

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6450

May 31, 1991

Mr. S--- L. H---
--- --- & ---
XXX --- ---
--- ---, CA XXXXXX

C--- Corporation
SC -- XX-XXXXXX

Dear Mr. H---:

This is reply to your November 29, 1990 letter regarding this Board's position as to the application of Revenue and Taxation Code section 6902 to a claim for refund of sales tax filed by C--- Corporation.

You believe that, assuming the case Chahine v. State Board of Equalization, 222 Cal.App.3d 485 (1990), was correctly decided, it is nonetheless distinguishable under the facts of your client's case, because the Chahine case pertained to amounts that were at least partially collected involuntarily. As you noted, there is dicta in the Chahine case concerning that issue; however, as we noted in our October 29, 1990 letter to you, it is the Board's position that the same result obtains where the taxpayer makes voluntary payments. We believe the Board's position would be upheld by the courts. The statute makes no distinction between voluntary payments and payments collected involuntarily.

You also believe that Mr. C. W. Philpot's August 19, 1985 letter expressly tolled the application of section 6902 where the letter states:

"Your legal recourse is that, (1) upon full payment of the liability; or (2) for each partial payment made against the amount due; you should file a claim for refund within six months from the date payment was made for any amount believed to have been overpaid."

You believe that, by employing the disjunctive “or,” the letter gives the taxpayer a choice of filing a refund claim within six months of a partial payment or within six months of full payment.

We believe that it is obvious that alternative (1) in the quoted paragraph contemplates payment in full. If alternative (1) pertained to partial payments, there would be no need for alternative (2). Even were we to agree with your interpretation, you would be asking the Board to invoke equitable relief; that is, to consider itself estopped from applying section 6902 to this case. The California Supreme Court held in the case, *Bloniarz v. Roloson*, 70 Cal.2d 143 (1969), that municipal courts do not have the power to consider the extrinsic factors that invoke the jurisdiction of equity. The Board’s legal staff has taken the position that it necessarily follows that the Board, an administrative agency, does not have such power.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

cc: Out-of-State District Administrator