

## CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 100

June 20, 1958

### OFFSET OF BARRED DEFICIENCY

Syllabus:

Overpayments in years not barred by the statute of limitations may be offset by a deficiency barred by the statute of limitations where the time for appeal or suit has expired.

On July 29, 1952, a Notice of Proposed Assessment was issued for the income year 1945. The statute of limitations had run on June 30, 1952, however, the assessment was made final without protest on October 16, 1952. On October 22, 1952, notices were issued showing overpayment for the income years 1946 and 1948. Transfer of credit was made to cover the barred assessments for 1945. Taxpayer objected to the transfer of credit in December of 1952. Advice is requested whether overpayment in the open years may be offset by the barred deficiency.

Section 25902 of the Bank and Corporation Tax Law does not limit the Franchise Tax Board's right to offset or recoup barred assessments against overpayments. The action of offsetting the overpayments by the barred deficiency is proper where the taxpayer did not appeal to the Board of Equalization within 90 days after being notified of the Franchise Tax Board's action on the 1946 and 1948 claims nor did it bring suit within the statutory period. If a taxpayer wishes to contest the Franchise Tax Board's action on a claim for refund even though that action be a crediting instead of refunding, he must follow the procedure outlined in the statute. (See Bermite Powder Co. v Franchise Tax Board, 38 Cal. 2d 700).