

## Summary of Second Interested Parties Meeting Regulation Section 19322, Refund Claims

- I. **Administration:** On April 21, 2016 at 10:00 a.m., at the Franchise Tax Board central office in Sacramento, interested members of the public (participants) attended the second Interested Parties Meeting (IPM) on proposed amendments to California Code of Regulations, Title 18, section 19322 (Regulation). Participants attended in person and by telephone. Participants physically present were asked to register at the entrance and phone participants introduced themselves.

Eric Yadao, FTB Tax Counsel, served as the IPM Facilitator (Facilitator) and listed the documents made available as handouts: the IPM announcement, the current law and regulation, a draft of proposed Regulation amendments (with proposed mark-ups: underscores to represent additions to language; and, strike-throughs to represent deletions to language), and an explanation of discussion draft for the proposed amendments. The Facilitator then explained the purpose of the meeting was to provide the public with an opportunity to discuss and provide comments on the proposed draft amendments to regulation section 19322 intended to clarify: the manner of filing refund claims; timeliness of claims; grounds that must be set forth in claims; allowable and impermissible offsets; who may act as a fiduciary; hearings on refund claims; and, to provide examples of valid claim forms. Participants were advised they had until May 23, 2016 to submit written comments, and that this summary of the IPM and comments would thereafter be prepared and published online.

- II. **Discussion:** The IPM discussion was organized by reviewing each subsection in the draft proposed Regulation amendments, beginning with the manner of filing refund claims. The Facilitator made opening remarks to each proposed subsection and invited comment.
- III. **Summary:** The opening remarks for each proposed subsection are presented below and are followed by a summary of the comments received during the IPM and in writing by the close of the IPM comment period, i.e, May 23, 2016.

### Facilitator opening remarks, proposed subsection (a):

The Facilitator explained the purpose of proposed Regulation amendments at subsection (a) is to direct taxpayers to use the appropriate form to file claims. The Facilitator stated that since the first IPM, FTB has made available new forms for individuals and entities to use to request a refund of penalties based on reasonable cause, and to request abatement of interest. The Facilitator also explained that use of the proper form will prompt the taxpayer to include sufficient detail in order to allow FTB to identify the document as a claim and to understand the amount and basis of the claim.

Commenters expressed various general concerns about the purpose and possible application of the scope of the regulation and its effects. Specifically, commenters were concerned that an improperly filed or incomplete claim would not stop the running of the

statute of limitations for allowing time to perfect the claim, and that letter claims would not be accepted even where the change to income or deductions should more properly be included on an amended return forms. One commenter objected to the requirement that the grounds of the claim be supported by documentation filed with the claim, preferring to provide such information to FTB only when requested.

Facilitator opening remarks, proposed subsection (b):

The Facilitator explained the purpose of proposed amended language at subsection (b) is to clarify the law for the taxpayer regarding timely submission of claims by referencing the applicable tax code sections. The proposed amended language adopts language previously included in the subdivision labeled Grounds Set Forth in Claim. Notably, the section references have been updated to include section 19316 as applicable authority.

No comments were received on proposed subsection (b).

Facilitator opening remarks, proposed subsection (c):

The Facilitator explained the purpose of proposed amended language at subsection (c) is to provide additional guidance on the substance or quality of information taxpayers should submit to support their claim for refund or credit.

A number of comments were received on this subsection, generally raising concerns that the regulation not be interpreted to treat claims as invalid where such claims stated grounds sufficiently to satisfy the minimum statutory requirements, but did not provide documentation in support of the claim. Another commenter wanted to allow "\$1 or more" claims where the amount could not be computed at the time of the claim.

Facilitator opening remarks, proposed subsection (d):

The Facilitator explained the purpose of proposed amended language at subsection (d) is to further clarify that taxpayers cannot reduce a liability for one year by applying an undetermined refund or credit of another tax year.

One commenter suggested this provision should not apply to claims based on federal Revenue Agent Reports. Another commenter pointed out that some claims are based on the new net operating loss carryback provisions, and suggested that this subsection be amended to address that situation.

Facilitator opening remarks, proposed subsection (e):

The Facilitator explained the purpose of proposed amended language at subsection (e) is to further clarify when a fiduciary or representative must provide separate evidence of its authority to act on behalf of a taxpayer. The Facilitator also explained that specific examples have been removed from the language in order to accommodate a variety of situations where individuals are empowered to act on behalf of an individual or entity.

A number of comments were received on this subsection, suggesting that the language be updated to reflect electronic claims and the FTB's electronic Power of Attorney database procedures.

Facilitator opening remarks, proposed subsection (f):

The Facilitator explained the purpose of proposed amended language at subsection (f) is to further clarify that taxpayers may request a hearing on a claim for refund, and that FTB in its discretion may grant the hearing if FTB believes it is necessary and will aid in the resolution of the claim.

Commenters sought clarification on how requests for a hearing would be submitted, reviewed, decided and held.

Facilitator opening remarks, proposed subsection (g):

The Facilitator explained the purpose of proposed additional language at subsection (g) is in response to public contact at the first IPM meeting to include specific examples of valid claims as to manner of filing and grounds for claim.

No comments were received on specific examples; however, commenters expressed that the practitioners' primary concern is to file a claim within the statutory period regardless of it being by letter or prescribed tax form.

**IV. Next Steps:** The Facilitator indicated that staff would review comments received and if necessary, schedule a future IPM.