

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 067

June 27, 1958

BOND PREMIUMS: ELECTION TO AMORTIZE

Syllabus:

The election to deduct amortized bond premiums may only be made at the time the return is filed and not by a subsequent claim for refund.

Taxpayer filed a 1945 return without taking a deduction for amortization of bond premium. Later, taxpayer filed a timely claim for refund accompanied by a schedule recomputing the net income with a deduction for amortizable bond premium. Advice is requested whether the claim should be allowed.

Section 17219, which provides the election to deduct amortizable bond premiums, states "The election shall be made in accordance with such regulations as the Franchise Tax Board shall prescribe." Regulation 17318.05-17318.7(d) states "Election shall be made by the taxpayer by claiming a deduction for the bond premium in his return for the first taxable year to which he desires the election to be applicable. No other method of making such election is permitted. If the election is made the taxpayer should attach to his return a statement showing the computation of the deduction."

The reasonable import of these provisions is that the election cannot be made by filing a claim for refund after the filing of a return in which the deduction was not claimed. The only method provided by the law for amending an original report of income to reduce its amount is the filing of a claim for refund. The regulation does not accept this method as a permissible way of electing to deduct bond premium; rather, it specifically precludes all methods other than claiming the deduction in the returns. A claim for refund is not a return. The claim for refund should be denied.