

**STATE BOARD OF EQUALIZATION**

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Executive Director

September 18, 1995

Mr. B--- H. F---
General Counsel
D--- G--- Inc.
XXXX --- Avenue
---, CA XXXXX

Re: Claim for Refund
SY -- XX-XXXXXX

Dear Mr. F---:

This letter is in response to your letter to Mr. Don Hennessey dated July 8, 1995, in which you requested advice as to whether a claim for refund filed by your client, D--- G--- Inc., was timely filed.

As I understand the facts, the Board issued D--- G--- Inc., a Notice of Determination dated August 30, 1990, for fiscal years April 1, 1985 through March 31, 1988. Your client filed a timely petition for redetermination of that determination. After a Board hearing on this matter a Notice of Redetermination was issued on August 27, 1992, and became final thirty days after the notice was issued. On November 19, 1993, Mr. R--- W---, C.F.O. of D--- G--- Inc., agreed to a "Taxpayer's Installment Payment Proposal." On December 16, 1994, the Board of Equalization faxed a copy of the payment activity (Exhibit 10 of the Claim for Refund) which reflected that a final payment of \$8,020.46 was posted on November 8, 1994, and that an adjustment to delete the finality penalty was made on December 14, 1994. On May 25, 1995, a claim for refund was filed for the amounts paid in satisfaction of this redetermination.

The claim for refund was not accepted on the grounds that it was not timely filed pursuant to Revenue and Taxation Code Section 6902. As provided by this section, a claim is timely if it is filed within three years of the due date of the tax or within six months of the date of payment. A claim is also timely if, with respect to amounts paid pursuant to a determination, the claim is filed within six months from the date the determination becomes final. Unless your client's claim has been filed within one of these limitations, the claim for refund is barred.

In support of your position that the claim for refund was timely filed you cite Chahine v. State Bd. of Equalization ((1990) 222 Cal. App. 3d 485). The actual holding of Chahine provides that:

“under section 6902 a taxpayer who seeks a refund of taxes he has paid in *partial* satisfaction of a periodic tax liability must petition for refund thereof within six months from the date of such partial payment.”(Id. at p. 490.)
(Id. at p. 490.)

While the court stated that this case did not involve a situation where a taxpayer entered into a payment agreement over a specified time, there is nothing in the opinion that indicates that the court would have interpreted section 6902 any differently if there had been such an agreement.

The Board cannot act upon a claim for refund until a final determination has been paid (State Board of Equalization v. Superior Court, (1985) 39 Cal. 3d 633.). Thus, when a taxpayer pays a liability through a payment plan with the intent of filing a claim for refund it should do so by filing claims for refund within six months after each installment payment is made in order to protect the taxpayer's rights. These periodic claims for refund are treated as “protective claims for refund” to protect against the expiration of the statute of limitations, pursuant to section 6902.

Your client's claim for refund, filed on May 25, 1995, would only be timely for payments made six months prior, or for all payments made on or after November 25, 1994. Since the last payment relative to this redetermination occurred on November 8, 1994, the claim for refund was not timely filed for any of the payments made. Accordingly, Mr. Turner's position that your claim for refund was not timely filed is correct.

If you have any further questions please feel free to contact this office again.

Sincerely,

Patricia Hart Jorgensen
Senior Staff Counsel

PHJ:cl

cc: Mr. Donald J. Hennessey
--- District Administrator
Mr. Robert Pieroni
Mr. Clifford Turner