

## CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 124

May 13, 1958

### REFUND CLAIMS: TIMELINESS OF CLAIMS BASED ON RENEGOTIATION OF GOVERNMENT CONTRACTS

#### Syllabus:

The two year period in which to file claims for refund under section 18359 shall begin to run on installment payments of renegotiated amounts upon the payment of each installment. The two year period shall begin to run upon Federal tax offsets on the date of final determination by the Director of Internal Revenue.

War contracts of X Co. for 1944 were renegotiated in November, 1949, and the company was required to return \$100,000, less applicable Federal taxes. X Co. appealed this determination to the Tax Court. The excess profits were repaid as follows: a Federal income tax credit finally determined in October, 1953; withholdings of income from May, 1951 through January, 1952; and by voluntary installment payments by taxpayer from May, 1952 through November 1953. Claims for refund of State taxes as a result of the renegotiation were filed in January and February 1954. Advice is requested as to what extent taxpayer's claims were timely.

The determination of the timeliness of renegotiation refund claims is set forth in section 18359 of the Personal Income Tax Law. In the present case the applicable provision is the two year provision of that section. The question is then whether the statute begins to run on the date of each installment payment or from the date of the last installment. Federal income tax cases have held that the statute runs from the date of payment of each installment. Harr v United States, 20 Fed. Supp. 206. In applying the specific language of section 19053, it is considered that the statute begins on the date of payment of the particular installment. Although section 18359 and section 19053 are worded differently the same basic principle is applicable to both. Accordingly, X Co.'s claims are to be considered to have been filed timely only to the extent of the installment payments made within two years of the date the claims for refund were filed.

Regarding the Federal tax offset, the date in October, 1953 should be accepted as the date when the amount of offset was finally determined. At that time the Director of Internal Revenue officially notified X Co. of the corrected amount of allowable offset. Since there is a definite record of the date of the revised determination, that date should be used. Therefore, claims filed within two years of October, 1953 are timely to the full extent of the offset.