

ARIZONA STATE SENATE
RESEARCH STAFF



TO: JOINT LEGISLATIVE AUDIT COMMITTEE
Representative John Huppenthal, Chair
Senator Robert Blendu, Vice Chair

SEAN LAUX
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FINANCE COMMITTEE
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DATE: January 4, 2005

SUBJECT: Sunset Review of the Arizona State Board of Tax Appeals

Attached is the final report of the sunset review of the Arizona State Board of Tax Appeals, which was conducted by the Senate Finance and House of Representatives Ways & Means Committee of Reference.

The Committee of Reference recommends that the Arizona State Board of Tax Appeals be continued for ten years.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona
The Honorable Janet Napolitano

President of the Senate
Senator Ken Bennett

Speaker of the House of Representatives
Representative Jake Flake

Senate Members
Senator Dean Martin, Cochair
Senator Jack W. Harper
Senator Marilyn Jarrett
Senator Jack A. Brown
Senator Jorge Luis Garcia

House Members
Representative Steven Huffman, Cochair
Representative Ken Clark
Representative Jack Jackson, Jr.
Representative Michele Reagan
Representative Steven Yarbrough

Arizona State Board of Tax Appeals
Office of the Auditor General
Department of Library, Archives & Public Records

Senate Majority Staff
Senate Research Staff
Senate Minority Staff
Senate Resource Center

House Majority Staff
House Research Staff
House Minority Staff
Chief Clerk

SL/jas

*Senate Finance and House of Representatives Ways & Means
Committee of Reference Report*

ARIZONA STATE BOARD OF TAX APPEALS

Background

The Arizona State Board of Tax Appeals (BOTA) was established in 1974 to provide taxpayers with an administrative forum to appeal decisions of the Arizona Department of Revenue (DOR). BOTA is a quasi-judicial agency that is not under the control or purview of DOR, which is comprised of three members appointed by the Governor. BOTA hears and decides appeals involving income taxes, transaction privilege taxes, estate taxes, use taxes and luxury taxes, the award of attorney fees and costs and any other matter of taxation assigned to it from a decision of DOR and the Office of Administrative Hearings. BOTA decisions may be appealed to Tax Court.

According to BOTA's FY 2004 Strategic Plan, the agency's goal is to receive and process tax appeals expeditiously to prevent any delays in the appeals process. To achieve this goal, BOTA has the stated objective of maintaining the current timely processing of appeals and issuance of written decision within 30 days of Board action.

The Joint Legislative Audit Committee assigned the review of a performance audit of BOTA to the Senate Finance and House of Representatives Ways and Means Committee of Reference.

Budget

According to the Joint Legislative Budget Committee, Fiscal Year 2005 Appropriations Report, BOTA's FY 2004 budget estimate was \$273,300, which is appropriated as a lump sum from the General Fund. BOTA reports that the agency's FY 2004 actual expenditures were \$238,200.

A.R.S. § 41-3005.11 dictates that the Board is to terminate on July 1, 2005, unless continued.

Committee Sunset Review Procedures

The Committee of Reference held one public hearing on Tuesday, November 30, 2004, to review the sunset factors prepared by the Board and to receive public testimony. Testimony was received from representatives of the Board.

Committee Recommendations

The Committee of Reference recommends that the Arizona State Board of Tax Appeals be continued for ten years.

Sunset Report Requirements Pursuant to A.R.S. § 41-2954

I. Identification of the problem or the needs that the agency is intended to address.

The Arizona State Board of Tax Appeals provides an inexpensive, independent, informal and impartial venue in which taxpayers can be represented before an experienced tax tribunal by themselves (in most cases), CPAs, enrolled agents, other authorized individuals or attorneys. The Board's published decisions provide guidance to taxpayers within and without the State of Arizona.

II. Statement of the objectives of the agency and its anticipated accomplishments.

The Board's stated objective is to maintain the current timely processing of appeals and issuance of written decisions within 30 days of Board action. The FY 2003-2004 estimate for backlogged cases requiring a written decision was 10; the length for processing appeals was 6.5 months. The Board was able to issue all written decisions within the stated timeframe and reduced the appeal processing time from 6.5 to 4.5 months.

III. Identification of any other agencies with similar, conflicting or duplicative objectives and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.

The Board's objectives may overlap with those of the Department of Revenue (DOR) and the Office of Administrative Hearings (OAH). However, the Board is a quasi-judicial agency, the decisions of which, unlike DOR and OAH, are not subject to further administrative review. Board decisions are appealable only to Tax Court, which is part of the Superior Court. DOR's main objective is to administer and enforce the state's tax laws, while that of OAH is to provide uniform hearing processes among state administrative agencies. The Board's principle objective, however, is to provide taxpayers with a fair and financially feasible opportunity for representation before a tribunal of focused tax experts. These professionals are experienced in the field of taxation and are appointed by the Governor – not salaried state employees. Thus, the objectives of the agencies are not duplicative.

IV. Assessment of the consequences of eliminating the agency or of consolidating the agency with another agency.

The elimination of the Board would significantly and detrimentally impact the Arizona Superior Court by increasing the caseload of the Tax Court. This would most likely result in fewer and less timely decisions being issued in nonproperty tax cases. Additionally, the elimination of the Board would impact taxpayer representatives, DOR and taxing authorities across the country that look for guidance on tax issues. Lastly, the possibility of consolidation of the Board with another agency was previously considered and rejected by the Regulatory Reform and Enforcement Study Committee.

Attachments

1. Agenda of the Senate Finance and House of Representatives Ways & Means Committee of Reference.
2. Meeting Minutes of the Senate Finance and House of Representatives Ways & Means Committee of Reference.
3. Agency response to the Sunset Questionnaire
4. Enabling Statute and Board Rules
5. Budget tables for FY 2003-2004 and FY 2004-2005
6. Strategic Plan
7. BOTA Meeting Minutes
8. BOTA Sample Decisions

**Senate Finance and House of Representatives Ways & Means
Committee of Reference
Meeting Agenda**

ARIZONA STATE LEGISLATURE

INTERIM MEETING NOTICE OPEN TO THE PUBLIC

SENATE FINANCE AND HOUSE OF REPRESENTATIVES WAYS AND MEANS COMMITTEE OF REFERENCE

Date: Tuesday, November 30, 2004

Time: 10:00 a.m.

Place: Senate Hearing Room 1

AGENDA

1. Call to Order
2. Opening Remarks
3. Non-sunset Audit on the Gila County Transportation Excise Tax
 - Presentation by the Office of the Auditor General
 - Public Testimony
 - Discussion and Recommendations by Committee of Reference
4. Sunset of the Board of Tax Appeals
 - Presentation by the Board of Tax Appeals
 - Public Testimony
 - Discussion and Recommendations by Committee of Reference
5. Sunset of the Municipal Tax Code Commission
 - Presentation by the Municipal Tax Code Commission
 - Public Testimony
 - Discussion and Recommendations by Committee of Reference
6. Adjourn

Members:

Senator Dean Martin, Cochair
Senator Jack Brown
Senator Jorge Garcia
Senator Jack Harper
Senator Marilyn Jarrett

Representative Steve Huffman, Cochair
Representative Ken Clark
Representative Jack Jackson Jr.
Representative Michele Reagan
Representative Steven Yarbrough

11/19/04 cd

**Senate Finance and House of Representatives Ways & Means
Committee of Reference
Meeting Minutes**

ARIZONA STATE LEGISLATURE
Forty-sixth Legislature – Second Regular Session

SENATE FINANCE AND HOUSE OF REPRESENTATIVES
WAYS AND MEANS COMMITTEE OF REFERENCE

Minutes of Meeting
Tuesday, November 30, 2004
Senate Hearing Room 1 – 10:00 a.m.

Chairman Martin called the meeting to order at 10:03 a.m. and attendance was noted by the secretary.

Members Present

Senator Brown
Senator Garcia
Senator Harper
Senator Martin, Cochair

Representative Reagan
Representative Yarbrough
Representative Huffman, Cochair

Members Absent

Senator Jarrett

Representative Clark
Representative Jackson

Speakers Present

Sean Laux, Research Analyst, Senate Family Services Committee
Carol West, Member, Tucson City Council; Vice Chair, Municipal Tax Code Commission
Dot Reinhard, Auditor General's Office
David Patterson, Finance Director, Gila County
Ruben Medina, Executive Director, Arizona State Board of Tax Appeals

Sean Laux, Research Analyst, Senate Family Services Committee, reviewed the responsibilities of the Committee of Reference (COR). He noted that sunset hearings will be conducted on the Arizona State Board of Tax Appeals (BOTA) and the Municipal Tax Code Commission (MTCC), as well as a non-sunset audit of the Gila County Transportation Excise Tax.

Sunset of the Municipal Tax Code Commission

Carol West, Member, Tucson City Council; Vice Chair, Municipal Tax Code Commission, provided historical background on formation of the MTCC. She stated that the oversight role of the MTCC has provided a check against inconsistent changes to the Model City Tax Code by

individual cities and towns, as well as a forum for the business community to comment upon proposed changes and suggest changes of their own. The MTCC meets only when necessary and operates at essentially no cost to the State, except for minimal staffing by the Arizona Department of Revenue (DOR). Recognizing the great importance of the local sales tax as a revenue source for all cities and towns in Arizona, she believes the Commission should be continued. The MTCC gives the business community a place to object or voice concerns about this local tax, and consistency in changes to the code, while preserving local authority over the most important local revenue source.

Mr. Huffman moved that the Committee make a recommendation to continue the Municipal Tax Code Commission for an additional 10 years. The motion carried.

Audit on the Gila County Transportation Excise Tax

Dot Reinhard, Auditor General's Office, reviewed the audit performed on the Gila County Transportation Excise Tax (Attachment 1).

Senator Brown remarked that the funds were not necessarily spent illegally, but for the public benefit, and cautioned against over-regulating.

Senator Martin stated that he is especially concerned about the gifts with public monies and suggested that the Committee meet again during the next interim to make sure the recommendations are implemented.

Senator Brown noted that the problems were corrected and changes were made. Also, the Auditor General's Office would let the Members know if the recommendations are not implemented.

Ms. Reinhard indicated to Mr. Yarbrough that the County agreed to determine the amount of inappropriate expenditures and compare those against indirect costs for that particular fund because monies were not transferred to the General Fund for indirect service costs. The County believes the amount of inappropriate expenditures would be less than the amount that should have been transferred to the General Fund for indirect costs. If that is the process the County took to implement that recommendation, it would have to be looked at, but she made the recommendation that going forward the County should follow appropriate accounting procedures and transfer that money to the General Fund for indirect service costs. As far as remedies, in the past the Attorney General's Office was involved in cases where counties inappropriately used excise tax monies and agreements were established to reimburse the funds appropriately.

Senator Martin asked about non-public groups that received monies. Ms. Reinhard responded that has not yet been determined, but there is the potential of expenditures that violate public monies where she does not believe the General Fund could be used to reimburse the Road Fund. At this point, she is not sure how those would be handled.

Senator Martin could not recall the statutory penalty, but submitted that it is fairly severe.

SENATE FINANCE AND HOUSE WAYS AND MEANS
COMMITTEE OF REFERENCE
November 30, 2004

David Patterson, Finance Director, Gila County, stated that he does not know how the auditors came up with 11 percent in questionable costs. Originally, the auditors conducted a random sample over three years, pulling 40 items per year, and found one item that was questionable. Based on that, the auditors said it was an attribute sampling versus a variable sampling, but he does not believe 1 item out of 120 equates to 11 percent questionable items. The auditors then started doing judgmental samples, and when that is done, specific items are looked for, and those cannot be projected to the population as a whole. Some of the items that were questioned are not that significant, although they are against the statutes. For example, \$500 for Kids Voting out of \$2.5 million for one year and \$48 for flowers from the community for someone's funeral. The Board of Supervisors was notified that those kinds of decisions cannot be made without identifying that it is for the betterment of the community and initialing the request. The County is in the process of correcting those items.

Senator Martin remarked that using money from the transportation plan for the public good becomes problematic no matter the amount. He requested the specifics of changes that need to be made, the illegal or inappropriate expenditures, and the plan detailing the fix.

Mr. Patterson indicated to Ms. Reagan that he is not opposed to a review by the Auditor General in six months, but the presentation by the Auditor General's Office implied that the issue is more horrendous than it actually is. In fact, the funds were spent inappropriately; however, he believes the \$500 donated to Kids Voting should be allowable. The only problem was that the supervisor did not initial the request, but believed it was in the best interest of the community to make the donation.

Ms. Reagan commented that if the Auditor General's findings are somewhat inflated, perhaps another audit would help clear the County's name.

Mr. Patterson advised Senator Martin that Kids Voting is not necessarily beneficial to transportation as it is to the community, but it was not public money given to a private charity that had no benefit to the community. It was not appropriate to be part of the transportation tax, but that is something that has been changed. At one time, the County had three road crews that were consolidated into one public works. Constituent Services was paid out of the Road Fund, but that was offset by what the County considers chargeable indirect costs. A decision was made that was inappropriate because the two could not be identified, so Constituent Services was pulled from the Road Fund and put into the General Fund where the County began charging the indirect costs. The County is in the process of making things more compartmentalized, which is also why a new financial accounting system will be implemented in January 2005.

Mr. Huffman stated that a memo from Mr. Nelson, the current County Manager, states that he agrees to all of the sample inappropriate expenditures amounting to over \$46,000, the County needs to improve the auditing process, and there may actually be more than \$46,000 that the County is attempting to identify and develop potential solutions.

Senator Martin stated that he appreciates the efforts that have been made, and therefore, does not recommend any action on the Legislature's behalf this session, but he would like to follow-up

with the Auditor General's Office and possibly hold another Committee meeting if the issues have not been worked out and reimbursement made.

Sunset of the Board of Tax Appeals

Ruben Medina, Executive Director, Arizona State Board of Tax Appeals, conveyed that he has been in this position since BOTA was created in 1974 and has handled many thousands of tax appeals in all areas of taxation. The sunset review report submitted to the COR on September 1, 2004 addresses all of the factors requested by the Committee. The Board consists of three members and staff includes himself, a hearing officer, and a secretary. There were previously five full-time employees, but now there are only three due to budget reductions. The caseload can only be handled because of a decrease in cases from previous years.

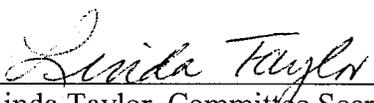
He stated that the type of cases that are heard are generally very complex after having gone through various appeals at DOR and the Office of Administrative Hearings (OAH), which handles sales and use tax type cases; however, BOTA has a very well qualified board of professionals. He conveyed that the number of months to process appeals was reduced from seven-and-a-half in 1999 to four-and-a-half presently. BOTA makes decisions within 30 days that are disseminated throughout the country because requests are constantly made since many times the decisions address issues of first impression. In 2002, BOTA completely revised the rules and procedures, shortening the appeals process.

He anticipated additional appeals to be filed, not only later this fiscal year, but next fiscal year, mainly because of a \$6.5 million appropriation by the Legislature to DOR for the revenue-generating program. With that, an additional 153 FTEs were appropriated, which will cause more audits and protests to DOR, and eventually, more appeals to BOTA. If additional funding is needed for another hearing office, a supplemental may be requested from the Joint Legislative Budget Committee, but until that happens, additional funding will not be requested.

He indicated to Ms. Reagan that BOTA rules for DOR about 80 percent of the time. From tracking through the Attorney General's Office, the courts upheld BOTA's decisions about 90 percent of the time.

Mr. Huffman moved that the Committee recommend continuation of the Board of Tax Appeals for an additional 10 years. The motion carried.

Without objection, the meeting adjourned at 10:48 a.m.



Linda Taylor, Committee Secretary
December 3, 2004

(Original minutes, attachment, and tape are on file in the Office of the Chief Clerk.)

SENATE FINANCE AND HOUSE WAYS AND MEANS
COMMITTEE OF REFERENCE
November 30, 2004

Agency Response



ARIZONA BOARD OF TAX APPEALS

100 North 15th Avenue - Suite 140

Phoenix, Arizona 85007

602.364.1102

September 1, 2004

Dean Martin,
State Senator
Chair, Senate Finance Committee of Reference

Re: Sunset Review Process

Dear Senator Martin:

As requested, the State Board of Tax Appeals submits this report addressing each of the factors listed in your letter dated July 30, 2004.

Should you or the Committee of Reference need additional information or have any questions, please contact this office.

Sincerely,

A handwritten signature in cursive script that reads "R. Medina".

Ruben M. Medina
Executive Director

cc
Members, Committee of Reference

1.
THE OBJECTIVE AND PURPOSE
IN ESTABLISHING THE AGENCY.

The Arizona State Board of Tax Appeals (the "Board") was established in July of 1974 to provide taxpayers, which includes individuals, small businesses, corporations and municipalities with the benefits of an independent, effective and inexpensive opportunity to appeal decisions of the Arizona Department of Revenue (the "Department") without the burdens commonly associated with court proceedings.

2.
THE EFFECTIVENESS WITH WHICH THE AGENCY
HAS MET ITS OBJECTIVE AND PURPOSE AND THE
EFFICIENCY WITH WHICH IT HAS OPERATED.

Throughout the years, the Board has successfully fulfilled its mission to afford taxpayers access to expertise in a fair and impartial venue at minimal cost.

The Board is a quasi-judicial agency that is not in any way subject to the supervision or control of the Department. Its three governor-appointed and senate-confirmed members serve six-year terms. They are highly qualified professionals selected on the basis of their knowledge and experience in the field of taxation and recognized by the Arizona Court of Appeals as tax experts.¹ The Board imposes no filing fees on taxpayers while adjudicating all appeals before it involving income, estate, transaction privilege, use and luxury taxes, the award of attorney fees and costs and any other matter of taxation assigned to it by law from decisions of the Department and the Office of Administrative Hearings (the "OAH").

The Board has effectively reduced the average number of months required to complete its appeal process from a high of 15.5 months in FY 1996 to 7.5 months by 1999 - the time of the last sunset review. Through a complete revision of its rules in 2002, the Board has streamlined its appeal procedures, further reducing the process by two months. Taxpayers can currently complete the appeals process before the Board in 4.5 months. In FY 1996, the Board had a backlog of 97 decisions to be written. There currently is no backlog and decisions are generally issued no more than 30 days after a hearing. See Attachment 4 for samples of decisions.

3.
THE EXTENT TO WHICH THE AGENCY HAS
OPERATED WITHIN THE PUBLIC INTEREST.

In its practices and procedures, the Board strives always to operate within the public interest. It complies with all statutes governing open meetings and the disclosure of public records. See Attachment 3 -- Minutes.

The Board's decisions are widely disseminated throughout the country by various publishing companies including Lexis, Commerce Clearing House and Prentice Hall. Additionally, the Board provides copies of its decisions from both taxpayers and taxing authorities upon reasonable request.

Neither the Department nor OAH publish their decisions, and the extensive workload of the Arizona Tax Court greatly limits the number of written decisions it issues in the non-property tax areas regularly addressed by the Board. Therefore, the Board's published decisions provide

¹ An attorney and two certified public accountants currently comprise the Board.

much-needed guidance to taxpayers, tax practitioners and taxing authorities, local and across the country, especially concerning issues of first impression.

The Board and its staff regularly participate in pertinent local tax seminars and review tax publications and court decisions to track current trends and recent developments in the field of taxation.

4.
THE EXTENT TO WHICH RULES ADOPTED BY
BY THE AGENCY ARE CONSISTENT WITH
THE LEGISLATIVE MANDATE.

In order to best fulfill its legislative mandate, the Board completed a thorough revision of its rules in 2002.

There had been significant changes in the statutes governing the tax appeals process (A.R.S. §§ 42-1252 and 1253) since the administrative rules were last reviewed. Beginning in August of 1995, the Board no longer consists of Division One and Division Two. Division One has become the State Board of Equalization. The former Division Two is now known as the State Board of Tax Appeals. The Board may now hear appeals from the Office of Administrative Hearings, which was created effective October 1, 1995, in addition to those from the Arizona Department of Revenue. Where the amount in dispute before the Board is less than twenty-five thousand dollars, a taxpayer may now be represented by a certified public accountant, a person enrolled to practice before the United States Internal Revenue Service and recognized as an enrolled agent, or any other person who is authorized by the taxpayer under a properly executed power of attorney and who was previously or is currently retained by the taxpayer for purposes other than representation in a hearing before the Board.

Due to the significant statutory changes and the attendant changes in the Board's policies and practices, all of the Board's rules were repealed and replaced with new sections reflecting the changes. Additionally, any mistakes in grammar, spelling, style or punctuation existing in the text of the repealed statutes were corrected when incorporated into the new rules, and a definitional section was added. Finally, to optimize the effectiveness of the rules, changes were made to improve the clarity, conciseness and understandability of the rules.

5.
THE EXTENT TO WHICH THE AGENCY HAS ENCOURAGED
INPUT FROM THE PUBLIC BEFORE ADOPTING ITS RULES
AND THE EXTENT TO WHICH IT HAS INFORMED THE
PUBLIC AS TO ITS ACTIONS AND THEIR EXPECTED
IMPACT ON THE PUBLIC.

During the course of its rule revision, the Board specifically sought input from those in the tax community who regularly appear before the Board and are most affected by its actions. Copies of proposed rules were disseminated to members of the Arizona Society of Certified Public Accountants, the Arizona Society of Public Accountants, the Tax Section of the Office of the Attorney General, and tax attorneys.

The Board reviewed all suggestions and comments it received, addressed any concerns noted and made revisions to the proposed rules when appropriate. The Board properly posted all

public notices and held public hearings, and the rules became final after the Governor's Regulatory and Review Council ("GRRC") approved them.

6.
THE EXTENT TO WHICH THE AGENCY HAS BEEN ABLE
TO INVESTIGATE AND RESOLVE COMPLAINTS THAT
ARE WITHIN ITS JURISDICTION.

The Board has received one complaint since the last Sunset Review. A taxpayer, who declined to appear at an oral hearing before the Board, complained that the Board did not sufficiently understand the written materials submitted to it and upon which it based its decision in favor of the Department. The taxpayer contended that the validity of this complaint was confirmed when the Department decided to settle with the taxpayer rather than pursue the matter in Tax Court. The Assistant Attorney General representing the Department explained to the taxpayer in writing that the settlement was offered because the relatively small amount in dispute did not justify the cost in time and expense required to continue to Tax Court. Nevertheless, the taxpayer filed complaints with the Department, with the State Bar of Arizona against the Assistant Attorney General, and -- after an exchange of correspondence on the matter with the Board dating back to 1995 -- the taxpayer eventually filed an appeal with GRRC concerning the Board's rules. The petition to GRRC specifically addressed the taxpayer's objection to the Board's lack of a rule governing the burden of proof in proceedings before it.

The Board's original burden of proof rule, R16-3-118 of the Arizona Administrative Code ("A.A.C.") provided that the burden of proof as to all issues of fact was on the taxpayer. This rule complied with the standard of proof established by case law in *Arizona State Tax Commission v. Kieckhefer*.²

Prior to submitting its last rule-making package, the Board considered developing a new rule shifting the burden of proof to the Department under certain specified conditions. The Board's consideration was prompted by its desire, in an attempt to establish a standard burden, to be consistent with the rule change adopted by the Tax Court. The Board invited comment on this proposed rule from parties potentially affected by the change. The Department objected to the change, and the Board was advised by counsel for GRRC that it would oppose such a change and advise members of the Council to reject the Board's rule-making package in its entirety.

The Board proceeded with the remainder of the rule-making package, allowing R16-3-118 to expire. After the Board's rules were approved and finalized, the Board reviewed the expiration of rule R16-3-118. After considering the fact that, absent a duly approved rule to the contrary, *Kieckhefer* established the standard of proof before the Board, and taking into account the rule-making guidelines proscribing the incorporation into agency rules of requirements already established outside of the rule, the Board chose not to attempt to circumvent these guidelines by promulgating a new, redundant rule.

The issue was finally successfully resolved April 16, 2004 when the governor signed legislation addressing the burden of proof in hearings before the Board.³ Appellant withdrew his appeal on April 20, 2004.

² "The presumption is that an additional assessment of income tax is correct, and the burden is on the taxpayer to overcome such presumption." *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948).

³ A.R.S. § 42-1255 provides, in part, that "[t]he Department has the burden of proof by a preponderance of the evidence in any administrative or judicial proceeding regarding any factual issue that is relevant to ascertaining the tax liability of a taxpayer. This section does not abrogate any provision of this title or title 43 that requires a taxpayer to substantiate an item of income or expense."

7.
THE EXTENT TO WHICH THE ATTORNEY GENERAL OR ANY
OTHER APPLICABLE AGENCY OF STATE GOVERNMENT
HAS THE AUTHORITY TO PROSECUTE ACTIONS
UNDER THE ENABLING LEGISLATION.

The Board is not a regulatory agency. The Office of the Attorney General represents the Department in appeals before the Board but neither the Attorney General nor any other State agency prosecutes actions under the Board's enabling legislation.

8.
THE EXTENT TO WHICH THE AGENCY HAS ADDRESSED
DEFICIENCIES IN THEIR ENABLING STATUTES WHICH
PREVENTS IT FROM FULFILLING ITS STATUTORY MANDATE.

There are no deficiencies in the statutes governing the Board that have prevented it from fulfilling its statutory mandate. Statutory changes have been enacted to assist the Board in best fulfilling its statutory mandate. Until 1997, practice before the Board was limited to licensed attorneys. In 1997, legislation was enacted to permit CPAs and agents enrolled before the Internal Revenue Service to practice before the Board when disputes involve less than \$5,000. A.R.S. § 42-1253(D) (formerly A.R.S. § 42-172(D)). In 1998, the legislature further amended the statute to extend non-attorney representation to any other person authorized by the taxpayer under a properly executed power of attorney who was previously or is currently retained by the taxpayer for purposes other than representation in a hearing before the Board. The amendment also raised the economic threshold requirement for all non-attorney representation to \$25,000.

Any attorney who is either a member of the Board or staff hearing officers employed by the Board, as well as Assistant Attorney Generals representing the Department before the Board could not function in accordance with this legislation without running afoul of the Code of Professional Responsibility, which prohibits attorneys from assisting or contributing to the unauthorized practice of law. Therefore, the Board petitioned the Arizona Supreme Court asking it to amend Rule 31 of the Rules of the Supreme Court governing attorneys to specifically allow non-attorneys to practice before the Board. The Court adopted a rule allowing CPAs and enrolled agents to practice before the Board.

9.
THE EXTENT TO WHICH CHANGES ARE NECESSARY TO
ADEQUATELY COMPLY WITH THE FACTORS LISTED IN THIS
SUBSECTION.

Although there are no deficiencies in the statutes governing the Board that have prevented it from fulfilling its statutory mandate, the amendment of Rule 31 of the Rules of the Supreme Court may require future revision to A.R.S. § 42-1253.

Although the Arizona Supreme Court amended Rule 31 to allow CPAs and enrolled agents to practice before the Board's attorneys, it did not address the final class of non-attorney representation permitted under A.R.S. § 42-1253(D)(3), i.e., representation by any other person authorized by the taxpayer under a properly executed power of attorney who was previously or is currently retained by the taxpayer for purposes other than representation in a hearing before the Board.

Nevertheless, the Board intends to fulfill the legislative mandate of the statute. If at any time it becomes necessary for an attorney serving the Board to be recused from participating in any proceeding, the remaining quorum of the Board will conduct the hearings and write the decisions in these cases.

10.

THE EXTENT TO WHICH THE TERMINATION OF THE
AGENCY WOULD SIGNIFICANTLY HARM THE
PUBLIC HEALTH, SAFETY OR WELFARE.

The elimination of the Board would significantly and detrimentally impact taxpayers. The Board provides an inexpensive, informal and impartial venue in which taxpayers can represent themselves in most cases. Taxpayers may also be represented before the Board by CPA's, enrolled agents or other authorized individuals, as well as attorneys. There are no filing fees, the rules of evidence are relaxed and Appellants are afforded a non-intimidating atmosphere in which they have the opportunity to fully state their positions and present their evidence. The Board provides a review of appeals completely independent from the Department by highly-qualified Board members, hearing officers and staff that work exclusively with tax matters. The Board is the only State agency that issues written decisions that are published and provide guidance to taxpayers.

The elimination of the Board would significantly and detrimentally impact the Arizona Superior Court. The elimination of the Board would significantly increase the already heavy caseload of the Arizona Tax Court, which is a division of the Superior Court. This would certainly result in even fewer and less timely decisions being issued in non-property tax cases.

The elimination of the Board would significantly and detrimentally impact taxpayer representatives, the Department and taxing authorities across the country who look to the Board's decisions for guidance on tax issues.

11.

THE EXTENT TO WHICH THE LEVEL OF REGULATION
EXERCISED BY THE AGENCY IS APPROPRIATE AND
WHETHER LESS OR MORE STRINGENT LEVELS OF
REGULATION WOULD BE APPROPRIATE.

This inquiry does not apply to the Board. The Board is not a regulatory agency.

12.

THE EXTENT TO WHICH THE AGENCY HAS USED PRIVATE
CONTRACTORS IN THE PERFORMANCE OF ITS DUTIES
AND HOW EFFECTIVE USE OF PRIVATE CONTRACTORS
COULD BE ACCOMPLISHED.

The Board has not used private contractors to perform its duties, nor has it sought funding to do so. Private contractors could not perform the duties of the Board members who are appointed by the governor. In addition to the Executive Director and the Board Secretary, the Board employs a hearing officer. The hearing officer is an attorney and full-time State employee who conducts legal research, presides over hearings, writes proposed decisions, revises rules and generally assists the Executive Director in the administration of the agency. It would neither be practical nor cost-efficient to utilize private contractors for these duties. Neither would the requisite level of expertise be generally available among private contractors.

ADDITIONAL REQUESTED INFORMATION

1. DESCRIBE THE ROLE AND FUNCTION OF THE AGENCY, INCLUDING MAJOR ACTIVITIES/PROJECTS, ACCOMPLISHMENTS AND OBSTACLES TO SUCCESS.

As previously addressed, the Board provides an inexpensive, independent, informal and impartial venue in which taxpayers can be represented before an experienced tax tribunal by themselves (in most cases), CPA's, enrolled agents, other authorized individuals or attorneys. The published decisions of the Board provide guidance to taxpayers within and without the State of Arizona.

The Board successfully completed the thorough revision of all its rules, and effectively petitioned the Arizona Supreme Court to amend Rule 31 to allow non-attorneys to practice before the Board.

The Board has reduced the average number of months required to complete its appeal process from a high of 15.5 months in FY 1996 to 4.5 months. There is currently no backlog and decisions are generally issued no more than 30 days after a hearing.

Like all state agencies, the Board has had to work within tight budget constraints. This can present an obstacle to the Board's efforts to maintain a timely and efficient appeals process. For FY 2004-2005, the Department was appropriated additional funding for the revenue generating program in the amount of \$6,537,000 and 153 FTE positions. The additional audits and protests this appropriation will facilitate will certainly impact the Board's caseload. The potentially dramatic increase in appeals to the Board may necessitate the full funding of the additional hearing officer position that is currently vacant.

Budget limitations may also prevent the Board from remaining current in the area of information technology. The Board is researching the feasibility of creating a website affording interested parties with easier access to the Board's forms, rules and decisions. The cost of the requisite software and computer upgrades may delay this project for some time.

2. PROVIDE DETAILED FINANCIAL DATA, INCLUDING BUT NOT LIMITED TO: NUMBER OF FULL-TIME EMPLOYEES, DETAILED EXPENDITURES, IDENTIFY AND QUANTIFY ALL REVENUES AND FEE STRUCTURE (IF APPLICABLE) FROM EACH FUND SOURCE.

See Attachment 2 for financial data.

Any revenue generated by the Board is minimal and wholly attributable to funds received for providing copies of Board records and hearing tapes. These funds totaled \$0.1 in FY 2002 – 2003 and \$0.0 in FY 2003 – 2004.

3. AN IDENTIFICATION OF THE PROBLEM OR THE NEEDS THAT THE AGENCY IS INTENDING TO ADDRESS.

As previously addressed in section 1 above, the Board may need to address the consequences created by a significantly increased caseload and the need for IT updates with limited available resources.

4. A STATEMENT, TO THE EXTENT PRACTICABLE, IN QUANTITATIVE AND QUALITATIVE TERMS, OF THE OBJECTIVES OF THE AGENCY AND ITS ANTICIPATED ACCOMPLISHMENTS.

See Attachment 2.1—Strategic Plan

5. AN IDENTIFICATION OF ANY OTHER AGENCIES HAVING SIMILAR, CONFLICTING OR DUPLICATIVE OBJECTIVES, AND AN EXPLANATION OF THE MANNER IN WHICH THE AGENCY AVOIDS DUPLICATION OR CONFLICT WITH OTHER SUCH AGENCIES.

To some extent, the Board's objectives may overlap with those of the Department and the OAH. However, the Board is a quasi-judicial agency, the decisions of which, unlike the Department and the OAH, are not subject to further administrative review. Board decisions are appealable only to the Tax Court, which is part of the Superior Court. The Department's main objective is to administer and enforce the State's tax laws, while that of the OAH may be to provide uniform hearing process among State administrative agencies. The Board's principle objective, however, is to provide taxpayers with a fair and financially feasible opportunity for representation before a tribunal of focused tax experts. These professionals are experienced in the field of taxation and are fellow citizens appointed by the governor – not salaried state employees. Thus, the objectives of the agencies are not truly duplicative.

6. AN ASSESSMENT OF THE CONSEQUENCES OF ELIMINATING THE AGENCY OR OF CONSOLIDATING IT WITH ANOTHER AGENCY.

The purpose and objective of the Board and its service to the public interest is thoroughly addressed in the sunset review, and the consequences of the void created if the Board were to be eliminated are clear. The distinctive and focused function of the Board does not permit its consolidation with another agency.⁴

⁴The possible consolidation of the Board was previously considered and rejected by the Joint Study Committee on Regulatory Reform and Enforcement.

Enabling Statute & Board Rules

may be returned at any time before the expiration of nine months from the date of such levy.

D. In its discretion and at any time, the department may release a levy or return property levied on if the department determines that any of the following conditions applies:

1. The levy was premature or otherwise in violation of the department's administrative procedures.
2. The taxpayer has entered into an installment payment agreement, unless the agreement provides otherwise.
3. The department's interests are best served by the release or return.

1999

ARTICLE 6. TAX APPEALS

42-1251. Appeal to the department; hearing

A. Except in the case of individual income taxes, a person from whom an amount is determined to be due under article 3 of this chapter may apply to the department by a petition in writing within forty-five days after the notice of a proposed assessment made pursuant to section 42-1109, subsection B or the notice required by section 42-1108, subsection B is received, or within such additional time as the department may allow, for a hearing, correction or redetermination of the action taken by the department. In the case of individual income taxes the period is ninety days from the date the notice is mailed. The petition shall set forth the reasons why the hearing, correction or redetermination should be granted and the amount in which any tax, interest and penalties should be reduced. If only a portion of the deficiency assessment is protested, all unprotested amounts of tax, interest and penalties must be paid at the time the protest is filed. The department shall consider the petition and grant a hearing, if requested. To represent the taxpayer at the hearing or to appear on the taxpayer's behalf is deemed not to be the practice of law.

B. If the taxpayer does not file a petition for hearing, correction or redetermination within the period provided by this section, the amount determined to be due becomes final at the expiration of the period. The taxpayer is deemed to have waived and abandoned the right to question the amount determined to be due, unless the taxpayer pays the total deficiency assessment, including interest and penalties. The taxpayer may then file a claim for refund pursuant to section 42-1118 within six months of payment of the deficiency assessment or within the time limits prescribed by section 42-1106, whichever period expires later.

C. All orders or decisions made on the filing of a petition for a hearing, correction or redetermination become final thirty days after notice has been received by the petitioner, unless the petitioner appeals the order or decision to the state board of tax appeals.

1997

(See Arizona Annotation Service)

42-1252. State board of tax appeals

A. The state board of tax appeals is established as an independent agency which shall not in any way be subject to the supervision or control of the department of revenue. The board shall have full power to hear and decide all appeals from decisions of the department of revenue.

B. The state board shall consist of three members appointed by the governor pursuant to section 38-211. Members shall be residents of this state.

C. Members shall be selected on the basis of their knowledge of and experience in taxation. Not more than two members may be primarily engaged in the same occupation or profession. The board shall handle all matters entrusted by law to it dealing with income taxation, estate taxation, transaction privilege, use and luxury taxation and any other

taxation assigned to it by law and shall hear and decide appeals from the department of revenue on such matters.

D. Not more than two members of the board shall be members of the same political party. No member of the board shall hold any other public office under the laws of this state or any of its political subdivisions. No member shall be a candidate for an elective office under the laws of this state, nor of any other state. No member of the board shall hold any position of trust nor provide or engage in any occupation or business which would corruptly conflict with the duties of a member of the board, nor take part directly or indirectly in any election campaign in the interest of any political party or other organization or any candidate or measure to be voted on by the people. This subsection does not prohibit a person from properly and lawfully engaging in a business or profession.

E. The term of board members is six years. The member of the board having the shortest term remaining shall act as chairperson if that member has served on the board at least two years. If the member having the shortest term remaining does not qualify to act as chairperson or if two or more members have an equal right by virtue of their remaining terms to serve as chairperson, the board shall elect a chairperson. A member may not be appointed for more than two terms.

F. Each member of the board shall receive:

1. One hundred fifty dollars per day for time spent in the performance of official duties.
2. Such travel and other expenses as provided by law for other state officers.

G. The governor may remove any member for cause.

H. The board shall appoint a clerk, hearing officers and such other employees as it deems necessary to carry out its duties. The hearing officer qualifications shall be the same as the selection criteria for the members as prescribed by this section. Notwithstanding section 41-192, subsection E, upon request of the board, the attorney general shall designate, for such time and purposes as the board requires, an attorney, acceptable to the board, whose compensation shall be fixed and paid by the board.

I. The board shall hold hearings and meetings at the call of the chairperson or a majority of the board and otherwise as may be prescribed by the rules of the board as required to carry out its duties. The principal office of the board shall be at the capitol, but the board may sit or hold hearings at any other place within the state. A majority of the board constitutes a quorum for making orders and decisions or transacting other official business, and the board may act even though one position on the board is vacant. The board shall keep a record of its proceedings.

J. In conducting the business of the board:

1. The board may not act if more than one position is vacant.
2. One or more members or a hearing officer of the board may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board.

1997

42-1253. Appeal to state board of tax appeals; definition

A. Except as provided in section 42-1254, Subsection C, a person aggrieved by a final decision or order of the department under section 42-1251, Article 3 of this chapter or section 42-2065, 42-2068, 42-2069, 42-2074, 42-2201 or 42-2202 may appeal to the state board of tax appeals by filing a notice of appeal in writing within thirty days after the decision or order from which the appeal is taken has become final.

B. The board shall take testimony and examine documentary evidence as necessary to determine the appeal, all pursuant to administrative rules to govern such appeals.

C. On determining the appeal the board shall issue a decision consistent with its determination. The board's decision is final on the expiration of thirty days from the date when notice of its action is received by the taxpayer, unless either the department or the taxpayer brings an action in tax court as provided in section 42-1254.

D. If the amount in any single dispute before the board is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by:

1. A certified public accountant.
2. A person who is enrolled to practice before the United States internal revenue service and is recognized as an enrolled agent.
3. Any other person who is authorized by the taxpayer under a properly executed power of attorney and who was previously or is currently retained by the taxpayer for purposes other than representation in a hearing before the board.

E. If a practitioner who represents a taxpayer before the board pursuant to Subsection D of this section fails to comply with an order or rule of the board, the board may impose sanctions including one or both of the following:

1. Order that the stipulation of the facts proposed by the department of revenue be accepted.
2. Suspend the practitioner from further practice before the board either for a specific period of time or until the board removes the suspension.

F. For the purposes of this section, "practitioner" means a person, other than a party, who files documents with or appears before the board in connection with a matter before the board.

2001

(See Arizona Annotation Service)

42-1254. Appeal to tax court

A. The department or a taxpayer aggrieved by a decision of the state board of tax appeals may bring an action in tax court.

B. If the department is aggrieved by a decision of the board and the amount in dispute is less than five thousand dollars, the department may not bring an action in tax court unless the department determines that the decision of the board involves an issue of substantial significance to the state. A taxpayer aggrieved by a determination of the department that an issue is of substantial significance to the state may file a motion with the tax court to dismiss the action brought by the department on the grounds that the determination constitutes an abuse of discretion.

C. Except in the case of individual income tax cases in which the amount in dispute is less than five thousand dollars, a person who is aggrieved by a final decision or order of the department under section 42-1251 or article 3 of this chapter may, in lieu of appealing to the state board of tax appeals under section 42-1253, bring an action in tax court by filing a notice of appeal in writing within thirty days after the decision or order from which the appeal is taken has become final.

D. Any appeal that is taken to tax court pursuant to this section is subject to the following provisions:

1. No injunction, writ of mandamus or other legal or equitable process may issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest.

2. The action shall not begin more than thirty days after the order or decision of the board or department becomes final. Failure to bring the action within thirty days after the order or decision of the board or department becomes final constitutes a waiver of the protest and a waiver of all claims against this state arising from or based on the illegality in the tax, penalties and interest at issue, except that within the time limits set forth in section 42-1106, a taxpayer who fails to bring an action within thirty days may pay the tax under protest stating the grounds of objection to the legality of the

tax and then file a claim for refund of the taxes paid. The refund claim shall then be governed by section 42-1119 and this section.

3. The tax court shall hear and determine the appeal as a trial de novo.

4. The department has the burden of proof by a preponderance of the evidence in any court proceeding regarding any factual issue relevant to ascertaining the tax liability of a taxpayer. This paragraph does not abrogate any provision of this title or title 43 that requires a taxpayer to substantiate an item of income or expense. This paragraph applies to a factual issue if a preponderance of the evidence demonstrates that:

(a) The taxpayer asserts a reasonable dispute regarding the issue.

(b) The taxpayer has fully cooperated with the department regarding the issue including providing, within a reasonable period of time, access to and inspection of all witnesses, information and documents within the taxpayer's control, as reasonably requested by the department.

(c) The taxpayer has kept and maintained records as required by this title, title 43 or the department.

5. Either party to such action may appeal to the court of appeals or supreme court as provided by law.

6. If a final judgment is rendered in favor of the taxpayer in the action, the amount or such portion of the judgment as may be necessary shall first be credited to any taxes, penalties and interest due from the plaintiff taxpayer, and the amount of the balance remaining due the taxpayer shall be certified by the department of revenue to the department of administration, with a certified copy of the final judgment and a claim for refund authenticated by the department of revenue. On receipt, the department of administration shall draw a warrant payable to the taxpayer in an amount equal to the amount of the tax found by the judgment to be illegal, less the amount of any taxes, penalties and interest due from the taxpayer. The department of administration shall draw a separate warrant payable to the taxpayer in an amount equal to the interest and other costs recovered against the department of revenue by the judgment, which shall be paid from the appropriate tax account.

2000

(See Arizona Annotation Service)

CHAPTER 2

TAXPAYER PROTECTION AND SERVICES

ARTICLE 1. CONFIDENTIALITY OF TAXPAYER INFORMATION

Section	
42-2001.	Definitions.
42-2002.	Disclosure of confidential information prohibited.
42-2003.	Authorized disclosure of confidential information.
42-2004.	Violation; classification.

ARTICLE 2. TAXPAYERS' BILL OF RIGHTS

42-2051.	Arizona taxpayer assistance office; taxpayer problem resolution officer; duties.
42-2052.	Erroneous advice or misleading statements by the department; abatement of penalties and interest; definitions.
42-2053.	Procedures involving taxpayer interviews.
42-2054.	Disclosure of taxpayer information.
42-2055.	Taxpayer assistance orders.
42-2056.	Closing agreements in cases of extensive taxpayer misunderstanding or misapplication; attorney general approval; rules.
42-2057.	Agreement for installment payments of tax.
42-2058.	Basis for evaluating employee performance.
42-2059.	No additional audits or proposed assessments; exceptions.

TITLE 16. TAX APPEALS

CHAPTER 3. STATE BOARD OF TAX APPEALS
LUXURY, TRANSACTION PRIVILEGE (SALES), USE, ESTATE, INCOME

(Authority: A.R.S. § 42-141 et seq.)

ARTICLE 1. TAX APPEAL PROCEDURES

Section

R16-3-101.	Definitions
R16-3-102.	Notice of Appeal
R16-3-103.	Incomplete Notice of Appeal
R16-3-104.	Memoranda, Waivers, and Supporting Authorities
R16-3-105.	Stipulation or Statements of Fact
R16-3-106.	Dismissal, Withdrawal, or Suspension of Appeal
R16-3-107.	Request for Hearing
R16-3-108.	Hearing Procedure
R16-3-109.	Evidence Produced at the Hearing
R16-3-110.	Official Notice
R16-3-111.	Subpoena
R16-3-112.	Repealed
R16-3-113.	Transcripts and Records
R16-3-114.	Decision or Order
R16-3-115.	Rehearing or Review of Decision or Order
R16-3-116.	Renumbered
R16-3-117.	Repealed
R16-3-118.	Burden of Proof
R16-3-119.	Repealed
R16-3-120.	Repealed
R16-3-121.	Renumbered
R16-3-122.	Renumbered
R16-3-123.	Renumbered
R16-3-124.	Renumbered
R16-3-125.	Renumbered
R16-3-126.	Renumbered

ARTICLE 1. TAX APPEAL PROCEDURES

R16-3-101. Definitions

For purposes of this Article:

1. "Appellant," unless otherwise noted, means a taxpayer or the representative of a taxpayer, or other person or entity directly interested who is legally entitled to initiate proceedings before the Board.
2. "Board" means the State Board of Tax Appeals.
3. "Clerk" means the Clerk appointed by the Board to carry out the duties established by A.R.S. § 42-1252.
4. "Commission" means the Municipal Tax Code Commission.
5. "Day" means a calendar day. If the last day for filing a document under the provisions of this Article falls on a Saturday, Sunday, or legal holiday, the document is considered timely if filed on the following business day.
6. "Department" means the Arizona Department of Revenue.
7. "Hearing Officer" means a person appointed by the Board to take oral testimony and other evidence, make recommendations, and carry out the duties of the Board established by A.R.S. § 42-1252.
8. "Memorandum" means a document that supports a party's position.
9. "Notice of appeal" means a written request for correction or redetermination, including all applicable attachments.
10. "Notice of determination" means a written notification of a final decision or order issued by the Department or any other governmental entity from which an appeal to the Board may be taken.

11. "OAH" means Office of Administrative Hearings as established by A.R.S. § 41-1092.01.
12. "Quorum" means two members of the Board.
13. "Supporting authorities" means cases and authorities cited and relied on by a party.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1).
Amended effective January 7, 1977 (Supp. 77-1).
Amended effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-102. Notice of Appeal

- A. The Appellant shall sign the notice of appeal and mail or deliver the original and six copies to the Board's office in Phoenix, Arizona. The Board shall consider a notice of appeal received by mail filed on the date shown by its postmark. In the absence of a legible postmark, the Board shall determine whether an appeal was timely filed.
- B. The Appellant shall legibly type, write, or print the notice of appeal and include the following information:
 1. The Appellant's name, address, and telephone number. If there is a difference between the name on the notice of determination and the name on the notice of appeal, the notice of appeal shall contain an explanation of the difference;
 2. The amount of money involved in the Department's determination, the type of tax, the year or other period for which the determination was made, and, if different from the determination, the approximate amount of money at issue in the appeal;
 3. A statement of issues involved in the appeal;
 4. A statement of errors the Appellant alleges the Department committed in the determination;
 5. The relief sought; and
 6. Whether a hearing is requested. The Appellant may waive a previously requested hearing within 10 days after the due date of the reply memorandum.
- C. The Appellant shall file six copies of the notice of determination and any findings of fact or conclusions of law issued by the Department or the OAH with the notice of appeal.
- D. The Appellant shall file the notice of appeal not more than 30 days after the final decision or order of the Department or the OAH becomes final.
- E. In addition to the requirements in subsections (A) through (D), a notice of appeal regarding reimbursement for fees or other costs shall include six copies of the following:
 1. The application that was submitted to the Department for reimbursement of fees or other costs.
 2. Documentation of payment of fees or other costs.
- F. If the notice of appeal is filed by a person aggrieved by an order or decision of the Municipal Tax Code Commission, the Appellant shall file a signed notice of appeal within 30 days after receiving the Commission's notice of the order or decision. The notice of appeal shall include the following information:
 1. The name and address of each municipality;
 2. The Appellant's name, address, and telephone number;
 3. The applicable tax rate of each municipality;
 4. A statement of issues involved in the appeal;

5. The relief sought; and
 6. Whether a hearing is requested.
- G.** The Appellant shall submit six copies of any municipal ordinance involved in the appeal.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1).
Amended effective January 7, 1977 (Supp. 77-1).
Amended effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-103. Incomplete Notice of Appeal

- A.** If the Appellant files a timely notice of appeal that is incomplete, the Clerk shall grant the Appellant 15 days to perfect the appeal.
- B.** Upon written request, the Clerk shall grant the Appellant a reasonable extension of time to comply with the provisions of this Section for good cause shown.
- C.** The Board may dismiss an appeal or exclude supplemental information for the Appellant's failure to act in a timely manner.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1).
Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-103 renumbered and amended as Section R16-3-111, former Section R16-3-105 renumbered and amended as Section R16-3-103 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-104. Memoranda, Waivers, and Supporting Authorities

- A.** Each party shall file an original and six copies of any memoranda filed with the Board. The Board shall provide a copy to the opposing party.
- B.** A party may waive in writing the right to file a memorandum any time before the memorandum is due.
- C.** The Appellant shall file a memorandum of not more than 15 pages that addresses the facts and law in support of the appeal within 20 days after filing the notice of appeal.
- D.** The Department shall file a response memorandum of not more than 15 pages within 20 days after receiving the Appellant's memorandum or waiver.
- E.** The Appellant may file a reply memorandum of not more than 10 pages within 15 days after receiving the Department's memorandum. The Appellant's reply memorandum shall only address the issues of law or fact raised in the Department's memorandum.
- F.** Each party shall file six copies of cited supporting authorities at the time the party files a memorandum.
- G.** Upon written request, the Board may grant a reasonable extension of time for filing a memoranda upon good cause shown.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1).
Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-104 renumbered and amended as Section R16-3-112, former Sections R16-3-106 and R16-3-107 renumbered and amended as Section R16-3-104 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-105. Stipulation or Statements of Fact

At the Board's request, the parties shall file a stipulation or separate statements of fact with any supporting affidavits or exhibits, listing

the facts upon which they agree, the facts that are in dispute, and the reasons for the dispute. If there are no facts in dispute, this should be stated in the stipulation or statements.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1).
Former Section R16-2-105 repealed, new Section R16-3-105 adopted effective January 7, 1977 (Supp. 77-1).
Former Section R16-3-105 renumbered and amended as Section R16-3-103, former Section R16-3-108 renumbered and amended as Section R16-3-105 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-106. Dismissal, Withdrawal, or Suspension of Appeal

- A.** If the Board lacks jurisdiction regarding an appeal, the Board shall dismiss the appeal on its own motion or on motion by the Department.
- B.** The Appellant may withdraw an appeal upon written notification to the Board or by the parties' written stipulation at any time before the Board issues its decision.
- C.** The Board may suspend proceedings for a reasonable period of time at the written request of either party, the written stipulation of the parties, or its own discretion.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1).
Former Section R16-3-106 repealed, new Section R16-3-106 adopted effective January 7, 1977 (Supp. 77-1).
Former Section R16-3-106 renumbered and amended as Section R16-3-104, former Section R16-3-109 renumbered and amended as Section R16-3-106 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-107. Request for Hearing

- A.** The Board shall schedule a hearing at the written request of either party. Either party may waive appearance, in writing, at least 10 days before the hearing.
- B.** A hearing officer or one or more members of the Board shall hold the hearing, taking testimony and other evidence.
- C.** The Board shall send a written notice to the parties of the date, time, and location of the hearing at least 20 days before the hearing. The Board shall ordinarily schedule one hour hearings. Upon written request, and after consideration of the hearing schedule, the Board may grant a party additional time for the hearing if the request is filed with the Clerk within 10 days after the due date of the reply memorandum.
- D.** The Board may postpone, continue, or cancel a hearing for good cause upon the written request of either party if the request is submitted at least 10 days before the hearing.
- E.** If a hearing is not requested, the Board shall consider the appeal submitted for decision based on the record.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1).
Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-107 renumbered and amended as Section R16-3-104, former Section R16-3-110 renumbered and amended as Section R16-3-107 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-108. Hearing Procedure

- A.** A hearing shall ordinarily proceed in the following manner:
 1. The Appellant may make an opening statement.

2. The Department may make an opening statement or reserve its opening statement until the close of the Appellant's case.
 3. The Appellant shall state its position and present its arguments and evidence.
 4. The Department may make a previously-reserved opening statement, state its position, and present its arguments and evidence.
 5. The Appellant may make a closing statement, presenting final arguments.
 6. The Department may make a closing statement, presenting final arguments.
 7. The Appellant may reply to the Department's closing statement or final arguments.
- B.** The Board may direct a party to submit an additional memorandum or information within a reasonable period of time. The Board shall grant the opposing party a reasonable period of time to respond to the additional memorandum or information.
- C.** The Board may recess or continue a hearing for good cause.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Former Section R16-3-108 repealed, new Section R16-3-108 adopted effective January 7, 1977 (Supp. 77-1). Former Section R16-3-108 renumbered and amended as Section R16-3-105, former Section R16-3-124 renumbered and amended as Section R16-3-108 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-109. Evidence Produced at the Hearing

- A.** The Board shall accept oral evidence only upon oath or affirmation.
- B.** Each party may call and examine witnesses, introduce exhibits, and cross-examine witnesses on any matter relevant to the appeal. The presiding officer at the hearing may call a party, or any other person who is present, to testify under oath or affirmation. The presiding officer and any member of the Board or its staff may question witnesses.
- C.** The Board may admit any relevant evidence, including affidavits and forms of hearsay evidence. The Board shall be liberal in admitting evidence but shall consider objections to the admission and comments on the weakness of evidence in assigning weight to the evidence.
- D.** The Board may admit carbon copies, photocopies, or copies made by similar procedures in place of original documents upon a showing of authenticity and proper foundation.
- E.** A party may substitute an exact legible copy for an exhibit upon written request if the request is submitted to the Board within 10 days after the hearing.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-109 renumbered and amended as Section R16-3-106, former Section R16-3-114 renumbered and amended as Section R16-3-109 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-110. Official Notice

- A.** The Board may take official notice of the following without the production of additional evidence:
1. Records maintained by the Board.

2. Tax returns filed with the Department for or on behalf of the Appellant or any affiliated company and related records on file with the Department.
 3. Any fact that may be judicially noticed by the courts of this state.
- B.** The parties may, refute any matters officially noticed at any time before the Board's decision or order becomes final.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Former Section R16-3-110 repealed, new Section R16-3-110 adopted effective January 7, 1977 (Supp. 77-1). Former Section R16-3-110 renumbered and amended as Section R16-3-107, former Section R16-3-115 renumbered and amended as Section R16-3-110 effective August 27, 1980 (Supp. 80-4). Former Section R16-3-110 repealed; new Section R16-3-110 renumbered from R16-3-116 and amended by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-111. Subpoena

The Board may, at its discretion or upon written request submitted by a party at least 15 days before a hearing, issue subpoenas for the attendance of witnesses or the production of books, records, documents, or other evidence that is not confidential or privileged. A subpoena shall be served on behalf of and at the expense of the party requesting its issuance.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-111 renumbered and amended as Section R16-3-114, former Section R16-3-103 renumbered and amended as Section R16-3-111 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-112. Repealed**Historical Note**

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-112 repealed, former Section R16-3-104 renumbered and amended as Section R16-3-112 effective August 27, 1980 (Supp. 80-4). Section repealed by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-113. Transcripts and Records

- A.** The hearing before the Board shall be transcribed upon written request submitted by a party to the Board at least five days before the hearing. The transcript shall be prepared at the expense of the requesting party.
- B.** A person shall not remove the records of the Board from its office for use as evidence or for other purposes. The Board shall provide certified copies of records as required under A.R.S. Title 39, Chapter 1.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-113 amended and former Section R16-3-123 renumbered and amended as Section R16-3-113 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-114. Decision or Order

- A. If a quorum of the Board agrees on a decision or order, the Board shall issue the decision or order.
- B. The Board shall issue all decisions or orders in writing and shall include separately-stated findings of fact and conclusions of law.
- C. The Board shall mail, return receipt requested, or hand deliver a decision or order to the parties.
- D. Except in the case of a tax dispute between municipalities, a decision or order is final 30 days after the Appellant receives it unless an aggrieved party files a motion for rehearing or review within 15 days after receipt.
- E. In a dispute between municipalities, a decision or order is final on the date of receipt by the party. An aggrieved party has 30 days to appeal the decision or order of dismissal to the tax court.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-114 renumbered and amended as Section R16-3-109, former Section R16-3-111 renumbered and amended as Section R16-3-114 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-115. Rehearing or Review of Decision or Order

- A. The Board may grant a rehearing or review of a decision or order based on a motion by an aggrieved party, or at its own discretion, for any of the following reasons:
 1. The findings of fact, conclusions of law, order, or decision are not supported by the evidence or are contrary to law.
 2. The party seeking review was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct of the prevailing party.
 3. Accident or surprise which could not have been prevented by ordinary prudence.
 4. Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the hearing.
 5. Error in admission or rejection of evidence, or other errors of law occurring at the hearing or during the progress of the action.
 6. The decision is the result of passion, bias or prejudice.
- B. Enforcement of a decision of the Board is stayed pending a determination on the motion for rehearing or review. If a motion for rehearing or review is denied, the stay is automatically lifted. The decision becomes final 30 days after the Appellant is notified of the Board's action on the motion for rehearing or review.
- C. The aggrieved party shall ensure that the motion for a rehearing or review is in writing and specifies the grounds upon which the motion is based. The aggrieved party may amend the motion at any time before the Board rules on it.
- D. If the Board desires a response to the motion for rehearing or review from the opposing party, the Board shall notify the opposing party in writing and allow a reasonable period of time for preparation and filing of the response.
- E. After granting a motion for rehearing or review, the Board may take additional testimony, amend findings of fact or conclusions of law, or make new findings or conclusions, and issue a new decision, depending on the particular circumstances of the appeal.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1).

Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-115 renumbered and amended as Section R16-3-110, former Sections R16-3-116 and R16-3-117 renumbered and amended as Section R16-3-115 effective August 27, 1980 (Supp. 80-4). Former Section R16-3-115 repealed; new Section R16-3-115 renumbered from R16-3-121 and amended by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-116. Renumbered**Historical Note**

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-116 renumbered and amended as Section R16-3-115, former Section R16-3-118 renumbered and amended as Section R16-3-116 effective August 27, 1980 (Supp. 80-4). Section R16-3-116 renumbered to R16-3-110 by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-117. Repealed**Historical Note**

Adopted effective December 30, 1974 (Supp. 75-1). Former Section R16-3-117 renumbered and amended as Section R16-3-115, former Section R16-3-119 renumbered and amended as R16-3-117 effective August 27, 1980 (Supp. 80-4). Section repealed by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

~~R16-3-118. Burden of Proof~~

~~The burden of proof will be upon the appellant as to all issues of fact. In any proceeding involving the issue of whether or not the appellant has been guilty of fraud with intent to evade tax, the burden of proof will be upon the Department.~~

Historical Note

~~Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-118 renumbered and amended as Section R16-3-116, former Section R16-3-120 renumbered and amended as Section R16-3-118 effective August 27, 1980 (Supp. 80-4).~~

R16-3-119. Repealed**Historical Note**

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-119 renumbered and amended as Section R16-3-117, former Sections R16-3-121 and R16-3-122 renumbered and amended as Section R16-3-119 effective August 27, 1980 (Supp. 80-4). Section repealed by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-120. Repealed**Historical Note**

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-120 renumbered and amended as Section R16-3-118, former Section R16-3-125 renumbered and amended as Section R16-3-120 effective August 27, 1980 (Supp. 80-4). Section repealed by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-121. Renumbered**Historical Note**

Adopted effective December 30, 1974 (Supp. 75-1).

REPEALED
EFF.
8-31-02

State Board of Tax Appeals - Luxury, Transaction Privilege (Sales), Use, Estate, Income

Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-121 renumbered and amended as Section R16-3-119, former Section R16-3-126 renumbered and amended as Section R16-3-121 effective August 27, 1980 (Supp. 80-4). Section renumbered to R16-3-115 by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-122. Renumbered**Historical Note**

Adopted effective December 24, 1974 (Supp. 75-1).
Amended effective January 7, 1977 (Supp. 77-1).
Renumbered and amended as Section R16-3-119 effective August 27, 1980 (Supp. 80-4).

R16-3-123. Renumbered**Historical Note**

Adopted effective December 24, 1974 (Supp. 75-1).
Amended effective January 7, 1977 (Supp. 77-1).
Renumbered and amended as Section R16-3-113 effective August 27, 1980 (Supp. 80-4).

R16-3-124. Renumbered**Historical Note**

Adopted effective December 24, 1974 (Supp. 75-1).
Amended effective January 7, 1977 (Supp. 77-1).
Renumbered and amended as Section R16-3-108 effective August 27, 1980 (Supp. 80-4).

R16-3-125. Renumbered**Historical Note**

Adopted effective December 24, 1974 (Supp. 75-1).
Amended effective January 7, 1977 (Supp. 77-1).
Renumbered and amended as Section R16-3-120 effective August 27, 1980 (Supp. 80-4).

R16-3-126. Renumbered**Historical Note**

Adopted effective January 7, 1977 (Supp. 77-1). Renumbered and amended as Section R16-3-121 effective August 27, 1980 (Supp. 80-4).

Budget Tables

BUDGET AND PERFORMANCE MEASURES

BUDGET

	FY2003	FY2003	FY2004	FY2004	FY2005
	<u>Budget</u>	<u>Actual</u> <u>Expenditure</u>	<u>Budget</u>	<u>Actual</u> <u>Expenditure</u>	<u>Budget</u>
FTE	4.0	4.0	4.0	4.0	4.0
Personal Services	187.7	166.4	192.7	165.7	195.6
ERE	37.5	32.8	35.2	26.8	35.3
Prof. & Outside Services	.9	.5	.9	.5	.9
Travel-in-State	.9	.5	.9	1.3	.9
Other Op. Exp.	41.5	40.1	43.4	43.9	46.0
Equipment	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
Total	268.5	240.3	273.10	238.2	278.7

PERFORMANCE MEASURES

	FY2003 <u>Actual</u>	FY2004 <u>Actual</u>	FY2005 <u>Estimate</u>
Caseload Processing (and number of issues)	138(3.15)	121(215)	150(300)
Number of Tax Appeals resolved	39	103	80
Number backlogged appeals requiring written decision	3	0	10
Percentage of rulings upheld in courts	90	90	90
Number of months to process appeal	5.5	4.5	4.5

Strategic Plan

TXA 0.0

AGENCY SUMMARY
STATE BOARD OF TAX APPEALS

Director: Ruben M. Medina, Executive Director
 Phone: (602) 364-1102
 A.R.S. § 42-1252

Mission:

To provide an independent appeals process for taxpayers with adverse decisions from the Department of Revenue and Office of Administrative Hearings, and to resolve jurisdictional disputes between municipalities regarding the imposition of transaction privilege and use taxes.

Description:

The State Board of Tax Appeals hears and decides appeals filed by taxpayers and Arizona municipalities concerning income, transaction privilege, use, luxury, and estate taxes.

Strategic Issues

Issue 1 *Continue to expedite tax appeals in a timely manner to prevent any delays in the appeals process.*

The Board is current in handling tax appeals. Maintaining the appeals process at the current level continues to be the Board's priority. The issuance of timely decisions and the timely publication of such decisions benefits all parties involved as well as tax practitioners. Unforeseen legislative changes and court decisions may increase the Board's caseload which will again create delays and backlogs in the appeals process. For example, in FY 2004 - 2005 the legislation relating to the appropriation of \$6,537,000 and 153 FTE to the Revenue Department for the revenue generating program will result in more audits, protests and tax appeals to the Board. Furthermore, the Board's caseload is based on appeals filed from decisions of the Department of Revenue and the Office of Administrative Hearings, large increases in the number of decisions issued by these State agencies may also create delays and backlogs in the appeals process.

Goal 1 To receive and process tax appeals expeditiously to prevent any delays in the appeals process.

- Objective 1**
- 2004 Obj: To maintain the current timely processing of appeals and issuance of written decisions within 30 days of Board action.
 - 2005 Obj: To maintain the current timely processing of appeals and issuance of written decisions within 30 days of Board action.
 - 2006 Obj: To maintain the current timely processing of appeals and issuance of written decisions within 30 days of Board action.
 - 2007 Obj: To maintain the current timely processing of appeals and issuance of written decisions within 30 days of Board action.

Performance Measures:

ML	Budget	Type		FY2003 Actual	FY2004 Estimate	FY 2004 Actual	FY2005 Estimate	FY 2006 Estimate	FY2007 Estimate	
1	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	IP	Caseload processing (and number of issues).	138(315)	200(400)	121(215)	150(300)	175(350)	200(400)
2	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	OP	Number of tax appeals resolved.	39	80	103	80	100	110
3	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	EF	Number backlogged requiring written decision.	3	10	0	10	15	20
4	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	EF	Number of months to process appeal.	6.5	6.5	4.5	4.5	5.5	5.5

BOTA Meeting Minutes

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD August 27, 2002**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting and hearings at 8:45 a.m., on August 27, 2002, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board

Janice C. Washington, Chairperson
William L. Raby, Member
Stephen P. Linzer, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Ms. Washington, Chairperson. Ms. Washington called for any corrections, deletions, additions to the minutes of June 11, 2002. It was moved by Mr. Raby and seconded that the minutes stand approved as written. The vote was 3-0-0 in favor. It was so ordered.

The Board then considered the following:

APPROVAL OF DECISION:

1. Kay Remein – 1861-01-I - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Mr. Raby and seconded that the decision be approved as written. The vote was 3-0-0. It was so ordered.

FOR DECISION:

2. Pacific Industrial Co., Inc. – 1866-01-S
Oral hearing held on this date. To be considered for decision.

The appeal involved a transaction privilege tax assessment issued for the audit period March 1, 1994 through April 30, 1998, plus penalties and interest.

Discussion was held by the Board and the matter was deferred for final decision.

3. Claudio D. Corral – 1871-02-S
Oral hearing held on this date. To be considered for decision.

The appeal involved the Appellant's claim for refunds based on amended transaction privilege tax returns for July, August, October, November and December 1992.

Discussion was held by the Board and the matter was deferred for final decision

OTHER BUSINESS:

- Arizona Tax Conference – October 30, 31 and November 1, 2002
Hyatt Regency, Phoenix

- Budget for FY 2004 & FY 2005

There being no further business to come before the Board, the meeting was adjourned.

Dated this 27th day of August, 2002.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Croswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD September 2, 2003**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting and hearing commencing at 8:45 a.m., on September 2, 2003, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board

William L. Raby, Chairman
Jacalyn A. Askin, Member
Janice C. Washington, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of July 15, 2003. It was moved by Ms. Washington and seconded that the minutes stand approved as written. The vote was 3-0-0 in favor. It was so ordered.

(The regular meeting was recessed until the conclusion of the hearing scheduled for 9:00 a.m.)

The Board reconvened the meeting at 9:45 a.m., and then considered the following:

APPROVAL OF DECISIONS:

1. Paula Lamfers - 1899-03-I - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 3-0-0. It was so ordered.

2. Richard and Charlotte Broderick - 1894-03-I - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 3-0-0. It was so ordered.

3. Warren Bechhoefer - 1895-03-I - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 3-0-0. It was so ordered.

4. Michael R. Schaefer dba Arcadia Lodge - 1891-03-S - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 3-0-0. It was so ordered.

MOTION FOR DISMISSAL:

5. Sharon Eason – 1898-03-I

The Board considered Appellee's Motion to Dismiss based on Appellant's failure to file supplemental information requested by the Board.

The Board, having considered the motion, it was moved by Ms. Washington and seconded that the motion be granted. The vote was 3-0-0. It was so ordered.

MOTION TO CONTINUE SUSPENSION OF PROCEEDINGS:

6. Excell Agent Services, L.L.C., Comdisco, Inc., Golden Enterprises, Inc., Voltdelta Resources Inc. – 1900-03-S/U(4)

The Board considered the Appellants' request for suspension of proceedings until November 25, 2003. The reason for the request was to allow additional time to determine the factual issue involving the amount of the requested refunds.

The Board having discussed the request, it was moved by Ms. Washington and seconded that the Appellants be given notice that their opening memorandum addressing the legal issues would be due within 20 days. The vote was 3-0-0. It was so ordered.

FOR DECISIONS:

7. Richard Birch – 1903-03-I

Oral hearing had been waived by the parties. To be considered for decision.

The appeal involved income tax assessments issued for the tax years 1998 and 1999, plus penalties and interest.

Discussion was held by the Board and the matter was deferred for final decision.

8. Marillyn L. Baehr – 1902-03-I

Oral hearing had been waived by the parties. To be considered for decision.

The appeal involved denial of a claim for refund for the tax year 1997.

Discussion was held by the Board and the matter was deferred for final decision.

9. Douglas and Jamie Roessing – 1889-03-AFTC

Oral hearing was held on May 6, 2003. To be considered for decision.

The appeal involved the Department's denial of Appellants' claim for an alternative fuel tax credit for the tax year 2000. The Board had taken the matter under advisement pending the Department's review of additional information provided by the Appellants.

Discussion was held by the Board and the matter was deferred for final decision.

10. Shukriyyah E. Canada – 1904-03-I

Oral hearing was held at 9:00 a.m. on this date. To be considered for decision.

The appeal involved an income tax assessment issued for the tax years 1998, 1999, 2000, and 2001, plus interest.

Discussion was held by the Board and the matter was deferred for final decision.

REQUEST FOR CONSOLIDATION OF APPEALS:

11. Appeals of Manuel and Mary Lou Torres, Docket No. 1907-03-TP, Victor E. and Mary E. Lowman, Docket No. 1906-03-TP, and Robert L. and Mary F. Yniguez, Docket No. 1908-03-TP.

These appeals involved Arizona government employees who paid Arizona income taxes on Arizona government pensions for the years 1997 through 2002. The taxpayers are claiming refunds on the taxes paid due to the enactment of Chap. 312, Laws of 1989, that repealed the tax exemption, except for the allowance of a subtraction of up to \$2,500 of retirement benefits paid. The rationale for the refund would be that all persons employed by the state prior to 1989 were employed pursuant to an implied contract that their retirement benefits would be free of Arizona income tax.

The Board discussed whether a conflict of interest existed for Mr. Raby and Mrs. Askin in this matter. Under the statutes relating to the Board and under the Board's rule, a quorum is required for the Board to take any action. Both Mr. Raby and Mrs. Askin were employed in positions covered by the Arizona State Retirement System prior to 1989. The Board reviewed and discussed the provisions of A.R.S. § 38-503 and 38-505 that addresses conflict of interest. A.R.S. § 38-505B. specifically provides for the authority of a public officer to act if they make known their substantial interests in the official records of the agency.

Based on the provisions in A.R.S. 38-505B, Mr. Raby has orally made it known in the record that he has a substantial interest. Mrs. Askin made known her substantial interest in writing and such written notification is made part of the minutes of this meeting.

Based on the above actions, the Board approved the Appellants' request for consolidation of the appeals.

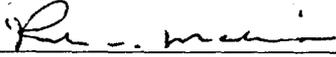
The Board further directed the Chief Clerk to request an attorney general's opinion on the question whether they have the authority to act under A.R.S § 38-505B.

OTHER BUSINESS:

- 1) Submission of Budget for FY 2005 – The Chief Clerk reported on the budget submission and informed the Board that the Budget was reduced by \$30,000 over the previous year appropriation. The only area that funds would be available if further reductions are made would be in vacancy savings.
- 2) Submission of 5-Year Strategic Plan – The strategic plan submission was briefly reviewed by the Chief Clerk.

There being no further business to come before the Board, the meeting was adjourned.

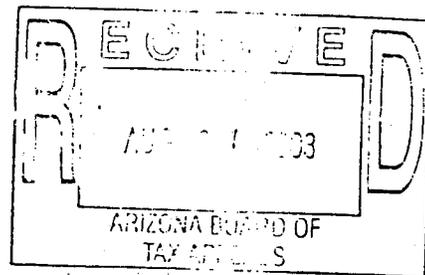
Dated this 2nd day of September, 2003.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Crosswell
Tax Board Secretary

5781 N Calle Grandeza
Tucson, AZ 85718
August 20, 2003



Mr. Ruben M. Medina, Chief Clerk
Arizona Board of Tax Appeals
100 N 15th Avenue, Suite 140
Phoenix, AZ 85007

Dear Ruben:

I have reviewed the appeal documents submitted of Manual and Mary Lou Torres, Victor E. and Mary E. Lowman and Robert L. and Mary F. Yniquez. My understanding of their claim is that the change in the Arizona Revised Statutes in 1989 that replaced the total exemption of retired state employees' retirement in the course of their of employment. Further, they are making this claim on behalf of the "class" of all employees so affected, e.g., anyone employed under the Arizona State Retirement System prior to the change in statute.

I have worked for public agencies that are Arizona State Retirement System employers since 1988. Thus, I have a conflict of interest in assessing the merits of this issue and the related arguments. I, therefore, must abstain from deliberations related to these appeals.

Thank you for giving me ample time to review this matter. I will see you on the second of September to deliberate other appeals on that agenda.

Sincerely,

Jacalyn A. Askin

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD October 8, 2002**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting at 9:00 a.m., on October 8, 2002, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board

Janice C. Washington, Chairperson
William L. Raby, Member
Stephen P. Linzer, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Ms. Washington, Chairperson. Ms. Washington called for any corrections, deletions, additions to the minutes of August 27, 2002. It was moved by Mr. Raby and seconded that the minutes stand approved as written. The vote was 3-0-0 in favor. It was so ordered.

The Board then considered the following:

APPROVAL OF DECISIONS:

1. Claudio D. Corral - 1871-02-S - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Mr. Raby and seconded that the decision be approved as written. The vote was 3-0-0. It was so ordered.

2. Pacific Industrial Co., Inc. - 1866-02-S - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Mr. Raby and seconded that the decision be approved as written. The vote was 3-0-0. It was so ordered

FOR DECISION:

3. J. Ernest Fresques - 1875-02-I
Oral hearing waived by parties. To be considered for decision.

The appeal involved an income tax assessment issued for the tax years 1994 and 1995, plus penalties and interest.

Discussion was held by the Board and the matter was deferred for final decision.

4. Southwestern Dakota – 1872-02-S
Oral hearing waived by the parties. To be considered for decision.

The appeal involved a transaction privilege tax assessment issued for the audit period January 1997 through September 2000, plus penalties and interest.

Discussion was held by the Board and the matter was deferred for final decision.

FOR DISCUSSION:

Federal Retiree Appeals. Discussion was held on these matters to determine how to proceed with these appeals. The Board directed the Chief Clerk to schedule a two-hour hearing regarding the appeal of Evelyn Koeck, Docket No. 1441-95-I.

INFORMATIONAL PURPOSES:

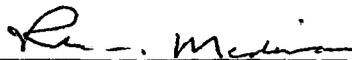
- Sun State Electric, Inc. and Troy and Peggy Porter dba Sun State Electric – 1856-01-S & 1857-01-S
These appeals were dismissed due to the Appellants having withdrawn their appeal.

OTHER BUSINESS:

- 10% Budget Reduction for FY 2003 Budget and FY 2004 & FY 2005 Budget Request – The Board was made aware of the impact of the budget reductions and that further reductions for the FY 2004 & FY 2005 Budget Request may be made due to the revenue shortages being experience.
- Arizona Tax Conference – October 30, 31 and November 1, 2002
Hyatt Regency, Phoenix

There being no further business to come before the Board, the meeting was adjourned.

Dated this 8th day of October, 2002.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Croswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD October 29, 2002**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting at 8:45 a.m., on October 29, 2002, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

<u>Board</u>	<u>Absent</u>
Janice C. Washington, Chairperson	Stephen P. Linzer, Member
William L. Raby, Member	

<u>Staff</u>	
Ruben M. Medina, Chief Clerk	Alisha L. Woodring, Hearing Officer

The meeting was called to order by Ms. Washington, Chairperson. Ms. Washington called for any corrections, deletions, additions to the minutes of October 8, 2002. It was moved by Mr. Raby and seconded that the minutes stand approved as written. The vote was 2-0-1 in favor. It was so ordered.

The Board then considered the following:

APPROVAL OF DECISIONS:

1. J. Ernest Fresques - 1875-02-I - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Mr. Raby and seconded that the decision be approved as written. The vote was 2-0-1. It was so ordered.

2. Southwestern Dakotah - 1872-02-S - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Mr. Raby and seconded that the decision be approved as written. The vote was 2-0-1. It was so ordered.

FOR DECISION:

3. Ronald L. and Audrey Stearns - 1870-02-I
Hearing was held at 9:00 a.m. on this date. To be considered for decision.

The appeal involved the Department's disallowance of a portion of a credit taken for income tax paid to other states in tax year 1998.

Discussion was held by the Board and the matter was deferred for final decision.

4. Best Laid Floors, L.L.C. – 1869-02-S

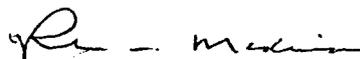
Hearing was held at 10:00 a.m. on this date. To be considered for decision.

The appeal involved a transaction privilege tax assessment issued for the audit period May 1997 through December 2000, plus penalty and interest.

Discussion was held by the Board and the matter was deferred for final decision.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 29th day of October, 2002.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Croswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD December 3, 2002**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting and hearing at 8:45 a.m., on December 3, 2002, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board

Janice C. Washington, Chairperson
William L. Raby, Member
Stephen P. Linzer, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Ms. Washington, Chairperson. Ms. Washington called for any corrections, deletions, additions to the minutes of October 29, 2002. It was moved by Mr. Raby and seconded that the minutes stand approved as written. The vote was 3-0-0 in favor. It was so ordered.

(The regular meeting was recessed until the conclusion of the hearing scheduled for 9:00 a.m.)

The Board reconvened the meeting at 11:15 a.m. and then considered the following:

APPROVAL OF DECISION:

1. Michael E. and Debra Brownfield – 1858-01-S - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Mr. Raby and seconded that the decision be approved as corrected. The vote was 3-0-0. It was so ordered.

FOR DECISIONS:

2. Orville R. and Irene Biel – 1876-02-I
Oral hearing was held on November 26, 2002. Hearing conducted by Alisha L. Woodring, Hearing Officer. To be considered for decision.

The appeal involved proposed income tax assessments issued for the tax years 1996 and 1997, plus penalties and interest.

Discussion was held by the Board and the matter was deferred for final decision.

3. David Lerner – 1879-02-I

Hearing was held on November 26, 2002. Hearing conducted by Alisha L. Woodring, Hearing Officer. To be considered for decision.

The appeal involved proposed income tax assessments issued for the tax years 1996, 1997 and 1998, plus penalties and interest.

Discussion was held by the Board and the matter was deferred for final decision.

4. Evelyn Koeck – 1441-95-I

Hearing was held at 9:00 a.m. on this date. To be considered for decision.

The appeal involved the Department's denial of refund claims of Arizona income taxes imposed upon federal pensions for the years 1985 to 1988.

Discussion was held by the Board and the matter was deferred for final decision.

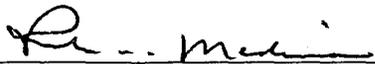
OTHER BUSINESS:

- SB 1095 Change in Return to Work Program for retirees under A.R.S. 38-766.01.

The Board was informed by the Chief Clerk that under this change in the retirement statutes, that he meets all the requirements and could now work full-time. The change in the statute requires that the retired member acknowledges that he is not entitled to accrue credited service and other benefits.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 3rd day of December, 2002.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Croswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD January 21, 2003**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting and hearing at 8:45 a.m., on January 21, 2003, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board

William L. Raby, Chairman
Thomas W. Bade, Member
Janice C. Washington, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of December 3, 2002. It was moved by Ms. Washington and seconded that the minutes stand approved as written. The vote was 2-0-1 in favor. It was so ordered.

(The regular meeting was recessed until the conclusion of the hearing scheduled for 9:00 a.m.)

The Board reconvened the meeting at 9:40 a.m. and then considered the following:

APPROVAL OF DECISIONS:

1. David Lerner – 1879-02-I - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as written. The vote was 2-0-1. It was so ordered.

2. Orville R. and Irene Biel – 1876-02-I – Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as written. The vote was 2-0-1. It was so ordered.

FOR DECISIONS:

3. Best Laid Floors, L.L.C. – 1869-02-S
Oral hearing was held on October 29, 2002. To be considered for decision.

The appeal involved transaction privilege tax assessments issued for the State of Arizona and the City of Sedona for the audit period May 1997 through December 2000, plus penalties and interest.

Discussion was held by the Board and the matter was deferred for final decision.

4. Robert Decker & Assoc. P.C. – 1878-02-AFTC
Oral hearing was held on December 17, 2002. Hearing conducted by Alisha L. Woodring, Hearing Officer. To be considered for decision

The appeal involved the Department's denial of Appellants' request for relief from the fuel usage requirements.

Discussion was held by the Board and the matter was deferred for final decision.

5. Steve Hernandez – 1880-02-I
Oral hearing was held on January 14, 2003. Hearing conducted by Alisha L. Woodring, Hearing Officer. To be considered for decision.

The appeal involved income tax assessments issued for the tax years 1996 and 1997, plus penalties and interest.

Discussion was held by the Board and the matter was deferred for final decision.

6. Linda R. Neal – 1874-02-I
Oral hearing was held on January 14, 2003. Hearing conducted by Alisha L. Woodring, Hearing Officer. To be considered for decision.

The appeal involved proposed income tax assessments issued for the tax years 1996, 1997, and 1998, plus penalties and interest.

Discussion was held by the Board and the matter was deferred for final decision.

7. Brice and Arlesa Hammond – 1887-02-AFTC
Oral hearing held on this date. To be considered for decision.

The appeal involved the Department's denial of Appellants' claim for an alternative fuel tax credit for the tax year 2000.

Discussion was held by the Board and the matter was deferred for final decision.

CONSIDER MOTION FOR REHEARING:

8. Michael and Debra Brownfield – 1858-01-S

On December 3, 2002, the Board issued its decision denying the Appellants' appeal. The decision was received on December 4, 2002 and the Appellant filed a timely Motion for Rehearing and Review on December 19, 2002. The Board considered the motion.

The Board having discussed this matter, it was moved by Janice Washington and seconded that the motion be denied and that a corrected decision be issued. The vote was 2-0-1. It was so ordered.

CONSIDERATION OF EXCEEDING PAGE LIMITATION:

9. Phoenix Newspapers, Inc. & Affiliates – 1884-

The Department had filed an objection to Appellant's request to exceed the page limit of the opening memorandum. The Appellant's memorandum was twenty-three pages in length and included ten exhibits. The Board considered the Appellant's request.

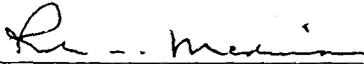
The Board having discussed the request, it was moved by Janice Washington and seconded to grant the request. The Department would be allowed additional time to file its memorandum. The vote was 3-0-0. It was so ordered.

OTHER BUSINESS:

- Pending Legislation – The Board discussed a proposed draft of a memorandum to be submitted to the legislative committee, if necessary, that will consider legislation merging the Board with another state agency.
- Budget for FY 2003 – 2004 and FY 2004 – 2005- The Board was provided with the budget recommendations of Office of Strategic Planning and Budgeting. The budget recommendations by the office of the JLBC had not been released.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 21st day of January, 2003.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Crosswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD February 11, 2003**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting and hearing at 9:00 a.m., on February 11, 2003, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board

William L. Raby, Chairman
Thomas W. Bade, Member
Janice C. Washington, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of January 21, 2003. It was moved by Ms. Washington and seconded that the minutes stand approved as written. The vote was 3-0-0 in favor. It was so ordered.

The Board then considered the following:

APPROVAL OF DECISIONS:

1. Robert Decker & Assoc. P.C. – 1878-02-AFTC
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be revised. The vote was 3-0-0. It was so ordered.

2. Steve Hernandez – 1880-02-I- Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 3-0-0. It was so ordered.

3. Linda R. Neal – 1874-02-I – Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as written. The vote was 3-0-0. It was so ordered.

FOR DECISIONS:

4. Warren and Carol Keppler – 1881-02-I & 1882-02-I
Consolidated oral hearing was held on January 21, 2003. Hearing conducted by Alisha L. Woodring, Hearing Officer. To be considered for decision.

The appeal involved income tax assessments issued for the tax years 1995, 1996, 1997, and 1998, plus interest and penalties for failure to file when due and negligence.

Discussion was held by the Board and the matter was deferred for final decision.

5. Henry and Patricia Leyva – 1873-02-I

Oral hearing to be held at 10:00 a.m. on this date. To be considered for decision after hearing is held.

The appeal involved an income tax assessment issued for the tax year 1989, plus interest.

CONSIDERATION OF MOTION TO DISMISS:

6. Alan Stang – 1888-02-I

The Appellee on January 16, 2003 filed a Motion to Dismiss for Failure to Prosecute. On January 31, 2003, Appellant filed a Response to Motion to Dismiss. The Board discussed the motion and the Board's rule R16-3-104 relating to the filing of memoranda. After the discussion, it was moved by Mr. Bade and seconded that the motion be denied. The vote was 3-0-0. It was so ordered.

FOR DISCUSSION:

7. Representation before the Board – Under Rule 31 and A.R.S. § 42-1253.

The provisions of the rule and the statute were discussed.

8. David Lerner – 1879-02-I

The Board issued its decision on January 21, 2003. The Board based on its discussion under item 7. above will issue a corrected decision.

The Appellant on February 6, 2003 filed a timely request for rehearing. The Board considered the request.

The Board, having reviewed the request for rehearing, it was moved by Ms. Washington and seconded that the request be denied. The vote was 3-0-0. It was so ordered.

9. Orville and Irene Biel – 1876-02-I

The Board on January 21, 2003 issued its decision denying the appeal. The Appellants filed correspondence regarding the decision.

The Board, having discussed the matter, directed the Chief Clerk to advise the Appellants that their recourse is to pursue this matter in the Arizona Tax Court.

(The regular meeting was recessed until the conclusion of the hearing scheduled for 10:00 a.m.)

The Board reconvened the meeting at 11:00 a.m. and then considered the following:

Item 5. Henry and Patricia Leyva – 1873-02-I

Oral hearing having been held, the matter was deferred for final decision, pending the filing of post-hearing information by the parties within 20 days.

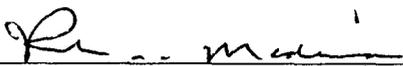
OTHER BUSINESS:

- Budget for FY 2003 – 2004 and FY 2004 – 2005 - The Joint Appropriations Committee on January 31, 2003 adopted the JLBC's Budget Recommendation.

The Board was informed that this was good news, at least for now, as many agencies budgets have not been approved or are being considered for elimination.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 18th day of February, 2003.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Crosswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD February 25, 2003**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting at 9:30 a.m., on February 25, 2003, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board
William L. Raby, Chairman
Thomas W. Bade, Member
Janice C. Washington, Member

Others
Brian Luscher, Attorney
Brian Campbell, Attorney

Staff
Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of February 11, 2003. It was moved by Mr. Bade and seconded that the minutes stand approved as written. The vote was 3-0-0 in favor. It was so ordered.

The Board then considered the following:

APPROVAL OF DECISIONS:

1. Warren and Carol Keppler – 1881-02-I & 1882-02-I
(Decision drafts prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decisions, it was moved by Mr. Bade and seconded that the decisions be approved as written. The vote was 3-0-0. It was so ordered.

2. Robert Decker & Assoc. P.C. – 1878-02-AFTC
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as revised. The vote was 3-0-0. It was so ordered.

FOR DECISIONS:

3. Ronald and Audrey Stearns – 1870-02-I
Oral hearing was held on October 29, 2003. The Appellant had filed post-hearing information as requested. To be considered for decision.

The appeal involved the Department's disallowance of a portion of a credit taken for income tax paid to other states in tax year 1998.

Discussion was held by the Board and the matter was deferred for final decision.

4. Evelyn Koeck – 1441-95-I

The Board discussed the supplemental post-hearing memoranda filed by the parties.

No action taken. pending further review.

FOR DISCUSSION:

5. Supreme Court Order Amending Rule 31

The provisions of the rule and the statute were discussed.

6. Michael R. Schaefer dba Arcadia Lodge – 1891-03-I

A Notice of Appeal and Supplement to Notice of Appeal was filed in this matter and signed by J. Michael Schaefer, as Assignee/Appellant. Discussion was held as to what procedure to be followed in order for the taxpayer to be properly represented.

The Board, having discussed the matter, directed the Clerk to advise the Appellant that he can be represented under a properly executed power of attorney.

OTHER BUSINESS:

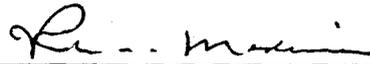
- Pending Legislation

SB 1314 Provides for appealing private taxpayer rulings among other provisions.
The Board was informed that this legislation was approved by a vote of 7-0-2 in the Senate Finance Committee.

HB 2494 Class actions prohibited in tax cases

There being no further business to come before the Board, the meeting was adjourned.

Dated this 25th day of February, 2003.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Croswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD March 11, 2003**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting and hearing at 8:45 a.m., on March 11, 2003, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board

William L. Raby, Chairman
Thomas W. Bade, Member
Janice C. Washington, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of February 25, 2003. It was moved by Ms. Washington and seconded that the minutes stand approved as written. The vote was 3-0-0 in favor. It was so ordered.

(The regular meeting was recessed until the conclusion of the hearing scheduled for 9:00 a.m.)

The Board reconvened the meeting at 10:15 a.m. and then considered the following:

APPROVAL OF DECISIONS:

1. Best Laid Floors LLC – 1869-02-S
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 3-0-0. It was so ordered.

2. Ronald and Audrey L. Stearns – 1870-02-I
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 3-0-0. It was so ordered.

FOR DISMISSAL:

3. Earl G. and Lesley Higbee – 1892-03-I
Board to discuss Appellee's Motion to Dismiss Appeal as Premature.

The Board, having discussed the motion, it was moved by Ms. Washington and seconded that the motion be granted. The vote was 3-0-0. It was so ordered.

FOR DECISIONS:

4. Ormond Builders, Inc. – 1883-02-I
Oral hearing was held on this date. To be considered for decision.

The appeal involved transaction privilege tax assessments for the State of Arizona and the City of Show low for the audit periods of October 1995 through February 2000.

Discussion was held by the Board and the matter was deferred for final decision pending the filing of post-hearing information by the Appellant.

5. Evelyn Koeck – 1441-95-I

The Board discussed matters relating to the federal retiree cases pending before the Board.

No action taken pending further review.

FOR DISCUSSION:

6. Michael R. Schaefer dba Arcadia Lodge – 1891-03-S

In this appeal, J. Michael Schaefer, who filed the appeal as Assignee/Appellant, was previously advised that he could represent the taxpayer under a properly executed power of attorney. Mr. Schaeffer filed an objection to this requirement.

Discussion was held and the Chief Clerk was directed to inform J. Michael Schaefer that he could represent the taxpayer only under a Board prescribed, properly executed power of attorney. Failure to file the power of attorney form within the time granted will be cause for dismissal of the appeal.

7. Standing Pre-hearing order proposed by William L. Raby, Chairman.

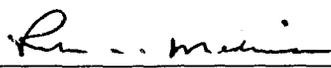
Discussion on this matter was postponed until another regular meeting.

8. Case relating to Gordon M. Robineau.

The Board again discussed all matters relating to this case. The Board concluded that a short response be sent to Mr. Robineau informing him that his matter was properly handled and the matter is considered closed.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 11th day of March, 2003.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Crosswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD April 1, 2003**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting at 9:00 a.m., on April 1, 2003, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board

William L. Raby, Chairman
Thomas W. Bade, Member
Janice C. Washington, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of March 11, 2003. It was moved by Mr. Bade and seconded that the minutes stand approved as written. The vote was 3-0-0 in favor. It was so ordered.

The Board then considered the following:

APPROVAL OF DECISIONS:

1. Brice and Arlesa Hammond – 1877-02-AFTC - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 3-0-0. It was so ordered.

CONSIDERATION FOR DISMISSAL:

2. Michael R. Schaefer dba Arcadia Lodge – 1891-03-S

The Appellant had been requested to file a Board prescribed, properly executed power of attorney. The Power of Attorney filed on March 22, 2003 was not notarized, but signed under Az.R.Civ.Proc.80(i). A copy of the rule was provided for the Board's review.

The Board considered the matter and allowed a final 15 day extension to perfect the power of attorney form. Failure to file the Board's prescribed, properly executed power of attorney will be cause for dismissal of this matter.

FOR DECISIONS:

3. Ormond Builders, Inc. – 1883-02-I
Oral hearing was held on March 11, 2003. The Appellant had filed the post-hearing information requested by the Board.

The appeal involved transaction privilege tax assessments for the State of Arizona and the City of Show Low for the audit periods of October 1995 through February 2000.

Discussion was held by the Board and the matter was deferred for final decision.

4. Span Construction & Engineering, Inc. 1885-02-S(4)

Oral hearing scheduled for this date was cancelled due to the parties having waived oral hearing.

The appeal involved transaction privilege tax assessments issued for the State of Arizona, the cities of Gilbert, Marana, and Tolleson for the audit period August 1997 through May, 2001.

Discussion was held by the Board and the matter was deferred for final decision.

FOR DISCUSSION:

5. Standing Pre-hearing Order proposed by William L. Raby, Chairman.

Discussion was held on this matter and the Board determined that the portion relating to representation and expert witnesses be sent to the parties with the hearing notice.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 1st day of April, 2003.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Crosswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD May 6, 2003**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting and hearings commencing at 8:45 a.m., on May 6, 2003, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board

William L. Raby, Chairman
Jacalyn A. Askin, Member
Janice C. Washington, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of April 1, 2003. It was moved by Ms. Washington and seconded that the minutes stand approved as written. The vote was 2-0-1 in favor. It was so ordered.

(The regular meeting was recessed until the conclusion of the hearing scheduled for 9:00 a.m.)

The Board reconvened the meeting at 9:50 a.m. and then considered the following:

APPROVAL OF DECISIONS:

1. Span Construction & Engineering, Inc. – 1885-02-S (4) - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 2-0-1. It was so ordered.

2. Ormond Builders, Inc. – 1883-02-S - Upheld
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 2-0-1. It was so ordered.

MOTION FOR DISMISSAL:

3. Marillyn Baehr – 1897-03-I

The Board considered Appellee's Motion to Dismiss Appeal as Premature.

The appeal was found to be premature as the Appellant had protested to the Director of the Department of Revenue and a decision had not been rendered by the Director.

The Board having considered the motion, it was moved by Ms Washington and seconded that the motion be granted. The vote was 2-0-1. It was so ordered.

FOR DECISIONS:

4. Alan Stang – 1886-02-I

Oral hearing waived by the parties. To be considered for decision.

The appeal involved a proposed income tax assessment issued for the tax years 1993 through 1998, plus penalties and interest.

Discussion was held by the Board and the matter was deferred for final decision.

5. Harold and Leona Resteiner – 1890-03-I

Oral hearing waived by the parties. To be considered for decision.

The appeal involved a proposed income tax assessment issued for the tax year 1998, plus a late payment penalty and interest.

Discussion was held by the Board and the matter was deferred for final decision.

6. Douglas and Jamie Roessing – 1889-03-AFTC

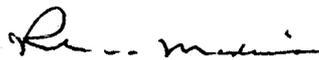
Oral hearing was held at 9:00a.m. on this date. To be considered for decision.

The appeal involved the Department's denial of Appellants' claim for an alternative fuel tax credit for the tax year 2000.

Discussion was held by the Board and the matter was deferred pending the filing of post-hearing information by the Department.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 6th day of May, 2003.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Croswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD May 27, 2003**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting and hearing commencing at 8:45 a.m., on May 27, 2003, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

<u>Board</u>	<u>Absent</u>
William L. Raby, Chairman	Jacalyn A. Askin, Member
Janice C. Washington, Member	

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of May 6, 2003. It was moved by Ms. Washington and seconded that the minutes stand approved as written. The vote was 2-0-1 in favor. It was so ordered.

The Board then considered the following:

APPROVAL OF DECISIONS:

1. Alan Stang – 1886-02-I - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as written. The vote was 2-0-1. It was so ordered.

2. Harold and Leona Resteiner – 1890-03-I - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as written. The vote was 2-0-1. It was so ordered.

CONSIDERATION OF MOTIONS TO DISMISS:

3. Lawrence and Mamie Arrington – 1400-95-I
The Board considered Appellee's Motion to Dismiss for Lack of Subject Matter Jurisdiction.

The motion was based on the Appellants' failure to timely appeal the decision of the Department's Hearing Office to the Board.

The Board having considered the motion, it was moved by Ms. Washington and seconded that the motion be granted. The vote was 2-0-1. It was so ordered.

4. Catherine Dahnert – 1896-03-I
The Board considered Appellee's Motion to Dismiss for Lack of Subject Matter Jurisdiction.

The motion was based on the Appellant's failure to timely appeal the proposed assessments to the Department of Revenue.

The Board having considered the motion, it was moved by Ms. Washington and seconded that the motion be granted. The vote was 2-0-1. It was so ordered.

(The regular meeting was recessed until the conclusion of the hearing scheduled for 9:00 a.m.)

The Board reconvened the meeting at 10:15 a.m. and then considered the following:

FOR DECISIONS:

5. Stephen M. Carney – 1893-03-I

Oral hearing was waived by the parties. To be considered for decision.

The appeal involved a proposed income tax assessment issued for the tax year 1998, plus penalties and interest.

Discussion was held by the Board and the matter was deferred for final decision.

6. James and Kathleen Bache – 1888-03-I

Oral hearing was held at 11:30 a.m., May 6, 2003. The hearing was conducted by Alisha L. Woodring, Hearing Officer. To be considered for decision.

The appeal involved a proposed income tax assessment issued for the tax year 1998, plus interest.

Discussion was held by the Board and the matter was deferred for final decision.

FEDERAL RETIREE CASES:

7. The Board discussed and considered the federal retiree cases shown in the attached stipulation.

The matters were deferred for final decision.

8. Phoenix Newspapers, Inc & Affiliates – 1884-02-I

Oral hearing was held at 9:00 a.m. on this date. To be considered for decision.

The appeal involved whether the department properly denied the Appellant's claims for refund covering the period ending December 1993 and December 1994.

Discussion was held by the Board and the matter was deferred for final decision.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 27th day of May, 2003.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Crosswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD June 10, 2003**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting and hearing commencing at 8:45 a.m., on June 10, 2003, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

<u>Board</u>	<u>Absent</u>
William L. Raby, Chairman	Jacalyn A. Askin, Member
Janice C. Washington, Member	

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of May 27, 2003. It was moved by Ms. Washington and seconded that the minutes stand approved as written. The vote was 2-0-1 in favor. It was so ordered.

The Board then considered the following:

APPROVAL OF DECISIONS:

1. James and Kathleen Bache - 18886-02-I - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as written. The vote was 2-0-1. It was so ordered.

2. Stephen M. Carney - 1893-03-I - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as written. The vote was 2-0-1. It was so ordered.

(The regular meeting was recessed until the conclusion of the hearing scheduled for 9:00 a.m.)

The Board reconvened the meeting at 9:45 a.m. and then considered the following:

FOR DECISIONS:

3. Federal Retiree Cases
The Board discussed the following federal retiree cases pending before the Board. To be considered for decision.
 - 3.1 Jack C. and Rosemary R. Moore - Docket No. 1318-94-I
 - 3.2 Emory Don Enos - Docket No. 1421-95-I
 - 3.3 Leroy F. and Delores J. Root - Docket No. 1548-95-I
 - 3.4 Ronald and Carol Marcos - Docket No. 1465-95-I
 - 3.5 Roland E. and Juanita B. Thomas - Docket No. 1388-95-I

3.6 Estate of James A. Walsh – Docket No. 1467-95-I

3.7 Dayton W. Herrington – Docket No. 1526-95-I

Discussion was held by the Board and the matters were deferred for final decision.

4. Varian Associates, Inc. & Affiliated Subsidiaries – 1887-02-I

Oral hearing was held at 9:00 a.m., on this date. To be considered for decision.

The appeal involved corporate income tax assessments issued by the Department of Revenue for fiscal years September, 1995 through September, 1998, plus interest.

Discussion was held by the Board and the matter was deferred for final decision.

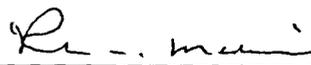
FOR DISCUSSION:

5. The Board discussed the status of two appeals pending relating to the tax on retirement contributions (Kerr case). Appeals pending are Lawrence E. and Joyce Hanline – 1834-00-TC and James J. Jr. and Sheri E. Ryan – 1841-00-TC.

The Board was informed that these appeals will be held in abeyance pending the court's decision in Kerr.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 11th day of June, 2003.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Crosswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD July 15, 2003**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting commencing at 9:00 a.m., on July 15, 2003, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona. Present were:

Board

William L. Raby, Chairman
Jacalyn A. Askin, Member
Janice C. Washington, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of June 10, 2003. It was moved by Ms. Washington and seconded that the minutes stand approved as written. The vote was 2-0-1 in favor. It was so ordered.

The Board then considered the following:

APPROVAL OF DECISIONS:

1. Varian Associates, Inc. & Affiliated Subsidiaries - 1887-02-I - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 2-0-1. It was so ordered.

2. Phoenix Newspapers, Inc. & Affiliates – 1884-02-I - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as written. The vote was 2-0-1. It was so ordered.

MOTION FOR RE-HEARING OR RECONSIDERATION:

3. Harold and Leona Resteiner – 1890-03-I
Appellants filed a motion for re-hearing or reconsideration of the Board's decision issued on May 27, 2003.

The Board, having considered the motion, it was moved by Ms. Washington and seconded that the motion be denied. The vote was 2-0-1. It was so ordered.

FOR DECISIONS:

4. Paula Lamfers – 1899-03-I
Oral hearing had been waived by the parties. To be considered for decision.

The appeal involved income tax assessments issued for the tax years 1997 and 1998, plus penalties and interest.

Discussion was held by the Board and the matter was deferred for final decision.

5. Richard and Charlotte Broderick – 1894-03-I

Oral hearing had been waived by the parties. To be considered for decision.

The appeal involved income tax assessments issued for the tax years 1991, 1992, 1993, and 1994, plus penalties and interest.

Discussion was held by the Board and the matter was deferred for final decision.

6. Warren Bechhoefer – 1895-03-I

Oral hearing had been waived by the parties. To be considered for decision.

The appeal involved income tax assessments issued for the tax years 1996 and 1997, plus penalties and interest.

Discussion was held by the Board and the matter was deferred for final decision.

7. Kimberly Wihelm – 1901-03-I

The Board considered Appellee's Motion to Dismiss. The Appellant filed a response to the motion.

The appeal involved an income tax assessment issued for the tax year 1998, plus penalties and interest.

The Board, having considered the motion, it was moved by Ms. Washington and seconded that the motion be granted. The vote was 2-0-1. It was so ordered.

8. Douglas and Jamie Roessing – 1889-03-AFTC

Oral hearing was held on May 6, 2003. To be considered for decision.

The appeal involved the Department's denial of Appellants' claim for an alternative fuel tax credit for the tax year 2000. The Board had taken the matter under advisement pending the Department's review of additional information provided by the Appellants.

Discussion was held by the Board and the matter was deferred pending further review.

9. Michael R. Schaefer dba Arcadia Lodge – 1891-03-S

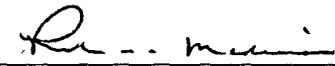
Oral hearing scheduled for July 15, 2003 was cancelled at the Appellant's request. The Appellee also waived oral hearing. To be considered for decision.

The appeal involved the Department's denial of Appellant's request for abatement of late filing penalties for the period July 2000 through October 2000.

Discussion was held by the Board and the matter was deferred for final decision.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 16th day of July, 2003.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Croswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD October 28, 2003**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting and hearing, commencing at 8:45 a.m., on October 28, 2003, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board

William L. Raby, Chairman
Jacalyn A. Askin, Member
Janice C. Washington, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of October 14, 2003. It was moved by Ms. Washington and seconded that the minutes stand approved as written. The vote was 3-0-0 in favor. It was so ordered.

(The regular meeting was recessed until the conclusion of the hearing scheduled for 9:00 a.m.)

The Board reconvened the meeting at 9:45 a.m., and then considered the following:

FOR DECISION:

Manuel and Mary Lou Torres – 1907-03-TP
Robert L. and Mary F. Yniguez – 1908-03-TP
Victor E. and Mary E. Lowman – 1906-03-TP

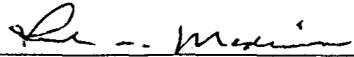
Oral hearing was held on this date at 9:00 a.m. To be considered for decision.

These appeals involved claims for refunds of taxes paid on Arizona government pensions received for various years.

Discussion was held by the Board and the matters were deferred for final decision.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 29th day of October, 2003.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Croswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD December 16, 2003**

The State Board of Tax Appeals, after notice, duly posted, held a regular meeting and hearings, commencing at 8:45 a.m., on December 16, 2003, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board

William L. Raby, Chairman
Jacalyn A. Askin, Member
Janice C. Washington, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of October 28, 2003. It was moved by Ms. Washington and seconded that the minutes stand approved as written. The vote was 3-0-0 in favor. It was so ordered.

(The regular meeting was recessed until the conclusion of the hearing scheduled for 9:00 a.m.)

The Board reconvened the meeting at 11:25 a.m., and then considered the following:

APPROVAL OF DECISIONS:

1. Evelyn Koeck – Docket No. 1441-95-I - Upheld
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as written. The vote was 3-0-0. It was so ordered.

2. Victor E. and Mary E. Lowman – 1906-03-TP - Denied
Manuel and Mary Lou Torres – 1907-03-TP – Denied
Robert L. and Mary R. Yniguez – 1908-03-TP – Denied
(Decision drafts prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decisions, it was moved by Ms. Washington and seconded that the decisions be approved as corrected. The vote was 3-0-0. It was so ordered.

3. Harley D. Spencer – Docket No. 1867-01-I
The decision included an appendix that lists all the federal retiree cases that are considered as part of the decision.
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board, having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 3-0-0. It was so ordered.

MOTIONS FOR DISMISSAL:

4. Host Marriott Corporation and Subsidiaries – Docket No. 1518-95-I

The Board considered Appellee's Motion to Dismiss based on the parties having entered into closing agreements.

The Board, having considered the motion, it was moved by Ms. Washington and seconded that the motion be granted. The vote was 3-0-0. It was so ordered.

5. Edward Alvarez – Docket No. 1915-03-I

The Board considered Appellee's Motion to Dismiss based on the appeal not being timely filed from the decision of the Director of the Department.

The Board, having considered the motion, it was moved by Ms. Washington and seconded that the motion be granted. The vote was 3-0-0. It was so ordered.

FOR DECISION:

6. California Energy Development Corporation & California Energy Yuma Corporation – Docket No. 1905-03-I(2)

Oral hearing was held on this date at 9:00 a.m. To be considered for decision.

The appeal involved corporate income tax assessments issued for the audit period 12/31/1995 through 12/31/1998, plus interest.

Discussion was held by the Board and the matters were deferred for final decision.

7. Robert E. & Carole L. Lowery – Docket No. 1910-03-NEV

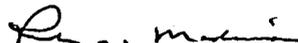
Oral hearing was held on this date at 10:30 a.m.

The appeal involved the denial of a credit for the purchase of a Neighborhood Electric Vehicle ("NEV").

At the hearing, the parties were allowed 20 days to file documents relating to the purchase of the NEV.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 18th day of December, 2003.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Crosswell
Tax Board Secretary

4. Emory Don Enos – Docket No. 1421-95-I- Upheld
(Decision drafts prepared by Alisha L. Woodring, Hearing Officer)

The Board deferred a decision.
5. James C. and Rosemary R. Moore – 1318-94-I – Partially Upheld/Denied
(Decision drafts prepared by Alisha L. Woodring, Hearing Officer)

The Board deferred a decision.
6. Leroy F. (dec'd) and Dolores J. Root – 1548-95-I – Partially Upheld/Denied
(Decision drafts prepared by Alisha L. Woodring, Hearing Officer)

The Board deferred a decision.
7. Ronald and Carol Marcos – 1465-95-I – Partially Upheld/Denied
(Decision drafts prepared by Alisha L. Woodring, Hearing Officer)

The Board deferred a decision.
8. Roland E. and Juanita B. Thomas – 1388-95-I – Partially Upheld/Denied
(Decision drafts prepared by Alisha L. Woodring, Hearing Officer)

The Board deferred a decision.

FOR DECISION:

9. Robert Lee, Jr. – Docket No. 1913-03-I
Oral hearing was waived by the parties. To be considered for decision.

The appeal involved proposed income tax assessments issued for the tax years 1995, 1996, 1997,, 1998, 1999 and 2000, plus interest and penalties for failure to file when due and late payment.

Discussion was held by the Board and the matter was deferred for final decision.
10. Robert E. & Carole L. Lowery – Docket No. 1910-03-NEV
Oral hearing was held on December 16, 2003. The Board allowed the parties 20 days to file post-hearing information. The parties filed the information. To be considered for decision.

The appeal involved the denial of a credit for the purchase of a Neighborhood Electric Vehicle (“NEV”) for the tax year 1999.

Discussion was held by the Board and the matter was deferred for final decision.
11. Nicholas C. and Mary M. Guttilla – Docket No. 1914-03-I
Oral hearing previously scheduled on this matter was cancelled as the parties have waived oral hearing. To be considered for decision.

The appeal involved the denial of a credit on Appellants' 1999 income tax return for the purchase of a new neighborhood electric vehicle (NEV).

Discussion was held by the Board and the matter was deferred for final decision.

12. James W. and Andrea Grantham – Docket No. 1911-03-I

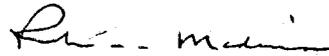
Oral hearing scheduled for this date was cancelled by the Appellants. The Appellants will be withdrawing their appeal.

The appeal involved the Department's denial of the Appellants' claim for refunds of taxes, penalty and interest paid for the tax years 1995 and 1996.

No action taken by the Board pending receipt of the withdrawal.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 13th day of January, 2004.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Crosswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD January 27, 2004**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting, commencing at 8:45 a.m., on January 27, 2004, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board

William L. Raby, Chairman
Jacalyn A. Askin, Member
Janice C. Washington, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of January 13, 2004. It was moved by Ms. Washington and seconded that the minutes stand approved as written. The vote was 3-0-0 in favor. It was so ordered.

(The regular meeting was recessed until the conclusion of the hearing scheduled for 9:00 a.m.)

The Board reconvened the meeting at 9:45 a.m., and then considered the following:

MOTION FOR REHEARING:

1. Harley D. Spencer – Docket No. 1867-01-I

The Appellee filed a motion for rehearing on January 6, 2004. The Appellants' filed a response to the motion on January 13, 2004.

The Board discussed all matters relating to Appellee's motion for rehearing on the issues of the tolling period and whether an amended decision should be issued.

The Board having considered this matter, it was moved by Mrs. Askin and seconded that Appellee's motion be denied. The vote was 3-0-0. It was so ordered.

APPROVAL OF DECISIONS:

2. Dayton W. Herrington – Docket No. 1526-95-I - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board having reviewed the decision, it was moved by Mrs. Askin and seconded that the decision be approved as written. The vote was 3-0-0. It was so ordered.

3. Emory Don Enos – Docket No. 1421-95-I- Upheld
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board having reviewed the decision, it was moved by Mrs. Askin and seconded that the decision be approved as written. The vote was 3-0-0. It was so ordered.

4. James C. and Rosemary R. Moore – 1318-94-I – Partially Upheld/Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board having reviewed the decision, it was moved by Mrs. Askin and seconded that the decision be approved as written. The vote was 3-0-0. It was so ordered.

5. Leroy F. (dec'd) and Dolores J. Root – Docket No. 1548-95-I – Partially Upheld/Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board having reviewed the decision, it was moved by Mrs. Askin and seconded that the decision be approved as written. The vote was 3-0-0. It was so ordered.

6. Ronald and Carol Marcos – Docket No. 1465-95-I – Partially Upheld/Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board having reviewed the decision, it was moved by Mrs. Askin and seconded that the decision be approved as written. The vote was 3-0-0. It was so ordered.

7. Roland E. and Juanita B. Thomas – Docket No. 1388-95-I – Partially Upheld/Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board having reviewed the decision, it was moved by Mrs. Askin and seconded that the decision be approved as written. The vote was 3-0-0. It was so ordered.

8. Robert Lee, Jr. – Docket No. 1913-03-I – Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as written. The vote was 3-0-0. It was so ordered.

REQUEST FOR ABEYANCE:

9. AZPB Limited Partnership – Docket No. 1909-03-S/U

The Appellant requested that this matter be held in abeyance pending the resolution of another matter in the Tax Court with similar issues and facts.

The Board having discussed the request, it was moved by Ms. Washington and seconded that the request for abeyance be granted. The vote was 3-0-0. It was so ordered.

FOR DISMISSAL:

10. James W. and Andrea Grantham – Docket No. 1911-03-I
Oral hearing scheduled for January 13, 2004 was cancelled by the Appellants. The Appellants submitted a letter withdrawing their appeal.

The Board having considered the withdrawal pursuant to its Rule R16-3-106, it was moved by Ms. Washington and seconded that the appeal be dismissed. The vote was 3-0-0. It was so ordered.

FOR DECISION:

11. Frank A. and Linda C. Smith – Docket No. 1917-03-NEV
Oral hearing was held on this date. To be considered for decision.

The appeal involved the Department's denial of Appellants' claim of a credit for the purchase of a neighborhood electric vehicle for the 1999 tax year.

Discussion was held by the Board and the matter was deferred for final decision.

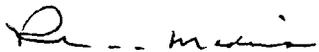
OTHER BUSINESS:

- Gordon M. Robineau
The Board considered the petition to amend its rules to include a rule relating to the burden of proof.

The Board having discussed this matter, it was moved by Mrs. Askin and seconded to deny Mr. Robineau's petition. The vote was 3-0-0. It was so ordered.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 29th day of January, 2004.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Crosswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD February 24, 2004**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting by telephone conference call, commencing at 10:30 a.m., on February 24, 2004, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present at the Board's office:

Board

Jacalyn A. Askin, Member

Present by Conference call:

William L. Raby, Chairman
Janice C. Washington, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of January 27, 2004. It was moved by Ms. Washington and seconded that the minutes stand approved as written. The vote was 3-0-0 in favor. It was so ordered.

The Board then considered the following:

APPROVAL OF DECISIONS:

1. Robert E. and Carole L. Lowery – Docket No. – 1910-03-NEV - Upheld
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 3-0-0. It was so ordered.

2. Nicholas C. and Mary M. Guttilla – Docket No. 1914-03-NEV- Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 3-0-0. It was so ordered.

3. Frank and Linda Smith – 1917-03-NEV - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 3-0-0. It was so ordered.

FOR DISMISSAL:

4. Thomasita Taylor – Docket No. 1918-03-I

Appellee filed a motion to dismiss for failure to prosecute. The Appellant filed a response on February 5, 2004.

The Board having considered the Appellee's motion to dismiss, it was moved by Mrs. Askin and seconded that the motion be granted and the appeal be dismissed. The vote was 3-0-0. It was so ordered.

SUBPOENA REQUEST:

5. Sesek & Associates, LTD – Docket No. 1912-03-I

The Appellant had requested that a subpoena be issued for certain information from the Department. The Board considered the request.

The Board having discussed the request, it was moved by Ms. Washington and seconded that the request be considered at the hearing scheduled for March 9, 2004. The vote was 3-0-0. It was so ordered.

OTHER BUSINESS:

(1) Gordon M. Robineau

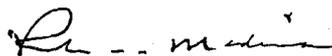
Mr. Robineau filed an appeal to the Governor's Regulatory Review Council ("GRRC") relating to the Board's denial of his petition to amend the Board's rule relating to the burden of proof. The Board filed a memorandum as directed by GRRC on February 10, 2004. It was reported to the Board that GRRC has scheduled a hearing on this matter for 9:00 a.m., March 2, 2004.

(2) Legislation – SB 1361 tax dispute; burden of proof

This bill passed the Senate Finance Committee by a vote of 8-0 on February 16, 2004. The Board was informed that this bill was on the agenda for the Senate Rules Committee meeting scheduled for February 24, 2004.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 25th day of February, 2004.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Crosswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD March 9, 2004**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting and hearing, commencing at 9:30 a.m., on March 9, 2004, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board
William L. Raby, Chairman
Janice C. Washington, Member

Absent
Jacalyn A. Askin, Member

Staff
Ruben M. Medina, Chief Clerk

Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of February 24, 2004. It was moved by Ms. Washington and seconded that the minutes stand approved as written. The vote was 2-0-1 in favor. It was so ordered.

APPROVAL OF DECISION:

1. California Energy Development Corporation & California Energy Yuma Corporation
Docket No. 1905-03-I(2) - Denied
(Decision draft prepared by Alisha L. Woodring, Hearing Officer)

The Board having reviewed the decision, it was moved by Ms. Washington and seconded that the decision be approved as corrected. The vote was 2-0-1. It was so ordered.

(The regular meeting was recessed until the conclusion of the hearing scheduled for 10:00 a.m.)

The Board reconvened the meeting at 10:40 a.m. and then considered the following:

FOR DECISION:

2. Sesek & Associates, LTD – 1912-03-I
Oral hearing was held on this date. To be considered for decision.

The appeal involved a corporate income tax assessment issued for the tax years ending March 31, 1998 and March 31, 1999, plus interest.

Discussion was held by the Board and the matter was deferred for final decision.

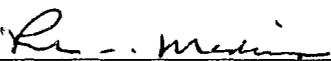
OTHER BUSINESS:

- (1) The Board was informed that the hearing scheduled for March 2nd before the Governor's Regulatory Review Council relating to the burden of proof rule was postponed.
- (2) Legislation – Status on SB1361 tax dispute; burden of proof

This bill passed the full Senate by a vote of 27-0-3 on March 2, 2004. The bill now goes to the House for consideration.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 9th day of March, 2004.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Crosswell
Tax Board Secretary

**MINUTES OF A REGULAR MEETING
OF THE ARIZONA STATE BOARD OF TAX APPEALS
HELD July 13, 2004**

The State Board of Tax Appeals, after notice duly posted, held a regular meeting and hearing commencing at 8:45 a.m., on July 13, 2004, 100 N. 15th Avenue, Suite 140, Phoenix, Arizona.

Present were:

Board

William L. Raby, Chairman
James M. Susa, Member
Janice C. Washington, Member

Staff

Ruben M. Medina, Chief Clerk
Alisha L. Woodring, Hearing Officer

The meeting was called to order by Mr. Raby, Chairman. Mr. Raby called for any corrections, deletions, additions to the minutes of March 30, 2004. It was moved by Ms. Washington and seconded that the minutes stand approved as written. The vote was 3-0-0 in favor. It was so ordered.

(The regular meeting was recessed until the conclusion of the hearing scheduled for 9:00 a.m.)

The Board reconvened the meeting at 10:05 a.m., and then considered the following:

FOR DECISION:

- Excell Agent Services LLC, Comdisco, Inc., Golden enterprises, Inc., Voltdelta Resources Inc. – 1900-03-S/U(4)
Oral hearing was held on this date at 9:00 a.m. To be considered for decision.

The appeal involved the Department's denial of Appellants' refund requests of transaction privilege taxes paid for various years.

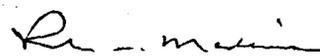
Discussion was held by the Board and the matter was deferred for final decision.

OTHER BUSINESS:

- Arizona Tax Conference, September 8-10, 2004
Sedona , Arizona
Mr. Raby and Ms. Washington plan to attend this conference.

There being no further business to come before the Board, the meeting was adjourned.

Dated this 13th day of July, 2004.



Ruben M. Medina, Chief Clerk

Prepared by:
Catherine Crosswell
Tax Board Secretary

BOTA Sample Decisions

**INDEX OF SAMPLE
OF TAX CASES DECIDED**

	<u>NAME</u>	<u>TYPE CASE</u>	<u>DATE</u>
1.	<u>Varian Associates, inc., and Affiliated Subsidiaries</u> Docket No. 1887-02-I	Corporate Income	July 15, 2003
2.	<u>Phoenix Newspapers, Inc. and Affiliates</u> Docket No. 1884-02-I	Corporate Income	July 15, 2003
3.	<u>Michael R. Schaefer dba Arcadia Lodge</u> Docket No. 1891-03-S	Transaction Privilege	September 2, 2003
4.	<u>Victor E. and Mary E. Lowman</u> Docket No. 1906-03-TP	Individual Income	October 16, 2003
5.	<u>Emory Don Enos</u> Docket No. 1421-95-I	Individual Income	January 27, 2001
6.	<u>Nicholas C. and Mary M. Guttilla</u> Docket No. 1914-03-NEV	Individual Income	February 26, 2004
7.	<u>California Energy Development Corporation & California Energy Yuma Corporation</u> Docket No. 1905-03-I(2)	Corporate Income	March 9, 2004

1 and interest. The Department subsequently modified the assessments, and the credit disallowance in
2 the fiscal year ending September 30, 1995 is the only issue remaining.

3 Appellant protested the disallowance to an administrative hearing officer who denied the protest.
4 Appellant now timely appeals to this Board.

5 DISCUSSION

6 The issue before the Board is whether Appellant is entitled to the credit claimed for construction
7 materials.

8 A.R.S. § 43-1171(A) provides that:

9 A credit is allowed against the tax imposed by this title for new construction materials
10 incorporated into a qualifying facility located entirely within this state, construction of
11 which is begun on or after January 1, 1994 and completed on or before December 31,
1999 This credit shall be claimed in the taxable year in which the qualified facility
receives a certificate of occupancy.

12 The session law enacting the statute above provides that "[t]his act is effective, and applies to taxable
13 years beginning, from and after December 31, 1994." Laws 1994, Ch. 117, § 7. Appellant began
14 construction on its facility in June of 1994 during the calendar years referred to in the statute but
15 completed it in November of 1994 before the first year for which the statute was effective as established
16 by the session law. Appellant contends that there is a conflict between A.R.S. § 43-1171(A) and the
17 session law and argues that the resulting ambiguity must be construed in favor of Appellant. *Estancia*
18 *Dev. Assocs., L.L.C. v. City of Scottsdale*, 196 Ariz. 87, 90, 993 P.2d 1051, 1054 (Ct. App. 1999).

19 According to Appellant, there is no reason for A.R.S. § 43-1171(A) and the session law to
20 encompass different dates, and the legislature could not have intended this inconsistency to exclude a
21 taxpayer such as Appellant from the benefit of the credit. In order "to avoid an absurd result that the
22 legislature could not in any event have intended," Appellant argues that one must look beyond the plain
23 meaning of the language in the statute. *Arizona Dep't of Rev. v. Gen. Motors Acceptance Corp.*, 188 Ariz.
24 441, 444, 937 P.2d 363, 366 (Ct. App. 1996). Thus, Appellant proposes that the specific and primary
25 language of A.R.S. § 43-1171(A) supersedes the general and secondary language of the session law.

1 See, e.g., *Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 268, 872 P.2d 668, 672 (1994); *Estancia*, 196 Ariz. at
2 90, 993 P.2d at 1054; *Centric-Jones Co. v. Town of Marana*, 188 Ariz. 464, 469, 937 P.2d 654, 659 (Ct.
3 App. 1996). The Board disagrees.

4 There is no authority supporting Appellant's contention that the language of A.R.S. § 43-1171(A)
5 is primary to that of the session law. Further, the principle of statutory construction holding that the
6 specific governs over the general in the event of a conflict is pertinent when courts construe two different
7 statutes addressing the same subject. The rule does not apply to provisions within the same statute.

8 To interpret a statute, one must "look *first* at the words of the statute itself, *and if their meaning is*
9 *clear,*" one must "accord the statute that plain meaning." *Allstate Ins. Co. v. Universal Underwriters, Inc.*,
10 199 Ariz. 261, 265, 19 P.3d 106, 110 (Ct. App. 2000) (quotation omitted) (emphasis added). The
11 language of A.R.S. § 43-1171(A) and the language of the session law are equally important and equally
12 clear and specific. A.R.S. § 43-1171(A) establishes the calendar years in which qualifying construction
13 must occur, and the session law identifies the taxable years for which a taxpayer may claim the credit.
14 The legislative history confirms that the statute was reviewed prior to its enactment, and in reviewing the
15 statute, the Board cannot conclude that the provisions of the law do not fulfill legislative intent.

16 Contrary to Appellant's position, credits are a matter of legislative grace and not a matter of
17 taxpayer right. As such, credits must be strictly construed against the taxpayer and in favor of the taxing
18 authority. *Keyes v. Chambers*, 209 Or. 640, 307 P.2d 498 (1957); *Davis v. Arizona Dep't Rev.*, 197 Ariz.
19 527, 4 P.3d 1070 (App. 2000). For the foregoing reasons, the Board finds that Appellant is not entitled to
20 the credit under A.R.S. § 43-1171(A) and is liable for the tax assessed. Because the interest at issue is
21 made a part of the tax by statute and represents a reasonable interest rate on the tax due, it may not be
22 abated. A.R.S. § 42-1123; *Biles v. Robey*, 43 Ariz. 276, 286, 30 P.2d 841 (1934).

23 CONCLUSIONS OF LAW

24 1. The Department properly denied the credit for construction materials, and Appellant is liable
25 for the tax assessed. A.R.S. § 43-1171(A); Laws 1994, Ch. 117, § 7; *Allstate Ins. Co. v. Universal*

1 *Underwriters, Inc.*, 199 Ariz. 261, 265, 19 P.3d 106, 110 (Ct. App. 2000); *Keyes v. Chambers*, 209 Or.
2 640, 307 P.2d 498 (1957); *Davis v. Arizona Dep't Rev.*, 197 Ariz. 527, 4 P.3d 1070 (App. 2000).

3 2. The interest at issue is made a part of the tax by statute and represents a reasonable interest
4 rate on the tax due; therefore, it may not be abated. A.R.S. § 42-1123; *Biles v. Robey*, 43 Ariz. 276, 286,
5 30 P.2d 841 (1934).

6 ORDER

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

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

11 DATED this 15th day of July, 2003.

12 STATE BOARD OF TAX APPEALS

13
14 
15 William L. Raby, Chairperson

16
17
18 WLR:ALW

19 CERTIFIED

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

PHOENIX NEWSPAPERS, INC. AND AFFILIATES,
Appellant,
vs.
ARIZONA DEPARTMENT OF REVENUE,
Appellee.

)
) Docket No. 1884-02-1
)
)
)
) 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

Phoenix Newspapers, Inc. (individually, "PNI") is the corporate entity, operating entirely within Arizona, that publishes the *Arizona Republic*. Appellant is a wholly owned subsidiary of Central Newspapers, Inc. ("Central"). Central is engaged, through its subsidiaries, in newspaper publishing, primarily in the metropolitan areas of Phoenix, Arizona, and Indianapolis, Indiana.

Central Newsprint Company, Inc. ("Central Newsprint") is a wholly owned subsidiary of Central Bradley Paper Company ("Bradley") is a wholly owned subsidiary of Central Newsprint. Appellant, Central Newsprint and Bradley share common ownership, common management, and a reconciled accounting system. Central Newsprint and Bradley are general partners of the Ponderay Central Newsprint Company ("Ponderay"), a Washington general partnership.¹ Ponderay operated at a loss in 1993 and 1994.

¹During tax years 1993 and 1994, Central Newsprint held a 10% ownership interest in Ponderay and Bradley held a 3.5% ownership interest in Ponderay.

1 Appellant filed amended returns for 1994 and 1995 claiming refunds for these tax years. The
2 amended returns reflected a change in filing method from separate company (PNI only) to full
3 combination (PNI, Central, Central Newsprint, Bradley, Topics Newspapers, Inc.; Indianapolis
4 Newspapers, Inc.; and Muncie Newspaper, Inc.) The Arizona Department of Revenue (the "Department")
5 denied the refund claims. Appellant timely protested the denial and amended the refund claims to reflect
6 a select combination filing which included only PNI, Central Newsprint and Bradley (Phoenix Newspaper,
7 Inc. and Affiliates) (collectively, "Appellant"). This amendment resulted in an increase of the refunds
8 claimed.

9 A Hearing Officer denied Appellant's protest. Appellant then timely protested the Hearing
10 Officer's decision to the Director of the Department, who upheld the decision. Appellant now timely
11 appeals to this Board.

12 DISCUSSION

13 The issue before the Board is whether the Department properly denied Appellant's refund claims.

14 A.R.S. § 43-492 provides the following:

15 A. In any case of two or more corporations owned or controlled directly or indirectly by
16 the same interest, the department may distribute, apportion or allocate gross income,
17 deductions, credits or allowances between or among such taxpayers, if it determines that
such distribution, apportionment or allocation is necessary in order to prevent evasion of
taxes or clearly to reflect the income of any such taxpayer.

18 B. For the purpose of enforcing this section, the department may require the filing of a
19 combined report

20 The Department generally requires corporations to file combined returns if they operate as a unitary
21 business.

22 Members of a unitary business may be horizontally integrated, as are segments of a railroad
23 operated in several states. *State v. Talley*, 182 Ariz. 17, 25, 893 P.2d 17, 25 (App. 1994). Or they may
24 be vertically integrated, as are companies that manufacture, produce, and sell at retail, doing business in
25 several states. *Id.* It is difficult to determine the correct tax liability for a member of a unitary business
because of the existence of substantial transactions, interrelations, or interdependence of basic

1 operations among the various income earning entities. *Id.* The entities in a unitary business derive
2 income from their own business efforts plus the efforts of other members of the unitary business
3 operation. *Caterpillar Tractor Co. v. Lenckos*, 417 N.E.2d 1343, 1347 (Ill. 1981). Thus, the unitary
4 business doctrine was created because states were unable to establish a fair arm's length price for goods
5 transferred, or basic services rendered, between controlled branches of an enterprise. *Talley*, 182 Ariz.
6 at 25, 893 P.2d at 25.

7 Under Arizona law, in order to form a unitary group companies must show that they share 1)
8 common ownership, 2) common management, and 3) reconciled accounting. A.A.C R15-2D-401(D). The
9 regulations further indicate that the presence of these three characteristics alone is not sufficient to
10 establish a unitary group "without evidence of substantial operational integration" among the members.
11 R15-2D-401(E). Presumptive evidence of operational integration exists where there is an inter-company
12 "transfer of over twenty percent (20%) of the total goods annually manufactured, produced or purchased
13 as inventory for processing and/or sale by the transferor, or over twenty percent (20%) of the total goods
14 annually acquired for processing and/or sale by the transferee. A.A.C R15-2D-401(G).

15 Appellant argues that PNI, Central Newsprint and Bradley may file combined income tax returns
16 as a unitary group for 1993 and 1994 because they share common ownership, common management,
17 and a reconciled accounting system. Appellant further contends that it satisfies the threshold requirement
18 demonstrating operational integration because PNI purchased over 20% of its newsprint (whether
19 measured by weight or cost) from Ponderay.

20 Appellant acknowledges that Ponderay is not a member of the unitary group but argues that its
21 sales should be attributed to Central Newsprint and Bradley because these companies were established
22 for the sole purpose of holding partnership interests in Ponderay and are precluded by a partnership
23 agreement from conducting any other business or activity. However, the administrative rule makes it
24 clear that PNI must purchase its materials from an entity that is a part of the unitary group. See A.A.C.
25 R15-2D-401(G). There are no cases in which a court has held that vertical integration exists based on

1 sales from an uncontrolled entity outside of the unitary group. Therefore, Ponderay's sales to PNI are
2 irrelevant, and Appellant has failed to demonstrate the operational integration necessary to establish a
3 unitary group.

4 In any event, PNI has not demonstrated the necessity of filing a combined return to accurately
5 reflect its Arizona income or to prevent the evasion of its Arizona tax liability. There is no evidence that
6 PNI's Arizona income is attributable to anything other than its own efforts. There is no difficulty
7 establishing a fair arm's length price for the purchase of paper from Ponderay; the purchase agreement
8 confirms that PNI pays market price for the paper. Given these facts, the Board concludes that the
9 Department did not abuse its discretion in disallowing the combined return. Accordingly, the Department
10 properly denied Appellant's refund claims.

11 CONCLUSIONS OF LAW

12 The Department properly denied Appellant's refund claims. A.R.S. § 43-492; A.A.C R15-2D-401.

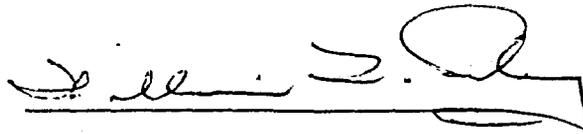
13 ORDER

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

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

18 DATED this 15th day of July, 2003.

19 STATE BOARD OF TAX APPEALS

20 

21
22 William L. Raby, Chairperson

23
24 WLR:ALW

1 CERTIFIED

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

MICHAEL R. SCHAEFER dba ARCADIA LODGE,)
Appellant,)
vs.)
ARIZONA DEPARTMENT OF REVENUE,)
Appellee.)

Docket No. 1891-03-S
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

In June, 2000, Michael R. Schaefer dba Arcadia Lodge ("Appellant") acquired a transaction privilege tax license and began operating a motel he had purchased in Kingman, Arizona. The records of the Arizona Department of Revenue (the "Department") show that, between June of 2000 and July of 2001, Appellant filed late all but two of the transaction privilege tax returns due under the transient lodging classification (A.R.S. § 42-5070).¹ All the returns showed tax due on the gross receipts from the operation of the motel. Appellant paid the tax due with each return either late or not at all. Subsequently, the Department assessed Appellant additional tax, interest and penalties for late filings and late payments.

¹ A. Except as provided in subsection B, C or D of this section, the taxes levied under this article are due and payable monthly on or before the twentieth day of the month next succeeding the month in which the tax accrues and are delinquent

1. If not postmarked on or before the twenty-fifth day of the month.
2. If not received by the Department on or before the business day preceding the last business day of that month for those taxpayers electing to file by mail.
3. If not received by the Department on the business day preceding the last business day of that month for those taxpayers electing to file in person.

1 Appellant's father, on behalf of Appellant, requested that all penalties be waived and that the
2 Department accept payment in full for taxes and interest on the condition that all returns would be filed no
3 later than October 20, 2001. The Department denied that request. Nevertheless, Appellant's father
4 remitted to the Department a check dated October 10, 2001 with the notation "Satisfaction of Unpaid
5 Balance and Interest, per \$8333.43 tax lien, Penalty Abated." The Department endorsed and cashed the
6 check but did not abate the penalties.

7 Appellant protested the denial of the penalty abatement to a hearing officer who upheld the
8 denial. Appellant then protested to the Director of the Department who upheld the hearing officer's
9 decision. Appellant now timely appeals to this Board.

10 DISCUSSION

11 The issue before the Board is whether Appellant is liable for the penalties assessed in this case.

12 Appellant argues that his failure to timely file returns and pay the applicable tax was due to
13 reasonable cause, and that, in any event, the Department is estopped from collecting the penalties
14 assessed because it cashed the check from Appellant's father.

15 A.R.S. § 42-1125.A provides that if a taxpayer files a return late, the penalty "shall be added to
16 the tax" unless the failure is due to reasonable cause and not willful neglect. A.R.S. § 42-1125.D
17 provides that a person who pays the tax late "shall pay a penalty of ten per cent" unless the failure is due
18 to reasonable cause and not willful neglect. The language of A.R.S. § 42-1125.A and D is clear and
19 unambiguous.

20 "Reasonable cause" is generally defined to mean the exercise of "ordinary business care and
21 prudence." *Daley v. United States*, 480 F.Supp. 808 (D.N.D 1979). Under A.R.S. § 42-1125(S), which
22 specifically applies to transaction privilege tax, "reasonable cause" is defined to mean a reasonable basis
23 for the taxpayer to believe that the tax did not apply to its business activity in this state.

24 Appellant maintains that threats of physical violence by former tenants evicted for nonpayment
25 caused him to abandon the business, and the resulting lack of revenue made it impossible to pay the
transaction privilege tax due. However, the lack of sufficient funds does not constitute reasonable cause

1 for failure to file returns or pay taxes. See *Fitch v. Commissioner*, 34 T.C.M. 233 (1975); see, also
2 *Copper Basin Supply Co., Inc. v. Arizona Department of Revenue*, No. 762-90-S (July 30, 1991, BOTA).
3 Thus, Appellant's financial difficulties do not constitute reasonable cause for his failure to timely file the
4 required Arizona tax returns or pay the tax, and he is liable for the penalties assessed.

5 Appellant next argues that the Department is estopped from collecting the penalties because it
6 endorsed and cashed the check tendered by Appellant's father with the notation that penalties were
7 abated. Appellant argues that the tender and cashing of the check constitute an accord and satisfaction.
8 The elements of an accord and satisfaction are (1) a debtor tenders payment (2) on a disputed claim, (3)
9 communicates that the payment is intended as full satisfaction of the disputed claim, and (4) the creditor
10 accepts the payment. *Town of North Bonneville v. Bencor Corp.*, 32 Wash. App. 144, 646 P.3d 161
11 (Wa.App. 1982) citing *Department of Fisheries v. J-Z Sales Corp.*, 25 Wash.App. 671, 610 P.2d 390
12 (1980).

13 Despite the notation on Appellant's check, case law has continuously held that a taxing authority
14 is not bound by any limiting language on a taxpayer's check. See, e.g., *id*; *Laurins v. CIR*, 889 F.2d 910
15 (9th Cir. 1989); *Whitaker v. CIR*, T.C. Memo. 1994 -109 (U.S. Tax Ct. 1994). "The simple acceptance and
16 cashing of a check tendered by a taxpayer does not represent an accord and satisfaction, or any similar
17 final determination binding upon the government as the recipient of the funds" *Kehew v. C.I.R.*, 46
18 T.C.M. (CCH) 478 T.C. Memo. 1983-354, 1983 WL 14339 (U.S. Tax Ct. 1083) (citations and footnotes
19 omitted). See also *Moskowitz v. U.S.*, 285 F.2d 451, 454 (Ct. Cl. 1961)

20 There are procedures available to taxpayers to mitigate the financial burdens of tax
21 assessments,² but Appellant acted unilaterally in a manner that is not an option under applicable law.
22 Accordingly, the Department is not estopped from collecting the penalties assessed.

23
24
25
² See A.R.S. § 42-1113.

CONCLUSIONS OF LAW

1
2 1. Appellant has not shown that his failure to timely file transaction privilege tax returns and pay
3 the applicable tax was due to reasonable cause and not willful neglect. A.R.S. § 42-1125(A) and (D).

4 2. The Department is not estopped from collecting penalties because it cashed the check from
5 Appellant's father. *Town of North Bonneville v. Bencor Corp.*, 32 Wash. App. 144, 646 P.3d 161
6 (Wa.App. 1982); *Laurins v. CIR*, 889 F2d 910 (9th Cir. 1989); *Whitaker v. CIR*, T.C. Memo. 1994 -109
7 (U.S. Tax Ct. 1994).

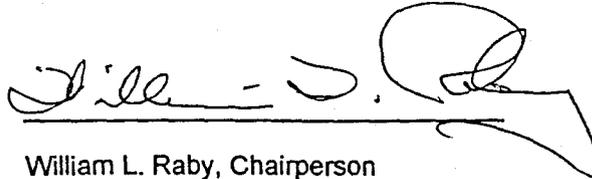
8 ORDER

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

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

13 DATED this 2nd day of September, 2003.

14 STATE BOARD OF TAX APPEALS

15 
16
17 William L. Raby, Chairperson

18 WLR:ALW

19 CERTIFIED

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23 Michael P. Worley
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25 Phoenix, Arizona 85007

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.

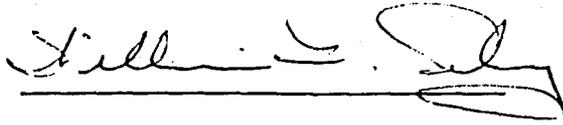
ORDER

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

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 16th day of December, 2003.

STATE BOARD OF TAX APPEALS



William L. Raby, Chairman

WLR:alw

CERTIFIED

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

EMORY DON ENOS,

Appellant,

vs.

ARIZONA DEPARTMENT OF REVENUE,

Appellee.

) Docket No. 1421-95-1

) 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,

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. Emory Don Enos ("Appellant") was not among the
12 individually-named taxpayers.

13 Sometime prior to appealing to this Board on March, 1995, Appellant contacted the Department
14 and claimed a refund for tax paid on retirement benefits for tax year 1988. The Department denied his
15 claim for refund on the basis that the claim was untimely. Appellant did not file an individual refund claim
16 within the applicable statute of limitations. However, if the statute of limitations was tolled by the filing of a
17 class refund claim on behalf of all retired federal employees, his claim may be timely, and he may be
18 entitled to a refund for 1988.

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

DISCUSSION

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2 The issues before the Board are as follows: 1) Whether a valid class claim was filed on behalf of
3 Appellants; if so, 2) whether the class claim tolled the four-year statute of limitations²; 3) when the tolling
4 began and ended; and 4) whether Appellant's refund claims were timely under the tolled statute.

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

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

12 After reviewing the complicated procedural history of this case, and in light of the clear ruling in
13 the *Ladewig* decision, the Board finds that a valid class action administrative refund claim was filed on
14 behalf of Appellants when Bohn, et al filed the second amended complaint with the Arizona Tax Court, on
15 July 18, 1989.⁵ Although the tax court denied class certification in the Bohn, et al case at that time⁶, and
16 the case was ultimately dismissed for failure to exhaust administrative remedies⁷, this occurred before the
17 *Ladewig* decision clearly settled these issues.

18 The *Ladewig* decision also settles the tolling issue in this case. As the Court noted, if a claimant
19 is allowed to exhaust administrative remedies on behalf of a similarly-situated class, then tolling of the
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21 ² A.R.S. §§ 42-1106 and 1104.

22 ³ A.R.S. § 42-1118(E).

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

24 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.

25 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).

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 prior to March 4, 1995 when he appealed the Department's decision
11 to this Board. Taking into consideration the 1169 days for which the statute of limitations was tolled, the
12 Board finds that Appellant's refund claim for 1988 was timely. Therefore, Appellant is entitled to a refund
13 for tax paid on retirement benefits for 1988.

14 CONCLUSIONS OF LAW

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

19 ORDER

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

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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).

1 program intended to improve Arizona's air quality, A.R.S. § 43-1086 allowed an income tax credit for
2 purchases of one or more new original equipment manufactured alternative fuel vehicles for use in this
3 state. The statute allowed a credit in an amount equal to fifty per cent of the cost of the vehicle or ten
4 thousand dollars, whichever was more. The statute was subsequently amended for tax year 2000 to limit
5 the credit to no more than the amount that the taxpayer actually paid for the vehicle. Laws 2000, 7th S.S.,
6 Ch. 1, § 16.

7 The 1999 version of the statute did not define a "purchase" for purposes of receiving the credit.
8 However, the 2000 amended version specified that in order to qualify for the income tax credit, "the
9 vehicle shall be in the possession of the taxpayer before December 1, 2000 *or* the taxpayer shall have
10 paid in full for the vehicle before December 1, 2000." *Id* (emphasis added).

11 Because Appellants did not have physical possession of the NEV in 1999, the Department argues
12 that they are not entitled to the credit for that year. Appellants counter that a qualified purchase requires
13 physical possession *or payment in full* and, for support, point to the language of the statute in effect for
14 2000, as well as similar language in the Department's own rule, A.A.C. R15-2C-702. However, the very
15 language of the amended statute makes it clear that the amendment does not apply to the 1999 tax year.
16 Laws 2000, 7th S.S., Ch. 1, § 26. Further, the historical note to A.A.C. R15-2C-702 provides that it was
17 not effective before November 29, 2001.

18 In determining what the Arizona Legislature intended by the word "purchase" in the 1999 statute,
19 the cardinal principle of statutory construction is to follow the plain and ordinary meaning of a word.
20 *Dearing v. Arizona Dep't of Economic Security*, 121 Ariz. 203, 589 P.2d 446 (App. 1978); *State Tax*
21 *Comm'n v. Peck*, 106 Ariz. 394, 476 P.2d 849 (1970). *See also* A.R.S. § 1-213.

22 The parties focus on whether or not "purchase" requires physical possession under the 1999
23 statute, and they provide multiple, conflicting definitions to support their opposing positions. Clearly,
24 physical possession of the NEV on or before December 31, 1999 would entitle Appellants to a credit for
25

1 year 1999. However, Appellants did not possess the NEV until 2000. Consequently, the issue before this
2 Board is whether Appellants' 1999 payment in full for the NEV entitles them to the credit in 1999.

3 The Board finds that a reasonable person would understand the plain and ordinary meaning of
4 the word "purchase" to include payment in full of an item. However, a reasonable person would also
5 understand that the payment must be for an existing item. Therefore, payment in full for an item that has
6 not yet been manufactured would not qualify as a purchase.

7 The Energy Office of the Arizona Department of Commerce published information on Alternative
8 Fuel Vehicle Incentives in July 1999. This information is not binding on the Department. There is, in fact,
9 no evidence that the Department approved or even reviewed the publication. Nonetheless, the
10 publication was distributed to assist taxpayers. It provides that taxpayers must have a vehicle factory
11 invoice. Such an invoice identifies an existing vehicle. This requirement supports the Board's reasonable
12 interpretation of "purchase" in this case.

13 Although Appellants' NEV was "assigned" a VIN, this can occur before the vehicle is
14 manufactured. Appellants did not provide a vehicle factory invoice identifying an NEV existing at the time
15 they paid in full for it. Therefore, Appellants have not satisfied the requirements of the applicable statute
16 and are not entitled to the credit for tax year 1999.

17 CONCLUSIONS OF LAW

18 Appellants are not entitled to the credit for tax year 1999. See A.R.S. § 43-1086 (as it read in
19 1999).

20 ORDER

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

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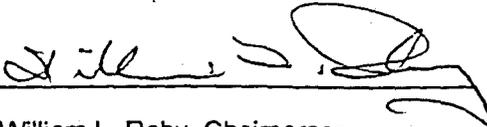
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1 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,
2 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

3 DATED this 26th day of February, 2004.

4 STATE BOARD OF TAX APPEALS

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William L. Raby, Chairperson

8 WLR:ALW

9 CERTIFIED

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

4 CALIFORNIA ENERGY DEVELOPMENT)
CORPORATION & CALIFORNIA ENERGY YUMA) Docket No. 1905-03-1(2)
5 CORPORATION,)
6 Appellants,)
7 vs.) NOTICE OF DECISION:
ARIZONA DEPARTMENT OF REVENUE,) FINDINGS OF FACT AND
8 Appellee.) CONCLUSIONS OF LAW

10 The State Board of Tax Appeals, having considered all evidence and arguments presented, and
11 having taken the matter under advisement, finds and concludes as follows:

12 FINDINGS OF FACT

13 For tax years 1995 through 1998 ("Audit Period"), California Energy Yuma Corporation ("CEYC")
14 was a wholly owned subsidiary of California Energy Development Corporation ("CEDC") ("Appellants").
15 At that time, CEDC was a wholly owned subsidiary of CalEnergy Company, Inc. ("CalEnergy"),¹ a
16 company primarily engaged in the business of generating and selling electric energy.

17 CEDC and CEYC were equal partners in Yuma Cogeneration Associates ("YCA"), a general
18 partnership. YCA operated a natural gas-fired cogeneration project in Yuma, Arizona where it used
19 natural gas as fuel to produce both electricity and steam.

20 During the Audit Period, YCA sold electricity to San Diego Gas & Electric Company ("SDG&E")
21 under a thirty-year Power Purchase Agreement and sold steam to a nearby industrial entity. None of
22 YCA's customers or suppliers had any affiliation with CalEnergy or its successor. All of YCA's operations
23 occurred wholly within Arizona.

24
25 ¹ CalEnergy Company, Inc. is now MidAmerican Holdings.

1 During the Audit Period, CEDC's entire assets consisted of its investments in YCA and CEYC,
2 CEYC's sole asset consisted of its investment in YCA. Neither CEDC nor CEYC had any sales,
3 employees, or tangible personal property of their own. Consequently, all of the gains recognized by
4 CEDC and CEYC resulted from the activities of YCA.

5 Appellants originally filed corporate income tax returns as part of a group under CalEnergy or its
6 successor for the years at issue. The Arizona Department of Revenue (the "Department") audited these
7 returns and changed the filing method by excluding entities included in the original returns resulting in a
8 select combination of only CEDC and CEYC. The Department then issued a notice of proposed
9 assessment. The Department subsequently modified the assessment to separate the select combination
10 into two separate company filings, one for CEDC and one for CEYC. After unsuccessfully protesting the
11 modified assessment to the Department, Appellant now timely appeals to this Board.

12 DISCUSSION

13 The primary issue before the Board is whether CEDC and CEYC form a unitary business with
14 CalEnergy that requires a combined Arizona income tax return to accurately determine their income. If
15 they are not part of a unitary business, the Board must decide whether the sales of electricity at issue in
16 this case were properly sourced to Arizona.

17 Arizona law allows the Department to require corporations to file combined returns and apportion
18 their income if it is necessary to prevent the evasion of taxes or to clearly reflect the income of any such
19 taxpayer. A.R.S. § 43-942. Pursuant to this statute, the Department generally requires corporations to
20 file combined returns if they operate as a unitary business.

21 Members of a unitary business derive income from their own business efforts plus the efforts of
22 other members of the unitary business operation. *Caterpillar Tractor Co. v. Lenckos*, 417 N.E.2d 1343,
23 1347 (Ill. 1981). Members may be horizontally integrated, as are segments of a railroad operated in
24 several states. *State v. Talley*, 182 Ariz. 17, 893 P.2d 17 (App. 1994). Or they may be vertically
25 integrated, as are companies that manufacture, produce, and sell at retail, doing business in several

1 states. *Id.* Because of the existence of substantial transactions, interrelations, or interdependence of
2 basic operations among the various income-earning entities, it is difficult to determine the correct tax
3 liability for a member of a unitary business *Id.* Thus, the unitary business doctrine was created because
4 states were unable to establish a fair arm's length price for goods transferred, or basic services rendered,
5 between controlled branches of an enterprise. *Id.*

6 To qualify as a unitary business in Arizona, companies must satisfy certain threshold
7 requirements established by the Department. Companies must show that they share 1) common
8 ownership, 2) common management, and 3) reconciled accounting. A.A.C R15-2D-401(D). The
9 Department concedes that CalEnergy, CEDC and CEYC meet the threshold requirements. However, as
10 the regulation further indicates, the presence of these three characteristics alone is not sufficient to
11 establish a unitary group "without evidence of substantial operational integration" among the members.
12 R15-2D-401(E). Arizona courts have confirmed that substantial operational integration is necessary to
13 establish a unitary business. See, e.g., *Talley*, 182 Ariz. 17 (App. 1994).

14 In *Talley*, the parent corporation owned twenty-five subsidiaries, ten of which operated in Arizona.
15 Several of the subsidiaries manufactured and supplied commercial and high technology products for
16 defense and industrial uses. Others manufactured timepieces and timekeeping instrumentation, imported
17 men's and women's apparel, and bought and sold real property primarily for commercial and industrial
18 development. *Talley* performed a number of services for its subsidiaries, including tax return preparation,
19 accounting, insurance, and employee benefits. *Talley* also borrowed funds, incurred corporate office
20 costs, and acted as banker for its subsidiaries. *Talley* determined each subsidiary's salary guidelines,
21 and its corporate officers served on each of the subsidiary's board of directors, supervising the operation
22 of the subsidiary. Even so, the Arizona Court of Appeals found that no substantial interrelationship
23 existed between the subsidiaries because there were virtually no operational ties among the subsidiaries,
24 and combined reporting was not necessary to clearly reflect the taxable income earned in Arizona.
25 *Talley*, 182 Ariz. at 18. Similarly, the circumstances of this case do not justify unitary apportionment.

1 Here, Appellants insist they are part of a horizontally integrated, multi-state business with
2 substantial interdependence as evidenced by CalEnergy's provision of regulatory oversight, operational
3 services and intangibles to the partners in YCA. The evidence does indicate that CalEnergy provides
4 elements of management, direction and control to the Arizona operations such as financing, acquisition,
5 construction, engineering, payroll, accounting, legal, tax, negotiations, and contracting activities.
6 However, these services are capable of measurement; therefore, they do not demonstrate substantial
7 interdependence at the basic operational level. *Id.*

8 CEDC and CEYC are partner-holding companies. Their only asset is their investment in YCA.
9 There is no evidence that either CEDC's or CEYC's Arizona income is attributable to anything other than
10 YCA's production and sale of electricity and steam. YCA's resources flow to its partners by using
11 generally accepted accounting methods, not requiring unitary apportionment. In fact, while A.R.S. § 43-
12 942 authorizes two or more *corporations* to file a combined report under certain circumstances, this
13 authority is clearly limited to corporations and does not include partnerships.

14 Neither CEDC nor CEYC have demonstrated the difficulty in determining their true income or the
15 necessity of a combined return to accurately reflect their Arizona income. Neither have they sufficiently
16 demonstrated that they form a unitary business with CalEnergy.

17 This being the Board's finding, Appellants next contend that, although they originally included
18 100% of YCA's sales in the Arizona numerator of the sales factor, the sales of electricity to San Diego
19 should now be treated as California sales and excluded from the Arizona numerator.

20 A.R.S. § 43-102(A)(5) imposes tax on each corporation with a business situs in this state. The
21 tax is measured by the taxable income that results from activity within this state or is derived from sources
22 within this state. "Any taxpayer having income from business activity which is taxable both within and
23 without this state shall allocate and apportion net income as provided in [the Uniform Division of Income
24 for Tax Purposes Act ("UDIPTA")]" A.R.S. § 43-1132(A).
25

1 Appellants concede that they did not pay tax to California on the activities at issue. Nevertheless,
2 they argue that they are entitled to allocate income, meaning they can exclude the sales of electricity to
3 San Diego from the Arizona numerator, because California "has jurisdiction to subject the taxpayer to a
4 net income tax regardless of whether, in fact, the state does or does not." A.R.S. § 43-1132(2).

5 Because California takes the position that electricity is an intangible and does not tax its sale, the
6 Board finds that it does not have jurisdiction to tax Appellants. Accordingly, UDITPA and A.R.S. § 43-
7 1146 do not apply. Therefore, 100% of CEDC's and CEYC's activity was properly sourced to Arizona .

8 CONCLUSIONS OF LAW

9 1. Appellants are not part of a unitary business. See A.R.S. § 43-942; *State v. Talley*, 182
10 Ariz. 17, 893 P.2d 17 (App. 1994).

11 2. The sales of electricity at issue in this case were properly sourced to Arizona. See
12 A.R.S. § 43-102(A)(5).

13
14 ORDER

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

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

19 DATED this 9th day of March, 2004.

20 STATE BOARD OF TAX APPEALS

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22 
23 William L. Raby, Chairperson

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25 WLR:ALW

1 CERTIFIED

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