California State
Board *of* Equalization

Legislative Bill Analysis

Legislative and Research Division

Assembly Bill 1856 (Dababneh)
Date: 03/29/16
Program: Business Taxes
Sponsor: Board of Equalization (BOE)
Revenue and Taxation Code Sections 6902.6, 9152.3, 30362.2, 32402.3, 40112.3, 41101.3, 43452.3, 45652.3, 46502.3, 50140.3, 55222.3, and 60522.3
Effective: January 1, 2017

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Summary: Allows a tax or fee payer (taxpayer) making installment payments on an outstanding tax liability to file a single claim for refund to cover the period.

Purpose: To provide some equitable relief for taxpayers who are 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.

Fiscal Impact Summary: Unknown revenue loss due to refunds currently barred by statute.

Existing Law: Under existing law,[1] when an overpayment of tax, interest or penalty is made to the 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.

Similar statutes cover the Use Fuel Tax, Cigarette and Tobacco Products Tax, Alcoholic Beverage Tax, Energy Resources Surcharge, Emergency Telephone Users Surcharge, Hazardous Substance Tax, Integrated Waste Management Fee, Oil Spill Response, Prevention, and Administration Fees, Underground Storage Tank Fee, Fee Collections Procedures, and Diesel Fuel Tax Laws.[2]

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. Nonetheless, the BOE may, at its discretion, accept a late petition as an 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.

[1] Sections 6901, 6902 and 6904 of the Revenue and Taxation Code (RTC).
[2] RTC Sections 9152, 30263, 32402, 40112, 41101, 43452, 45652, 46502, 50140, 55222, and 60522, respectively.

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.

Proposed Law: This bill allows a taxpayer making installment tax payments to file a single claim for refund to cover the period before the outstanding determination 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 would cover all subsequent payments applied to that determination.

The bill takes effect on January 1, 2017.

Background: In 2001, the Franchise Tax Board (FTB) sponsored Assembly Bill 1115 (Chapter 920, 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 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.

Commentary:

1. **Taxpayers do not understand why they must file a claim for each individual payment.** Assuming all other statutory limitation periods have elapsed or do not apply, the law requires a taxpayer to 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.
2. **BOE has identified several cases in which taxpayers were not refunded all of their payments.** This bill is prompted by several cases in which a taxpayer was barred by the statute of limitations from recovering 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.

Administrative Costs: BOE administrative costs to modify forms, publications, and website materials are absorbable.

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 determination that was reduced or cancelled on appeal. Some decrease in tax revenue would result from this bill because overpayments would be refunded that otherwise would be barred under current law.

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