

**Amend Sections 32402, 45652, 46502, 50140, and 55222 of the Revenue and Taxation Code to clarify the time period in which a claim for refund may be filed.**

**Source: Legal Division**

Under existing law, Section 6902 of the Revenue and Taxation Code provides that the Board shall not approve a refund of the sales and use tax: (1) within three years after the due date of the payment for the period for which the overpayment was made; or, (2) with respect to determined amounts after six months from the date the determinations become final; or (3) after six months from the date of overpayment, whichever period expires later, unless a claim for refund is filed with the Board within that period. Several other tax and fee programs administered by the Board contain identical provisions.

However, Sections 45652 (Integrated Waste Management Fee Law), 46502 (Oil Spill Response, Prevention and Administration Fee Law), 50140 (Underground Storage Tank Fee Law), and 55222 (Fee Collection Procedures Law) are similar, except that the phrase “after six months from the date the determinations become final” is replaced by “within six months after the determinations have become final”. There appears to be no apparent reason for this difference, and the language is difficult to interpret and apply. For example, this may be interpreted to mean that the taxpayer may file a claim for refund at any time after six months after the determination becomes final, in effect eliminating the statute of limitations.

This proposal would amend the Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fee Law, Underground Storage Tank Fee Law, and Fee Collection Procedures Law to provide claim for refund language consistent with the Sales and Use Tax Law and the other tax and fee laws administered by the Board.

Under current law, Section 32402 (Alcoholic Beverage Tax Law) also includes the phrase “within six months after the determinations become final” rather than “after six months from the date the determinations become final”. In addition, Section 32402 does not contain the third option, the filing of a claim for refund after six months from the date of overpayment, thus imposing a more restrictive statute of limitations on the filing of claims for refund in this tax program.

This proposal would also amend the Alcoholic Beverage Tax Law to be consistent with the claim for refund provisions of the Sales and Use Tax Law and the other tax and fee laws administered by the Board.

*Section 32402 of the Revenue and Taxation Code is amended to read:*

32402 (a) Except as provided in subdivision (b) no refund shall be approved by the board after three years from the 15th day of the calendar month following the close of the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 32271), 3 (commencing with Section 32291) or 5 (commencing with Section 32311) of Chapter 6 ~~after~~within six months ~~from the date~~after the determinations become final, ~~or after six months from the date of overpayment,~~ whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period unless a claim for credit is filed with the board within that period, or unless the credit relates to a period for which a waiver is given pursuant to Section 32273.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 32273, if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

*Section 45652 of the Revenue and Taxation Code is amended to read:*

45652. (a) Except as provided in subdivision (b), no refund shall be approved by the board after three years from the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 45201) of Chapter 3, ~~after~~within six months ~~from the date~~after the determinations have become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given pursuant to Section 45204.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 45204 if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

*Section 46502 of the Revenue and Taxation Code is amended to read:*

Section 46502. (a) Except as provided in subdivision (b), no refund shall be approved by the board after three years from the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 46201), Article

3 (commencing with Section 46251) or Article 4 (commencing with Section 46301) of Chapter 3, ~~after~~within six months ~~from the date~~after the determinations become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given pursuant to Section 46205.

(b) A refund may be approved by the board for any period for which a waiver is given pursuant to Section 46205 if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) If the board has made a determination under Article 2 (commencing with Section 46201), Article 3 (commencing with Section 46251), or Article 4 (commencing with Section 46301) of Chapter 3, and if a person's claim for refund was filed timely within the applicable six-month period specified by subdivision (a) or (b), that claim for refund shall be deemed to also apply to that person's later payments in full or partial satisfaction of that determination.

*Section 50140 of the Revenue and Taxation Code is amended to read:*

Section 50140. (a) Except as provided in subdivision (b), the board shall not approve a refund three years after the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 50113) of Chapter 3, ~~after~~within six months ~~from the date~~after the determinations have become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. The board shall not approve a credit after the expiration of that period, unless a claim for credit is filed with the board within that period.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 50113.2 if a claim is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

*Section 55222 of the Revenue and Taxation Code is amended to read:*

55222. (a) Except as provided in subdivision (b), no refund shall be approved by the board after three years from the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 55061) of Chapter 3, ~~after~~within six months ~~from the date~~after the determinations have become final, or six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved

by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given pursuant to Section 55064.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 55064 if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.