

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 136

June 25, 1958

REFUND CLAIMS: TIMELINESS UNDER SECTION 19053.3

Syllabus:

Section 19053.3(b) is applicable only in cases where the waiver extends the period to the date the claim is filed and not to cases where the period is extended by Tax Court litigation.

Taxpayer executed a Federal waiver on Form 872 extending the Federal statute to June 30, 1952. Due to litigation in the Tax Court and provisions of the Internal Revenue Code applicable as a result of the litigation, the closing date of the Federal statute did not occur until May 31, 1954. Taxpayer claims for the purpose of State taxation that November 30, 1954 was the closing date for refund purposes under section 19053.3(b). Advice is requested whether an appeal to the Tax Court extends the period within which a claim for refund may be filed. Also, whether the period in which taxpayer may file a claim for refund is still open.

Section 19053.3(b) is precisely worded and should be strictly construed, and should be applied only where there was an agreement and not where a statute automatically extends the period. In the absence of specific legislation to the contrary, the strict wording of the statute must be followed. Therefore, an appeal to the Tax Court does not extend the period within which a claim for refund may be filed.

Taxpayer in question here executed a Federal waiver on Form 872. This form provides a fixed period of suspension, plus the time during which assessment is prohibited in the event a notice of deficiency is issued, plus sixty days. Thus, the extension agreed upon by the parties expired May 31, 1954, just as surely as if that exact date had been inserted in the agreement. Therefore, taxpayer is entitled to the benefit of section 19053.3(b) in filing a claim for refund.