

Explanation of Discussion Draft for Proposed Amendments to Regulation Section 19322

Revenue and Taxation Code (RTC) section 19322 is the law setting forth the contents of a claim for refund. The corresponding regulation at California Code of Regulations, Title 18, Section 19322 (regulation) provides guidance on the form of a claim for refund.

In practice, the Franchise Tax Board (FTB) receives a significant amount of correspondence that purports to be a claim for refund but does not meet the minimum threshold requirements for a number of reasons. Moreover, the regulation provides clarification only for individual return filers, in reference to form 540X, and does not address other amended return filers. The regulation, may be contributing to delays in acknowledging valid claims, rejecting correspondence intended by the taxpayer to be a claim, and ultimately delays in resolving claims.

FTB held a first interested parties meeting (IPM) on December 3, 2010 eliciting comments from the public on potential amendments to the regulation. A summary of the first IPM was thereafter made available to the public. For this second IPM, the summary of the first IPM is referenced, and additional documents are being made available, identified as follows: the second IPM announcement; existing law and regulation language; discussion topics; and, the proposed amended regulation draft.

The key proposed revisions to the regulation are set forth with explanations below.

(a) Manner of filing.

This subsection is proposed to be added in its entirety to provide guidance to taxpayers regarding the format of claims for refund. As stated at the first IPM, FTB proposes to recommend that taxpayers use the appropriate amended return, which would serve as a roadmap for taxpayers to provide the correct information to FTB, which will allow FTB to evaluate and make a determination on claims more expeditiously. Accordingly, amended returns direct taxpayers to provide very specific information. The language borrows previous reference to the 540X and supporting documentation in the existing version of the previous subdivision (a) Grounds set forth in claim, and amends that language to specify that taxpayers should use the prescribed form, i.e., an amended return form, or a form prescribed by FTB. Notably, FTB has since the first IPM made available additional forms that claim a refund of certain penalties based on reasonable cause. Other examples are provided in the proposed regulation subsection (g).

(b) Timeliness of Claim.

This subsection is proposed to be added borrowing and replacing language previously referenced in subsection (a), i.e., Grounds set forth in claim, and proposes to amend that language to reference additional RTC authority beginning with section 19306 and ending with section 19316. Following the first IPM, FTB realized that this timeliness language may be clearer to taxpayers if set apart from the language setting forth the grounds for the claim.

(c) Grounds for Claim.

Previous subsection (a) is proposed to be re-ordered to subsection (c) and is proposed to be amended to remove language that has been adopted into proposed subsections (a) and (b). The purpose of the proposed language is to encourage inclusion of supporting documentation for the claimed items with the original claim for refund. The proposed language includes reference to refunds as well as credits and sets forth the grounds, the basis and supporting information, e.g., calculations, forms, schedules and source documents, or a copy of a final federal determination if the claim is based on an Internal Revenue Service account change, that taxpayers must submit with their amended return or other claim form in order for FTB to evaluate and resolve the taxpayer's claim. Satisfying these grounds conforms to section 19322, which requires the taxpayer to state the specific grounds upon which the claim is founded, and will allow FTB to understand the claim amount, its calculation in relation to the original return, and the legal authority supporting the claim. The proposed language also adds "for refund" in reference to a "claim" so that the language is consistent with the statutory language.

(d) Offset.

Previous subsection (b) is proposed to be re-ordered to subsection (d) with proposed amended language intended to clarify that a taxpayer may not, on their own initiative, offset a liability for one tax year based on a claim of overpayment for another tax year that has not yet been granted or approved absent written confirmation from FTB indicating that the overpayment has been or will be granted. This language is still consistent with the published decision in the *Appeal of General Telephone Company*, (78-SBE-076, 9/27/78.)

(e) Fiduciaries.

Previous subsection (c) is proposed to be re-ordered to subsection (e) with proposed amended language to clarify that a fiduciary, representative, trustee or other person authorized to act on behalf of a taxpayer requires evidence of authority to act. While this was not a topic of discussion in the first IPM, the language is proposed to be amended to be less specific as to who may act on behalf of a taxpayer based on the potential documentation that would suffice to prove that a representative is the fiduciary of a decedent's estate. Evidence of such authority should be submitted with each claim and FTB will evaluate each authorization on a case by case basis. Other changes to this subsection are limited to grammatical improvements and revisions to modify instances of the term "refund claim" to "claim for refund" to be consistent with the statutory language.

(f) Hearings.

Previous subsection (d) is proposed to be re-ordered to subsection (f) with proposed amended language to clarify that taxpayers may make a written request for a hearing on a claim, which may be granted at the discretion of FTB, if FTB determines that such a hearing is necessary and will aid in the resolution of the claim. The purpose of this proposed language is to clarify that requests for hearings should be made in writing.

(g) Specific Examples.

This subsection is proposed to be added in response to public input at the first IPM to include specific factual examples and proper forms of various claims based on those facts.