

Add Revenue and Taxation Code Section 6902.1 to the Sales and Use Law, and add comparable statutes to the special tax and fee laws, to allow a taxpayer making installment payments on an outstanding tax liability to file a single claim for refund to cover the period.

Source: Sales and Use Tax Department

Existing Law. Under existing law,¹ when an overpayment of tax, interest or penalty is made to the Board of Equalization (BOE), a claim for refund must be filed within a specified period to recover any amounts overpaid. The law requires a claim for refund to be in writing and state the specific grounds for the claim.

Under existing Sales and Use Tax Law, a claim for refund must be filed within the latest of the following periods:

- Three years from the due date of the return for the period for which the claimed overpayment was made;
- Six months from the date of the (claimed) overpayment;
- Six months from the date a determination (billing) became final; or
- Three years from the date the BOE collected an involuntary payment by the use of enforcement procedures, such as levies or liens.

Unless the taxpayer filed a timely petition for redetermination, no refund may be allowed for an overpayment if the taxpayer does not file a claim for refund with the BOE within the latest of these periods, even if there is a cancellation or reduction of the originally determined amount.

The only recourse for taxpayers who miss a 30-day deadline to file a formal protest of an audit determination is to pay the tax and file a claim for refund. However, the BOE may, at its discretion, accept a late petition as an administrative protest. The administrative protest, however, generally does not result in a stay of collection actions. The taxpayer generally is required to make installment payments while the appeals process is pending.

A taxpayer must file a timely claim for refund within six months of *each individual installment payment* made on an outstanding tax liability. Despite the BOE's letters and publications instructing taxpayers to file a protective refund claim for each individual payment, some taxpayers still fail to do so. Taxpayers who have entered into an installment payment plan often mistakenly believe they need only file one claim for refund at the conclusion of the payment plan, rather than filing protective claims for refund for each payment within six months. Similarly, taxpayers making multiple payments may believe that upon paying the amount due and receiving notice of their appeal rights, each payment will be refunded, regardless of whether they filed claims for each individual payment.

This Proposal. Proposed RTC Section 6902.1 allows a taxpayer making installment tax payments to file a single claim for refund before the outstanding liability is paid in full. This single claim for refund would toll the statute of limitations as of the timely filing of a refund claim on the first installment for all prior payments made within the limitation period (i.e. the previous six months) and all subsequent payments, and would be deemed to be timely filed when full payment of the tax is made. The claim would not be considered timely, however, for payments made more than seven years prior to the date full payment is made.

This proposal provides some equitable relief for taxpayers who would be barred from receiving a refund for one or more installment payments because they did not file a timely claim for refund for each individual payment.

¹ Sections 6901, 6902 and 6904 of the Revenue and Taxation Code (RTC).

This proposal is prompted by several cases in which the taxpayer was barred by the statute of limitations from recovering all of the installment payments made to the BOE even though the determination was either cancelled or reduced to an amount less than the total payments received. In each case, the taxpayer did not file a timely petition for redetermination, made multiple payments for one liability, but did not file refund claims for each installment payment.

Franchise Tax Board. In 2001, the Franchise Tax Board (FTB) sponsored Assembly Bill 1115 (Chapter 920, Assembly Committee on Revenue and Taxation, effective January 1, 2002) to allow a taxpayer to file a claim for refund before a liability was fully paid. The claim is accepted as an “informal claim for refund.” The informal claim delays the expiration of the statute of limitations (the later of four years from the original due date of the return or one year from the date of payment) and protects the taxpayer’s right to appeal to the BOE or file suit against the FTB in court. The statute of limitations on refund claims is held open for up to seven years for taxpayers making installment payments. The informal claim is “perfected” and considered filed when the full amount due has been paid. The FTB can take formal action to either allow the claim or deny the claim in whole or in part.

Taxpayers paying their taxes in installments typically pay in full within three years, but may extend payments for as long as seven years. Prior to enactment of Assembly Bill 1115, those taxpayers who waited to file a refund claim until the tax was paid in full under a seven-year payment plan were barred by the statute of limitations and could not recover all of their payments even if they prevailed on appeal.

Revenue Impact. The actual revenue impact of the proposed change is unknown. BOE staff does not track the number of administrative protests for which taxpayers made installment payments and that were upheld on appeal. Nor does staff track the number of refund claims associated with installment payments on a liability that was reduced or cancelled on appeal. Some decrease in tax revenue would result from this proposal because overpayments would be refunded that otherwise would be barred under current law.

Section 6902.1 is added to the Revenue and Taxation Code to read:

6902.1. (a) (1) A claim for refund that is otherwise valid under Section 6904 but that is made in the case in which full payment of the tax determined has not been made, shall be a claim only for purposes of tolling the limitations period set forth in Section 6902. For all other purposes (including the application of 6906, 6932, 6933, and 6934) the claim shall be deemed filed on the date that full payment of the tax is made. However, no credit or refund may be made or allowed for any payment made more than seven years before the date that full payment of the tax is made.

(b) This section shall apply to all claims for refund on or after the effective date of the act adding this section.

Similar amendments would be made to the various special tax and fee laws.