

State Board of Equalization
Taxpayer Bill of Rights Hearing
Culver City
September 22, 2004

Re: Downey, Smith & Fier-Topics Requested to be Addressed

The following summarizes the topics, Refunds and Amnesty Program, that Downey, Smith & Fier would like addressed at the Hearing:

Processing of Refunds

Note: The main issues discussed below involve Board policy and the field time required to process/verify refunds. No issues exist with Headquarters' processing of claims (timely and responsive).

➤ Issues

- Current process too long and cumbersome, over a year on average to issue refunds to taxpayers, including:
 - Six months to assign refund claim to an auditor
 - Six months or more to process the claim
 - Four months for Board approval on consent calendar
- Auditor are currently incentivized to hold/delay refund claims based on evaluation system

➤ Factors Contributing to Delays

- SBE receives many more refund claims than in the past
 - Current BOE policy requires taxpayers to file a formal claim for refund for any prior period return

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adjustment, regardless of size. Smaller claims are bogging down the system.

- Refund threshold that requires Board approval is outdated (\$50,000). This amount has not been updated in over 15 years. Every refund on the consent calendar is approved, without discussion. No such approval is required for Franchise Tax Board refunds.
- Auditors evaluated based on dollars refunded, not issues involved. No incentive or requirements to process refunds quickly:
 - Example: For a \$100,000 refund, auditor work will be evaluated as productive if they spend less than 1000 hours. Accordingly, audit hours and time to verify is inflated.
 - No mandate to complete refunds within a certain period
- The current process for obtaining refunds requires taxpayers to engage consultants (and pay them a fee) to manage this process
- Ridiculously low overpayment interest rate of 1% does not incentivize SBE to process refunds quickly
- Specific examples:
 - Current client filed a refund claim more than 18 months ago for use tax inadvertently accrued and paid on an asset physically located in Australia. The auditor has still not confirmed the refund, yet the BOE continues to hold their money. Based on the size of the refund we expect the final processing not to be complete for an additional 12 months.
 - Recently, an auditor spent over a thousand hours to verify a client's refund claim that involved a single issue. Note the taxpayer was required to

prepare all schedules, retrieve all source documents and overcome the presumption that the property was taxable.

Potential Solutions

- Modify current policy to allow taxpayers to claim refunds as adjustments on their current return and offset the tax due, including in such situation a forfeiture of any interest. Benefits include revenue generation and ease on system to audit and process formal claims for refund.
 - As a deduction, the adjustments would be fully documented and the returns would serve as a claim for refund.
 - Refunds can be explained on line 12F-Other deductions
 - This provides sufficient notice to the SBE
 - To reduce the fiscal impact to the State, taxpayers would forego credit interest for refunds claimed in this manner.
 - Promote efficiency and taxpayer compliance
 - SBE could create or organize an audit team to review these deductions/claims. Many would most likely only require a desk audit.
 - Increase uniformity
 - Maintain separation from the audit

Amnesty Program

➤ Issue

- Application of the 10 year statute of limitations

- Appears to allow assessments retroactive to 1995 for unregistered and registered taxpayers
 - How can a 10 yr. statute apply when registered taxpayers are only required to retain books and records for four years?
 - What happens if a taxpayer has yet to be audited, or is under audit and does not know if a liability exists, or is in appeal to determine whether a liability exists, during the amnesty period?

- Does this allow an auditor to project an error percentage back to 1995 if one is applied to a current audit period?

- If a taxpayer pays a deposit to cover any potential liability and the SBE subsequently confirms no liability exists, can the taxpayer obtain a refund of this payment?