



## FTB NOTICE

California Franchise Tax Board - Legal Branch

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June 2, 1997

### FTB NOTICE 97-4

#### SUBJECT: LEGAL RULING 402 WITHDRAWN

Legal Ruling 402, January 27, 1977, CCH California Reporter ¶205-590, held that a refund claim would be valid if, as of the date of filing, the entire amount of tax and penalties (but not associated interest) assessed or asserted against the taxpayer for the claim year have been paid. The ruling also stated that requests for refund wherein the taxpayer satisfies all the requirements for a valid claim, except payment of the tax assessed or asserted, shall be considered "informal claims" which could be "perfected" by payment of the entire tax assessed or asserted.

Legal Ruling 92-1, December 28, 1992, explained that all published Franchise Tax Board positions may be superseded by subsequent changes in the law or judicial decisions, and that taxpayers should not rely on a Legal Ruling which has been so superseded.

*Anand G. Garg, et. al. v. The People ex rel. State Board of Equalization*, (February 28, 1997) 53 Cal.App.4th 199, 1997 Cal.App.Lexis 158, held that the California Constitution forbids a court from adjudicating the validity of a tax before the tax, together with interest and penalties, has been paid in full.

*Shiseido Cosmetics (America), Ltd. v. Franchise Tax Board* (1991) 235 Cal.App.3d 478, 486-489, held that satisfaction of the essential statutory criteria of prepayment and a contemporaneous or subsequent clear written statement that a claim was being sought must first occur for a valid refund claim to exist. FTB had no power to authorize as valid a purported refund claim that failed to meet these essential statutory criteria. See also *State Board of Equalization v. Superior Court* (1985) 39 Cal.3d 633, 642; *Masi v. Nagle* (1992) 5 Cal.App.4th 608; *Farrar v. Franchise Tax Board* (1993) 15 Cal.App.4th 10.

The Franchise Tax Board will continue to consider the effect of the cases cited above. Legal Ruling 402 is hereby withdrawn.

**Drafting Information**

The principal author of this notice is Bruce R. Langston of the Franchise Tax Board, Legal Branch. For further information regarding this ruling, contact Mr. Langston at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720.