

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

ADOLPH K. (deceased) and EVELYN KOECK,)
Appellant,) Docket No. 1441-95-I
vs.)
ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION:
Appellee.) 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 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).

Adolph K. (deceased) and Evelyn Koeck ("Appellants," with the singular referring to Evelyn Koeck) paid Arizona income tax on federal retirement benefits for tax years 1984 through 1988. Appellant asserts that, prior to April 15, 1989, they filed an amended return form for tax year 1984 and a blanket return form as a protective notice for tax years 1985 through 1988. The Department searched its records but found no written refund claim for tax years 1984 through 1988, and, therefore, denied the

1 refund claims. After unsuccessfully protesting the denial to the Department, Appellant now appeals to
2 this Board.

3 DISCUSSION

4 The issue now before the Board is whether Appellants are entitled to refunds of Arizona income
5 tax paid on federal retirement benefits in tax years 1984 through 1988.

6 A.R.S. § 42-1106 provides that a claim for a tax year must be filed within four years of filing the
7 return for that year. "The failure to begin an action for refund or credit within the time specified . . . is a
8 bar against recovery of taxes by the taxpayer." A.R.S. § 42-1106.C. Further, such a claim must be "in
9 writing" and "shall provide the specific grounds on which the claim is founded." A.R.S. § 42-1118.E.
10 Nothing in either the *Davis* or *Harper* decision precludes the operation of the State's statute of limitations
11 or negates the procedural requirements that must be followed in order to receive a refund. The
12 Department contends that it has no record of a timely claim for any years 1984 through 1988.

13 Appellant submits a letter from their long-time CPA attesting to the fact that he timely prepared an
14 amended return (Form 140X) for Appellants in April, 1989. He provided a file copy dated April 14, 1989
15 and signed by both Appellants. The CPA states that he also filed the blanket claim form for tax years
16 1985 through 1988. He noted that Adolph K. Koeck was meticulous and visited his office several months
17 before his death to review the progress of the refund claims.

18 In a sworn affidavit, Appellant verifies that Appellants signed and deposited in the mail the 1984
19 amended return and the blanket claim form, addressed to the Department with first class postage affixed,
20 before April 15, 1989. She states that Appellants' return address was on the envelope and it was never
21 returned for insufficient postage or as being undeliverable. The Board finds the evidence of timely filing
22 submitted to be credible. Therefore, Appellants are entitled to the refunds claimed.

23 CONCLUSIONS OF LAW

24 Appellants timely filed claims for refunds tax years 1984 through 1988; therefore, they are entitled
25 to the refunds claimed. See A.R.S. §§ 42-1106, 42-1118.

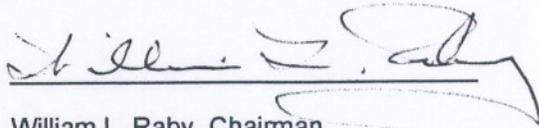
ORDER

1
2 THEREFORE, IT IS HEREBY ORDERED that the appeal is granted, and the final order of the
3 Department is vacated.

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

6 DATED this 16th day of December, 2003.

STATE BOARD OF TAX APPEALS

7
8 
9 William L. Raby, Chairman

10 WLR:ALW

11 CERTIFIED

12 Copies of the foregoing
13 mailed or delivered to:

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