

Summary of Interested Parties Meeting Regulation §19322, Refund Claims

- I. **Administration:** On December 3, 2010 at 1:00 p.m., members of the public attended an interested parties meeting at the Franchise Tax Board central office in Sacramento. Parties attended in person and by telephone. Those physically present were asked to register at the entrance and phone participants introduced themselves. The session was audio recorded for reference but there will be no attribution of comments and no transcript.

The Hearing Officer, Jaclyn Appleby, listed the three documents available as handouts: the notice of the meeting, the list of discussion topics, and the text of regulation section 19322 as it currently reads. Parties were told they had until January 3, 2011 to submit written comments and that a summary of the interested parties meeting and any written comments would be posted online. The hearing officer explained that the purpose of the meeting was to provide the public with an opportunity to discuss and provide comments on the proposed amendments to regulation section 19322 to clarify the prescribed methods of filing, specify the grounds to be set forth in a claim, and clarify the hearing process.

- II. **Discussion:** The discussion was organized by discussion topic beginning with the methods of filing refund claims. The comments are not necessarily replicated in the order spoken but rather are grouped topically. The numbering of the comments is for ease of reference and thus readers should not assign any importance to one comment over any other comment. Public questions/comments have been italicized.

A. Manners of Filing.

1. Use of prescribed amended return forms (540X, 100X, etc) for claims based on items required to be reported on a return.
 - a. *Is the intention of the Franchise Tax Board to require that all claims for refund be filed on amended tax return forms? Will letter refund claims be rejected?*

The Franchise Tax Board would like to recommend that taxpayers file their refund claims on amended tax returns so that the taxpayer can use the amended return as a sort of road map for providing the correct information which allows Franchise Tax Board to quickly work through their claim. While it is the intention of the Franchise Tax Board to recommend that taxpayers file their refund claims on amended tax returns, letter refund claims will not be rejected.

- b. *When filing claims for refund, the taxpayer does not always know the exact amount of the claim for refund, therefore use of an amended return would not be sufficient for making the claim. In these situations, a letter*

claim, laying out the facts and circumstances of the claim, would be more appropriate.

The intention of the amendments to the regulation is to provide guidance to taxpayers on the most streamlined process for getting their refund claims processed. Taxpayers need to provide sufficient information on the claim for refund for the Franchise Tax Board to be apprised of the grounds of the claim, and to be able to process the claim. Amended returns provide the opportunity to collect very specific information from taxpayers. While letter claims will not be rejected, the use of the amended tax return provides a more streamlined claim process for taxpayers and thus is recommended.

- c. *The statute and case law both take a very broad view as to what is considered a claim for refund. Is Franchise Tax Board proposing to create a regulation that is more restrictive than the statute?*

The regulation will not be more restrictive than the statute. The amendments are intended simply to provide clarification of the statute and provide guidance to taxpayers.

- d. *What if, for example, a taxpayer uses an amended return form to claim a refund based on an additional itemized deduction for mortgage interest? The taxpayer would reference the amount of the change to itemized deductions on the amended return form but without further explanation Franchise Tax Board wouldn't know it was for mortgage interest. In this situation, the amended return would not be in compliance with the statute's requirement that the grounds must be set forth in the claim. A letter claim for refund would be better.*

The proposed amendments to the regulation would ask a taxpayer to include all supporting documentation with their original claim, so the combination of the amended return with the supporting documentation would be sufficient to comply with the grounds that must be set forth in the claim.

- e. *The current regulation already asks taxpayers to use a 540x (amended return for personal income tax filers). What would the proposed amendments add or change?*

The amendments would include the use of a 100x for corporate income tax filers.

- f. *Does Franchise Tax Board plan to change the 100X? Multistate issues often arising in claims for refund could not be shown on the 100X as it currently reads.*

The proposed amendments to the regulation are meant to advise all taxpayers, including individuals and non-apportioning business entities. Additionally, many apportioning multistate taxpayers do use the current 100X form to file claims for refund. As such, the use of the current amended tax return forms would suffice for the majority of taxpayers. That said, any multistate problems that do arise could be addressed via form changes if necessary; however, those changes would be separate from this regulation.

g. Suggestions

- i. *In cases where time constraints and complexity limit the taxpayer from being able to provide the specific amounts required on amended tax forms, it may be possible to complete an amended tax return, but leave some or all of the amounts blank and include with the amended return a letter claim with the additional information required to determine the claim amount. This method may help to address the problem of letter claims being received amongst millions of pieces of correspondence and not being timely identified as refund claims.*
- ii. *The regulation should reflect the fact that one set of prescribed filing methods does not fit all and the regulation should provide that alternative methods are available to taxpayers with situations that make the use of an amended return for refund claims impractical.*
- iii. *Franchise Tax Board could develop a form to be used specifically for claims for refund. Sometimes it is difficult to differentiate a claim for refund amended return from a deficiency amended return so the use of a new claim for refund form could provide clarity and address the problem of the amended return not being suited to the needs of all taxpayers.*

Form changes are not a component of this regulation process; however, Franchise Tax Board will consider the use of language that would encompass a future claim for refund form.

2. Use of electronic claim forms that may become available in the future.

- a. The language of the regulation would encompass electronic forms of filing prescribed by the Franchise Tax Board to take into account the manner in which electronically filed claims which may become available in the future would be filed.

There were no public comments as to this topic.

B. Grounds Set Forth in Claim.

1. Specify what must be included with the claim for refund to ensure that the claim meets the requirements.

- a. *What kinds of amendments are proposed as to the grounds that one must set forth?*

The ultimate goal of the amendment is to encourage inclusion of supporting documentation for the claimed items with the original claim for refund.

The goal is to streamline the process such that Franchise Tax Board receives more information with the original filing of the claim so that in appropriate cases, an audit of the claim will not be required and the claim can be allowed simply on the basis of the information that was provided. The language of the regulation will aim to advise taxpayers that more information is better when it comes to filing a claim for refund.

- b. *Case law has taken a very broad approach to the grounds that must be set forth in a refund claim so isn't the codification of grounds making the requirements too specific?*

The goal of the amendments is not to narrow the case law and statutory requirements but rather to provide guidance and clarification on what would constitute sufficient grounds. Franchise Tax Board intends to include examples in the regulation and any examples from the public in this regard would be welcome.

- c. *Will the specificity of the language of the regulation preclude taxpayers who do not really know what they are asking for in terms of a refund or who do not have supporting documentation for their refund claim at the time the claim is originally filed from making a valid claim for refund?*

A claim for refund will not be denied solely on the basis that a taxpayer did not provide supporting documentation with the claim for refund. The regulation is intended to provide guidance on the method for filing a refund claim that will allow such claim to be processed as easily as possible. If supporting documentation is not provided with the originally filed claim, Franchise Tax Board will need to request that information from the taxpayer at a later date, which will delay the refund process.

- d. Suggestions

- i. Perhaps a definition of what "grounds" are and examples of what are and are not sufficiently stated grounds would be helpful in the regulation.

C. Amend regulation to clarify the regulation's current prohibition in subdivision (c) on taxpayer's offsetting of overpayments against liabilities for other tax years.

1. Revise language to more clearly state that taxpayers may not, on their own initiative, offset a tax liability for another year with funds from an expected refund based on a claim that has not yet been allowed by Franchise Tax Board.

There were no public comments as to this topic.

D. Amend regulation to clarify the process for oral hearings requested by the taxpayer prior to determination on a claim.

1. Specify the manner in which hearing requests should be made.
 - a. *Oral hearings are easily requested using letter refund claims. What specifications are intended regarding the manner in which requests should be made?*

The intent is to require that requests for oral hearings on claims for refund be made in writing, which can be done via letter refund claims. The regulation would also then seek to clarify how to make oral hearing requests on amended tax return forms.

- b. *When must an oral hearing request be made? It is confusing that a protest hearing is requested in the original protest letter, yet a request for a hearing on a claim for refund can seemingly be made at any time. Maybe requiring that an oral hearing request be made at the time the original claim is filed will eliminate this confusion.*

The goal of this regulation is not to require that all oral hearings be requested with the filing of the claim. Hearings are not appropriate in every situation and requiring that it be requested at the time of filing may lead to taxpayers or practitioners requesting a hearing at the time of filing every claim which would not be logistically feasible or appropriate.

- c. *By requiring that a taxpayer request a hearing prior to Franchise Tax Board taking action on the refund claim, the taxpayer loses its rights to request the hearing further down the line if it is unhappy with Franchise Tax Board's decision.*

This regulation addresses only the hearing prior to Franchise Tax Board's action on a refund claim. The taxpayer's right to a hearing before the State Board of Equalization is not altered. Additionally, there is no law that requires a hearing before Franchise Tax Board can act on a claim for refund. This is different from a protest where the statute specifically

provides the taxpayer a right to a hearing. The oral hearing for a refund claim has historically been done as an accommodation for taxpayers, but it has always been granted in the Franchise Tax Board's discretion and this regulation does not intend to change that. The regulation intends only to provide clarification.

2. Clarify the oral hearing process.

- a. *Oral hearings on claim for refunds are generally conducted by the same auditor who is evaluating the claim for refund and has in many cases already preliminarily disallowed the refund claim. There is no impartial person that currently steps in to evaluate the refund claim. The regulation should clarify who will conduct the hearing process.*

Franchise Tax Board is seeking to make the process much more efficient and valuable to both the taxpayer and the Department. If members of the public have thoughts on how the oral hearing process should be conducted, Franchise Tax Board is open to comments and suggestions.

E. Amend regulation to provide examples of valid and invalid refund claims.

The Franchise Tax Board encourages anyone with examples of claims that have been allowed or disallowed to submit the examples to Jaclyn Appleby.

F. Additional discussion topics.

- a. *Can the Franchise Tax Board issue acknowledgment letters when claims for refund are received?*

This is probably logistically infeasible as Franchise Tax Board receives millions of claims for refund each year. There are some circumstances in which acknowledgments are issued, but acknowledgment letters would not be part of this regulation project. Sending claims for refund with a return receipt request is always a good idea.

- b. *Can the Franchise Tax Board place in the regulation a deadline by which the Department must issue an allowance/disallowance/modification of a claim for refund?*

Under the statute, taxpayers can deem a claim for refund denied if they do not receive a response within 6 months from the filing of the claim. Placing additional time restrictions on claims for refund would be in conflict with the deemed denial statute. Additionally, a multitude of factors including the complexity of the claim, whether supporting documentation has been provided, workload constraints, etc, can lead to claims that take longer to process such that it is difficult to place a timeframe on the working of a claim.

- c. *Is there going to be clarification language as to what constitutes a "final determination" on a claim for refund? Denial letters are coming from auditors that look like determination letters and state that Franchise Tax Board has denied the claim but it does not provide appeal rights. Is this a final determination? Could Franchise Tax Board issue formal notices of denial/allowance/modification akin to the Notice of Action?*

If a letter states "we have denied your claim" then that is the claim denial letter, but it should have appeal rights with it. If taxpayers or practitioners are finding that they are receiving letters denying their claim that do not include appeal rights, please contact Franchise Tax Board.

- d. *Will this regulation address the problem of flow-through refunds that are issued prior to Franchise Tax Board's decision to allow/disallow/modify the flow-through entities refund claims?*

This is a statutory issue resulting from the fact that California has never conformed to the federal statutory scheme that governs audit adjustments to pass-through entities. It is unlikely that California will ever conform to these federal statutes, so this problem will continue but workarounds are being assessed. The regulation will not cover this issue.

III. Written Comments Received by January 3, 2011.

Franchise Tax Board has not received any written comments.

An additional Interested Parties Meeting will be held after draft language has been developed so that the public may have an opportunity to comment on the proposed language of the amended regulation.