BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
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JACK C. and ROSEMARY R. MOORE, Appellants, vs. ARIZONA DEPARTMENT OF REVENUE, Appellee.	Docket No. 1318-94-I 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).

On April 17, 1989, John L. Bohn, Shirley Bohn, Donald Rutan, Mary Rutan and Carl Linton ("Bohn, et al") filed refund claims with the Department for income tax paid on federal retirement benefits for one or more of the years 1984 through 1988. On June 22,

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

Appellants sent the Department a letter dated August 13, 1993 with a *Davis* claim form. The Department denied their claim for refund on the basis that the claim was untimely. Appellants did not file individual refund claims within the applicable statute of limitations. However, if the statute of limitations was tolled by the filing of a class refund claim on behalf of all retired federal employees, some or all of their claim may be timely, and they may be entitled to a refund of the tax paid on their retirement benefits.

After unsuccessfully protesting the denial of their refund to the Department, Appellants now appeal to this Board.

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[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.

DISCUSSION

The issues before the Board are as follows: 1) Whether a valid class claim was filed on behalf of Appellants; if so, 2) whether the class claim tolled the four-year statute of limitations[2]; 3) when the tolling began and ended; and 4) whether Appellants' refund claims were timely under the tolled statute.

The Department contends that no valid class refund claim has been filed in this matter; therefore, Appellants are not entitled to refunds because they failed to timely file individual, written refund claims.[3] The Board disagrees.

The Arizona Supreme Court has determined that it is proper to use the class device as a vehicle for bringing and exhausting administrative remedies and that it is unnecessary for each taxpayer to file an individual administrative refund claim with the Department in order to participate in a class action refund claim. *Arizona Dep't of Rev. v. Dougherty,* 29 P.3d 862, 200 Ariz. 515 (2001) ("*Ladewig*[4]").

After reviewing the complicated procedural history of this case, and in light of the clear ruling in the *Ladewig* decision, the Board finds that a valid class action administrative refund claim was filed on behalf of Appellants when Bohn, et al filed the second amended complaint with the Arizona Tax Court, on July 18, 1989.[5] Although the tax court denied class certification in the Bohn, et al case at that time[6], and the case was ultimately dismissed for failure to exhaust administrative remedies[7], this occurred before the *Ladewig* decision clearly settled these issues.

The *Ladewig* decision also settles the tolling issue in this case. As the Court noted, if a claimant is allowed to exhaust administrative remedies on behalf of a similarly-situated class, then tolling of the

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[2] A.R.S. §§ 42-1106 and 1104.

[3] A.R.S. § 42-1118(E).

[4] Referred to herein as "*Ladewig*" for the Estate of Helen H. Ladewig on whose behalf the suit was originally brought.

[5] The Tax Court complaint included the refund claim filed with the Department on June 22, 1989, which asserted a class claim on behalf of all retired federal employees for the years 1984 through 1988.

[6] Bohn v Waddell, 164 Ariz. 74, 790 P.2d 772 (Tx. Ct. 1990).

[7] *Bohn v. Wadell*, 848 P.2d 324 (Ariz. App. 1992).

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

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

Appellants claimed a refund on August 13, 1993. Taking into consideration the 1169 days for which the statute of limitations was tolled, the Board finds that Appellants' claim was untimely for 1984 and 1985 but timely for 1986, 1987 and 1988. Therefore, Appellants are entitled to a refund for tax paid on retirement benefits for 1986, 1987 and 1988.

CONCLUSIONS OF LAW

1. A valid class refund claim was filed on behalf of Appellants.
2. The class refund claim tolled the four-year statute of limitations.
3. The tolling began on July 18, 1989 and ended September 29, 1992.
4. Appellants' refund claims for 1986, 1987 and 1988 were filed timely.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the appeal is granted in part and denied in part, and the final order of the Department is modified.

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[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).

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

DATED this 27th day of January, 2004.

STATE BOARD OF TAX APPEALS

William L. Raby, Chairperson

WLR:ALW

CERTIFIED

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