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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date:	**02/21/14**	Bill No:	**Senate Bill 1327**
Program:	**Administration**	Author:	**Knight**
Sponsor:	**BOE Member Runner**	Code Sections:	**RTC 41 and 5148**
Related Bills:	**Assembly Bill 2510 (Wagner)**	Effective Date:	**01/01/15**

This analysis only addresses the provisions that impact the BOE.

BILL SUMMARY

This bill:

- Allows a claimant to file a claim for refund with the Board of Equalization (BOE) within one year after a court of competent jurisdiction determines that a tax, fee, assessment, surcharge or other amount was illegally levied or collected.
- Requires the BOE to issue refunds when a court of competent jurisdiction determines that a tax, fee, assessment, surcharge or other amount was illegally levied or collected without a claim for refund when information in the BOE's records is sufficient to identify the person, his current address, the date of payment and the amount paid; and,
- Allows state assessees to bring refund action to recover taxes levied on state-assessed property arising out of a dispute as to an assessment, including a dispute as to valuation, assessment ratio, or allocation of value for assessment purposes within one year after the date a court of competent jurisdiction determines that property tax was illegally assessed or allocated.

ANALYSIS

CURRENT LAW

Business Taxes. Existing law[1] limits the time period in which a person may file a valid refund claim with the BOE for an overpaid tax, fee, assessment, surcharge or other amount, including applicable interest and/or penalty. Generally, a person must file a refund claim no later than:

- Three years from the return due date for the period for which the person made the overpayment,
- Six months from the overpayment date, or
- For a payment made pursuant to a determination, six months from the date the determination became final.

The law[2] prescribes a different time period for persons who claim a refund for an overpayment that the BOE collected by means of a levy, lien, or other enforcement procedure. For this type of overpayment, the person may file a valid refund claim within three years from the date the BOE collected the overpayment.

[1] Revenue and Taxation Code (RTC) Section 6902.
[2] RTC Section 6902.3.

A person's failure to file a refund claim within any of these time periods invalidates a refund claim and prevents the BOE from making or allowing a refund or credit, regardless of the refund claim's merit.

Property Taxes. Existing law[3] requires the BOE to assess market values for public utilities and railroads as provided by the State Constitution. Under the "state assessed" property program, the BOE-assessed values are allocated to local jurisdictions for property tax levy and collection from "state assessees." Existing law requires payment of taxes prior to an action to recover state-assessed property taxes arising from a disputed assessment. This action must commence within 4 years after the later of the dates that the BOE mailed its decision or its written findings and conclusions, as provided.

Court Ruling. When a court of competent jurisdiction determines that a tax, fee, assessment, surcharge or other amount has been illegally levied or collected, the limitations period for filing a claim for refund for the illegally paid amount is not affected. In other words, if a person failed to file a timely claim for refund, no refund may be allowed, despite a court's determination.

PROPOSED LAW

Notwithstanding existing law regarding the rule of res judicata, this bill authorizes a taxpayer to file a claim for refund with the BOE within one year after the date of a final and nonappealable decision and requires the BOE to refund the amounts so paid. The claim for refund must be for a tax, fee, assessment, surcharge, or other amount levied or collected by the BOE, that has been determined to have been illegally levied or collected in a final and nonappealable decision of a court of competent jurisdiction. This bill also requires the BOE to refund these amounts, regardless of whether a person files a refund claim, when information in the BOE's records is sufficient to identify the person. The BOE will make these refunds upon appropriation of necessary amounts by the Legislature.

This bill also requires a refund action to commence no later than one year from the date a court of competent jurisdiction rendered a final and nonappealable decision that property tax was illegally assessed or allocated.

BACKGROUND

In a property tax case involving a state assessee, Elk Hills Power, LLC and the BOE, the court of appeal ruled partially in favor of the state assessee, concluding that the BOE should not have included emission reduction credits in its replacement cost approach to value of the power plant. However, the BOE had included similar credits in its assessed valuation of about 58 other state assessees. Due to the statute of limitations for filing a refund action, these 58 state assessees were barred from attempting to recover such amounts.

[3] Article XIII, Section 19 of the California Constitution and Chapter 4 (commencing with Section 721) of Part 2 of Division 1 of the RTC.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by BOE Member George Runner in an effort to ensure taxpayers have a realistic and relatively easy process to receive refunds of previously paid taxes found to be illegal or unconstitutional.

2. **Administrative Impact.** The impact of this measure on BOE staff is currently unknowable. Possible administrative impacts include, but may not be limited to, an increased number of refunds, BOE policy and guideline modifications, and outreach activities. These activities can differ dramatically depending on:

   - Impacted tax or fee program;
   - Ability to identify impacted taxpayers;
   - Number of taxpayers impacted;
   - Complexity of determining the refund amount;
   - Required system and technological changes;
   - Scope of BOE policy publication modifications and required staff training; and
   - Scope of outreach efforts.

3. **Current litigation.** On October 3, 2012, the Howard Jarvis Taxpayer Association filed a class action lawsuit seeking to overturn the California Fire Prevention Fee. The lawsuit claims the fee is illegal.

4. **Allocation of funds to BOE for refunds.** The Legislature must appropriate and allocate sufficient funds to the BOE before it can make any refunds pursuant to this section.

5. **Administrative costs.** Funds appropriated by the Legislature should include an amount to cover BOE's administrative cost to process any refunds pursuant to this section. Typically, the BOE seeks administrative cost reimbursement through the Budget Change Proposal or deficiency letter process. However, reimbursement funding through this process is uncertain.

6. **Suggested Amendment.** RTC Sections 41(a) and 5148(j) include the phrase "court of competent jurisdiction" when describing the level of court whose holding would be binding on a state agency if it holds that a tax, fee, assessment, surcharge, other amount, or state-assessed property tax is found to be illegal. The California Constitution requires a state agency to enforce a statute without regard to the issue of constitutionality until an appellate court determines the statute unconstitutional.[4] Therefore, it is suggested the phrase "a court of competent jurisdiction" be amended to "an appellate court of competent jurisdiction" to conform to the California Constitution.

Related legislation. AB 2510 (Wagner), also sponsored by BOE Member Runner, is identical to this bill.

[4] Article III, Section 3.5 of the California Constitution

COST ESTIMATE

Administrative costs associated with this bill depend on the number of taxpayers impacted by any final court decision. Therefore no amount can be estimated at this time.

REVENUE ESTIMATE

This bill does not independently impact state revenues. The extent of the state revenue impact is dependent on the amount of funds allocated by the Legislature.

The defendant county or counties are responsible for any refunds of state–assessed property tax found to be due pursuant to this section.

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.