

ASSEMBLY BILL

No. 867

Introduced by Assembly Member Wagner

February 26, 2015

An act to amend Section 5148 of, and to add Section 42 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 867, as introduced, Wagner. Tax administration: refunds: property tax: state assessment: actions.

(1) The Franchise Tax Board administers the Personal Income Tax Law and the Corporation Tax Law and the State Board of Equalization administers the Sales and Use Tax Law and various other tax and fee laws. Counties, cities, and districts, as specified, are authorized to impose local sales or transactions and use taxes in conformity with the Sales and Use Tax Law. Amendments to the Sales and Use Tax Law are automatically incorporated into the local laws. Those laws generally require a claim for refund to be filed within specified timeframes based on the date of overpayment or specified board action if any amount has been overpaid, as specified. Under those laws, the rule of res judicata, which provides that a matter that has been adjudicated by a court of competent jurisdiction may not be pursued further by the same parties is applicable only if the liability involved is for the same reporting period as was involved in the case previously determined.

This bill would, notwithstanding existing law regarding the rule of res judicata, where a tax, fee, assessment, surcharge, or other amount levied or collected by the tax agency, which this bill would define to include the board and the Franchise Tax Board, has been determined to have been illegally levied or collected in a final and nonappealable

decision of a court of competent jurisdiction, authorize any person who paid that tax, fee, assessment, surcharge, or other amount to file with the tax agency a claim for refund, within one year after the date of the final and nonappealable decision and would require the tax agency to refund the amount so paid. This bill would also require the tax agency to refund these amounts without the person filing a claim for refund when information in the tax agencies' records is sufficient to identify the person. This bill would, upon appropriation by the Legislature, allocate the amounts necessary to make these refunds to the applicable tax agency.

(2) Existing law requires an action to recover property taxes levied on state-assessed property arising out of a dispute as to an assessment to be commenced only after payment of the taxes in issue and within 4 years after the latest of the dates that the State Board of Equalization mailed its decision or its written findings and conclusions, as provided.

This bill would instead require, where the tax assessed or allocated has been determined to have been illegally assessed or allocated in a final and nonappealable decision of a court of competent jurisdiction, the action to commence no later than one year from the date the court rendered that decision.

(3) This bill would make a legislative finding and declaration regarding the public purpose served by the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 42 is added to the Revenue and Taxation
 2 Code, to read:
 3 42. (a) Where a tax, fee, assessment, surcharge, or other
 4 amount levied or collected by the tax agency has been determined
 5 to have been illegally levied or collected in a final and
 6 nonappealable decision of a court of competent jurisdiction, any
 7 person who paid that tax, fee, assessment, surcharge, or other
 8 amount may file with the tax agency a claim for refund of the
 9 amount so paid in accordance with this section and the tax agency
 10 shall refund the amount so paid.
 11 (b) Notwithstanding subdivision (a), a person who has paid to
 12 the tax agency a tax, fee, assessment, surcharge, or other amount
 13 described in subdivision (a) that filed a claim for refund prior to

1 the effective date of the act adding this section that the tax agency
2 has not refunded before that date shall be refunded by the tax
3 agency to the person in accordance with the provisions of this
4 section. The act adding this section shall not be construed to require
5 refiling of those previously filed claims for refund.

6 (c) Notwithstanding any other law relating to the limitations
7 period for filing a claim for refund, this section shall apply to any
8 claims for refund of any amounts described in subdivision (a) paid
9 to the tax agency.

10 (d) A claim for refund for any amounts described in subdivision
11 (a) shall be filed within one year after the date upon which the
12 court decision described in subdivision (a) becomes final and
13 nonappealable.

14 (e) Interest shall be paid on the refunds provided by this section
15 in accordance with applicable provisions of this code related to
16 the tax, fee, assessment, surcharge, or other amount subject to
17 refund.

18 (f) For the purposes of bringing an action against the tax agency
19 for recovery of the whole or any part of the amount claimed as an
20 overpayment of an amount described in subdivision (a), the period
21 for filing such action provided in this code and applicable to the
22 tax, fee, assessment, surcharge, or other amount, shall not
23 commence until the one-year claim period provided in subdivision
24 (d) has expired pursuant to the terms of this section. Suits for
25 refund shall be brought in accordance with the applicable
26 provisions in this code.

27 (g) When information in the tax agencies' records is sufficient
28 to identify the person that paid an amount described in subdivision
29 (a), and the person's current address, the date of payment, and the
30 amount paid, the tax agency shall refund that amount. The person
31 shall not be required to file a claim for refund.

32 (h) Except as provided in Chapter 4 (commencing with Section
33 7275) of Part 1.6, this section shall apply to the tax, fee,
34 assessment, surcharge, or other amount paid to the tax agency and
35 collected or levied pursuant to applicable provisions of this code.

36 (i) Upon appropriation by the Legislature, the amounts necessary
37 to make refunds pursuant to this section shall be allocated to the
38 applicable tax agency.

39 (j) For purposes of this section, "tax agency" includes the board
40 and the Franchise Tax Board.

1 SEC. 2. Section 5148 of the Revenue and Taxation Code is
2 amended to read:

3 5148. Notwithstanding Section 5140, an action to recover taxes
4 levied on state-assessed property arising out of a dispute as to an
5 assessment made pursuant to Section 721, including a dispute as
6 to valuation, assessment ratio, or allocation of value for assessment
7 purposes, shall be brought under this section. In any action brought
8 under this section, the following requirements shall apply:

9 (a) The action shall be brought by the state assessee. There shall
10 be a single complaint with all parties joined therein with respect
11 to disputes for any year.

12 (b) The action shall name the board and the county or counties.
13 When a county is named which collected taxes on behalf of a city
14 or cities, the county shall give notice of that action to the city or
15 cities within 30 days of receipt of advice from the board of the
16 action. A fee shall be payable by the state assessee in an amount
17 prescribed by the court to cover the reasonable costs incurred by
18 a county or counties in giving that notice. Any city receiving notice
19 of the action filed against the board and the county may, within
20 30 days of the receipt of that notice, intervene in that action.
21 Whether or not a city intervenes in the action, any judgment
22 rendered for an assessee shall be entered exclusively against the
23 county; however, the county shall be entitled to recover separately
24 from the city or cities and other tax entities those taxes collected
25 by the county on behalf of the city or cities and other tax entities
26 which are subject to refund to the assessee as the result of the
27 judgment. Payment to the taxpayer upon the judgment and any
28 interest thereon may be deferred by the county until the
29 apportionment of property tax revenue next following the date of
30 the judgment, or as the county and the taxpayer may otherwise
31 agree. Interest shall accrue during any deferral period unless the
32 county and taxpayer otherwise agree. The county may if it chooses
33 to do so offset the amount of the judgment and interest recoverable
34 by it from the city or cities and other tax entities against amounts
35 held in the county treasury therefor or against amounts due and
36 payable thereto, including, but not limited to, property tax
37 apportionments. The amount of the fee required by this section
38 shall not be recoverable by the assessee in the action and no
39 judgment entered in the action in favor of the assessee shall provide
40 for the recovery of the fee.

1 As used in this section, “county” includes a city and county.

2 (c) Service of the summons and complaint shall be only upon
3 the board. The board shall serve as agent of the defendant county
4 or counties for the purpose of service of process. A fee shall be
5 payable by the state assessee in an amount prescribed by the court
6 to cover all reasonable costs incurred by the board while acting in
7 its capacity as agent for the defendant counties.

8 (d) Venue of the action shall be in any county in which the
9 Attorney General of California has an office or in which the state
10 assessee has a significant presence.

11 (e) The action shall be limited in the case of valuation and
12 allocation disputes to the grounds specified in the following:

13 (1) A petition for reassessment filed under Section 741, or any
14 proceeding thereon.

15 (2) A petition for correction of allocated assessment filed under
16 Section 747, or any proceeding thereon.

17 (f) A timely filed petition for reassessment or petition for
18 correction of allocated assessment shall constitute a claim for
19 refund if the petitioner states in the petition it is intended to so
20 serve.

21 (g) ~~The~~ *Except as otherwise provided in subdivision (j), the*
22 *action shall be commenced only after payment of the taxes in issue*
23 *and within four years after the latest of the dates that the State*
24 *Board of Equalization mailed its decision or its written findings*
25 *and conclusions on the following:*

26 (1) A petition for reassessment filed under Section 741 and
27 intended to constitute a claim for refund.

28 (2) A petition for correction of allocated assessment filed under
29 Section 747 and intended to constitute a claim for refund.

30 (h) The action shall not be joined with any action filed under
31 Section 5140.

32 (i) Any refund of tax overpayments and any interest thereon,
33 determined in any action brought under this section to be due shall
34 be made by the defendant county or counties.

35 (j) *Where the tax assessed or allocated has been determined to*
36 *have been illegally assessed or allocated in a final and*
37 *nonappealable decision of a court of competent jurisdiction, the*
38 *action shall commence no later than one year from the date the*
39 *court rendered that decision.*

1 SEC. 3. The Legislature finds and declares that the refunds
2 allowed to persons by this act with respect to taxes, fees,
3 assessments, surcharges, or other amounts levied or collected by
4 the Franchise Tax Board or the State Board of Equalization, as
5 applicable, that have been determined to be illegally levied or
6 collected in a final and nonappealable decision of a court of
7 competent jurisdiction, serves a public purpose and does not
8 constitute a gift of public funds within the meaning of Section 6
9 of Article XVI of the California Constitution.

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