

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 161

November 25, 1957

REFUND CLAIMS: PROTESTS

Syllabus:

Protests against additional assessments do not constitute claims for refunds, unless the protest refers to prior overpayment or in some other manner calls to the Board's attention that a refund is claimed.

Taxpayer filed timely franchise tax returns for its 1944 and 1946 income years. Federal waivers were executed by the taxpayer which resulted in an extension of the State assessment period to January 1, 1954. On November 27, 1951 notice of proposed assessments were issued, which were protested by taxpayer on January 22, 1952. On September 30, 1954 notices of action were issued withdrawing the proposed assessments and on October 27, 1954 claims for refund were filed. Advice is requested whether the protests against additional assessments constituted claims for refund.

Section 26073(a) provides that a claim for refund may be filed during the same period within which an assessment may be made. Since the period for assessing deficiencies expired on December 31, 1953, the formal claims for refund filed on October 27, 1954 were not timely unless they can be considered to be amendments to prior informal claims. Although the courts have been liberal in deciding just what constitutes a proper claim for refund, letters and protests ordinarily have not been recognized as such. It is only when a protest is found to constitute more than a protest or statement of intention to file a claim later, that it has been considered an informal refund claim. Unless the protest refers to prior overpayment or in some other manner calls our attention that a refund is claimed, it cannot be considered an informal claim for refund. See Maas & Waldstein Co. v. U.S., 283 U.S. 538; Wrightsmen Petroleum Co. v. U.S., 35 F.Supp. 86, certiorari denied 61 S.Ct. 1095; Mutual Trust Life Ins. Co. v. U.S., 45 F2d 288; Julia A. Forhan, 45 BTA 799; Estate of Albert A. Hansen, 9 TC 108.

Since taxpayer's protests were specifically directed to the assessment of additional taxes and did not indicate that a return of overpaid taxes was sought, they cannot be considered informal claims for refunds. The taxpayer's claim for refund must be denied.