

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 402

January 27, 1977

DEFINITION OF A VALID CLAIM FOR REFUND

Syllabus:

Advice has been requested as to whether payment in full of tax, penalty and interest is necessary for a refund request to qualify as a "valid" claim.

Discussion:

A claim for refund is "valid" if it is filed within the prescribed statute of limitations period, meets statutory requirements as to form and content, and as of the date of filing the entire amount of the tax and penalties assessed or asserted against the taxpayer for the claim year have been paid.

The requirement that the tax and penalties be paid in full in order for a claim to be considered valid evolves from the statutory provisions and legal decisions concerning refund actions in the courts. Revenue and Taxation Code Sections 19082 and 26102 provide that any taxpayer who claims that the tax computed and assessed against him (it) is void in whole or in part may bring an action in the courts after payment of the tax and the denial (or deemed denial under Sections 19085, 26103a) by the Franchise Tax Board of a claim for refund. Federal and state courts in interpreting similar tax refund statutes have held that the language with respect to payment of the tax means full payment of all tax assessed or asserted. (Flora v. United States, 362 U.S. 145 (1959), aff'd on rehearing 357 U.S. 63 (1958); Faix, Ltd. v. County of Los Angeles, 54 Cal. App. 3d 992 (1976)).

The Flora and Faix decisions are based upon the concept that taxes are the life blood of the government and that their prompt and certain availability is an imperious need. Because of the importance of taxes to continued government, the usual procedure for recovery of debt has been reversed in the field of taxation. Payment precedes defense, and the burden of proof which would normally be upon the state as a creditor is shifted to the taxpayer by virtue of his position as a claimant. (See People v. Skinner, 18 Cal. 2d 349 (1941)). As part of this same concept of pay now and litigate later, the California Constitution provides that the taxing agency may not be enjoined, within Constitutional limitations, from assessing or collecting any authorized tax. (See Cal. Const., Art 13, Sec. 32; Revenue & Taxation Code Sections 19081, 26101; Dupuy v. Superior Court, 15 Cal. 3d 410 (1975), and Horack v. Franchise Tax Board, 18 Cal. App. 3d 363 (1971)). To allow a taxpayer to bring a refund action after only partial payment would frustrate this scheme of taxation

and allow a taxpayer to secure what would be in effect -- even though not technically -- a declaratory judgment. (See Flora v. United States, supra; Faix Ltd. v. County of Los Angeles, supra.) The only deviation from this established scheme of taxation has been where the taxpayer brought suit for refund of "divisible" taxes (Steele v. United States, 280 Fed. 2d 89 (1960)) or in cases wherein payment of the tax was not a statutory prerequisite to the bringing of a refund action. (Schaffer v. State Board of Equalization, 109 Cal. App. 2d 574 (1952)).

Since the income tax for any particular year is not divisible, the Franchise Tax Board in any refund litigation can always raise as a jurisdictional question the taxpayer's failure to pay the full amount of the tax assessed or asserted. It therefore follows that if full payment is a prerequisite to a judicial determination of an overpayment of the tax, it is also a necessary element in determining the validity of a claim predicated on an overpayment of the tax.

Penalties assessed for any year are to be treated as an addition to tax in determining whether the taxpayer has paid the entire tax assessed or asserted against him (it). (Revenue and Taxation Code, Sections 18681 -- 18685.01, 25931 -- 25951.) Payment of assessed interest is not a necessary element to a claim for refund predicated upon the overpayment of tax and/or penalties for any particular year (Kell-Stom Tool Co., Incorporated v. U. S., 205 Fed. Supp. 190 (1953); Flora v. United States, supra). Separate and specific provisions for the payment of interest on overpayments are provided in the law. (Revenue and Taxation Code Sections 19062-19062.11, 19091, 26080-26080.4, 26107).

Requests for refund wherein the taxpayer satisfies all the requirements for a valid claim, except payment of the entire tax assessed or asserted, shall be considered "informal claims." The status of such "informal claims" shall be the same as claims which are deficient because they lack sufficient specificity to apprise the Franchise Tax Board of the exact basis of the claim, (Crenshaw v. Hrcka et al., 237 F.2d 372, affg. 140 F. Supp. 350 (4 Cir., 1956). Appeal of W. J. Sasser, Cal. St. Bd. of Equal., November 5, 1963, CCH 202-300, PH-58, 324; Continental Illinois National Bank and Trust of Chicago v. United States, 39 F. Supp. 620 (Ct. Clms.-1941); Newton v. United States, 163 F. Supp. 614 (Ct.Clms.-1958). Such informal claims may be perfected by payment of the balance of the entire tax assessed or asserted. The Franchise Tax Board will not deny nor consider such informal claims on their merits until they have been perfected by full payment. In those instances where a taxpayer pays its tax in installments, timely "informal claims" must be filed within one year from the date of payment in order to protect taxpayers' rights, (Appeal of W. J. Sasser, supra; Appeal of First Investment Service Company, Cal. St. Bd. of Equal., July 31, 1973, CCH 204-965, PH-13,097).

A protest or appeal of a deficiency may be recharacterized as a claim for refund if the statutory requirements of Revenue and Taxation Code Section

19061.1 and 27068 are satisfied. These sections provide that in order for the change in status to take place the taxpayer must pay the tax protested. Based on the foregoing analysis with respect to the requirements for a "valid claim", the phrase "tax protested" means the entire tax and penalties assessed or asserted for the year, but does not include any accrued interest.

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