

PROPOSAL TO ALIGN THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION’S “DEEMED-DENIAL” RULE FOR REFUND CLAIMS TO THE FRANCHISE TAX BOARD’S RULE¹

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EXECUTIVE SUMMARY

To ensure taxpayers have equal access to administrative appeal rights, California law and California Code of Regulations, title 18, Section 30103(b) (“Reg. 30103(b)”) should be amended to provide taxpayers with unresolved refund claims at the California Department of Tax and Fee Administration (“CDTFA”) with the same rights granted to claimants before the Franchise Tax Board (“FTB”). This includes providing equal access to review by the Office of Tax Appeals (“OTA”). Aligning the remedies will ensure consistent treatment of refund claims, strengthen taxpayer rights, and promote efficiency in the administration of California’s tax system.

Under California law, taxpayers may deem a claim for refund denied if the CDTFA or the FTB fail to mail a determination notice within six months of the claims filing date. The purpose of these laws is to prevent refund claims from being indefinitely prolonged due to agency inaction, allowing taxpayers to move their cases forward once a reasonable period has passed. A taxpayer’s remedy, however, differs by agency. Taxpayers who deem their refund claims denied by the FTB may either file a lawsuit in court or appeal to the OTA. For pending claims at the CDTFA, however, a taxpayer’s only option is to file lawsuit in court, with no rights to appeal to the OTA.

This inequitable gap in taxpayer rights may have been an oversight in the landmark legislation that created the CDTFA and the OTA. This is because other similar factual scenarios allow for OTA review when the CDTFA issues a full or partial denial of a refund claim. It makes little sense, thus, that there would be an intent to deny taxpayers access to the OTA only when a refund claim is **deemed denied** due to agency inaction. Moreover, prohibiting taxpayers from filing an appeal with OTA—forcing them to pursue a lawsuit—creates inconsistency, undermines fairness, and ultimately burdens both taxpayers and the courts. Tax policy should encourage, rather than discourage, efficient resolution of disputes.

¹ The comments contained in this paper are the individual views of the author who prepared them, and do not represent the position of the California Lawyers Association or of the Taxation Section.

BACKGROUND

Prior to 2017, the five-member Board of Equalization (“BOE”) adjudicated appeals involving income/franchise and sales/use taxes, as well as many other taxes and fees. The BOE, at that time, served as a single, statewide tax tribunal and was the only constitutionally established, tax-focused body with statewide reach and expertise. For sales and use and other taxes that were administered by the BOE prior to 2017, the five-member BOE acted as a final *internal* reviewer. For FTB matters, the five-member BOE acted as an *external* reviewer, which lawmakers viewed as independent of FTB’s administrators.

The Legislature stripped most duties from the BOE, including most of its adjudicatory duties, when it passed the Taxpayer Transparency and Fairness Act of 2017 (“2017 Act”), and transferred those duties to the newly created CDTFA and OTA.² Specifically, the BOE’s adjudicatory duties for both FTB and CDTFA controversies were transferred to the OTA.

Unfortunately, the Legislature did not fully address some important appeals procedures and processes in the underlying statutes and regulations in order to align CDTFA’s procedures with the FTB’s, especially as they relate to appeals before the OTA.

If the CDTFA fails to act on a refund claim within six months, the claim is considered deemed denied, which is the same rule if the FTB failed to act on a claim within six months. However, the statute currently forces the taxpayer to file suit in court rather than have the choice of filing suit or appeal to the OTA like the FTB.

This paper primarily references the deemed-denial rules for sales and use taxes under Revenue and Taxation Code Section 6934, but all similar statutes and underlying regulations related to CDTFA-administered taxes and fees should be amended, including:

- Sales & Use Tax Law (Rev. & Tax. Code § 6934)
- Motor Vehicle Fuel Tax Law (Rev. & Tax. Code § 8149)
- Use Fuel Tax Law (Rev. & Tax. Code § 9173.5)
- Cigarette & Tobacco Products Tax Law (Rev. & Tax. Code § 30404)
- Alcoholic Beverage Tax Law (Rev. & Tax. Code § 32414)
- Timber Yield Tax Law (Rev. & Tax. Code § 38614)
- Energy Resources Surcharge Law (Rev. & Tax. Code § 40128)
- Hazardous Substances Tax Law (Rev. & Tax. Code § 43474)
- Integrated Waste Management Fee Law (Rev. & Tax. Code § 45704)
- Fee Collection Tax Law (Rev. & Tax. Code § 55244 (covers many CDTFA fee and special taxes))
- Diesel Fuel Tax Law (Rev. & Tax. Code § 60544)

DISCUSSION

I. INTRODUCTION

The relevant CDTFA provisions that need to be amended include Revenue and Taxation Code Sections 6934 (“Section 6934”), 8149, 9173.5, 30404, 32414, 38614, 40128, 41111, 43,474, 45704, 55244, and 60544. These CDTFA provisions should be modeled after Revenue and Taxation Code Section 19331 (“Section 19331”), the corresponding FTB provision. Each of the relevant statutes establish a **six-month statutory limit**—a built-in exhaustion endpoint so that a taxpayer can advance their refund claim, which are similar to the federal rules. Further, Reg. 30301(b), which addresses OTA jurisdiction over CDTFA appeals, would need to be amended to make it clear that the OTA has jurisdiction to hear CDTFA-related deemed-denial appeals, just like it does for an FTB deemed-denial appeals.

² Assembly Bill 102 (Stats. 2017, Ch. 16) and Assembly Bill 131 (Stats. 2017, Ch. 252)

The six-month deadline affords the CDTFA and FTB with a reasonable period to verify facts and calculate refund amounts, but then shifts control back to the taxpayer to prevent prolonged uncertainty and cash-flow disruptions. Absent this statutory limit, refund claims could remain unresolved indefinitely, leaving taxpayers in limbo and exposing the state to significant liability from accrued interest. By imposing this deadline, the law ensures that refund claims cannot be stalled indefinitely due to administrative inaction.

The deemed-denial rules are intended to protect taxpayers by guaranteeing timely access to remedies, while promoting efficiency and accountability in tax administration. The two provisions read (the other CDTFA-related provisions noted above are similar):

Section 6934 (CDTFA). “If the board [CDTFA] fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board of its action on the claim, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.”

Section 19331 (FTB). “If the Franchise Tax Board fails to mail notice of action on any refund claim within six months after the claim is filed, the taxpayer may prior to mailing of notice of action on the refund claim consider the claim disallowed and appeal to the board. For substitution of the 120-day period for the six-month period contained in this section in a Title 11 case, see Section 505(a)(2) of Title 11 of the United States Code.”

II. PROBLEMS ADDRESSED

Under current law, when a refund claim is deemed denied by the CDTFA after six months of inaction, a taxpayer’s only recourse is to file a lawsuit in court. By contrast, when a refund claim is deemed denied by the FTB, a taxpayer may choose either to file an appeal with the OTA or file a lawsuit in court.

When the CDTFA and OTA were created in the 2017 Act, the legislation overlooked some of the detailed procedures, including the misaligned deemed-denial rule, which treats taxpayers differently depending on which agency they are before. The author of this paper is not the first person to recognize the disparity. OTA Director Myriam Bouaziz has stated more than once in a public forum, that her staff has identified multiple misalignments that the Legislature may want to address, including misalignment with the deemed-denial rules. She said that she believes the cause of the deemed-denied rule is because of the CDTFA’s vertical appeals system under the former BOE procedures.³

The CDTFA’s rules are rigid, and create an unnecessary and inequitable burden on taxpayers compared to the parallel rules administered by the FTB. Despite serving the same underlying purpose, the two statutes diverge significantly in practice.

The policy behind allowing taxpayers to appeal a tax agency’s decision on a refund claim is rooted in fairness, accountability, and the constitutional principle of due process. Allowing taxpayers with unresolved refund claims access to the OTA instead of filing suit in court is preferable for efficiency, cost, expertise, and procedural control. Practitioners often recommend OTA appeals first for a variety of reasons.

Specialized Tax Expertise

- OTA’s administrative law judges (“ALJs”) are tax specialists, and many of them are former FTB, CDTFA and Board of Equalization (BOE) attorneys with deep experience in California tax law and procedure. By contrast, superior court judges hear all types of civil cases — tax cases are rare for them — so they may lack familiarity with complex tax statutes and administrative rules.
- OTA ALJs have a better understanding of statutory nuances. OTA judges are more comfortable with technical doctrines like apportionment, nexus, conformity issues, interest computations, and administrative

³ Assembly Revenue and Taxation Committee Informational Hearing: Evaluating California’s Newest Tax Agencies on October 8, 2024 [Agenda](#)

exhaustion — areas that often confuse generalist courts.

Cost and Expediency

- OTA proceedings are less expensive than court proceedings. There are no filing fees, discovery is limited, and representation can be handled more efficiently. Court litigation, by contrast, involves filing fees, motions practice, discovery, and potentially trial, driving up attorney time and client costs.
- OTA decisions generally are released faster than court decisions. OTA appeals usually conclude within 9–18 months, whereas superior court refund suits can stretch 2–5 years, especially if appeals follow.

Procedural Flexibility and Reduced Risk

- Taxpayers may elect an informal hearing at the OTA, which can be conducted via videoconference and often without strict evidentiary or procedural rules.
- There are no jury trials and limited procedural barriers. The OTA process is a record-based process focused on substantive tax law.
- De novo review: The OTA reviews the case de novo — meaning it considers the matter anew, not bound by the FTB’s or CDTFA’s prior determinations. This allows for a fresh evaluation of the taxpayer’s arguments.

Opportunity for Settlement and Collaboration

- OTA appeals often include opportunities for pre-hearing settlement discussions with the FTB or CDTFA.
- The forum is administrative and collegial, there’s often greater flexibility to negotiate — including partial resolutions — before or during the hearing stage.

Precedential and Educational Value

- OTA decisions, especially precedential ones, provide guidance for future cases and agency practice.
- Even when a taxpayer doesn’t prevail, a written decision from OTA can help clarify agency policy or interpretation — which is valuable for advocacy and future legislative reform.

III. RECOMMENDATIONS TO IMPROVE CALIFORNIA TAX LAW

Taxpayers should not be forced to file suit in court, a costly and complicated process, when there already is an appellate agency, the OTA, which was created by the Legislature for this very purpose—to heal claims. There is no logical reason why there should be two different procedures between the two sister agencies—the CDTFA and the FTB—for claims that are “deemed denied” because there is inaction by the agency. Taxpayers should have the option, as they do when the agency in question is the FTB, to have their appeal heard at the OTA, which is staffed by administrative law judges that specialize in taxation.

The policy underlying the right to appeal a tax agency’s inaction on a refund claim rests on due process and the protection of property rights. Permitting taxpayers to seek review outside the CDTFA ensures they are not left in prolonged uncertainty—sometimes for decades—while their funds are effectively withheld, and interest accrues with the state.

Extending OTA jurisdiction to CDTFA deemed-denied refund cases is essential to ensure fairness, consistency, and efficiency in California’s tax system. Granting OTA jurisdiction would harmonize taxpayer remedies across agencies, provide a defined exhaustion point through a deemed-denial framework, and ensure that taxpayers have timely access to an impartial, expert administrative forum. This reform would not only uphold the principles of due process and equal treatment but also promote confidence in the integrity and responsiveness of California’s tax administration.