

[Assembly Bill 867](#) (Wagner)

Date: 02/26/15

Program: All Tax Programs

Sponsor: BOE Member Runner

Revenue and Taxation Code Sections 42 and 5148

Effective: January 1, 2016

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This analysis only addresses the provisions that impact the BOE

Summary: Allows a claimant to file a refund claim with the Board of Equalization (BOE) within one year after a final nonappealable decision in which a court of competent jurisdiction, determines that a tax, fee, assessment, surcharge or other amount (“amount”) was illegally levied or collected.

Requires the BOE to issue refunds when the court makes its determination. Additionally, requires the BOE to issue refunds without a refund claim, as specified when the BOE’s records are sufficient.

Allows state assessees to bring a refund action in state-assessed property tax disputes, as specified, within one year after a court of competent jurisdiction’s final and nonappealable decision determines the BOE illegally assessed or allocated the tax.

Purpose: To ensure taxpayers have a realistic and relatively easy process to receive refunds of amounts paid that a court of competent jurisdiction, in a final and nonappealable decision, determined to be illegal or unconstitutional.

Fiscal Impact Summary: Revenue impact depends upon whether any future nonappealable court decision requires the BOE to make refunds in a manner required by the bill.

Existing Law: Business Taxes. Existing law¹ limits the time period in which a person may file a valid refund claim with the BOE for amounts that the person may have overpaid. Generally, a person must file a refund claim no later than:

- Three years from the return due date for the period for which the person made the overpayment,
- Six months from the overpayment date, or
- For a payment made pursuant to a determination, six months from the date the determination became final.

The law² prescribes a different time period for persons who claim a refund of an overpayment that the BOE collected by means of a levy, lien, or other enforcement procedure. For this type of overpayment, the person may file a valid refund claim within three years from the date the BOE collected the overpayment.

A person’s failure to file a refund claim within the required time period invalidates a refund claim and prevents the BOE from making or allowing a refund or credit, regardless of the refund claim’s merit.

Property Tax. Existing law³ requires the BOE to assess market values for public utilities and railroads. Under the “state assessed” property program, the BOE-assessed values are allocated to local jurisdictions for property tax levy and collection from “state assessees.” Existing law requires payment of disputed amounts prior to an action to recover state-assessed property taxes arising from a disputed assessment. This action must commence within four years after the date the BOE mailed its decision or its written findings and conclusions, whichever is later, as provided.

¹ Revenue and Taxation Code (RTC) Section 6902.

² RTC Section 6902.3.

³ Article XIII, Section 19 of the California Constitution and Chapter 4 (commencing with Section 721) of Part 2 of Division 1 of the RTC.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.

Court Ruling. When a court determines that the BOE has illegally levied or collected an amount, the law nevertheless prohibits the BOE from accepting refund claims from persons to recover the amounts found to be illegal if the person failed to timely file a refund claim. In other words, if a person failed to file a timely refund claim, no refund may be allowed, despite a court's determination.

Proposed Law: Notwithstanding existing law regarding the rule of *res judicata*, this bill authorizes a person who has paid an amount that a court of competent jurisdiction, in a final and nonappealable decision, determines to have been levied or collected illegally, to file a refund claim with the BOE within one year after the date of that decision, and requires the BOE to refund the amounts so paid.

This bill requires the BOE to refund the amount, regardless of whether a person files a refund claim, when the BOE's records are sufficient to identify the person. The bill specifies that, upon an appropriation, amounts necessary to make the refunds shall be allocated to the BOE.

With respect to state-assessed property tax, this bill also requires a refund action to commence no later than one year from the date the court of competent jurisdiction rendered a final and nonappealable decision that the BOE illegally assessed or allocated the tax.

Background: In a property tax case involving a state assessee, Elk Hills Power, LLC and the BOE⁴, the court of appeal ruled partially in favor of the state assessee, concluding that the BOE should not have included emission reduction credits in its replacement cost approach to the power plant's valuation. The BOE had included similar credits in its assessed valuation of 58 other state assessees. Due to the limitations period for filing a refund action, the law barred these 58 state assessees from filing refund claims and recovering the amounts overpaid.

Two measures similar to this bill were considered during the 2013-14 Session. [AB 2510](#) (Wagner) was held in the Assembly Revenue and Taxation Committee, and [SB 1327](#) (Knight) failed to pass the Senate Governance and Finance Committee.

Commentary:

- 1. Effect of this bill.** This bill enables persons who have paid amounts that are determined to have been illegally levied or collected to file a refund claim within one year from the date a court of competent jurisdiction makes a final and nonappealable decision that determines the BOE illegally collected or levied the amount.
- 2. Administrative Impact.** While accurately predicting the bill's potential impact on the BOE's functions is difficult, possible administrative impacts would primarily be attributed to an increased workload related to refund processing and outreach activities. These activities can differ dramatically depending on:
 - Impacted tax or fee program;
 - Ability to identify impacted taxpayers;
 - Number of taxpayers impacted;
 - Complexity of determining the refund amount;
 - Required system and technological changes; and
 - Scope of outreach efforts.
- 3. Current litigation.** On October 3, 2012, the Howard Jarvis Taxpayer Association filed a class action lawsuit that seeks to overturn the California Fire Prevention Fee.⁵ The issue is whether the fee is an illegal tax enacted without the two-third's vote required by law.⁶ The case is still pending.

⁴ *Elk Hills Power, LLC v. Board of Equalization et al.* (2013) 57 Cal.4th 593.

⁵ Enacted by ABx1 29 (Stats 2011, First Ex. Sess., Ch.8).

⁶ Article XIII A, Section 3, of the California Constitution.

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4. **Allocation of funds to BOE is necessary for refunds.** The Legislature must appropriate and allocate sufficient funds to the BOE before it can make any refunds pursuant to this bill.
5. **Administrative costs.** Legislatively appropriated funds should include an amount to cover BOE's administrative costs to process any refunds pursuant to this bill. Typically, the BOE seeks administrative cost reimbursement through a Budget Change Proposal or deficiency letter process. However an appropriation provides more certainty than these processes.

Administrative Costs: Administrative costs associated with this bill depend on the number of taxpayers impacted by any future final court decision. Therefore no amount can be estimated at this time.

Revenue Impact: This bill does not independently impact state revenues. The extent of the state revenue impact depends on the amount the Legislature appropriates to make refunds.

For state-assessee property tax refunds, the county or counties would be responsible for any allowable refunds.