

Memorandum

• Miss Frankie Meixner, Chief
 Division of Tax Deeded Lands
 Office of the State Controller
 1021 O Street
 Sacramento, California

Date : December 11, 1962

File No.:

From : Office of the Attorney General

Subject: Manual for County Tax Collectors
Collection of Unsecured Taxes

This memorandum will confirm our discussions of the four questions set forth in your memorandum of July 27, 1962.

1. Your first question was whether the assessor, tax collector or auditor should compute the amount of the unsecured taxes when the tax collector collects the unsecured taxes as provided for in §§ 2904, 2909 and 2909.1, Revenue and Taxation Code.

We have concluded that either the assessor or the tax collector may compute the amount of the unsecured taxes.

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Taxes on unsecured property are due on the lien date, i.e., the first Monday in March (§ 2901, Revenue and Taxation Code). Section 2902 provides that the assessment of unsecured property shall be deemed complete for the purpose of enforcing the collection thereof when the assessor has made a record in writing of the assessment in such form as the State Board of Equalization may prescribe. We are informed that the form approved by the State Board provides a space for computation by the assessor, although he is not required to extend the taxes. Section 2904 provides that the board of supervisors shall decide whether the tax collector shall collect unsecured taxes and requires the county board to fix the date on which the duty of collecting shall be transferred annually to the tax collector. Section 2909, Revenue and Taxation Code, provides that if the tax collector is to collect taxes on the unsecured roll after the last business day in July, the assessor shall deliver the roll to the tax collector as soon as practicable after that day. Section 2909.1 provides that if the tax collector is to collect unsecured taxes 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 in such form as the State Board may prescribe. It should be noted that § 2191.3, Revenue and Taxation Code, which provides for the recording of a Certificate of Delinquency of personal property taxes, contains language indicating that either the tax collector or the assessor, whoever makes the computation, shall state that he has complied with all the provisions of this division in the computation

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and levying of the tax. This section, by implication, indicates that either the assessor or the tax collector should extend the taxes on unsecured property. No provision calls for extension of such taxes by the auditor.

2. The next question which you asked was whether the tax collector may accept negotiable paper at a public auction sale of seized property.

As you know, §§ 2505, 3450-3452 and 3693, Revenue and Taxation Code, provide for the acceptance of negotiable paper in payment of taxes, assessments or redemptions, on sales of tax sold property, or on sales of tax deeded property, respectively. There is, however, no provision for the acceptance of negotiable paper on the sale of seized property. When a sheriff sells property on execution, the cases have held that while he is not bound to receive bids other than for cash in full, if he completes the sale without collecting, he is personally liable for any amount not collected. (See, Meherin v. Saunders, 110 Cal. 463; 131 Cal. 681.) Accordingly, in the absence of statutory authority permitting the acceptance of negotiable paper, the better practice would be to conduct the sale for cash.

3. Would the filing of a Certificate of Lien under § 2191.3, Revenue and Taxation Code, preclude action to collect under other provisions of the law?

While the doctrine of election of remedies sometimes applies to prevent two different actions to collect the same debt, we are of the opinion that merely recording a Certificate of Tax would not preclude an action at law to recover the amount of unsecured taxes from the tax debtor. The recording of a Certificate of Lien is an extraordinary remedy available only to political subdivisions of the sovereign. Since the doctrine of election of remedies is a matter of defense which would have to be raised by the tax debtor, we do not believe it is appropriate for the tax collector to anticipate such defense and refrain from proceeding to collect the tax in any way he can.

4. When and what penalty attaches to property transferred from the secured roll to the unsecured roll, pursuant to §§ 2921.5, 2922 and 4986, Revenue and Taxation Code?

Section 4986, as amended in 1959, provides for the transfer of unpaid taxes, penalties and costs to the unsecured roll pursuant to section 2921.5 when the property is acquired after the lien date by any of the public agencies set forth in the section. Section 134 of the Revenue and Taxation Code, as amended in 1959,

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defines "unsecured property" as property:

"(b) The taxes on which were secured by real estate on the lien date and which real estate was later acquired by the United States of America, the State, or by any county, city, school district or other public agency and the taxes transferred to the unsecured roll pursuant to Section 4986 of this code."

Section 2921.5 provides for the transfer of taxes on unsecured property as defined in section 134, subparagraph (b), from the secured roll to the unsecured roll, which taxes should be collected in the same manner as other delinquent taxes on the "unsecured roll" and provides further that no delinquent penalty shall attach to such taxes so transferred, except to those taxes which carry delinquent penalty on secured roll at the time the real estate involved was acquired by a public agency. Section 2922 provides that taxes on unsecured rolls are delinquent on August 31 at five p.m., provides for a delinquent penalty of eight percent, and also provides that such delinquency penalty shall not attach to taxes transferred to the unsecured roll under section 2921.5 except where such taxes carried delinquency penalties on the secured roll at the time of transfer.

Prior to 1959 section 4986 did not provide for the transfer of taxes on the real property to the unsecured roll and neither section 4986 nor section 134 provided for the transfer of any penalties or costs to the unsecured roll. Sections 2921.5 and 2922 were not amended in 1959. This office has previously advised your division that the penalty provided for in sections 2921.5 and 2922 upon transfer of the taxes on personal property would attach to taxes which were delinquent at the time of transfer and that the eight percent penalty should be applied to the personal property taxes in lieu of the six percent penalty provided for in section 2704. Sections 2921.5 and 2922 were never intended to apply to taxes on the real property and fail to cover the situation where penalties, taxes and costs are transferred from the secured roll to the unsecured roll.

In applying these sections since the 1959 amendments, difficulty is occasioned by the fact that sections ~~2129.5~~ 2921.5 and 2922 were not amended to cover the transfer of penalties and costs on both the real and personal property taxes to the unsecured roll. If sections 2921.5 and 2922 are read literally, no penalty would attach if the transfer took place after July 1 and before December 10, but a double penalty would attach if the taxes were transferred after December 10, the secured roll penalty imposed by section 2704 and the unsecured roll penalty provided for in § 2922. We are certain the Legislature

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did not intend that a double penalty attach under such circumstances. We accordingly suggest that section 2922 be applied to the taxes on personal property in lieu of the penalty provided for in section 2704 but that the penalties and costs which attach to the taxes on real property be transferred to the unsecured roll. It is recommended that legislation be proposed to amend section 2921.5 and 2922 to provide that only the eight percent penalty shall apply to the taxes on the personal property and to amend section 4986 so that only the penalties and costs on the taxes against the real estate be transferred to the unsecured roll.

We trust that this informal statement of our views will serve your purposes in this matter. If anything further is desired, however, do not hesitate to call on us.


Edward P. Hollingshead

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