

Opinion No. 79-607—September 18, 1979

SUBJECT: DELINQUENT UNSECURED PROPERTY TAXES—The tax collector may not accept a partial payment of delinquent unsecured property taxes (consisting of payment of the tax and partial penalties) as payment in full in effecting settlement of potential litigation by compromise.

Requested by: COUNTY COUNSEL, PLACER COUNTY

Opinion by: GEORGE DEUKMEJIAN, Attorney General
Anthony S. DaVigo, Deputy

The Honorable L. J. Dewald, County Counsel, County of Placer, has requested an opinion on the following question:

May the tax collector accept a partial payment of delinquent unsecured property taxes (consisting of payment of the tax and partial penalties) as payment in full in effecting settlement of potential litigation by compromise?

CONCLUSION

The tax collector may not accept a partial payment of delinquent unsecured property taxes (consisting of payment of the tax and partial penalties) as payment in full in effecting settlement of potential litigation by compromise.

ANALYSIS

The present inquiry is whether a county tax collector may accept a partial payment of delinquent unsecured property taxes, consisting of the principal payment and partial penalties, as payment in full in effecting settlement by compromise of potential litigation. The provisions pertaining to the collection of taxes on unsecured property are found in sections 2901 through 3107 of the Revenue and Taxation Code.¹

A tax collector is a county officer whose duties are prescribed by law. (*Cf.* Gov. Code, §§ 24000, 27400.) Among these duties is the collection of taxes on unsecured property. (§ 2903.) The tax rate to be used in collecting taxes on unsecured property is set forth in section 2905. Section 2922 specifies the dates on which taxes on the unsecured roll become delinquent, and further provides with regard to taxes unpaid on said dates that a delinquent penalty "attaches to them." Such penalties become part of the tax (*cf. Weston Inv. Co. v. State of California* (1948) 31 Cal. 2d 390, 393); thus, the duty to collect taxes includes the duty to collect penalties. With respect to such duty section 2909.1 provides:

"To enable the tax collector to collect taxes on unsecured property on or after the due date, the assessor shall deliver to the tax collector, as soon as practicable after that date, a record in writing of the assessment of the unsecured property in such form as the board may prescribe."

¹ Hereinafter, all section references are to the Revenue and Taxation Code unless otherwise indicated.

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Section 2910 provides:

"Annually, as soon as practicable after the close of the last business day in July and before December 1, the auditor shall examine the unsecured roll, ascertain the amount of taxes collected and charge the tax collector with *the taxes and penalties which it is his duty to collect in pursuance of the records of assessment delivered to him by the assessor.*" (Emphasis added.)

The tax collector is not at liberty to depart from these statutory duties except as may be otherwise provided by law. (*City and County of San Francisco v. Ford* (1877) 52 Cal. 198, 200.)

Certain exceptions are expressly provided. Section 2923 provides as follows:

"Any tax collector charged by law with the collection of any delinquent taxes on unsecured property may file a verified application with the board of supervisors for a discharge from accountability for the collection of the *taxes, penalty and interest*, and any other charge pertaining thereto, *if the amount is such as not to justify the cost of collection or enforcement is impracticable.*" (Emphasis added.)

Such a discharge from accountability does not release the taxpayer from liability for any taxes, penalties, interest, or other charges. (§ 2926.)

Section 2927.6 provides:

"Notwithstanding any other provision of law, in the case of a deficiency in the payment of taxes due and payable pursuant to this chapter, the tax collector, with the approval of the board of supervisors, may accept such partial payment from the taxpayer. The difference between the amount paid by the taxpayer and the amount due shall be treated as a delinquent tax in the same manner as any other delinquent tax."

In the absence of any such provision expressly authorizing the acceptance of partial payments, we have previously determined, with respect to property taxes on the unsecured roll, that the tax collector was not authorized to accept such payments. (55 Ops. Cal. Atty. Gen. 247, 251-252 (1972); accord *Herrington v. Weigel* (1978) 82 Cal. App. 3d 676, 684-685.)

Sections 2923 and 2927.6 provide specifically limited exceptions to the duty of a tax collector to collect taxes and penalties. Neither of these sections provide for settlement by compromise. Any such settlement would, in effect, constitute a cancellation. The provisions prescribing the specifically limited conditions under which a tax or penalty may be canceled are set forth below. Section 4985 provides as follows:

"Any uncollected delinquent penalty, cost, redemption penalty, interest, or redemption fee, heretofore or hereafter attached, shall upon satisfactory proof submitted by the tax collector, the auditor, or the

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assessor, be canceled by the auditor on order of the board of supervisors with the written consent of the district attorney upon a showing that either:

"(a) Such delinquent penalty, cost, redemption penalty, interest, or redemption fee has attached because of an error of the tax collector, the auditor, or the assessor, or because of their inability to complete valid procedures initiated prior to the delinquency date, and upon the further showing that payment of the corrected or additional amount was made within 30 days from the date that the correction was entered on the roll or abstract record; or

"(b) The correction of any assessor's error under Section 4831 for any prior fiscal year causes an increase of over one hundred dollars (\$100), or over 50 percent of such tax for such year, whichever is greater, and such error was made without fault on the part of the assessee, and upon a further showing that payment of such increased tax was made within one year from the date that such correction was entered on the roll or abstract record; provided, however, that if payment of such increased tax is made pursuant to Section 4837.5, this subdivision shall not apply."

Section 4985.1 provides:

"In charter counties with a population of over 1,300,000, all or a portion of the duties imposed upon the auditor pursuant to Section 4985 may, upon approval of the auditor and by resolution of the board of supervisors, be transferred to the tax collector.

"The tax collector shall make a report to the auditor in the manner prescribed by the auditor of any cancellation made pursuant to this section."

Section 4985.2 provides:

"(a) Any uncollected delinquent penalty on property provided for in Section 2617, 2618, 2704, 2705, or 2922 may be canceled by the tax collector or the auditor, with the approval of the board of supervisors upon a finding that (1) the assessee's failure to make a timely payment is due to reasonable cause and circumstances beyond the assessee's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, provided the principal payment for the proper amount of the tax due is made within 90 days after the first delinquency date or within 30 days after the second delinquency date, or, (2) there was an inadvertent error in the amount of payment made by the assessee, provided the principal payment for the proper amount of the tax due is made within 10 days after the notice of shortage is mailed by the tax collector.

"(b) Any assessee seeking to be relieved of the penalty shall file with the board of supervisors a claim for refund conforming with the

provisions of Article 1 (commencing with Section 5096) of Chapter 5 of Part 9. The claim for refund shall be accompanied by a statement under penalty of perjury setting forth the facts upon which the claim for relief is based. The statement shall be filed with the board of supervisors within 60 days after the penalty is paid, or within 60 days following the effective date of this act, whichever is later.

"(c) Nothing herein shall affect the powers of a tax collector or redemption officer pursuant to Section 2512, 2512.5 or 2513."

Section 4986 provides:

"(a) All or any portion of any tax, penalty, or costs, heretofore or hereafter levied, may, on satisfactory proof, be canceled by the auditor on order of the board of supervisors with the written consent of the county legal adviser if it was levied or charged:

"(1) More than once.

"(2) Erroneously or illegally.

"(3) On the canceled portion of an assessment that has been decreased pursuant to a correction authorized by Article 1 (commencing with Section 4876) of Chapter 2 of this part.

"(4) On property which did not exist on the lien date.

"(5) On property annexed after the lien date by the public entity owning it.

"(6) On property acquired prior to September 18, 1959, by the United States of America, the state, or by any county, city, school district or other political subdivision and which, because of such public ownership, became not subject to sale for delinquent taxes.

"(7) On that portion of an assessment in excess of the value of the property as determined by the assessor pursuant to Section 469.

"(b)

"No cancellation under paragraph (2) of subdivision (a) of this section shall be made in respect of all or any portion of any tax, or penalties or costs attached thereto, collectible by county officers on behalf of a municipal corporation without the written consent of the city attorney or other officer designated by the city council unless the city council, by resolution filed with the board of supervisors, has authorized the cancellation by county officers. The resolution shall remain effective until rescinded by the city council. For the purpose of this section and Section 4986.9, the date of possession shall be the date after which the plaintiff may take possession as authorized by order of the court or as authorized by a declaration of taking."

These provisions do not confer upon the tax collector the authority to accept the payment of partial penalties, i.e., less than the total penalty prescribed by law, in order to obviate potential litigation.²

The tax collector is a public officer of special and limited jurisdiction, whose authority is expressly conferred by law. Official powers cannot be extended beyond the terms and necessary implications of such granted authority. (*Federal Trade Comm. v. Raladam Co.* (1931) 283 U.S. 643, 649; *Cal. Toll Bridge Authority v. Kuchel* (1952) 40 Cal. 2d 43, 53; 61 Ops. Cal. Atty. Gen. 335, 338 (1978).) In the absence of any such express or implied authority, it is concluded that a county tax collector may not accept a partial payment of delinquent unsecured property taxes, consisting of the principal payment and partial penalties, as payment in full in effecting settlement by compromise of potential litigation.

Opinion No. 79-708—September 18, 1979

SUBJECT: CONCEALED FIREARM PERMIT—A city police chief may not issue a concealed firearm permit to a person appointed to the position of reserve police officer for the city if the reserve officer does not reside in the county in which the city is located.

Requested by: DISTRICT ATTORNEY, SAN BERNARDINO COUNTY

Opinion by: GEORGE DEUKMEJIAN, Attorney General
Paul H. Dobson, Deputy

The Honorable James M. Cramer, District Attorney, County of San Bernardino, has requested an opinion on the following question:

May a city police chief issue a concealed firearm permit to a person appointed to the position of reserve police officer for the city if the reserve officer does not reside in the county in which the city is located?

CONCLUSION

A city police chief may not issue a concealed firearm permit to a person appointed to the position of reserve police officer for the city if the reserve officer does not reside in the county in which the city is located.

ANALYSIS

Penal Code section 830.6 authorizes a city police chief to appoint a reserve (i.e., volunteer) "city policeman" to carry out assigned specific police functions, and for the duration of the specific assignment a reserve police officer has the

² The inquiry does not suggest nor do we assume for purposes of this analysis that the amount of the total penalty prescribed by law is uncertain or that the liability of the taxpayer is unclear. Nor do we express any view with respect to the settlement of a bona-fide dispute in litigation.