

OFFICE OF THE ATTORNEY GENERAL  
State of California

above secs. to be added  
to Manual - citing to  
Opinion in both)

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OPINION

of

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No. CV 71/304  
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THE HONORABLE L. J. DEWALD, COUNTY COUNSEL OF THE COUNTY OF PLACER, has requested an opinion on the following questions relating to the payment of property taxes on the secured roll prior to the time the property is tax sold to the state (referred to herein as "current taxes"):

1. Is a county tax collector required by law to accept a tendered underpayment or partial payment of current taxes?
2. If not, may the tax collector in his discretion accept such tendered payment?
3. If not, must the tax collector return the tendered payment to the sender or must it be deposited in the county treasury and refunded by county warrant?
4. If the tendered payment should be returned to the sender without going through the county treasury, what procedure should be used in making a record of the tendered payment and its return?
5. If the tax collector is required to accept a tendered partial payment or underpayment, or if he may in his discretion accept it:

(a) In what manner is it to be applied if the second installment is due and all or a portion of the first installment is unpaid?

(b) On what amount are interest and penalties to be computed when a portion of an installment is delinquent and unpaid, the entire installment or only the unpaid balance?

(c) How is the tendered partial payment to be allocated among the various taxing agencies where taxes are included in the tax bill upon which such partial payment is tendered?

The conclusions are:

1. A county tax collector is not required by law to accept a partial payment of current taxes on the secured roll. Payment of such taxes in installments must be made in the manner specified in sections 2605-2608, Revenue and Taxation Code, or as specified in the alternative provisions for collection of taxes in installments provided for in Chapter 2.1 or 2.2, Part 5, Division 1 (§§ 2700-2707; §§ 2750-2771), Revenue and Taxation Code, in those counties which have adopted them. The only authority for accepting partial payments of current taxes is section 4717 which is applicable only in those counties which have adopted it.

2. A county tax collector has no discretion to accept tendered partial payments of current taxes.

3 and 4. A tendered partial payment or underpayment which does not satisfy the requirements of section 2607 or the alternative provisions of section 2703 or 2758, whichever is applicable, should be returned to the sender accompanied by a notification setting forth the amount of the tendered underpayment, a statement of the current amount due, and the reason for returning the remittance. The tax collector should retain a copy for his records. Such disposition should be reported by the tax collector in his reports to the auditor pursuant to section 2616, Revenue and Taxation Code, and section 24453, Government Code.

5. In view of our answers to questions 1-4, question 5 requires no further answer.

## ANALYSIS

The imposition of ad valorem taxes on real property is authorized by the provisions of section 1, et seq., article XIII, of the Constitution of California. The Legislature is specifically authorized by section 7 of article XIII to provide by law for the payment of all taxes on real property by installments. See also section 13, article XIII, Constitution of California. Pursuant to this article, the Legislature has enacted as part of the Revenue and Taxation Code a number of sections providing for the payment and receipt of property taxes.

The payment of property taxes on the secured roll of a county prior to the time the property is tax sold to the State of California is governed by the provisions of Chapters 1 and 2, Part 5, Division 1 (§§ 2501-2635), of the Revenue and Taxation Code.<sup>1/</sup> A county may, however, adopt the alternative provisions in Chapter 2.1 for collection in equal installments (§§ 2700-2707) or, if it is a county having a population of 4,000,000 or more, adopt the provisions of Chapter 2.2 for collection in four equal installments (§§ 2750-2771). For purposes of this opinion, we shall focus on the general provisions in Chapters 1 and 2 and the alternative provisions of Chapter 2.1, since they are of application to all counties. Placer County has adopted Chapter 2.1 in the collection of its current taxes on the secured roll.<sup>2/</sup>

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1. All statutory references in this opinion are to the Revenue and Taxation Code unless otherwise indicated

2. As noted in the introductory sentence preceding the questions, this opinion deals with the collection of property taxes on the secured roll prior to the time the property is tax sold to the state pursuant to section 3436 and before the delinquent taxes on the secured roll are entered on the abstract list (§§ 2851-2862). Such taxes are referred to herein as "current taxes." We are not here concerned with collections which are made after the sale to the state, since such collections are treated as redemptions and are governed by other statutory provisions (§§ 4101, et seq.). Nor does this opinion deal with collections on the unsecured roll, which are governed by sections 2901, et seq.

Current taxes on the secured roll are collected by the county tax collector (§ 2602). On or before the fourth Monday in September, the county auditor delivers the secured roll to the county tax collector, and charges him with the taxes extended on the local roll and on the board roll prepared by the State Board of Equalization (§§ 2601, 2603). Subsequently assessed taxes are also added to the roll and are charged to the tax collector (§ 2604). The first installment of taxes on the secured roll is due November 1 and consists of (a) all taxes on personal property and (b) half the taxes on real property (§ 2605). The second installment is due February 1 (§ 2606). The first installment is delinquent December 10 and the second installment is delinquent April 10, at which time a delinquent penalty of 6 percent attaches to the particular installment (§§ 2617, 2618). Section 2607 further provides:

"The entire tax on real property may be paid when the first installment is due. The second installment may be paid separately only if the first installment has been paid. Unless accompanied by the payment of the second installment, payment of the first installment shall not be accepted after the second installment has become delinquent."

The tax collector may fix a date preceding the due date when payments may be made (§ 2608). On or before the day when taxes are payable the tax collector is required to publish a notice specifying: (a) the dates when taxes on the secured roll will be due, (b) the times when these taxes will be delinquent, (c) the penalties and costs for delinquency, (d) that all taxes may be paid when the first installment is due, and (e) the times and places at which payment of taxes may be made (§ 2609). The notice must be published (§ 2610). In addition, a notice must be printed on all tax bills specifying that if taxes are unpaid, it will be necessary as provided by law to pay (a) delinquency penalties, (b) costs, (c) redemption penalties, and (d) the redemption fee (§ 2611).

If the county adopts the alternative provisions of Chapter 2.1 (§§ 2700-2707), half the taxes on real and personal property on the secured roll are due November 1 (§ 2701). The second half of said taxes are due February 1 (§ 2702). Section 2703 is similar to section 2607. It provides:

"The entire tax on the secured roll may be paid when the first half is due. The second half may be paid separately only if the first half has been paid. Unless accompanied by the payment of the second half, payment of the first half shall not be accepted after the second half has become delinquent."

When Chapter 2.1 is in effect, the first half of secured taxes is delinquent December 10 and the second half is delinquent April 10, at which times a delinquent penalty of 6 percent attaches to them (§§ 2704, 2705). With the exception of sections 2605, 2606, 2607, 2617, 2618, 2621 and 2624, payments under Chapter 2.1 are governed by the general provisions of Chapters 1 and 2, referred to above (§ 2700).

The principal question which arises under these statutory provisions is whether the tax collector is required by law to accept a tendered partial payment of taxes on the secured roll. Alternatively, we are asked whether the tax collector may, in his discretion, accept partial payments.

While there is no case authority in point, we are informed that the administrative practice in most counties in the state is to refuse partial payments. To permit partial payments would mean that assesses could pay their taxes in such amounts and at such times as they see fit without regard to the requirement of the law that current taxes on the secured roll be paid in no more than two installments (excepting only Chapter 2.2, referred to above). In most counties, when amounts less than the installment amount due are tendered, the payment is returned with a notice stating the actual amount due. Under section 2611.4, upon authorization of the board of supervisors and approval of the county counsel, the tax collector may refrain from collecting any tax assessment, penalty, or cost where the amount to be collected is one dollar (\$1.00) or less. In those counties, the tax collector could properly accept a tax payment which is less than one dollar short. Many tax collectors, when faced with a payment of a large amount due which is underpaid by more than one dollar, will call or write the taxpayer and advise him to pay the proper amount before the delinquency date. If the taxpayer appears in person, he is given verbal notice of the amount actually due.



The manner of payment of current taxes on the secured roll is purely a matter of statute. We are of the opinion that the payment of such taxes in amounts less than the entire tax levied against the parcel of real property is limited to payments in two installments under sections 2605-2607. The same is true under sections 2700-2707 when they are applicable. Acceptance of partial payments of less than the prescribed installments is not permissible under these statutes. Nor is the payment of the second installment permissible if the first installment has not been paid. Once the second installment is delinquent, the first installment cannot be accepted without payment of the second installment, together with the penalties due under sections 2617 and 2618 or sections 2704 and 2705. Although section 2615 provides that the tax collector shall give a receipt to the person making payment showing inter alia, the amount remaining unpaid, this provision does not authorize the acceptance of payments other than the two installments spelled out in the statute.

The only exception to the foregoing statutory scheme is section 4717, which is a part of Chapter 3, Part 8, Division 1 (§§ 4701-4717), which is commonly referred to as the "Teeter Plan." Section 4717 requires short payments to be deposited in a trust fund, to be held until the date the property is sold to the state by operation of law. The taxpayer is required to be notified of the deficiency and is given until the date the property is sold to the state to pay the balance. If payment of the balance is not made before that time, the insufficient payment is required to be returned to the taxpayer, and the sale to the state is required to be made for the full amount of the unpaid taxes, penalties and costs. Section 4717 is applicable only if the provisions contained therein are specifically adopted by the county board of supervisors of a county which has elected to follow the procedure authorized in Chapter 3. The language of section 4717 indicates that it is an exception to the general rules discussed above. The presence of such an exception is supportive of the conclusion that underpayments or partial payments are not to be permitted where section 4717 is not in effect. We are advised that this is the case in Placer County.

From the foregoing, we conclude that the tax collector is neither required nor permitted by law to accept tendered amounts which fall short of the installment payment requirements of section 2607, or section 2703

where Chapter 2.1 is in effect, unless the provisions of section 4717 have been adopted. In view of the statutory scheme, the tax collector has no discretion to accept tendered underpayments. This is so whether the payment is tendered in cash (§ 2502) or by negotiable instrument (§§ 2505-2511), in person or by mail (§§ 2512, 2512.5).

When an underpayment is tendered to the tax collector, questions 3 and 4 ask whether it should be returned to the sender or deposited in the county treasury and refunded by county warrant or handled in some other way. These questions arise because of the requirement of section 2616 that the tax collector account each month to the auditor "for all moneys collected during the preceding month" and file with the auditor at intervals not exceeding 90 days a "statement under oath, showing an itemized account of all his transactions and receipts since his last settlement."<sup>3/</sup> In addition, section 24353, Government Code, requires each county officer authorized to collect money to pay into the county treasury "all money collected by him or under his control during the preceding month that is payable into the treasury" and to file a cash statement of "all money handled by him in his official capacity during the preceding month."<sup>4/</sup> If all amounts of money and all negotiable instruments, regardless of amount,

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3. Section 2616 provides:

"On or before the fifth day in each month the tax collector shall account to the auditor for all moneys collected during the preceding month. On the same day he shall file with the auditor a statement under oath, showing that all money collected by him has been paid as required by law.

"On or before the 25th day of each month, or at greater intervals not exceeding 90 days and on dates approved by the auditor, the tax collector shall file with the auditor a statement under oath, showing an itemized account of all his transactions and receipts since his last settlement, including the amount collected for each fund or district extended on the roll."

4 Section 24353 provides:

"Each officer of a county of judicial district authorized to collect money shall pay into the county treasury at the time required

tendered to the county tax collector were required by these sections to be paid into the county treasury, then it would follow that in order to return them to the sender, a refund would have to be made by county warrant (§§ 24353, 27000, Government Code).

To require the county tax collector to pay all receipts regardless of amount into the county treasury would be in conflict with the requirement that he refuse to accept tendered partial payments of current taxes on the secured roll. We are of the opinion that section 2616, Revenue and Taxation Code, and section 24353, Government Code, simply require the tax collector to pay over all those amounts actually collected and which belong in the county treasury as required by law. Amounts which he may not accept because they are insufficient to pay the installments due and payable as prescribed by law should be returned to the sender accompanied by a notification setting forth the amount

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by law, but in any event on or before the fifth day of each month, all money collected by him or under his control during the preceding month that is payable into the treasury and file with the county auditor, on or before the fifth day of each month, a cash statement, in such form as the auditor requires, of all money handled by him in his official capacity during the preceding month, showing cash on hand at the beginning of the month, collections and payments during the month, and cash on hand at the end of the month. Each item shall be properly classified as to funds and accounts affected and as to whether or not it is payable into the county treasury.

"Whenever the business of a court requires, any officer of a judicial district authorized to collect money, with prior approval of the county auditor, shall pay into the county treasury all money collected by him or under his control during the preceding month that is payable into the treasury, and file the cash statement required herein, on or before the 15th day of each month."



of the tendered underpayment, a statement of the correct amount due, and the reason for returning the remittance. The tax collector should retain a copy of the notification for his own records. Then, when he is required to account to the auditor he will have a suitable record of such amounts tendered and returned.

In making his report to the auditor, the tax collector should itemize all such tendered underpayments that have been returned to the sender. Such amounts should be reported in the statements required by section 2616. Such a statement would also satisfy the requirements of section 24353, Government Code.

In view of our answers to questions 1 through 4, question 5 does not require any further answer.