

NOTE: SEE, ALSO, APPENDED
HERETO:

- 1) LTR. OF CFP - DTD 12/19/58.
 - 2) LTR. OF CONCURRENCE - DTD 1/22/59.
 - 3) ATTY. GEN. OP. N.S. 2536
DTD. 4/20/40;
- (REFERENCED IN FORMER SECTION M-5472)



OFFICE OF THE ATTORNEY GENERAL
Department of Justice

LIBRARY AND COURTS BUILDING, SACRAMENTO 14

M-5451

(Referenced to letter of
1/22/59)

September 13, 1963

Miss Frankie Meixner, Chief
Division of Tax Deeded Land
Office of the State Controller
Room A-202, 1021 "O" Street
Sacramento 14, California

Re: Allowance of Credit on Defaulted Installment Plans
Section 4336, Revenue and Taxation Code

Dear Miss Meixner

This is in reply to your memorandum of August 13, 1963, in which you ask this office to review the question of whether interest payments previously made in the course of an installment plan of redemption by a redemptioner who defaulted should be credited to him now upon redemption pursuant to section 4336, Revenue and Taxation Code. More particularly, you have requested that we review the application of Ops. Cal. Atty. Gen. N.S. 2536, April 29, 1940, to this problem in light of an opinion by the County Counsel of Riverside County dated July 3, 1963.

Opinion N.S. 2536 construed the provisions of former section 3817g, Political Code, which is now section 4337 of the Revenue and Taxation Code. It concluded that the language of that section which provided for a credit "for the total amount, without an allowance of interest thereon, previously paid to the county treasurer" did not forbid a credit for interest previously paid by him. Essentially the same language was also contained in section 3817f of the Political Code, which is now section 4336, Revenue and Taxation Code.

It further appears that when sections 3817f and 3817g of the Political Code were recodified in the Revenue and Taxation Code in 1941, the language in question was changed to provide for a credit for "the total amount of back taxes previously paid, without an allowance for interest on it" both in sections 4336 and 4337, Revenue and Taxation Code. The term "back taxes" is defined in section 4187, Revenue and Taxation Code, as "all payments required to be made under any provision of law allowing payment of delinquent taxes in installments, except payments of current taxes due on the property and the penalties and costs on the current taxes".

(Referenced to letter of
1/22
September 13, 1963

Miss Frankie Meixner, Chief

-2-

In view of the well known rule that codification of a statutory provision does not effect a substantive change in the law, we are of the view that Opinion N.S. 2536 is still valid. Since the language of the two sections is essentially the same, we believe the same construction properly was given to former section 3817f of the Political Code, and that the same construction should now be given to sections 4336 and 4337, Revenue and Taxation Code. The language of former sections 3817f and 3817g clarifies the interpretation to be given to the present section, particularly in view of the fact that Stats. 1935, pp. 1065-66, added the words "without an allowance for interest thereon" in place of the words "without interest." (Emphasis added.)

We have reviewed the opinion of the County Counsel of Riverside County dated July 3, 1963, which relies in part on two other opinions of this office in concluding that the words "without an allowance of interest on it" contained in section 4336, mean that no credit shall be allowed for interest paid in the course of a defaulted installment plan. Ops. Cal. Atty.Gen. N.S.2035, December 8, 1939, was concerned with the question of when the credit for previous payments should be allowed under former sections 3817f and 3817g of the Political Code. While it pointed out the difference between an election to pay taxes in installments and the election to redeem, such discussion did not indicate that the language relating to the allowance of interest was to be given a different construction in the two situations. The distinction sought to be drawn by the County Counsel in the present situation is, in our opinion, a distinction without a difference. Ops. Cal. Atty.Gen. N.S. 3631, July 3, 1941, contains some language to the effect that a redemptioner, under former section 4101.5, was entitled to credit for payments previously made "exclusive of interest." However, that opinion did not pass on the present question, and the language referred to does not support the opposite conclusion as suggested in the County Counsel's opinion. The reasons set forth by the County Counsel in support of the opposite conclusion do not, accordingly, convince us that Opinion N.S. 2536 is either erroneous or inapplicable.

The foregoing interpretation has been followed by all or nearly all of the county officials involved for many years. While such administrative interpretation is not controlling, it is consonant with the legislative history of the sections involved, and with Opinion N.S. 2536. We are, therefore, of the opinion that such interpretation should still be followed, and that your County Tax Collectors' Reference Manual, now under consideration, should reflect this view.

We trust that the foregoing informal statement of

(Referenced to letter of 1/)

Miss Frankie Meixner, Chief

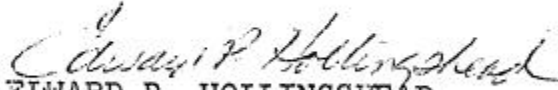
-3-

September 13, 1963

our views serves your purposes in this matter. If, however, anything further is desired, please do not hesitate to call on us.

Very truly yours,

STANLEY MOSK
Attorney General


EDWARD P. HOLLINGSHEAD
Deputy Attorney General

EPH:jw