint filed with the tax court on July 18, 1989. On April 11, 1990, Bohn, et al filed a
5 second amended and restated class refund claim with the Department that included approximately 4,823
6 additional individually-named taxpayers, on behalf of themselves and all retired federal employees for the
7 years 1984 through 1988. At the time of the receipt of this amended and restated class refund claim, the
8 Department had taken no action on the Bohn, et al or the related refund claims.¹ The Department
9 accepted this refund claim as a timely filed claim for Bohn, et al and the specifically named taxpayers for
10 the years 1985 through 1988 and has paid, or is in the process of paying, refund to those persons of
11 taxes paid on federal pensions for the years at issue. Dayton W. Herrington ("Appellant") was not among
12 the individually-named taxpayers.

13 Appellant sent the Department a letter dated January 15, 1992 seeking a refund for tax paid on
14 retirement benefits for tax years 1986 and 1987. The Department denied his claim for refund on the basis
15 that the claim was untimely. Appellant did not file an individual refund claim within the applicable statute
16 of limitations. However, if the statute of limitations was tolled by the filing of a class refund claim on
17 behalf of all retired federal employees, some or all of his claim may be timely, and he may be entitled to a
18 refund of the tax paid on his retirement benefits.

19 After unsuccessfully protesting the denial of their refund to the Department, Appellant now
20 appeals to this Board.

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25 ¹ Counsel filing the claims at all times stated to the Department that the claims were filed as protective claims only
and that the Department should not act on them since the Department lacked jurisdiction to resolve their dispute.

1 statute of limitations should receive similar treatment. Thus, "taxpayers whose claims were not barred by
2 the statute of limitations, and who therefore could have filed separate, individual administrative refund
3 claims at the time [taxpayers] filed [their] representative claim, and whose administrative remedies were
4 therefore preserved by [taxpayers'] filing, are not barred by the statute of limitations" *Id.*

5 Having determined that the complaint filed with the tax court on July 18, 1989 qualifies as a valid
6 class refund claim in this matter, the Board, accordingly, concludes that this date began the tolling of the
7 statute of limitations. The tolling ended with a judicial decision when the Arizona Court of Appeals
8 dismissed the Bohn, et al case on September 29, 1992.⁸ *Bohn*, 848 P.2d 324 (Ariz. App. 1992). Thus, the
9 statute of limitations was tolled for a total of 1169 days.

10 Appellant claimed a refund on January 15, 1992. Taking into consideration the 1169 days for
11 which the statute of limitations was tolled, the Board finds that Appellants' claim was timely for 1986 and
12 1987. Therefore, Appellant is entitled to a refund for tax paid on retirement benefits for 1986 and 1987.

13 CONCLUSIONS OF LAW

- 14 1. A valid class refund claim was filed on behalf of Appellants.
15 2. The class refund claim tolled the four-year statute of limitations.
16 3. The tolling began on July 18, 1989 and ended September 29, 1992.
17 4. Appellant's refund claim for 1986 and 1987 was filed timely.

18 ORDER

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

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25 ⁸ The tolling of the statute of limitations ends with a court's dismissal of the class action even if the dismissal is on appeal. See *Armstrong v. Martin Marietta Corp.*, 138 F.3d 1374 (11th Cir. 1998) (en banc).

