



For Immediate Release
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A California Appellate Court Will Ultimately Decide Who is Eligible to Receive Fire Prevention Fee Refunds if the Fees are Ruled Unconstitutional, says Board of Equalization Chairman Jerome E. Horton

Sacramento – Chairman Horton wants taxpayers to know that if they want to claim a refund for taxes or fees they believe they do not owe, the general rule is that they must file a timely claim for refund that specifies the specific grounds upon which the claim is founded.

However, a recent court decision indicates that refunds under the Fire Prevention Fee law, established by the Legislature ([Assembly Bill x1 29](#)), administered by CAL FIRE, but collected by the Board of Equalization, *may not follow this general rule*.

In a lawsuit filed by the Howard Jarvis Taxpayers Association that challenges the constitutionality of the Fire Prevention Fee, the trial court has ruled that fee payers must also file a timely Petition for Redetermination prior to filing a timely claim for refund.

The court focused on language in Public Resources Code section 4213, subdivision (a)(3)(A) & (B), which states:

- (A) Notwithstanding the refund provisions in the Fee Collection Procedures Law, the State Board of Equalization shall not accept any claim for refund that is based on the assertion that a determination by the department improperly or erroneously calculated the amount of the fire prevention fee, or incorrectly determined that the person is subject to that fee, unless that determination has been set aside by the department or a court reviewing the determination of the department.
- (B) If it is determined by the department or a reviewing court that a person is entitled to a refund of all or part of the fire prevention fee, the person shall make a claim to the State Board of Equalization pursuant to Chapter 5 (commencing with [Section 55221](#)) of Part 30 of Division 2 of the Revenue and Taxation Code.

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Today, Tim Bittle, Director of Legal Affairs with the Howard Jarvis Taxpayers Association, told the Chairman: “We will continue to fight for refunds for everyone who has paid the fee and if the trial court denies relief, we will appeal!”

Chairman Horton agrees: “Sound tax policy requires the return of tax and fee money improperly or illegally collected,” said Horton. “It is my hope that this policy will be vindicated upon appeal. I believe that individuals who paid the fee but did not file a timely Petition for Redetermination should still be able to receive a refund if the courts find the Fire Prevention fee to be unconstitutional. Given the legal uncertainties, fee payers should pay the fee and file a timely Petition for Redetermination to preserve their potential refund rights.”

According to one press account, as things stand now, nearly 800,000 property owners who failed to file a timely Petition for Redetermination for the 2011-2012 fee year may not receive refunds if the \$150 annual fire prevention fee is declared an illegal tax. Those who did file the proper form in a timely manner will be eligible to get their money back.

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Elected in 2010, Chairman Jerome E. Horton is the Fourth District Member of the California State Board of Equalization, representing more than 8.5 million residents in Los Angeles County. He is also the Board of Equalization’s Legislative Committee Chairman. He is the first to serve on the Board of Equalization with over 21 years of experience at the BOE. Horton previously served as an Assembly Member of the California State Assembly from 2000-2006.

The five-member California State Board of Equalization is a publicly elected tax board. The Board of Equalization collects more than \$53.7 billion annually in taxes and fees supporting state and local government services. It hears business tax appeals, acts as the appellate body for franchise and personal income tax appeals, and serves a significant role in the assessment and administration of property taxes. For more information on other taxes and fees in California, visit www.taxes.ca.gov.

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