

STATE BOARD OF EQUALIZATION



Appeal Name: CHARLES E. KOHLHASE, JR.

Case ID: 547973

ITEM #: B14

Date: JUNE 21, 2011

Exhibit No: _____

TP

FTB

DEPT

B14
June 21, 2011
Charles E. Kohlhase, Jr.
547973


August 22, 2010

Board Proceedings Division MIC:81
Board of Equalization
450 N Street
P. O. Box 942879
Sacramento, CA 94279-0081

Dear Appeals Decision Board:

I recently received Attachments 1-3 denying my 540x request for a refund of overpaid back FTB taxes on the basis that the statute of limitations (SOL) had expired, but giving me until 10/28/10 to appeal this decision. In the instructions for form 540x, the following statement is made: "If you are filing your amended return after the normal statute of limitation period (four years after the due date of the original return), **attach a statement explaining why the normal statute of limitations does not apply.**" Therefore, any denial should be based upon the unacceptability of my statement and not upon the SOL. The purpose of this appeal is to provide you with my **statement** of the reasons why I believe that the SOL should not apply in my special case. All of the information requested by form FTB 1084 has been supplied in Attachment 4.

I turned 62 on 8/15/1997 and began collecting early Social Security payments from the federal government. Hence, when I filed my 540 return for 2007 with the state of California in April of 1998, I wondered whether this added income should be reflected in any way on the California adjustments form CA. So I called one of the FTB agents and inquired. This agent told me that the Social Security payments were still income and should be reported with no adjustments. Based upon that answer, I made no adjustments on form CA for tax years 1997 through 2006 (a period of 10 years). Then in early 2008, when filling out my 540 return for tax year 2007, I quite by chance discovered that I should not be paying state income tax on federal Social Security payments (or on state income tax refunds, as well). Hence, I corrected this adjustment on form CA for tax year 2007. Then I quickly submitted forms 540x for back tax years 2003 through 2006. As the rationale was straightforward, the state did correctly refund overpaid taxes for those years.

Then, on 6/17/2008, I submitted my **statement** (see Attachment 5) explaining why the SOL should not apply for tax years 2000 through 2002. I would have also included in that letter tax years 1997 through 1999 as well, but could not locate my copies of the completed forms 540 for those earlier years. For some reason, it took the FTB over 2 years to reply to Attachment 5 with a refund denial as shown in Attachments 1-3. As the reasons for approving refunds for tax years 2000 through 2002 are exactly the same as the reasons that the FTB approved refunds for tax years 2003 through 2006, it seems to me that the SOL should not be applied in my case, particularly as the FTB agent had given me incorrect information when I originally inquired. I recognize that the state has major budget problems, but this should not influence your decision related to this appeal. I therefore hope that you will accept my straightforward **statement** and refund the monies requested in Attachment 5 (with interest). One small note: I do not know why your Attachment 3 cites \$1559 and not the \$1719 noted in my earlier Attachment 5, but I will accept either figure in this regard.

Very sincerely,

Charles E. Kohlhase Jr.


Instructions for Form 540X

Amended Individual Income Tax Return

General Information

Protective Claim – If you are filing a claim for refund on Form 540X for a tax year where litigation is pending or where a final determination by the Internal Revenue Service (IRS) is pending, you must write "PROTECTIVE CLAIM" in red ink at the top of your completed Form 540X. Specify the pending litigation or reference the federal determination on Side 2, Part II, so we can properly process your claim.

Installment Payments – If you cannot pay the full amount that you owe with your amended return, you may request approval to make monthly installment payments. You will be charged interest and may be charged a late payment penalty even if your request to pay in installments is granted. To limit interest and penalty charges, pay as much of the tax as possible with your amended return. You can apply for an Installment Agreement (form FTB 3567) online. Go to our Website at www.ftb.ca.gov. To order the form by phone, call (800) 338-0505, select personal income tax, then select forms and publications, and enter code 049 when instructed.

Military Compensation – If you are filing an amended return to exclude military compensation as a result of the Servicemembers Civil Relief Act (P.L. 108-189), write "Military HR 100" in red at the top of Form 540X. In addition, please attach a copy of your military W-2, a revised Form 540NR, Schedule CA (540NR), and any other affected forms or schedules to your Form 540X. If you are amending a tax year for which the normal statute of limitations (SOL) has expired, attach a statement explaining why the SOL is still open. If the SOL is open because of military service in a combat zone or outside the United States, attach copies of any documents that show when you served in a combat zone or overseas. Include a daytime phone number on the line provided on Side 2 of Form 540X. For additional information, get FTB Pub. 1032, Tax Information for Military Personnel.

Abusive Tax Shelter – If you have been involved in a potentially abusive tax shelter, you have a disclosure, registration, and list maintenance requirement. We may impose several new and enhanced penalties if you fail to file the required information or forms. For more information, see "Reporting Requirements" under "Abusive Tax Shelters" on our Website at www.ftb.ca.gov.

Victims of Terrorism – California has conformed to the Victims of Terrorism Tax Relief Act of 2001 that allows victims who died as a result of the terrorist attacks of September 11, 2001, and the anthrax incidents in 2001, a forgiveness of their state tax liability for the year immediately preceding the incident and all subsequent tax years until the date of death. For victims who died in 2001, this will result in a forgiveness of tax liability for tax years 2000 and 2001. Therefore, the surviving spouses or executors of victims who died in 2001 may claim a refund of taxes paid by filing an amended or original tax return for 2000 at any time until April 15, 2005, and for 2001 at any time until April 15, 2006. To qualify for a tax refund, the victim must have paid state income taxes or had them withheld.

Survivors or executors of those "Killed in Terrorist Action" (KITA) victims should write "KITA-9/11" or "KITA-Anthrax" in red ink at the top of the first page of their amended returns.

A Purpose

Use Form 540X to correct your 1990 through 2004 California personal income tax return (Form 540, 540A, 540EZ, 540 2EZ, 540TEL, 540-ADS, or Long or Short 540NR), whether originally filed via paper, TeleFile, or e-file.

Use Tax: Do not use this form to correct a "use tax" error reported on your original return. Under California law, use tax generally applies to merchandise purchased from businesses outside of California where California sales tax was not paid. The State Board of Equalization (BOE) administers the use tax. Please refer all questions or requests relating to use tax to the BOE's Website at www.boe.ca.gov or call 1-800-400-7115.

B When to File

Generally, if you filed federal Form 1040X, Amended U.S. Individual Income Tax Return, you must file Form 540X within six months unless the changes do not affect your California tax liability. File Form 540X only after you have filed your original California return.

California Statute of Limitations

Original return was filed on or before April 15th:

If you are making a claim for refund, file an amended return within four years from the original due date of the return or within one year from the date of overpayment, whichever period expires later.

Original return was filed within the extension period (April 15th - October 15th): If you are making a claim for refund, file an amended return within four years from the date the original return was filed or within one year from the date of overpayment, whichever period expires later.

Original return was filed after October 15th:

If you are making a claim for refund, file an amended return within four years from the original due date of the return (April 15th) or within one year from the date of overpayment, whichever period expires later.

If you are filing your amended return after the normal statute of limitation period (four years after the due date of the original return), attach a statement explaining why the normal statute of limitations does not apply.

If you are filing your amended return in response to a billing notice you received, you will continue to receive billing notices until your amended return is accepted. After January 1, 2002, you may file an informal claim for refund even though the full amount due including tax, penalty, and interest has not yet been paid. After the full amount due has been paid, you have the right to appeal to the State Board of Equalization or to file suit in court if your claim for refund is disallowed.

To file an informal claim for refund, write "INFORMAL CLAIM" in red ink at the top of the first page of your completed Form 540X and mail the claim to:

INFORMAL CLAIMS UNIT, MS F-228
FRANCHISE TAX BOARD
PO BOX 1468
SACRAMENTO, CA 95812-1468

Financially Disabled Taxpayers

The statute of limitations for filing claims for refunds is suspended during periods when a taxpayer is "financially disabled." You are considered "financially disabled" when you are unable to manage your financial affairs due to medically determinable physical or mental impairment that is deemed to be either a terminal impairment or is expected to last for a continuous period of not less than 12 months. You are not considered "financially disabled" during any period that your spouse or any other person is legally authorized to act on your behalf on financial matters. For more information, get form FTB 1564.

C Information on Income, Deductions, etc.

If you have questions, such as what income is taxable or what expenses are deductible, refer to the income tax booklet for the year you are amending. Be sure to use the proper tax table or tax rate schedule to figure your corrected tax. The related schedules and forms may also help you. If you amended your federal income tax return and made changes to your medical expense deduction, charitable contributions, or miscellaneous itemized deductions, you must also make adjustments on Form 540X if you itemized your deductions for California. You must use your revised federal adjusted gross income (AGI) to compute the percentage limitations.

D Part-Year Residents and Nonresidents

Line 1 through Line 14. Skip these lines.

Line 15 – Complete a corrected Long or Short Form 540NR, California Nonresident or Part-Year Resident Income Tax Return. Enter on Form 540X, line 15, column C, the total tax from your corrected Long or Short Form 540NR, line 46.

Complete the rest of the form as directed starting on page 3 of the instructions.

Attach to Form 540X. You must attach the following corrected forms and schedules:

- Long or Short Form 540NR. Write "AMENDED" in red ink at the top of the first page of this form.
- Schedule CA (540NR), California Adjustments - Nonresidents or Part-Year Residents (Long Form 540NR filers only).

(For taxable years 1990, 1991, and 1992, attach Schedule SI, Nonresident or Part-Year Resident California Adjusted Gross Income.)

- Any other forms and schedules that were affected by the changes you made.
- A complete copy of your federal amended return, if one was filed, including all the revised forms and schedules.

E Federal Notices

If you were notified of an error on your federal income tax return that changed your AGI, you may need to amend your California income tax return for that year.

If the IRS examines and changes your federal income tax return, and you owe additional tax, report these changes to the FTB within six months. You do not need to inform the FTB if the changes do not increase your California tax liability. If the changes made by the IRS result in a refund due, you must file a claim within two years. Use Form 540X to make any changes to your California income tax returns already filed, or send copies of the changes together with your recomputation of California tax to: