

## BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations  
Title 18. Public Revenues  
Division 2.1. State Board of Equalization – Rules for Tax Appeals  
**Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees**

### ARTICLE 3: CLAIMS FOR REFUND

#### 5230. PERSONS WHO MAY FILE A CLAIM FOR REFUND; LIMITATIONS ON CERTAIN CLAIMS.

(a) Any person, supplier, distributor, insurer, surplus line broker, user, or tax or fee payer who believes that it has overpaid a tax or fee, or interest or penalty thereon, or other refundable amount to the Board may file a claim for refund. An authorized representative may file a claim for refund on such a person's behalf.

(b) Motor Vehicle Fuel Tax Law. A claim for refund based upon the following grounds must be filed with the Controller and is not governed by this chapter:

- (1) The motor vehicle fuel was purchased and used for a purpose other than operating motor vehicles on public highways in California.
- (2) The motor vehicle fuel was exported for use outside of California.
- (3) The motor vehicle fuel was sold to the armed forces of the United States for use in ships or aircraft, or for use outside of California in a manner that would qualify for an exemption under Revenue and Taxation Code section 7401.
- (4) The motor vehicle fuel was purchased for and used in construction equipment, which is exempt from vehicle registration under the Vehicle Code.
- (5) The claimant is a supplier who sold motor vehicle fuel to a consulate office or consulate employee under circumstances that would have entitled the supplier to an exemption under Revenue and Taxation Code section 7401, subdivision (a)(4).
- (6) The claimant is a supplier that:
  - (A) Removed motor vehicle fuel from a rack and paid tax on that removal, or purchased tax-paid motor vehicle fuel outside the bulk transfer/terminal system; and
  - (B) Delivered the tax-paid motor vehicle fuel to another approved terminal from which the supplier subsequently removed the tax-paid motor vehicle fuel at the terminal rack and paid a second tax on the same amount of motor vehicle fuel.
- (7) The claimant is a supplier who purchased tax-paid motor vehicle fuel in the bulk transfer/terminal system and subsequently removed the tax-paid motor vehicle fuel at the terminal rack, and paid tax upon the same amount of motor vehicle fuel twice.
- (8) The claimant provides public transportation services and used tax-paid motor vehicle fuel to propel passenger carrying vehicles used for the transportation of persons for hire, compensation, or profit.
- (9) The claimant paid tax attributable to the distribution of motor vehicle fuel for use or used in propelling a vessel operated by its owner on waters located on private property owned or controlled by it.

(c) Hazardous Substances Tax Law.

- (1) All claims for refund filed under Revenue and Taxation Code section 43452 will be acknowledged. However, no determination will be made as to whether any substance is a hazardous or extremely hazardous waste. A claim for refund based upon such grounds will be forwarded to the Director of the California Department of Toxic Substances Control for determination in accordance with Revenue and Taxation Code section 43452.

(2) A claim for refund required to be forwarded to the Director of the California Department of Toxic Substances Control under paragraph (1) will not be considered until after the Director of the California Department of Toxic Substances Control has made his or her determination.

(3) Childhood Lead Poisoning Prevention Fee.

(A) All claims for refund of the Childhood Lead Poisoning Prevention Fee will be acknowledged. A claim for refund of the Childhood Lead Poisoning Prevention Fee may be founded upon any grounds, including such grounds as:

(i) The taxpayer's industry did not contribute in any manner to environmental lead contamination;

(ii) The taxpayer's lead or lead containing product does not currently or did not historically result in quantifiable persistent lead contamination; or

(iii) The amount of the fee assessed does not reflect the taxpayer's market share or is incorrectly computed.

(B) A claim for refund described in clauses (i), (ii), or (iii) of subparagraph (A) will not be acted upon until after the California Department of Public Health has acted upon the taxpayer's application for exemption from the fee or reassessment of the fee. Applications for exemption shall be submitted to the California Department of Public Health in the manner provided in California Code of Regulations, title 17, section 33040. Applications for reassessment shall be submitted to the California Department of Public Health in the manner provided in California Code of Regulations, title 17, section 33050.

(d) Covered Electronic Waste Recycling Fee. All claims for refund of the Covered Electronic Waste Recycling Fee will be acknowledged. However, no determination will be made as to whether an item is or is not a covered electronic device. Claims for refund based upon such grounds will be forwarded to the California Department of Toxic Substances Control for determination in accordance with Public Resources Code section 42464.6.

(e) Water Rights Fee Law. A claim for refund filed under the Fee Collection Procedures Law that is based upon the assertion that the State Water Resources Control Board improperly or erroneously determined that a person or entity was required to pay a water rights fee or the amount of such fee will not be accepted. However, the Board will accept a claim for refund based upon such grounds if the determination referred to in the claim for refund has already been set aside by the State Water Resources Control Board or a court reviewing the determination. A determination by the State Water Resources Control Board regarding the amount of the water rights fee or that a person or entity is required to pay such fee is subject to review under chapter 4 of part 1 of division 2 of the Water Code.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 6902, 8101, 8101.1, 8101.6, 8101.7, 8102, 8126, 8128, 9151, 9152, 12977, 12978, 30176, 30176.1, 30176.2, 30177, 30361, 30362, 32401, 32402, 32407, 38601, 38602, 40111, 40112, 41100, 41101, 43451, 43452, 45651, 45652, 46501, 46502, 50139, 50140, 55221, 55222, 60501, 60502, 60507, 60521 and 60522, Revenue and Taxation Code; and Section 1537, Water Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.  
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments replaced "persons" with "a person's" at the end of subdivision (a); replaced "should" with "must" in subdivision (b); inserted "provides public transportation services and" after "claimant" in subdivision (b)(8); inserted "the California Department of" in the third sentence in subdivision (c)(1) and two places in subdivision (c)(2); replaced "petitioner's" with "taxpayer's" in subdivision (c)(3)(A)(i), (ii), and (iii); replaced "State Director of Health Services" with "California Department of Public Health" and replaced "claimant's" with "taxpayer's" in the first sentence in subdivision (c)(3)(B); replaced "should" with "shall" and replaced "State Department of Health Care Services" with "California Department of Public Health" in the second sentence in subdivision (c)(3)(B); replaced "should" with "shall" and replaced "State Department of Health Services" with "California Department of Public Health" in the third sentence in subdivision (c)(3)(B); inserted

“California” in subdivision (d); deleted the second sentence from subdivision (e); replaced “This prohibition does not apply” with “However, the Board will accept a claim for refund based upon such grounds “ at the beginning of and inserted “referred to in the claim for refund” in the third sentence in subdivision (e); added a new last sentence to subdivision (e); and added a citation to Water Code section 1537 to the regulation’s reference note.