

1 income tax pursuant to Title 43. The Legislature did further amend Title 43 to allow a subtraction from
2 Arizona gross income *for State or federal* retirement benefits up to \$2,500.¹

3 Victor E. Lowman became an Arizona State employee prior to 1989. He was a public employee
4 in Arizona for approximately 30 years prior to his retirement in 1983. For tax years 1997 through 2000,
5 Victor E. and Mary E. Lowman ("Appellants") filed Arizona individual income tax returns and paid taxes on
6 retirement income received by Victor E. Lowman under the Arizona State Retirement Plan.

7 Appellants subsequently filed amended State returns for tax years 1997 through 2000² claiming a
8 refund for tax paid on the retirement income. Appellants also filed a "Class Income Tax Refund Claim"
9 with the Arizona Department of Revenue (the "Department") purporting to represent a class of individuals
10 who were employees of the State of Arizona, before the 1989 amendment of the income tax statutes, who
11 either before or after that date retired or will receive retirement benefits from the State of Arizona (the
12 "Class"). Additionally, Appellants filed a class action in Superior Court against the State for breach of
13 contract, unjust enrichment, takings without just compensation and promissory estoppel.

14 The Department denied Appellants' claims for refund of income taxes, as well as their request for
15 class representation. After unsuccessfully, protesting the decision before the Department, Appellants
16 now timely appeal to this Board. They are seeking certification of the Class and refund for tax Appellants
17 paid on their 1997 through 2000 retirement benefits.

18 DISCUSSION

19 The issues before the Board are 1) whether the Board may certify the Class; and, 2) whether
20 Appellants are entitled to the refund requested.

21 Few principles of law are as well established as the proposition that administrative agencies, as
22 entities created by the legislature, have only such powers as are expressly granted to them by the

23 _____
24 ¹ The subtraction is codified at A.R.S. § 43-1022.

25 ² Appellants actually claimed refunds for tax years 2001 and 2002 as well as 1997 through 2000. However,
Appellants filed their refund claims in November 2001. A refund claim must identify the amount of the refund
requested and the specific tax period involved. A.R.S. § 42-1118(E). Appellants' refund claims cannot include claims
for unknown amounts on tax that had not yet been paid.

1 legislature, or as may be necessarily implied from the applicable statutes. *Boyce v. City of Scottsdale*,
2 157 Ariz. 265, 756 P.2d 935 (App. 1988). They are part of the executive branch of government, not the
3 judicial branch. In determining the nature and scope of an agency's powers, its enabling statutes are to
4 be strictly construed to preclude the exercise of power not expressly granted. Any reasonable doubt as to
5 the existence of an implied power should be resolved against the agency. In considering the taxpayer's
6 appeals from the Department's denial of class certification to them, this Board must therefore consider
7 both the powers delegated to the Department, whose actions the Board reviews, and to the Board itself.
8 This Board finds nothing in the statutes authorizing class actions in tax refund matters. The Board finds
9 authority for class actions only in Arizona's Rules of Court. These rules dealing with class actions are by
10 their own terms only applicable to the judicial branch of government and not to executive agencies.

11 Nor, in the Board's opinion, can the statute authorizing the Board to establish its own "rules of
12 practice and procedure" be reasonably construed to empower this Board to permit an individual taxpayer,
13 in an appeal from an adverse ruling of the Department on his or her individual refund claim, to undertake
14 to represent a class of thousands of other taxpayers in the appeal proceedings. For the Board to so take
15 unto itself such a power would be contrary to the plainly worded and mandatory statutes prescribing
16 refund procedures before both the Department and the Board itself. It would permit the addition of
17 thousands of parties and claims never processed before the Department as required by the statute. The
18 Board does not see its statutory powers as broad enough to add so greatly to its own jurisdiction – much
19 less to negate statutes and rules governing procedures before another agency. In the interests of justice,
20 a court may find it equitable to take such a step, but this Board is not a court and does not have equitable
21 powers.

22 Undoubtedly, a class-action procedure before the Department and the Board – at least in
23 extraordinary cases such as this one – would, as Appellants argue, greatly benefit the taxpayers in the
24 Class by relieving them from making individual applications for refunds in the event the Board were to
25 decide for the Appellants on the substantive issue here involved. Because this Board cannot expand the
Department or the Board's authority beyond that granted by the Legislature, any such relief will have to
come from that body or from the courts.

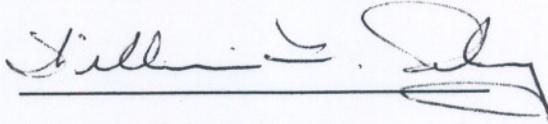
ORDER

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

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.

7 STATE BOARD OF TAX APPEALS

8
9 

10 William L. Raby, Chairman

11 WLR:alw

12 CERTIFIED

13 Copies of the foregoing
Mailed or delivered to:

14 Brian A. Luscher,
Randall D. Wilkins
15 Bonn & Wilkins, Chartered
805 North Second Street
16 Phoenix, Arizona 85007

17 Lisa A. Neuville
Assistant Attorney General
18 Civil Division, Tax Section
1275 West Washington Street
19 Phoenix, Arizona 85007