

Add Sections 9152.2, 30178.3, 32402.2, 40112.2, 41101.2, 43452.2, 45652.2, 46502.2, 50140.2, 55222.2, and 60522.2 to the Revenue and Taxation Code to allow the Board to grant refunds of overpayment of tax, fee, interest, or penalty collected by the Board by means of a levy if the claim is filed within three years of the date of overpayment.

Source: Excise Taxes and Fees Division and Fuel Taxes Division

Existing Law

Under the existing Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel 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 overpayment was made.
- Six months from the date of your overpayment.
- For a payment made pursuant to a determination, six months from the latter of the date the determination became final or the payment was made.

No refund may be allowed for an overpayment if a claim for refund is not filed by the taxpayer with the Board within these periods.

If any person is delinquent in the payment of the amount required to be paid by him or her, the Board may, by notice of levy, require all persons having in their possession, or under their control, any credits or other personal property belonging to that person to withhold from those credits or personal property the amounts due and to transmit those amounts to the Board at the time it may designate. Existing law also allows for a perfected and enforceable state tax lien for a person's failure to pay any amounts owned under the tax laws administered by the Board. Collection efforts such as these could occur outside of the three year statute of limitation from the due date of the return for the period for which the overpayment was made. In such case, a claim for refund must be filed six months from the date of overpayment by levy, through the use of liens, or by other enforcement procedures.

In the past, the Board has received sales and use tax amounts pursuant to a notice of levy or as a result of a tax lien in error. Either the taxpayer had already paid the liability in full, the creditor remitted an amount in excess of the amount due, or the taxpayer provided documents supporting a lower amount of tax due. When the statute of limitation period has not expired, and a taxpayer files a

timely claim for refund, the Board is authorized to refund any erroneous amounts collected. However, there have been cases in the past where the statute of limitations has barred the Board from initiating a refund for purposes of sales and use tax.

To provide a remedy for this inequity, Senate Bill 1827 (Stats. 1996, Ch. 1087) added Section 6902.3 to the Sales and Use Tax Law to extend the statute of limitation period with respect to overpayments from erroneous levies, liens, or other enforcement procedures and allow the Board to refund to a taxpayer any such amounts within three years from the last day of the month following the quarterly period in which the determination became final, or three years from the date of the levy or lien, whichever period expires later.

This Proposal

This proposal would extend the claim for refund provisions that exist under the Sales and Use Tax Law to specified special tax and fee programs administered by the Board. This proposal would extend the statute of limitation period to allow the Board to grant a claim for refund filed within three years of the date of overpayment of tax, interest, or penalty collected by the Board by means of a levy, through the use of liens or other enforcement procedures.

Section 9152.2 of the Revenue and Taxation Code is added to read:

9152.2. Notwithstanding Section 9152, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for refund is filed within three years of the date of overpayment.

Section 30178.3 of the Revenue and Taxation Code is added to read:

30178.3. Notwithstanding Section 30178, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for refund is filed within three years of the date of overpayment.

Section 32402.2 of the Revenue and Taxation Code is added to read:

32402.2. Notwithstanding Section 32402, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for refund is filed within three years of the date of overpayment.

Section 40112.2 of the Revenue and Taxation Code is added to read:

40112.2. Notwithstanding Section 40112, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for refund is filed within three years of the date of overpayment.

Section 41101.2 of the Revenue and Taxation Code is added to read:

41101.2. Notwithstanding Section 41101, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for refund is filed within three years of the date of overpayment.

Section 43452.2 of the Revenue and Taxation Code is added to read:

43452.2. Notwithstanding Section 43452, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for refund is filed within three years of the date of overpayment.

Section 45652.2 of the Revenue and Taxation Code is added to read:

45652.2. Notwithstanding Section 45652, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for refund is filed within three years of the date of overpayment.

Section 46502.2 of the Revenue and Taxation Code is added to read:

46502.2. Notwithstanding Section 46502, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for refund is filed within three years of the date of overpayment.

Section 50140.2 of the Revenue and Taxation Code is added to read:

50140.2. Notwithstanding Section 50140, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for refund is filed within three years of the date of overpayment.

Section 55222.2 of the Revenue and Taxation Code is added to read:

55222.2. Notwithstanding Section 55222, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for refund is filed within three years of the date of overpayment.

Section 60522.2 of the Revenue and Taxation Code is added to read:

60522.2. Notwithstanding Section 60522, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for refund is filed within three years of the date of overpayment.