

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2009-000393

03/09/2010

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

RONALD L STEARNS, et al.

JAMES G BUSBY JR.

v.

ARIZONA STATE DEPARTMENT OF
REVENUE

KIMBERLY J CYGAN

BRIAN W LACORTE

MINUTE ENTRY

The Court took this matter under advisement following oral argument on March 8, 2010. The Court has considered the State's Motion to Dismiss. As both parties have brought forward evidence outside the pleadings, the Court treats it as a motion for partial summary judgment. *Parks v. Macro-Dynamics, Inc.*, 121 Ariz. 517, 519-20 (App. 1979).

Claims for tax refunds are governed by A.R.S. § 42-1118. Subsection E of that statute requires that the claim include the claimant's "name, address and tax identification number... the amount of refund requested, the specific tax period involved and the specific grounds on which the claim is founded." A careful review of the Stearns's claim letter of March 30, 2006 reveals that, of the required elements, it includes only the name of Mr. Stearns (but not his wife) and the tax periods involved. The Court questions whether the incorporation "by reference" to Mr. Stearns's income tax returns of his address and taxpayer identification (social security) number is adequate in light of the statutory requirement that "each claim ... shall identify" those items; however, as the State is not seeking dismissal based on their omission, it does not pursue the point. More critical is the omission of the amount of refund requested and the specific grounds on which the claim is founded. The letter requests the refund of "all Arizona income taxes unlawfully imposed ... as a result of [ADOR's] wrongful and improper interpretation of A.R.S. § 43-1071(A)(3)," "based upon the Court of Appeals decision in *Stearns v. Arizona Department of Revenue* [slip citation omitted], which is incorporated herein by reference." But neither the effect of *Stearns* on the specific facts of his tax liability nor the amount of the refund

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requested is stated in the letter. The decision in *Stearns*, which is published at 212 Ariz. 333 (App. 2006), dealt with calculating the appropriate credit for taxes paid to another state, specifically what income is to be included in the denominator of the fraction used to calculate the credit. *Id.* at 335 ¶ 7-8. The amount of refund necessitated by *Stearns* is not evident on the March 2006 letter's face, and the Response at 2:14-15 acknowledges that ADOR would have to "figure out what amounts were at issue:" it would have to refer to the income tax returns in question and other records showing the tax ultimately assessed, recalculate the tax based on the proper denominator, and subtract that amount from the tax actually paid. It is up to the taxpayer, not ADOR, to perform the arithmetic. The statute requires that the claim state "the amount of refund requested," not merely facts or legal analysis relevant to the calculation of the refund.

Perhaps recognizing the inadequacy of the 2006 letter, Mr. Stearns's counsel sent another letter to the department on March 4, 2009, nearly three years later. This letter included Mr. Stearns's address and taxpayer identification number as well as dollar amounts for the requested refunds. The Response asserts that this is permitted under R15-10-108(A): "A petition may be supplemented or amended at any time before the conclusion of the hearing." But R15-10-101(5) defines "petition" as "a written request for hearing, correction, or redetermination." A statutory claim for a refund is not a petition; rather, a petition is filed if the statutory claim is denied by the Department. R15-10-105(A). A.R.S. § 42-1118(E) sets down specific requirements that a claim for a refund must satisfy; a document that fails to meet those requirements is not a valid claim. *See McNutt v. Dept. of Revenue*, 196 Ariz. 255, 266 ¶ 37 (App. 1998) ("informal claims" do not satisfy A.R.S. § 42-1118). Not until the 2009 letter did Mr. Stearns submit a claim containing all the required elements. By then, the four-year statute of limitations for refund claims set forth in A.R.S. § 42-1106(A) had expired for tax years 2003 and before, except for 1999 (for which an amended Form 140X was filed, evidently within the allowable time).

The Court takes no position on whether a new class representative should be chosen, observing that it has not yet been asked to approve class certification.

IT IS ORDERED the State's Motion to Dismiss is granted with respect to refund claims for tax years 2000 through 2003, without prejudice to refiling under the name of a suitably-situated class representative.