

# ANALYSIS OF ORIGINAL BILL

Author: Wagner Analyst: Diane Deatherage Bill Number: AB 867  
 See Legislative  
 Related Bills: History Telephone: 845-4783 Introduced Date: February 26, 2015  
 Attorney: Bruce Langston Sponsor \_\_\_\_\_

<b>SUBJECT:</b>	State Assessments/Tax Agency Includes FTB/Refunds
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## SUMMARY

This bill would modify the procedures for specified claims for refund under the Revenue and Taxation Code.

This analysis will not address the bill's changes to the Property Tax Law, as they do not impact the department.

## RECOMMENDATION

No position.

## REASON FOR THE BILL

The reason for the bill is to extend common-sense protections to taxpayers by requiring the state provide a full refund to all individuals who paid a tax later declared unconstitutional or illegal.

## EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2016, and would apply to claims for refund under the provisions of this bill filed either before, or within one year after, the date upon which the non-appealable court decision is rendered.

## FEDERAL/STATE LAW

Taxpayers are required to file a claim for refund prior to filing a suit in federal court for the recovery of any tax that is alleged to be erroneously or illegally assessed or collected, any penalty claimed to be collected without authority, or any sum alleged to be excessive or wrongfully collected. Taxpayers can file a suit for refund in federal court if the IRS fails to take action on a claim for refund within six months of the date the claim was filed. A taxpayer's suit for refund must be filed within two years of the date that the notice disallowing the underlying claim, in whole or in part, was mailed. Taxpayers may challenge a deficiency (additional tax) assessment prior to payment in federal court.

Under existing state law, a taxpayer may file a claim for refund within four years from the date the tax return was timely filed, four years from the due date of the tax return, or one year from the date of any overpayment.

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Interest on a claim for refund is calculated from the date of overpayment to 30 days preceding the date of the refund warrant.

A claim for refund must be in writing and state the specific grounds for the refund. If the Franchise Tax Board (FTB) fails to mail a notice of action on any refund claim within six months after the taxpayer files the claim, the taxpayer may consider the claim disallowed and may either file (1) an appeal with the Board of Equalization (BOE) or (2) a suit in court to recover the refund amount claimed.

### **THIS BILL**

In order to receive a refund of the amount paid, where the normal statute of limitations has expired, this bill would require taxpayers to file a claim for refund within one year from the final and non-appealable decision of a court of competent jurisdiction that the tax, fee, assessment, surcharge, or other amount paid was determined to be illegally levied or collected by the tax agency.

Claims for refund filed prior to the bill's effective date and unpaid as of that date would be subject to refund under the provisions of this bill and would not be required to be refiled.

"Tax agency" would include the BOE and the FTB.

Interest on refunds would be allowed in accordance with current law governing interest on overpayments.

The period for bringing an action in court against the tax agency for the recovery of the whole or any part of the amount claimed as an overpayment could not commence until the expiration of the one-year claim period.

The FTB would be required to refund amounts deemed illegally levied or collected when information sufficient to identify a person that paid such an amount and that person's current address, the date of payment, and the amount paid exists in the department's records.

A person that could be sufficiently identified would not be required to file a claim for refund.

Notwithstanding any other law relating to the limitations for filing a claim for refund, this bill would apply to any claims for refund of any amounts paid to the tax agency.

This bill would require an appropriation by the Legislature to make the refunds allowed by this bill.

### **IMPLEMENTATION CONSIDERATIONS**

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The phrase "determined to have been illegally levied or collected" is undefined in the bill. Without a definition, the term could be broadly interpreted and may lead to disputes between the department and taxpayers. For example, in *Ventas Finance I, LLC v. Franchise Tax Board* (2008) 165 Cal.App.4<sup>th</sup> 1207, the Court of Appeal held that the LLC fee imposed was unconstitutional as applied because the statute did not use a method of fair apportionment to calculate the total income upon which the LLC fee was based. Would a statute that is determined to be unconstitutional meet the definition of "determined to have been illegally levied or collected," therefore, opening up the statute of limitations to file a claim for refund for all tax years after the statute was enacted by the legislature?

The requirement for a taxpayer to file a claim for refund within one year from the final and non-appealable decision of a court of competent jurisdiction appears to conflict with the Constitution (Article 3, section 3.5) that requires the FTB to enforce a statute until an appellate court has determined the statute is invalid or unenforceable. The author should consider resolving this conflict.

This bill would require an appropriation by the Legislature to make the refunds allowed by this bill. If sufficient funds fail to be appropriated to cover all of the refunds due, the department would suspend payment of the refunds until additional funds were appropriated. Interest would have to be paid to refund recipients for the period the refund was delayed. This delay would result in additional contacts to the department by refund recipients, which would likely increase departmental costs.

The changes proposed by this bill would require taxpayers and the department to maintain tax records in perpetuity in order to demonstrate entitlement to a refund should a court deem an amount paid was illegally levied or collected at some future date, thereby eliminating the finality of the tax system and creating a burdensome record retention requirement.

## **LEGISLATIVE HISTORY**

SB 1327 (Knight, 2013/2014) was substantially similar to this bill. SB 1327 failed to pass out of the Senate by the constitutional deadline.

AB 2510 (Wagner, 2013/2014) was substantially similar to this bill. AB 2510 failed to pass out of the Assembly by the constitutional deadline.

## **OTHER STATES' INFORMATION**

A review of the tax laws of *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* found no information related to claims for refund based on illegally levied or collected tax. Each state has specific statutes of limitation on claims for various overpayments and allows protective claims for refund when a court case is pending.

## **FISCAL IMPACT**

As the bill continues to move through the legislative process and the implementation concerns are resolved, costs will be identified and an appropriation will be requested, if necessary.

## **ECONOMIC IMPACT**

### **Revenue Estimate**

The FTB is unable to estimate the revenue impact to the General Fund as the outcome of cases involving an allegedly illegally levied or collected tax, fee, assessment, surcharge, or other amount that are currently in litigation or that could be the subject of future litigation is undeterminable. Based on the implementation concerns outlined above, the potential revenue loss to the state could be in the billions.

## **SUPPORT/OPPOSITION**

Support: None provided.

Opposition: None provided.

## **ARGUMENTS**

Proponents: Some would argue that the current statute of limitations favors the state over the taxpayer.

Opponents: Some would argue that a statute of limitations based on an undeterminable court action is burdensome to both the taxpayer and the state.

## **LEGISLATIVE STAFF CONTACT**

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