

# State of California County Tax Collectors' Reference Manual

## Chapter 2000: Unsecured Tax Collections



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California State Controller's Office

# Chapter 2000 Unsecured Tax Collections

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## 2000-2004 General Overview: General Information

### 2000. TAX COLLECTOR'S DUTIES

"The tax collector shall collect taxes on unsecured property" ([Rev. & Tax. Code §2903](#)).

The authority of a board of supervisors is limited to those express and implied powers granted to the board by statutes. Since the Legislature has provided the tax collector a specific duty to collect all of the taxes, the board of supervisors has no authority to transfer this function to any other officers of the county or to any private person or company, except in accordance with provisions of [Government Code section 26220](#).

In lieu of [seizure and sale](#), the law provides a method for assigning delinquent unsecured taxes to a collection agency. Such assignment may be made 90 days after the [lien](#) is due and delinquent ([Gov. Code §26220\(b\)](#)). Such assignment requires a four-fifths vote by the board of supervisors and approval by the tax collector.

[Government Code section 26220\(b\)](#) also requires the tax collector to declare that seizure and sale procedures will not be used in collection of the subject lien. Secured roll taxes may not be assigned ([Gov. Code §26220\(c\)](#)).

**NOTE:** No [injunction](#) or writ of mandate or other legal or equitable process shall issue in any [action](#) or proceeding in any court against any county, or district, or any officer thereof, to prevent or enjoin the collection of property taxes sought to be collected ([Rev. & Tax. Code §4807](#)).

[Revenue and Taxation Code section 4807](#) does not prevent injunctions or restraining orders by [bankruptcy](#) or other federal courts, where such actions are permitted by federal rules and [case law](#).

### 2001. DEFINITION

"Unsecured property" is property on which taxes:

- 1) Are not a lien on real property sufficient, in the assessor's opinion, to secure payment of the taxes ([Rev. & Tax. Code §134](#));
- 2) Were secured by real estate on the lien date, which real estate was later acquired by a public agency and the taxes transferred to the unsecured roll pursuant to [Revenue and Taxation Code sections 2921.5](#) or

Most [possessory interests](#), goods in transit not secured by any lien on real property, improvements [assessed](#) pursuant to the provisions of [Revenue and Taxation Code section 2188.2](#), and unsecured property not secured by a lien on any real property, as defined, constitute unsecured property and are subject to assessment on the unsecured roll ([Rev. & Tax. Code §§107](#)). Possessory interests may be placed on the secured roll at the discretion of the county board of supervisors, but tax collection is enforced through unsecured measures.

The taxes on [possessory interests](#) and on improvements [assessed](#) pursuant to [Revenue and Taxation Code section 2188.2](#) constitute a lien against such interests and property. However, if the real property subject to the possessory interests or upon which such [improvements](#) are located is not tax-exempt land, the fact of such lien must be indicated on the secured roll where such real property is listed ([Rev. & Tax. Code §2190.2](#)).

[Leasehold estates](#) in exempt property for the production of gas, petroleum, and other hydrocarbon substances as defined in [Revenue and Taxation Code sections 107.2 and 107.3](#) are subject to assessment on the secured roll as possessory interests. However, for enforcement of the collection of taxes thereon, they are subject to seizure and sale like unsecured property ([Rev. & Tax. Code §§107](#), *Gottstein v. Adams*, 202 Cal. 581; also see *Picchi v. Montgomery*, 261 Cal. App. 2d 246).

### 2002. TYPES OF UNSECURED ASSESSMENTS

Typical items assessed and collected on the unsecured roll include:



- 1) Boats, with the exception of those excluded by [Revenue and Taxation Code section 228](#);
- 2) Airplanes;
- 3) [Improvements](#) on the real estate of others;
- 4) Business property;
- 5) Most [possessory interests](#), except those to which a homeowners' exemption applies ([M-2011](#));
- 6) Escape and supplemental assessments against former owners of real property;
- 7) Change of ownership penalties imposed on former owners of real property;
- 8) Special levies against former owners of real property; e.g., weed abatement;
- 9) Mining rights; and
- 10) Some [fixtures](#).

### 2003. PAYMENT LIABILITY

The lien for unsecured taxes is against the [assessee](#). The assessee can be any person owning, claiming, possessing, or controlling the property on the [lien date](#) ([Rev. & Tax. Code §405](#)). Enforcement is against the property owned by the assessee ([Rev. & Tax. Code §§2186, 2191.3](#)).

### 2004. MISTAKE IN THE NAME OF PROPERTY OWNER

If there is a mistake in the name of an owner or supposed owner of property on the unsecured roll that does not prevent the person from reasonably ascertaining that he/she is the [assessee](#), the error does not invalidate an assessment or a tax sale ([Rev. & Tax. Code §613](#)).

## 2010-2014 General Overview: Secured Taxes Subject to Unsecured Collection

### 2010. GENERAL APPLICATION

Certain [assessments](#) are by law entered on the secured roll but, when delinquent, become subject to unsecured collection provisions ([Rev. & Tax. Code §760](#)). Typical examples of such assessments include:

- 1) [Manufactured homes](#), [floating homes](#), and related supplemental assessments;
- 2) Structural improvements on leased land and other leasehold interests;
- 3) Personal property and [fixtures](#) assessed by the State Board of Equalization;
- 4) Real property assessed by the State Board of Equalization that becomes delinquent;
- 5) Possessory interests in [public lands](#) and [leasehold estates](#) for gas, oil, and other hydrocarbon substances; and
- 6) Escape assessments discovered after the real property has transferred ownership.

**NOTE:** Real property taxes should not be transferred to the unsecured roll prior to a [foreclosure](#) by the Small Business Administration (*Garcia v. County of Santa Clara* (1978) 87 Cal. App. 3d 319).

**2011. POSSESSORY INTERESTS**

If a homeowner's exemption has been applied to a [possessory interest](#), the [assessor](#) must enter the possessory interest on the secured roll, noting that such [assessment](#) does not constitute a lien on the land. When any installment of tax becomes delinquent, the tax collector may use unsecured collection procedures (certificates of lien, seizure and sale, [summary judgment](#), suit for taxes). If the possessory-interest tax remains unpaid at the time set for [tax default](#) of the secured property, the county must transfer the possessory-interest tax, penalties, and costs to the unsecured roll ([Rev. & Tax. Code §2190](#)).

**2012. FLOATING HOMES**

Floating homes are assessed on the secured roll but, when delinquent, taxes are collected as unsecured. When ownership is transferred or a floating home is moved, its owner must obtain a Tax Clearance Certificate from the tax collector. See [M-10032](#) - [M-10034](#) for procedures involved in completion of the Tax Clearance Certificate ([Rev. & Tax. Code §§229, 2189.7-2189.8](#)).

**2013. MANUFACTURED HOMES**

If the tax installment on a [manufactured home](#) is unpaid as of either December 10 or April 10 at 5 p.m. or the close of business, whichever is later, unsecured collection procedures can be initiated ([Rev. & Tax. Code §§2617-2618, 5830\(a\)](#)). The taxes, together with any penalties and costs applied while on the secured roll, are transferred to the unsecured roll at the time set for declaring delinquent secured taxes to be in [default](#) ([Rev. & Tax. Code §5830\(b\)](#)).

**2014. ESCAPE ASSESSMENTS**

Installment payments authorized by [Revenue and Taxation Code section 4837.5](#) apply to taxes due on secured or unsecured escape assessments for prior fiscal years.

Arbitrary and penal assessments are covered in [M-1700](#) - [M-1741](#).

## 2020-2022 General Overview: Discharge of Accountability

**2020. GENERAL APPLICATION**

Any county department, officer, or employee 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, interest, or any other charge pertaining thereto, in accordance with sections [25257 - 25259.5](#) of the Government Code ([Rev. & Tax. Code §2923](#)) if the amount is too small to justify the cost of collection or if collection enforcement is impracticable ([Gov. Code §25257](#)). Form [SCO 2-22](#) is recommended.

The application to the board of supervisors for a discharge of accountability must include ([Rev. & Tax. Code §2611.2](#)):

- 1) A statement of the nature of the amount owing;
- 2) The names of the assesseees or persons liable and the amount owed by each;
- 3) The estimated cost of collection; and
- 4) Any other fact warranting the discharge, except where the board of supervisors determines that the circumstances do not warrant the furnishing of detailed information.

The fact that the tax collector has obtained a discharge of accountability does not release an [assessee](#) from the obligation to pay the amounts due ([Gov. Code §25259](#)).

### **2021. DELEGATION OF AUTHORITY**

The board of supervisors may adopt, by majority vote, a resolution that authorizes and designates the county auditor as the officer to exercise the authority of the board. The board may order the discharge and instruct the auditor to adjust tax charges accordingly ([Rev. & Tax. Code §2611.3](#)).

### **2022. WHEN AMOUNT IS \$20 OR LESS**

An attempt to collect an amount of \$20 or less may be waived without authorization of the board of supervisors or approval of the county counsel ([Rev. & Tax. Code §2611.4](#)).

## 2030 General Overview: Destruction of Unsecured Records

### **2030. GENERAL APPLICATION**

Any original tax roll may be destroyed if:

- 1) A certified, permanent record has been made on a "substitute media" (see definition in [Gov. Code §26205](#));
- 2) The substitute media will be kept for at least five years;
- 3) The auditor has certified the delinquent roll or [abstract list](#) as correct and complete; and
- 4) The board of supervisors has approved the destruction ([Rev. & Tax. Code §2928](#)).

## 2040 General Overview: Bankruptcy

### **2040. GENERAL APPLICATION**

Various provisions in the United States Bankruptcy Reform Act of 2005 (P.L. 109-8) affect the rights of a county in claiming taxes. See [Bankruptcy, Chapter 11000](#) of this manual.

Upon learning that an unsecured assessee is legally in [bankruptcy](#), maintain compliance with 11 U.S. Code § 362 and seek guidance from county counsel.

County counsel should be consulted for guidance concerning bankruptcy cases.

## 2100-2105 Billing and Payment Processing: Administrative Requirements

### **2100. DUE DATES**

Taxes on unsecured property are due on the [lien date](#) ([Rev. & Tax. Code §2901](#)), which is the first day of January preceding the [fiscal year](#) for which the taxes are levied ([Rev. & Tax. Code §2192](#)).

### **2101. NEGOTIABLE PAPER – DEFINITION**

Negotiable paper is defined as checks and drafts, and money orders ([Rev. & Tax. Code §2504](#)). This includes personal checks ([Attorney General Letter 3-6-46](#)).

### **2102. NEGOTIABLE PAPER - OPTIONAL ACCEPTANCE**

The tax collector may accept [negotiable paper](#) in payment of any tax ([Rev. & Tax. Code §2505](#)).

**2103. REMITTANCES BY MAIL**

Taxes on the unsecured roll may be paid by mail.

If a remittance is received through the United States mail properly addressed with postage prepaid, it is deemed to be received on the date shown on the cancellation, or on the date it was actually mailed if proof satisfactory to the tax collector is submitted that mailing occurred earlier. If a timely mailed remittance is received more than 30 days after the payment deadline, it need not be accepted ([Rev. & Tax. Code §2512](#)).

If a mailed remittance is received and accepted after final settlement, the tax collector should file an amended report with the auditor ([Rev. & Tax. Code §2630](#)).

**2104. REMITTANCES BY AN INDEPENDENT DELIVERY SERVICE**

If a remittance is deposited for shipment with an independent delivery service that is either designated as an independent delivery service by the Internal Revenue Service or approved by the tax collector, prior to a specified date and hour, and, if it is received before 5 p.m. on the next business day after the effective delinquent date, it is deemed to be received on the date shown in the packing slip or air bill attached to the outside of the package ([Rev. & Tax. Code §2512](#)).

**2105. REMITTANCE BY EFT**

If a remittance to cover a payment, required by law to be made to a taxing agency prior to a specified date and hour, is made by an electronic payment option, such as wire transfer, telephoned credit card, or electronic Internet means, the remittance shall be deemed received on the date the transaction was completed by the taxpayer, if the remittance was made on the taxing agency's authorized Internet Web site or via the taxing agency's authorized telephone number. Proof of completion of the transaction in the form of a confirmation number or other convincing evidence shall be presented by the taxpayer to the satisfaction of the tax collector. This subdivision does not apply to payments by electronic fund transfer as provided in [Revenue and Taxation Code sections 2503.1 and 2503.2](#) ([Rev. & Tax. Code §2512\(b\)](#)).

This section does not apply to payments made for the redemption of tax-defaulted property ([Rev. & Tax. Code §2512\(c\)](#)).

## 2110-2114 Billing and Payment Processing: Preliminary Procedures

**2110. DELIVERY OF ASSESSMENT RECORDS**

The [assessment](#) is complete for the purpose of collection when the [assessor](#) has made a record in writing of the assessment in such form as the State Board of Equalization may prescribe ([Rev. & Tax. Code §2902](#)).

So that unsecured taxes may be collected expeditiously, the assessor is required to deliver to the tax collector, as soon as possible after the lien date (January 1), a written record of the assessment of unsecured property, in such form as the State Board of Equalization prescribes ([Rev. & Tax. Code §2909.1](#)).

**2111. ROLL INDEX FROM ASSESSOR**

The [assessor](#) prepares and delivers to the tax collector an index to the roll showing the name of the [assessee](#) and each page, assessment, or parcel number under which his/her assessment appears. The index must be delivered to the tax collector on or before the delivery of the extended roll ([Rev. & Tax. Code §615](#)).

**2112. DELIVERY OF RECORDS TO THE TAX COLLECTOR**

To enable the tax collector to collect taxes on unsecured property, the assessor is required to deliver a written record of the assessment of unsecured property to the tax collector as soon as practicable after the due date of January 1 ([Rev. & Tax. Code §2909.1](#)).

**2113. APPLICABLE TAX RATE**

The rate used for unsecured taxes is the rate used for the preceding year's secured roll ([Rev. & Tax. Code §2905](#)).

Taxes on escape assessments are calculated at the rate(s) applicable to the unsecured roll for the year(s) when the property should have been assessed ([Rev. & Tax. Code §§506, 531, 534, 2905](#)).

**2114. AUDITOR'S CHARGE TO TAX COLLECTOR**

Annually, between the last business day in July and December 1, the auditor examines the unsecured roll and charges the tax collector with the taxes and penalties that it is the tax collector's duty to collect ([Rev. & Tax. Code §§2603-2604](#)).

## 2120-2122 Billing and Payment Processing: Billing

**2120. GENERAL REQUIREMENTS**

The tax collector may, no later than 30 days prior to the date on which taxes are delinquent and as soon as reasonably possible after receipt of the extended [assessment roll](#), mail or electronically transmit a tax bill for every assessment on the unsecured roll on which taxes are due ([Rev. & Tax. Code §2910.1](#)). The tax collector may refrain from mailing a tax bill for an amount that is too small to justify the cost of collection. A tax may also be canceled by the auditor upon recommendation of the tax collector if the amount is too small to justify the cost of collection ([Rev. & Tax. Code §4986.8](#)).

Failure to receive a tax bill does not relieve the lien of taxes; however, the penalty for delinquent taxes must be canceled if the [assessee](#) convinces the tax collector that he/she did not receive a tax bill. The taxes may also be canceled by the auditor upon recommendation of the tax collector if the amount is too small to justify the cost of collection ([Rev. & Tax. Code §4986.8](#)).

**2121. INFORMATION ON THE TAX BILL**

The following information shall be included either in each county tax bill or in a separate statement accompanying the tax bill ([Rev. & Tax. Code §2611.6](#)):

- 1) The full value of locally assessed property, including assessments made for irrigation district purposes in accordance with [Water Code section 26625.1](#);
- 2) The tax rate required by Article XIII A of the California State Constitution (one percent of the full cash value);
- 3) The rate or dollar amount of taxes levied in excess of the one-percent limitation to pay for voter-approved indebtedness incurred before July 1, 1978, or bonded indebtedness for the acquisition or improvement of real property approved by two-thirds of the voters on or after June 4, 1986;
- 4) The amount of any special taxes and special assessments levied;
- 5) The amount of any tax rate reduction pursuant to section 100, with the notation, "Tax reduction by (name of jurisdiction)." (The jurisdiction must be a local agency, school district, community college district, or county superintendent of schools) ([Rev. & Tax. Code §95](#));
- 6) The amount of any exemptions (exemptions reimbursable by the State are shown separately);
- 7) The total taxes due on the property covered by the bill;
- 8) Instructions on tendering payment, including the name and mailing address of the tax collector;

- 9) A notice that, if taxes are unpaid, delinquency penalties, costs, redemption penalties, and a redemption fee will be incurred ([Rev. & Tax. Code §2611](#)) and ([M-1125](#)); and,
- 10) Information specifying all of the following, pursuant to [Revenue and Taxation Code section 2611.6](#):
  - a. That, if the taxpayer disagrees with the assessed value as shown on the tax bill, the taxpayer has the right to an informal assessment review by contacting the assessor's office;
  - b. That, if the taxpayer and the assessor are unable to agree on a proper assessed value pursuant to an informal assessment review, the taxpayer has the right to file an application for reduction in assessment for the following year with the county board of equalization or the assessment appeals board, as applicable; and
  - c. The address of the clerk of the county board of equalization or the assessment appeals board, as applicable, where forms for an application for reduction may be obtained.

**NOTE:** Not more than ten assessment appeals boards may be created within any county. Assessment appeals boards shall be designated by number in the ordinance providing for their creation ([Rev. & Tax. Code §1621](#)). Revenue and Taxation Code section 1621 shall remain in effect only until January 1, 2005, unless a later-enacted statute deletes or extends that date.

Form [SCO 2-01](#) is a checklist to assist you in designing new tax bills.

#### **2122. SUBSEQUENT NOTICE**

Prior to delinquency, it may be beneficial to notify taxpayers of the approaching delinquency date and the penalty for delinquency.

## 2130-2139 Billing and Payment Processing: Special Circumstances

### **2130. TAX BILLS AND NOTICES RETURNED DUE TO INCORRECT ADDRESSES**

The following records may be researched to obtain a correct address:

- 1) County tax collector's records;
- 2) Telephone books;
- 3) Secretary of State's office;
- 4) FAA records;
- 5) County recorder's records;
- 6) Expired change-of-address records;
- 7) County clerk's records;
- 8) Prior-year tax payment records; and
- 9) DMV records.

**2131. RETURNED CHECKS**

Acceptance constitutes payment as of the date of acceptance only when it is duly paid ([Rev. & Tax. Code §2506](#)). The tax collector shall cancel on his/her records any indication of payment when [negotiable paper](#), for any reason, is not paid and shall immediately send a notice of cancellation to the person who attempted payment. The [tax lien](#) continues as though no attempt at payment had been made ([Rev. & Tax. Code §§2509-2510](#)).

[Government Code section 6157](#) provides that, if any personal check is returned to the payee public agency without payment, for any reason, the public agency may impose a reasonable charge for the returned check, not to exceed the actual costs incurred by the agency, and may prescribe a different method of payment for that payment and future payments by the person.

[Civil Code section 1719](#) provides that, if a check is returned and the person or entity who wrote the check refuses to honor it within 30 days following a written demand, the person or entity shall be liable to the county for (in addition to the amount owed) damages of three times the amount of the check, but in no case less than \$100 or more than \$1,500. The written demand must be sent by [certified mail](#) to the payor. If the payor has not satisfied the amount owed within 30 days of the mailed notice, an [action](#) may be brought in small claims court or in any other appropriate court.

**2132. DUPLICATE PAYMENTS**

"Duplicate payment" is defined as a submitted payment that is identical in every respect to the original.

If there are other unpaid bills on the same property, the funds can be applied to the open bills ([Rev. & Tax. Code §2635.5](#)).

Duplicate payments of taxes, made either before or after delinquency, may be refunded by either the tax collector or the auditor within four years after payment. See [M-1601](#) and [M-2150](#).

**2133. RETURN OF REPLICATED OR DUPLICATE PAYMENT**

A replicated payment is a payment submitted by, or on behalf of, a taxpayer that is indicated for application to a specific tax or tax installment that has already been paid, whether or not the prior payment and the replicated payment are in the same amount ([Rev. & Tax. Code §2780.5](#)).

The law requires a county, whenever possible, to return a replicated payment to the tendering party within 60 days of the date the payment becomes final. Payment is "final" when the original payment is not subject to chargeback, dishonor, or reversal ([Rev. & Tax. Code §2781](#)).

Counties that manually process payments usually can verify duplicates and return one payment within a few days or weeks.

Counties that use check-processing machines ordinarily must refund replicated amounts, and they must pay interest on any amounts not returned to the tendering parties within 60 days of becoming final ([Rev. & Tax. Code §2782](#)). Replicated payments returned after 60 days must include interest at the rate provided in [Revenue and Taxation Code section 5151](#), if that interest is ten dollars or more. The interest is calculated at the greater of 3% per annum or the county pool apportioned rate and applies from the 60th day after the replicated payment becomes final to the date the replicated payment is returned to the tendering party ([Rev. & Tax. Code §2783](#)).

A tax collector is not prohibited from exercising reasonable judgment in applying a payment if the payor returns the wrong payment stub or does not indicate the intended application for the payment ([Rev. & Tax. Code §2783](#)).

**NOTE:** The payment submitted must be clearly indicated as applicable only to a specific tax or tax installment. Usually such payment is accompanied by a letter or installment stub indicating the payor's intent to pay a particular tax or installment. In a case where no intent is expressed and an installment or a tax on another property owned by that person has not been paid, the tax collector may apply payment to the remaining

installment or other tax without incurring interest penalties if subsequent data indicate that payment should not have been so applied ([Rev. & Tax. Code §2635.5](#)).

#### **2134. PARTIAL PAYMENTS**

With approval from the board of supervisors, the tax collector may accept partial payments. If partial payments are accepted, the amount accepted is distributed rather than held in trust; only the balance is subject to additional penalties. Accepted partial payments are first applied to delinquency charges, then to the actual tax ([Rev. & Tax. Code §2927.6](#)).

Notwithstanding any other provision of law, in the case of a deficiency of payment of taxes due and payable pursuant to the provisions of Chapter 4 of Part 5 (Collections on the Unsecured Roll) of the Revenue and Taxation Code, 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 and the amount due shall be treated as a [delinquent tax](#) in the same manner as any other delinquent tax ([Rev. & Tax. Code §2927.6](#)) and ([M-1240](#)).

An exception is made for counties operating under Chapter 3 of Part 8 of the Revenue and Taxation Code, Alternative Method of Distribution of Tax Levies and Collections and of Tax Sale Proceeds ([Rev. & Tax. Code §§4701-4717](#)). This method is known as the "[Teeter Plan](#)."

#### **2135. CASH DIFFERENCE FUND**

The cash difference fund ([Rev. & Tax. Code §2611.5](#)) may be used when discrepancies are ten dollars or less.

#### **2136. OVERAGE FUND**

When an amount paid to the county on any tax, assessment, penalty, cost, or interest exceeds the amount due and the excess does not exceed ten dollars (\$10), the excess amount may be deposited into the overage account. If the excess amount is not so deposited, it shall be refunded to the person making the deposit.

#### **2137. EXCESS AMOUNTS OVER \$10**

If the amount tendered exceeds the amount of taxes due by an amount greater than ten dollars (\$10), the tax collector may:

- 1) Apply the overpayment to any [delinquent taxes](#) owing on the same property, as long as the taxpayer remains liable for the payment of the delinquent tax ([Rev. & Tax. Code §2635.5](#)); or
- 2) Refund the excess payment without the necessity of submitting a claim to the board of supervisors ([Rev. & Tax. Code §5097.2](#)). It is advisable to deposit the excess in a trust fund until the check is honored by the bank.

#### **2138. PAYMENTS UNDER PROTEST**

[Revenue and Taxation Code sections 5140-5149.5](#) describe the procedures by which a taxpayer may recover secured and unsecured taxes (see [M-2170](#) - [M-2172](#) for procedures and [M-1246](#) for assessment protest procedures).

#### **2139. SUIT FOR RECOVERY**

The person who paid the tax, the person's guardian, the [executor](#) of the person's will, or the [administrator](#) of the person's estate may bring an [action](#) only in the superior court, but not in the small claims division of the superior court, to recover the taxes ([Rev. & Tax. Code §5140](#)).

This action must be commenced within six months from and after the date that the board of supervisors or its designate rejects a claim for refund in whole or in part ([Rev. & Tax. Code §5141](#)). The board of supervisors may delegate the authority to the tax collector or another official.

To file a claim with the board of supervisors, the tax must be paid in full within four years of the date of the claim. The postmark governs the date of the claim ([Rev. & Tax. Code §5097.2](#)).



**NOTE:** Actions brought under [Revenue and Taxation Code section 5148](#) (disputes involving state-assessed property) are excluded from any action commenced under [Revenue and Taxation Code section 5149](#). Such actions may be brought by public agencies under [Revenue and Taxation Code section 5161](#).

## 2140-2143 Billing and Payment Processing: Post-Payment Requirements

### 2140. POSTING PAYMENTS

The tax collector shall record payment of taxes on the unsecured roll by either of the following methods ([Rev. & Tax. Code §2913](#)):

- 1) By marking the fact and date of payment on the unsecured roll opposite the tax to which the payment relates; or
- 2) By recording the fact and date of payment on a machine-prepared list or in the form of an electronic data processing record.

### 2141. RECORDING OF PAYMENTS

The tax collector shall record payment of taxes on the unsecured roll by either of the following methods:

- 1) By marking the fact and date of payment on the unsecured roll opposite the tax to which the payment relates; or
- 2) By recording the fact and date of payment on a machine-prepared list or in the form of an electronic data processing record ([Rev. & Tax. Code §2913](#)).

### 2142. RECEIPT TO PAYOR

When taxes on unsecured property are paid in cash, or when a receipt is requested at the time of payment by the person paying the tax, the tax collector shall give a receipt to the person making payment ([Rev. & Tax. Code §2910.5](#)).

### 2143. DEPOSIT OF MONEY

All moneys collected must be immediately deposited with the treasurer or in a bank selected by the treasurer ([Rev. & Tax. Code §2507](#); [Gov. Code §§53680-53681](#)).

## 2150-2154 Billing and Payment Processing: Corrections

### 2150. WHO MAY CORRECT ROLL

Corrections are made on the roll by the auditor ([Rev. & Tax. Code §4834](#)).

### 2151. CHANGE IN THE AMOUNT OF TAX

If a correction increases the amount of an [assessment](#), the tax rate applied to the increase must be the rate for the year in which the error was made ([Rev. & Tax. Code §532](#)). The increased taxes are entered on the roll prepared or being prepared for the current [assessment year](#) ([Rev. & Tax. Code §4836.5](#)).

If the correction decreases the amount due, it is necessary to obtain the consent of the board of supervisors ([Rev. & Tax. Code §4835](#)).

**2152. CORRECTION TIME FRAME**

Any increase in the amount of taxes due created by the correction cannot constitute a lien or charge on the real property if the property has been sold or [encumbered](#) for value prior to enrollment of the correction ([Rev. & Tax. Code §4836.5](#)). These taxes are transferred to the unsecured roll and collected in the same manner and subject to the same penalties as other taxes transferred under provisions of [Revenue and Taxation Code section 5090](#) ([Rev. & Tax. Code §4831\(b\)](#)).

The tax collector may file a certificate of lien against the [assessee](#) liable for the amount due ([Rev. & Tax. Code §2191.3](#)). Any such [recorded](#) lien has the force, effect, and priority of a judgment lien ([Rev. & Tax. Code §2191.4](#)).

[Assessments](#) (usually of personal property) based on erroneous information supplied by the assessee may be corrected within the time limitation imposed by [Revenue and Taxation Code sections 532 and 532.1](#) ([Rev. & Tax. Code §4831.5](#)). Currently, most corrections must be made within four years from July 1 of the [assessment year](#) in which a problem occurs.

An escape involving [fraud](#) or willful concealment may be corrected within six years after July 1 of the [assessment year](#) in which the escape occurs. [Revenue and Taxation Code section 4840](#) provides a method whereby the lien of taxes improperly entered on the secured roll can be canceled and then re-entered, either as cross-secured to other real property or on the unsecured roll.

After four years, corrections can be made only by the auditor, at the direction of either the county board of equalization ([Rev. & Tax. Code §1614](#)) or the assessment appeals board ([Rev. & Tax. Code §§1620-1630](#)).

If an error is discovered from an audit of the taxpayer's books and records, the assessor has six months after the completion of the audit to make the correction ([Rev. & Tax. Code §4831](#)).

**2153. CORRECTION OF ENTRIES ON UNSECURED ROLL**

Any error or omission involving the exercise of a value judgment that arises solely from a failure to reflect a decline in the taxable value of real property, as required by subdivision (b) of [section 51](#), may be corrected within one year after the assessment being corrected was made ([Rev. & Tax. Code §4831](#)).

Any error resulting in incorrect entries on the unsecured roll may be corrected within four years after the assessment being corrected was made. This does not apply to either of the following:

- 1) Errors involving value judgments; or
- 2) Escape assessments caused by the assessee's failure to report information required under [Revenue and Taxation Code section 441 et seq.](#)

**2154. FOUR-YEAR INSTALLMENT COLLECTION OF TAX INCREASE**

When an increase in property tax results from either an escape [assessment](#) for a prior year only or correction of an error on the roll of a prior year, the assessee has the option of paying the tax over a four-year period ([Rev. & Tax. Code §4837.5](#)).

The assessee cannot make installment payments pursuant to [Revenue and Taxation Code section 4837.5](#) if the additional tax is less than \$500.

The current taxes for the same property must be kept current. If not, the four-year plan is defaulted. The payment plan can be reinstated only if the assessee or the agent of the assessee can, by substantial evidence, convince the tax collector that the payment was not made through any fault of the assessee and if payment of the installment amount plus any additional interest that has accrued is made prior to the time the property becomes tax-defaulted or prior to June 30, whichever is earlier.

Also, in the case of an escape assessment triggered because there was a violation of assessment requirement, such as a failure to file a change-of-ownership statement, the assessee is required to pay interest at the rate of 3/4% per month for the life of the payment plan.

**NOTE:** When the installment account is paid in full or placed on the tax rolls due to a defaulted payment plan and the tax collector has filed for record a certificate of lien, the tax collector shall also file for record a release of lien. The filings of the certificates of lien and the release of lien are not subject to recording fees ([Rev. & Tax. Code §4837.5](#)).

## 2160-2161 Billing and Payment Processing: Cancellations

### 2160. ERRONEOUS OR ILLEGAL ASSESSMENTS

All or any portion of any tax, penalty, or cost may be canceled by the auditor 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 [Rev. & Tax. Code §4876](#)) of Chapter 2 of Part 9;
- 4) On property that 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 by the United States, the state, or any county, city, school district, or other public entity to the extent provided for in Article 5 (commencing with [Rev. & Tax. Code §5081](#)); or
- 7) On that portion of an assessment in excess of the value of the property as determined by the assessor, pursuant to [Revenue and Taxation Code section 469](#) ([Rev. & Tax. Code §4986](#)).

**NOTE:** When the board of supervisors has so prescribed, any uncollected tax, penalty, or cost subject to transfer from the secured roll or [abstract](#) pursuant to [Revenue and Taxation Code section 5090](#) and amounting to less than \$20 is canceled rather than transferred to the unsecured roll ([Rev. & Tax. Code §5089](#)).

### 2161. UNENFORCEABLE TAX LIEN

Whenever it is discovered that collection of a tax cannot be enforced because of an error in description, [assessment](#), [equalization](#), [levy](#), or any other proceeding, the board of supervisors must be notified and a cancellation of the tax requested ([Rev. & Tax. Code §§3438, 4946](#)).

If the board of supervisors determines that the tax should be enforced, it orders the assessor to place the uncollected taxes on the next roll. The procedure for [rescinding](#) the cancellation is found in [Revenue and Taxation Code sections 4946-4948](#).

## 2170-2178 Billing and Payment Processing: Refunds

### 2170. APPLICATION OF REFUND

The tax collector may apply a refund due a taxpayer or the taxpayer's agent to any [delinquent taxes](#) owing on the same property, as long as the taxpayer remains liable for the payment of the delinquent tax ([Rev. & Tax. Code §2635.5](#)). This law applies to both secured and unsecured tax liens.

### 2171. CLAIM REQUIRED

A refund may be made only upon a verified claim filed by the person who paid the tax or his/her guardian, executor, or administrator ([Rev. & Tax. Code §5097](#)).

**EXCEPTION:** Under [Revenue and Taxation Code section 5097.2](#), the auditor or tax collector can make a refund within four years after the date of the payment without a claim being filed, under the following conditions:

- 1) The amount has been paid more than once;
- 2) The amount paid exceeds the amount due on the property as shown on the roll;
- 3) The amount paid exceeds the amount due on the property as the result of corrections to the roll or cancellations ordered by the board of supervisors after such taxes were paid;
- 4) In any other case, where the claim for refund is made under penalty of perjury and is for an amount less than ten dollars (\$10), with the written consent of the legal advisor; or,
- 5) The amount paid exceeds the amount due on the property as the result of a reduction attributable to a hearing before an assessment appeals board or an assessment hearing officer.

### 2172. TIME LIMITATIONS

If a verified, written claim for refund is filed pursuant to [Revenue and Taxation Code section 5097 \(M-2171\)](#), the following time frames apply.

- 1) Except as provided in section [5097\(a\)\(3\)](#), the claim must be filed within four years after the making of the payment sought to be refunded, or within one year after the mailing of the notice as prescribed in [Revenue and Taxation Code section 2635](#), or the period agreed upon by the assessor and the taxpayer as provided by [Revenue and Taxation Code section 532.1](#), or within 60 days of the date of the notice by the auditor as prescribed in [Revenue and Taxation Code section 4836\(a\)](#), whichever is later ([Rev. & Tax. Code §5097\(a\)\(2\)](#)).
- 2) An application for a reduction of an assessment filed under [Revenue and Taxation Code section 1603](#) constitutes a sufficient claim for refund if the applicant states that the claim is for a refund. If the application does not include a claim for refund, the applicant can file a separate claim for refund, pursuant to section 1603 or [section 1604](#), within the time frame specified in [Revenue and Taxation Code section 5097\(a\)\(3\)](#). ([Rev. & Tax. Code §5097\(b\)](#)).
- 3) If an application for equalization of an escape assessment is filed pursuant to section 1603, a claim may be filed on any taxes resulting from the escape assessment or the original assessment to which the escape relates within the period provided in [Revenue and Taxation Code section 5097\(a\)\(3\)](#). ([Rev. & Tax. Code §5097\(c\)](#)).

### 2173. UNCLAIMED REFUNDABLE AMOUNTS

After the deadline for filing a claim for refund has expired under [Revenue and Taxation Code section 5097 \(M-2172\)](#), any unclaimed amount otherwise payable as a refund may be transferred to the county general fund, on order of the board of supervisors ([Rev. & Tax. Code §5102](#)).

### 2174. REFUNDS ORDERED BY BOARD OF SUPERVISORS

Any taxes, including penalties, interests, and costs paid ([Rev. & Tax. Code §5107](#)), before or after delinquency, shall be refunded by order of the board of supervisors, if they were:

- 1) Paid more than once;
- 2) Erroneously or illegally collected, including those paid due to the inability of the claimant to file a veteran's exemption because of military service outside of the continental limits of the United States between the [lien date](#) and 5 p.m. on April 15 of any year ([Rev. & Tax. Code §273](#));
- 3) Illegally [assessed](#) or levied;
- 4) Paid on an assessment in excess of the ratio of [assessed value](#) to full value of the property, due to either the assessor's clerical error or erroneous information furnished by the assessee;

- 5) Paid on improvements nonexistent on the lien date;
- 6) Taxes collected on behalf of a [special district](#) from a taxpayer whose property was annexed to a city but not detached from the special district due to an error ([Rev. & Tax. Code §5096.1](#)); or
- 7) Any taxes paid on an assessment in excess of the value of the property as determined by the assessor, pursuant to [Revenue and Taxation Code section 469](#) ([Rev. & Tax. Code §5096](#)).

See [Revenue and Taxation Code section 5097](#) and [M-1620](#) for the conditions to order refunds.

#### **2175. COURT ACTION TO RECOVER**

If the board of supervisors rejects a claim for refund, an action to recover may be instituted only in the superior court, but not in the small claims division of the superior court, within six months after the rejection ([Rev. & Tax. Code §5141](#)). Failure of the board of supervisors or the city council to act on the claim for a period of six months may be treated as a rejection for purposes of suit (*Otis v. San Francisco*, 170 Cal. 98).

When an application for reduction of assessment states that it is intended as a claim for refund under [Revenue and Taxation Code section 5097](#), the claim is considered denied as of the date the final installment of the tax extended on the assessment becomes delinquent or on the date the equalization board makes its final determination on the application, whichever is later ([Rev. & Tax. Code §5141](#)).

Superior court actions may be brought by public agencies, pursuant to [Revenue and Taxation Code section 5161](#).

#### **2176. REPLICATED PAYMENTS**

Section deleted and combined with section [M-2133](#), RETURN OF REPLICATED OR DUPLICATE PAYMENT.

#### **2177. INTEREST PAYABLE WITH CERTAIN REFUNDS**

The county must pay interest, when such interest amounts to ten dollars or more, on any amounts refunded:

- 1) Under [Revenue and Taxation Code section 5096.7](#) (property acquired by a public agency where a proration of taxes is required);
- 2) As a result of the reduction of [assessed value](#) following an application for [equalization](#) by a board of equalization ([Rev. & Tax. Code §1605](#));
- 3) By a court [action](#) to recover penalties ([Rev. & Tax. Code §§5150.5-5151](#)); or
- 4) On correction of an assessor's clerical error.

**NOTE:** [Revenue and Taxation Code section 5150.5](#) is an exception to the ten-dollar exclusion.

No interest may be paid if the taxpayer has been given the notice required by [Revenue and Taxation Code section 2635](#) and has failed to apply for a refund within 30 days after the mailing of such notice ([Rev. & Tax. Code §5151](#)). Notice given pursuant to [Revenue and Taxation Code section 2635](#) should inform the taxpayer of this fact.

The interest paid by the county on the refundable amounts shall be taken proportionately from the appropriate funds, as determined by the county auditor ([Rev. & Tax. Code §5151](#)).

A taxpayer has no right to recover interest from the county on property taxes that the county voluntarily refunds unless interest is provided for by statute (*Ball v. Los Angeles County*, 82 Cal. App. 3d 312; Cert. Den. 439 U.S. 1116).

#### **2178. APPLICATION OF REFUND TO FUTURE TAX LIABILITIES**

Taxpayers may enter into an agreement with the county to offset their refund amount against future tax liabilities. Interest accrues on the refund amount until it has been fully offset ([Rev. & Tax. Code §5103](#)).

## 2200-2205 Delinquent Payment Processing: General Information

### 2200. EFFECTIVE DATES AND TIMES

Taxes on the [unsecured roll](#) as of July 31 are [delinquent taxes](#), if unpaid, at 5 p.m. or the close of business, whichever is later, on August 31 and are thereafter subject to a delinquent penalty of ten percent ([Rev. & Tax. Code §2922\(a\)](#)).

Taxes added to the roll after July 31 are delinquent if unpaid at 5 p.m. or the close of business, whichever is later, on the last day of the month succeeding the month in which they were added to the roll.

### 2201. DELINQUENT PENALTY

Effective July 1, 1982, the delinquent penalty is ten percent.

Taxes on the [unsecured roll](#) as of July 31 are delinquent, if unpaid, at 5 p.m. or the close of business, whichever is later, on August 31 and are thereafter subject to a delinquent penalty of ten percent ([Rev. & Tax. Code §2922\(a\)](#)).

Taxes added to the unsecured roll after July 31 are delinquent if unpaid, and subject to a penalty of ten percent, at 5 p.m. or the close of business, whichever is later, on the last day of the month succeeding the month of enrollment.

It is incorrect to say that the delinquent penalty attaches at 5 p.m. on the next business day when August 31 falls on a weekend or a holiday. The delinquent penalty always attaches on August 31 (or on the last day of a particular month).

However, the penalty is not applied in cases where the last day of the month falls on a weekend or a holiday and the tax collector receives payment before 5 p.m. or the close of business, whichever is later, on the next business day.

**NOTE:** The following chart shows the delinquent penalty rates for historical periods.

On or before September 30, 1965	8%
Between October 1, 1965; and June 30, 1982	6%
On or after July 1, 1982	10%

This penalty does not attach to unpaid taxes already carrying a delinquent penalty transferred from the secured roll or the supplemental roll. Such taxes are subject only to the additional penalties and costs as prescribed in [Revenue and Taxation Code sections 2922\(d\) and \(e\)](#), which shall attach beginning July 1 and on the first day of each month thereafter ([Rev. & Tax. Code §2922\(c\)\(e\)](#)).

### 2202. ADDITIONAL PENALTY

Effective July 1, 1982, if taxes on the roll remain unpaid at 5 p.m. or the close of business, whichever is later, on the last day of the second succeeding calendar month after delinquency, they become subject to an additional penalty of one and one-half percent per month, together with any actual costs of collection incurred by the county up to the time the delinquency is paid ([Rev. & Tax. Code §§2922\(c\)\(d\)](#)).

This additional penalty attaches on the first day of each month thereafter until payment is made or a court judgment is entered, whichever occurs first.

**EXAMPLE:** A ten-percent penalty applied after 5 p.m., November 30. An additional one and one-half percent penalty attaches on February 1, March 1, etc.

If delinquent taxes transferred from the secured and supplemental rolls at the time of tax-defaulting carry a delinquent penalty from the secured roll, they are subject to the additional penalty beginning July 1 and on the first day of each month thereafter.

If the last day of a month falls on Saturday, Sunday, or a legal holiday, the additional penalty shall not attach if the tax collector receives payment in full by 5 p.m. or the close of business, whichever is later, on the next business day. If the board of supervisors, by adoption of an [ordinance](#) or resolution, closes the county's offices for business prior to the time of delinquency on the "next business day" or for that whole day, that day shall be considered a legal holiday ([Rev. & Tax. Code §2922](#)).

**NOTE:** Following is the schedule of various additional penalties.

On or before December 31, 1963	No additional penalty
Between January 1, 1964, and September 30, 1965	½ of 1% per month
Between October 1, 1965, and June 30, 1982	1% per month
On or after July 1, 1982	1½% per month

**2203. PENALTIES ON ADJUSTED OR "LATE" TAX BILLS**

When a late, amended, or corrected tax bill is issued, the penalty imposed for delinquent taxes does not apply if payment is made within 30 days from the date the tax bill is mailed or electronically transmitted ([Rev. & Tax. Code §2610.5](#)). This 30-day period applies to bills issued with fewer than 30 days remaining prior to the delinquency date or issued after the delinquency date has passed ([M-1144](#)).

**EXAMPLE:** If taxes are enrolled as of July 31, an adjusted tax bill for unsecured property mailed on August 15 must be paid as of September 14, to cancel the delinquent penalty attaching on August 31. Do not count the date of mailing.

**2204. ASSESSMENT REDUCED BY APPEALS BOARD DECISION**

[Revenue and Taxation Code section 2922.5](#) deals exclusively with unpaid unsecured taxes where an assessment appeals hearing has reduced the disputed [assessment](#).

[Revenue and Taxation Code section 2922.5](#) is tied to [Revenue and Taxation Code section 4985](#). Applicable portions of [Revenue and Taxation Code section 4985](#) allow cancellation of any penalty, cost, interest, or fee attaching because of an error caused by the tax collector, auditor, or assessor if payment of the corrected amount is made within 30 days from the date the roll or [abstract](#) is corrected.

Interest at the rate of one percent per month is calculated from the delinquent date established in [Revenue and Taxation Code section 2922](#) (normally August 31) to the date of correction. In addition, the delinquent penalty attaches to the reduced assessment 31 days after the roll or abstract is corrected. An additional penalty of one and one-half percent per month is added when no payment is made by 5 pm or the close of business, whichever is later, on the last day of the second succeeding month after the delinquent penalty attaches.

**2205. INFORMATION NEEDED FOR ENFORCEMENT OF LIEN**

Upon the request of the tax collector, the [assessor](#) shall disclose and provide to the tax collector the information used in preparation of that portion of the [unsecured roll](#) for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he/she needs the information requested for the enforcement of the assessee's [tax lien](#) in collecting those delinquent taxes.

Information requested by the tax collector may include Social Security numbers, and the assessor shall recover from the tax collector his/her actual and reasonable costs for providing the information. The tax collector shall

add the costs to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of [Revenue and Taxation Code section 2922](#) ([Rev. & Tax. Code §408\(c\)](#)).

## 2210-2212 Delinquent Payment Processing: Abstract List or Delinquent Roll

### 2210. PREPARATION AND MAINTENANCE

The officer collecting unsecured taxes must prepare either an [abstract list](#) of all unpaid items or a delinquent roll ([Rev. & Tax. Code §2927](#)). Annually, after delinquency, unpaid items must be inserted in the abstract list or a delinquent roll must be prepared. Upon completion of the list or roll, the auditor certifies it to be correct ([Rev. & Tax. Code §§2927.2-2927.3](#)).

### 2211. FORM AND CONTENTS

The form of the [abstract list](#) or the delinquent roll must be approved by the auditor and the board of supervisors and must contain all essential information relating to unpaid items contained in the rolls from which it was prepared ([Rev. & Tax. Code §2927.1](#)).

Form [SCO 2-04](#) has been drafted as an aid to assist in designing a form locally. It covers all transactions up to judgment and may also be used as a receipt.

### 2212. CANCELLATION OF DELINQUENT PENALTIES

Any penalty, cost or other charge resulting from tax delinquency may be canceled by the auditor or the tax collector in the following situations.

- 1) The failure to make a timely payment was due to reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, provided the principal payment for the proper amount of the tax due is made no later than June 30 of the fourth fiscal year following the fiscal year in which the tax became delinquent. All of these requirements must be met before a penalty cancellation can be made ([Rev. & Tax. Code §4985.2](#)).
- 2) There was an inadvertent error in the amount of payment made by the taxpayer, provided the principal payment for the proper amount of the tax due is made within ten days after the notice of shortage is mailed by the tax collector ([Rev. & Tax. Code §4985.2](#)).
- 3) The cancellation was ordered by a local, state, or federal court ([Rev. & Tax. Code §4985.2](#)).
- 4) When the Federal Deposit Insurance Corporation (FDIC) is acting as a receiver, all penalties and costs shall be canceled. Section 15, Federal Deposit Insurance Act (12 U.S.C. 1825 (b), (3)).

## 2300-2307 Delinquent Payment Enforcement: General Information

### 2300. COLLECTOR RESPONSIBILITIES

It is the responsibility of the tax collector to collect as much of the unsecured charge as available resources and legal authority permit.

### 2301. FOLLOW-UP TAX NOTICES

The use of multiple notices and personal field contact helps reduce assessee complaints of ignorance of the tax bill and resultant collection actions. Tax bills and notices should inform assessees of their responsibility to



pay the taxes and of the point at which they will be subject to penalties. Assesseees should also be advised of the collection actions that may be taken should they fail to pay the bill.

Checking the secured and supplemental tax rolls can be an excellent method of locating addresses for taxpayers with delinquent unsecured bills.

As a general collection principle, the more follow-up notices of unpaid accounts that are mailed, the lower the delinquency rate. Every group of notices mailed will return a substantial percentage of payments. Also, taxpayer complaints can be resolved before delinquency, or at least prior to enforced collection action. While lack of receipt of a tax bill is not a defense against enforced collection, the mailing of multiple notices discourages a taxpayer from using this excuse.

### **2302. ENFORCEMENT COLLECTION LETTER**

Substantial payments may result from a letter warning of impending enforced collection, sent early in the first month of delinquency, with the penalty amount included.

After the expiration date of the intent letter, there should be a [recording](#) and mailing of [liens](#), to encourage additional payments. See [M-2310](#) for a description of appropriate actions.

### **2303. DELINQUENCY NOTICE ON TRANSFERABLE TAXES**

A notice of delinquency should be sent to any assessee listed on the secured roll whose property tax is subject to unsecured collection enforcement procedures. Typically, this assessment type applies to a [manufactured home](#) or a [possessory interest](#). These assessments are subject to transfer to the unsecured abstract at the end of the [fiscal year](#). Generally, collection efforts can begin upon delinquency of either installment ([Rev. & Tax. Code §§75.54\(b\)](#), [107](#), [2188.7\(e\)](#), [2189](#), [2189.6](#), [2189.7](#), [2190](#), [5830](#)).

### **2304. FINAL NOTICE BY PHYSICAL DELIVERY**

If field investigators or collectors are employed, a separate "final notice" form can be used to elicit payment from unresponsive assesseees. Some counties have better success when they physically deliver the notice to existing businesses or they tag airplanes and marina boats with such notices. Red-colored notices are recommended. Although some offices with inside telephone collectors mail such "final notices," the best collection results are obtained with face-to-face field contact.

### **2305. PERSONAL CONTACT WITH DELINQUENT TAXPAYERS**

The demand for payment should be made upon the [assessee](#) or his/her agent. It is suggested that business be conducted in private, if at all possible. It is best to determine the problem and a possible solution as quickly as possible. While the most desired response is payment in full, arrangements for partial payment should be made if necessary, subject to approval of the tax collector. Partial payments are only permissible if the county board of supervisors has adopted a resolution according to [Revenue and Taxation Code section 2927.6](#). See [M-2307](#) for further information regarding partial payment plans.

### **2306. CONTACT WITH BANKRUPT ASSESSEES**

A tax collector must not take any action to violate an automatic stay, but he/she should pursue information required to file a claim with the bankruptcy court. Be cautious of debtors who say they are "bankrupt" due to lack of funds but are not planning to formally file [bankruptcy](#).

### **2307. PARTIAL PAYMENT ACCEPTANCE**

The tax collector may accept partial payment of unsecured taxes if the county board of supervisors has adopted an enabling [ordinance](#), pursuant to [Revenue and Taxation Code section 2927.6](#) .

Many counties have established criteria for staff to follow when establishing individual payment plans. The plans should require taxes to be paid in full in the shortest possible amount of time. Avoid plans that allow an overlapping of delinquency with current-year assessments.

## 2310-2313 Delinquent Payment Enforcement: Enforcement Techniques Information

### 2310. COLLECTION ACTIONS

When an unsecured tax becomes delinquent, the tax collector should initiate involuntary collection action. The type and timing of the action necessary depends on many variables, including the dollar amount of the bill, whether the assessee owns the real estate, his/her ability to pay, future reliability of bill collection, and prior payment record.

Collection personnel should know how to locate assessees and assets and which legal means are available to enforce collection of delinquencies. Actions a tax collector may take include [liens](#) on real estate located in any county, [summary judgments](#) or other court [action](#), Federal Aviation Administration liens, California Department of Alcoholic Beverage Control liens, claims in a bulk transfer of assets, and claims in [bankruptcy](#). Many counties have established guidelines for collection procedures. For tax collectors who have not established policies, the following may offer some collection guidance.

**Liens** - [Liens](#) on all delinquent bills over a certain dollar amount and liens on an individual basis can be filed shortly after the delinquent date. The low-dollar amount used by counties ranges from \$20 to \$100. Liens are filed approximately two weeks after delinquency. These liens are a very helpful tool, since they appear on [title reports](#) and credit reports.

**Small Claims Court** - [Actions](#) filed in small claims court are time-consuming. In some cases, the judgments have been unsatisfactory. While this option remains open to counties, most tax collectors no longer use small claims court. A [summary judgment](#) procedure may be more effective.

**Municipal or Superior Court** - Like filings made in small claims court, these cases are very time-consuming. They should be used only when the summary judgment procedure is impractical.

**Summary Judgment** - These superior court filings are an excellent way to obtain an enforceable judgment. They have the same force and effect as any other judgment in superior court and can be used to attach wages, bank accounts, and other assets. Penalties continue to accrue at the allowable rate within the Revenue and Taxation Code rather than being modified to the lower legal interest rate that may apply to other judgments.

A [summary judgment](#) maximizes the return and avoids the additional bookkeeping required with other types of judgments. Some counties use summary judgment for all tax delinquencies over \$10, some restrict their use to delinquencies over \$50, others to delinquencies over \$500. The cost to the county is mainly in the mailing of a certified notice.

Summary judgments and all other court judgments appear on credit reports.

**Writ of Execution** - Once a summary judgment is obtained, a county can attach any assets of the assessee by writ of execution. Once the writ is completed, it is filed with the clerk and delivered to the sheriff in the county in which the asset is located. This avoids the tax collector's involvement in the actual attaching of the asset. A writ can be used for attaching bank accounts, wages, boats, cars, equipment, tills, etc.

**Seizure and Sale** - Seizure is an extremely useful collection method. In most cases, this is usually the last action necessary to enforce collection. The decision to seize an item of personal property is also the decision by the county to expend keepers fees, locksmith fees, and time to inventory the property. These fees, of course, are added into the seizure total and collected along with the tax payment. Failure to collect the bill will result in a loss of these costs.

Sales generally occur very rarely, but every seizure should be approached as if a sale will be required. Most tax collectors reserve seizures for delinquencies over \$100; others will not seize unless the delinquency is at least \$500.

**Seizure of Checking Accounts** - This is usually the easiest way to enforce collection. If a copy of the assessee's check is available, verify the account information with the bank, and serve the bank with the seizure notice. Make every attempt to have the notice served on the bank at a time when there are funds available in the account.

Checking account seizures avoid direct conflict with the assessee and the costs involved in keepers, inventories, etc., but they generally occur only when tax bills exceed \$50 or \$100.

### 2311. AVAILABILITY OF ASSESSEE

The type of enforcement technique selected may depend on locating the assessee or his/her assets. If the assessee is located within the county, collection enforcement is usually easier and most of the legal steps to enforce collection may be effective. If the assessee and all his/her assets are out of the county but within California, collection instruments may be [recorded](#) in the county of domicile and assistance obtained from officials of that county. Seizures, by mail, of funds in bank accounts are available for bank branches located in California.

Similarly, writs of execution served to county sheriff departments can assist in attaching assets. Out-of-state assesseees can pose the greatest impediment to collections, particularly if the assets are also moved. Assessors' offices may be able to provide additional information on the assessee's location.

**NOTE:** There are various sources of information, such as DataQuick and Experian, that provide statewide property ownership information, and online companies such as Infoquest, a people-finding service, can be used to locate assesseees. Other resources include DMV records and court records.

### 2312. ASSETS OF ASSESSEE FOR COLLECTION ENFORCEMENT

The type of assets available often determines the most effective collection technique to implement. A known bank account may be easier to collect against than certain physical assets. The mobility of an asset may impede collections. The assessor may provide additional information on the makes, models and identification of assets. DMV can provide ownership records and lienholder information for all vehicles and boats registered in California.

### 2313. ASSETS SUBJECT TO SPECIAL COLLECTION PROCEDURES

[M-2500 et seq.](#) is devoted to special collection procedures against certain assets. The procedures may be used in conjunction with other collection techniques or may require certain recorded collection instruments. For instance, the California Interagency Offset Program ([M-2610](#)) requires a recorded lien before an offset will be made by the Franchise Tax Board. A review of the special collection requirements should be made so that needed instruments can be obtained in a timely manner.

## 2320-2329 Delinquent Payment Enforcement: Court Actions/General Applications

### 2320. GENERAL INFORMATION

A taxpayer cannot, as a defense in any court action, claim that the taxes are excessive based on an overvaluation unless he/she has petitioned the county board of equalization for a reduction of the assessment (*Security First National Bank v. County of Los Angeles*, 35 Cal. 2d 319). However, distinctions exist between a wrongful assessment of property not subject to taxation and property wrongfully valued that is taxable. The county board of equalization need not be petitioned if property is nontaxable (*Lockheed Aircraft Corp. v. County of Los Angeles*, 207 Cal. App. 2d 119). The defendant, except for small claims cases, may claim that the tax was illegally assessed for reasons other than [valuation](#).

### 2321. AUTHORITY FOR SUITS

[Revenue and Taxation Code section 3003](#) authorizes civil [action](#) by the county in its own name against an assessee, including general partners of a partnership assessee, persons who have assumed the liability to pay

the assessed taxes by [contract](#) or [lease](#), and those persons who are the alter ego or successor in interest of a corporate assessee, to recover delinquent unsecured taxes or assessments, including penalties, interest, and costs. [Revenue and Taxation Code section 3002](#) authorizes the tax collector to employ an attorney to sue in his/her name if the assessee moves to another county ([M-2333](#)). [Revenue and Taxation Code sections 107](#) and [2189.5](#) authorize suits for the collection of delinquent taxes on leasehold estates or rights as defined therein. The [Code of Civil Procedure section 116.530](#) provides that no attorney may take part in the conduct or defense of a small claims action.

[Government Code section 25203](#) allows the board of supervisors discretionary power to appoint county officials to initiate and conduct litigation in superior court on behalf of the county.

For the collection of delinquent taxes on improvements of water distribution systems, see [M-6115](#).

For the collection of delinquent taxes on possessory interests that have been entered on the secured roll, see [M-2011](#).

### **2322. AUTHORITY FOR EX PARTE WRIT OF ATTACHMENT**

When there is sufficient information to justify the commencement of an [action](#) prior to the date taxes on the [unsecured roll](#) become delinquent, the tax collector may apply to the court for issuance of an [ex parte writ of attachment](#) of enough of the assessee's property as is necessary to satisfy the taxes on the basis of this information ([Rev. & Tax. Code §3006](#)).

**NOTE:** "Ex parte" means that a judicial proceeding may be held and any petition for this writ may be granted by the court without notice to the assessee or without the necessity of the assessee being present in court.

A tax collector generally seeks this attachment because of the financial position of the assessee or for some other appropriate reason, such as when there is a reported sale of unsecured property to another party, or when property is moved or hidden. Since this declaration must be filed under penalty of perjury, the tax collector should seek the advice of the county counsel prior to commencing the lawsuit.

### **2323. RESOLUTION OF BOARD OF SUPERVISORS**

The board of supervisors directs and controls the prosecution and defense of all suits to which the county is a party ([Gov. Code §25203](#)). The board, by resolution, should authorize actions to recover delinquent unsecured property taxes, penalties, and costs. This should include the authority to name partners of an assessed partnership and other persons as alter egos or successors in interest.

A single annual resolution, or a resolution effective until [rescinded](#), authorizing institution of legal [actions](#) by either the district attorney or the county counsel and the tax collector is recommended, since it facilitates collection and obviates the need for a resolution by the board of supervisors in each instance.

### **2324. NOTICE OF INTENTION TO BRING SUIT**

The [assessee](#) may be notified before an [action](#) is filed that only immediate payment will avoid impending court action, the costs of which will be added to the amount due. Form [SCO 2-09](#) is recommended.

**NOTE:** Consider sending one "Notice of Intent to Enforce Collections," which includes all collection alternatives. The desired methods can then be chosen without further notification.

### **2325. REFERRAL TO COUNTY COUNSEL**

Following the delinquency date and prior to expiration of the statute of limitations, the tax collector may prepare and submit to the county legal officer a list of unpaid accounts where, individually, the total sum of tax and penalties exceeds \$5,000 ([Code Civ. Proc. §116.220\(a\)\(2\)](#)).

The tax collector should keep county counsel informed of any payments the taxpayer makes. Counsel will be better able to advise whether to accept any partial payment. Partial payments do not constitute full satisfaction of the taxes, costs, and penalties due the county ([Attorney General Opinion 9-18-79](#)).

Amounts of \$5,000 or less lie within the [jurisdiction](#) of the small claims courts ([Code Civ. Proc. §116.220\(a\)\(1\)](#)). Counsel may be consulted but may not appear in court. However, in known disputed cases involving amounts greater than \$2,500, the county legal officer may pursue an [action](#) in superior court. County counsel may also wish to pursue an action in superior court to recover taxes from third parties liable under contract, "alter egos," or successors in interest.

### **2326. ENFORCEMENT BY COURT ACTION/ SMALL CLAIMS**

[Action](#) in small claims court is commenced when the plaintiff files, in person or by mail, a claim under oath with the judge or clerk of the small claims division ([Code Civ. Proc. §116.320](#)). The claim shall be prepared by the tax collector in substantially the same form as shown in the Claim of Plaintiff and Order form ([Code Civ. Proc. §116.320](#)).

[Civil Procedures Code section 116.220](#) authorizes suits where the small claims courts have [jurisdiction](#) in actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant ([M-2328](#)).

Small claims actions often are less effective as a collection measure than either [summary judgment](#) or [seizure and sale](#).

If an assessee denies the legality of unsecured personal property taxes, the tax collector may have the matter transferred to superior court ([Code Civ. Proc. §116.220\(a\)](#)) and ([M-2328](#)).

The assessee's defenses in any court [action](#) appear limited to:

- 1) The fact that the assessee did not own the property (*People v. Wilson*, 26 Cal. 127);
- 2) The nonexistence of the property on the [lien date](#); or
- 3) The fact that the property was outside the jurisdiction of the county on the lien date. Temporary absence from jurisdiction is not, however, a valid defense against the assessment of personal property (*Brock & Co. v. Board of Supervisors*, 8 Cal. 2d 286; *Church v. City of Los Angeles*, 96 Cal. App. 2d 89).

Generally, summary judgment is preferable to a small claims action because the defendant often raises an "assessment" issue, requiring the case to be transferred to superior court ([M-2328](#)).

### **2327. FILING FEE EXEMPTION**

Authority for exemption of filing fees is found in [Government Code section 6103](#). However, the filing fee exempted by this section must be included in the amount of final judgment ([M-2380](#)).

### **2328. DEFENSES AGAINST COUNTY'S CLAIM**

Small claims, justice, or municipal courts are without [jurisdiction](#) to try the legality or validity of the tax. Defenses raised on these points fall within the jurisdiction of the superior court only ([Code Civ. Proc. §§86\(a\)\(1\), 116.220\(a\)\(2\)](#); *Cal. Empl. Stab. Com. v. Municipal Court*, 62 Cal. App. 2d 781). In such cases, the district attorney or the county counsel should initiate steps to transfer these cases to the superior court.

In any suit for taxes, the roll or a duly [certified copy](#) of any entry showing the assessee, the property, and unpaid taxes or assessments is [prima facie](#) evidence of the plaintiff's right to recover ([Rev. & Tax. Code §3004](#)).

### **2329. STATUTE OF LIMITATIONS**

The three-year statute of limitations, contained in the [Code of Civil Procedure section 338\(1\)](#), applies to suits for collection of unsecured taxes and begins with the date of delinquency (*Los Angeles County v. Continental Corp.*, 113 Cal. App. 2d 207; see annotations to [Revenue and Taxation Code sections 107](#) and [3003](#)).

Civil [actions](#) for delinquent taxes or assessments, pursuant to [Revenue and Taxation Code section 3003](#), shall be commenced within three years of the date upon which unsecured taxes became delinquent. The limitation

period of this section shall be extended for any and all periods during which a civil action described by this section is prohibited by federal bankruptcy laws or rules or by a court order.

**EXCEPTION:** If property is acquired by a public agency so as to become tax-exempt, and all delinquent taxes, together with the pro rata share of current taxes, are transferred from the secured to the unsecured roll, the statute of limitations begins to run from the date of the transfer ([Rev. & Tax. Code §5090\(b\)](#)).

## 2330-2336 Delinquent Payment Enforcement: Court Actions/Judgement Processing

### 2330. ENTRY OF JUDGMENT

At the conclusion of the hearing, if a decision is given in favor of the county, judgment is entered by the court ([Code Civ. Proc. §116.860](#)).

The judge may provide for payment immediately or at any time and upon such terms and conditions as he/she determines ([Code Civ. Proc. §116.860](#)).

### 2331. ABSTRACT OF JUDGMENT

If no payment is received, an [abstract of judgment](#) may be obtained from the court without charge ([Code Civ. Proc. §116.610](#)). Upon recordation of the abstract in any county (without charge), the judgment becomes a lien upon all real property owned in the county or subsequently acquired by the defendant ([Code Civ. Proc. §674\(a\)](#)). See [M-2334](#) regarding the recordation of an abstract of judgment in other counties.

The lien continues for ten years from the entry of the judgment or until the lien is satisfied or otherwise discharged ([Code Civ. Proc. §674\(a\)](#)).

If justified, an action to renew the original judgment may be commenced within ten years ([Code Civ. Proc. §337.5](#)). When the new abstract of judgment is recorded, the lien attaches for another ten-year period.

**NOTE:** Do not confuse an [abstract of judgment](#) with the provisions for summary judgment. See [M-2350 - M-2355](#).

### 2332. INTEREST ACCRUAL ON JUDGMENTS

Interest on judgments rendered by California courts accrues at the following rates:

On and before December 31, 1982 – 7 percent per annum on a daily basis until the judgment is paid.

January 1, 1983, through June 30, 1983 – 10 percent per annum on a daily basis until the judgment is satisfied or up to the date of a levy under a writ of execution.

On or after July 1, 1983 - 10 percent per annum on a daily basis until the judgment is satisfied or, in the case of a writ of execution, up to the date the proceeds of the sale or collection are actually received by the levying officer ([Code Civ. Proc. §685.010](#)).

**NOTE:** Interest on judgments accrues from the date of entry. If the judgment was entered before January 1, 1983, it accrues interest at the rate of 7 percent per annum until December 31, 1982; thereafter, the judgment accrues interest at the rate of 10 percent per annum until satisfied, as described above.

### 2333. ASSESSEE OUTSIDE COUNTY

After the judgment is obtained, an [abstract of judgment](#) must be [recorded](#) as soon as possible in any county in which the defendant has real property (form [SCO 2-10](#) ).

From the date of the recording, the judgment or decree becomes a [lien](#) upon all the real property of the judgment debtor not exempt from execution and continues for ten years from that date ([Code Civ. Proc. §674](#)).

Actions for the recovery of taxes may be instituted in other states that permit such actions when the amount to be recovered is sufficient to justify the time, expense, and effort ([Rev. & Tax. Code §31](#)).

#### **2334. EXECUTION UPON JUDGMENT BY MARSHAL OR SHERIFF**

The marshal or the sheriff can assist in preparing documentation required to [execute](#) a judgment. The judgment may be carried into execution in any county of the state.

#### **2335. EXAMINATION OF DEBTOR**

The examination may be conducted in the courtroom, but it is usually done in a vacant jury or conference room. Questions that the defendant refuses to answer or considers unfair must be returned to the courtroom for a ruling by the judge. ([Code Civ. Proc. §708.110 et seq.](#)).

The information learned during this process is used for further legal action, as necessary. Ideally, a satisfactory payment arrangement can be made, eliminating the need for additional action. Remember that judgments can be [executed](#) for ten years ([§3105](#)).

The Order of Examination must be served on the taxpayer in person. The request for service will be sent to the marshal or sheriff's civil division. Service must be made ten days prior to the date of examination, and proof of this service should be returned to the tax collector and the court before that date. If it is not, the tax collector should call the sheriff or marshal to verify service. If the defendant was not served in a timely fashion, a new court date must be set, and the process starts over again.

A debtor may be ordered to court for examination every 120 days. A special request may be filed with the court to shorten this time if it is felt that the debt will be jeopardized by waiting the required period of time. There is a 150-mile limit, outside of which a defendant may not be served. Also, few if any states recognize California liens or judgments, so filing outside the state may be a wasted effort.

If the defendant does not appear in court for the Order of Examination, the judge, in most cases, will issue a bench warrant for his/her arrest.

**NOTE:** The Order of Examination must be served by an officer of the court, i.e., sheriff, marshal or constable, or the judge will not issue a bench warrant.

The defendant must then post a bond (bail), cash or otherwise, to avoid being arrested and to ensure his/her appearance on the next examination date. At the next examination, the judge may be asked to exonerate the bail and have it applied to the bill. If this is acceptable to the court and the defendant, an order is made to accomplish this and no examination is necessary.

#### **2336. SERVICEMEMBERS' CIVIL RELIEF ACT**

Under this Act, no proceeding or [action](#) may be commenced to collect unsecured taxes except upon leave of the court, granted upon application of the tax collector. For the provisions of this Act affecting tax collections, refer to United States Code, Title 50, App., sections 501 through 585 (see especially §560).

Any tax or assessment that is not paid when due shall bear interest at the rate of six percent per annum until paid, and no other penalty or interest shall be incurred by reason of such nonpayment.

An [affidavit](#) or declaration by the taxpayer, indicating nonmilitary status, must be filed with the court before a judgment by default will be entered.

## **2340-2342 Delinquent Payment Enforcement: Certificate of Lien**

### 2340. GENERAL APPLICATION

From the time of filing, the [lien](#) has the force, effect, and priority of a judgment lien and continues for ten years from the time the certificate is recorded, unless it is released or otherwise discharged before then. The lien is upon all personal and real property in the county owned by and then assessed to the assessee named in the certificate or acquired by him/her before the lien expires ([Rev. & Tax. Code §2191.4](#)) (form [SCO 2-02](#)).

The courts have held that a certificate of lien does not give preference over other liens that attached before the certificate was recorded and is not effective against an innocent or [bona fide](#) purchaser for value or an encumbrancer for value who acquires interest in the property without actual knowledge of the certificate of lien ([Rev. & Tax. Code §2191.4](#)).

The lien is also [subordinate](#) to preferences given to claims for personal services by [Code of Civil Procedure sections 1204 and 1206](#) ([Rev. & Tax. Code §2191.5](#)).

### 2341. FILING A CERTIFICATE OF LIEN

When a delinquent tax becomes subject to unsecured collection procedures, or when an unsecured tax becomes delinquent, a certificate specifying the amount of tax due (including interest, costs and penalties) may be [recorded](#) in any county, without a fee being charged. This procedure extends to:

- 1) A [possessory interest](#) secured only by a lien on the interest itself;
- 2) Goods in transit, not secured by any lien on real property;
- 3) Improvements that have been [assessed](#) pursuant to [Revenue and Taxation Code section 2188.2](#);
- 4) Off-roll taxes on escape assessments where the error was not the fault of the assessee and the escape taxes are being paid pursuant to [Revenue and Taxation Code section 4837.5](#);
- 5) Unsecured property not secured by a lien on real property, where the tax has become delinquent or where there are prior unpaid and delinquent taxes on the property;
- 6) A tax entered on the unsecured roll pursuant to [Revenue and Taxation Code sections 482, 531.2 or 4836.5](#); or
- 7) A tax transferred to the unsecured roll under any provision of law ([Rev. & Tax. Code §2191.3](#)) and ([M-1720](#)).

The filing of this certificate establishes priority of the county's lien over any subsequently recorded lien; therefore, the certificate should be [recorded](#) as soon as possible after delinquency.

**NOTE:** A certificate of lien must be recorded for each year of delinquency. The certificate of lien is NOT an "add-on" lien, i.e., taxes from a subsequent year cannot be added to an existing certificate of lien.

Filing the certificate does not prevent the tax collector from seeking to enforce the collection of unsecured delinquent taxes through the use of unsecured roll summary judgment ([Rev. & Tax. Code §3101 et seq.](#)), suit for taxes ([Rev. & Tax. Code §3002 et seq.](#)), or seizure and sale procedures ([Rev. & Tax. Code §2951 et seq.](#); [Attorney General Letter 12-11-62](#)).



A certificate of lien is accepted for [recording](#) in the office of the county recorder in any county without fee. The certificate should specify the amount due, the name of the assessee, the Social Security number, if known, and the last known address of the assessee, and it should include a statement that the county is in compliance with all provisions of the Revenue and Taxation Code with respect to the computation and [levy](#) of the tax.

The procedure authorized is cumulative to the procedure provided by [Revenue and Taxation Code sections 2951](#) and [3003](#). The county recorder shall, within 30 days after a filing, as described in this subdivision with respect to delinquent taxes on unsecured property, send a notice of the filing to the assessee at the assessee's last known address. The notice shall contain the information contained in the filing and shall prominently display on its face the following heading ([Rev. & Tax. Code §2191.3](#)):

**THIS IS TO NOTIFY YOU THAT A TAX LIEN HAS BEEN FILED WITH RESPECT TO UNSECURED PROPERTY**

**2342. EXTENSION OF A CERTIFICATE OF LIEN**

Within ten years from the date of certificate [recording](#) or within ten years from the date of the first lien extension, the lien may be extended for another ten-year period by re-filing ([Rev. & Tax. Code §2191.4](#)).

**NOTE:** Notwithstanding any number of extensions caused by filing a new certificate, the lien is conclusively presumed paid 30 years after the time when the tax became a lien ([Rev. & Tax. Code §2195](#)).

## 2350-2355 Delinquent Payment Enforcement: Summary Judgement

**2350. PURPOSE AND EFFECT OF LIEN CREATED**

[Summary judgment](#) provides an additional method of enforcing the collection of unsecured taxes. A judgment lien may be recorded that attaches to all property owned by the assessee. The summary judgment also affords a means of levying through a writ of execution ([Rev. & Tax. Code §§3101-3107](#)) and ([M-2370 - M-2376](#)).

A [recorded](#) judgment creates a lien against [bona fide](#) purchasers but only upon the debtor's real property; the levy of a writ of execution is required to bind the debtor's personal property in a manner that is effective against bona fide purchasers ([Code Civ. Proc. §674](#); *Miller v. Bank of America*, 2-19-48, Ninth Circuit, U.S. Court of Appeals, 166 F. 2d 415, 417-419).

Without such a levy, the lien of the judgment on personal property has no "force, effect, or priority" against bona fide purchasers.

The [recorded](#) judgment has the force, effect, and priority of a judgment lien upon all property of the assessee that may be owned by him/her in the county at that time or that may be subsequently acquired by him/her prior to the expiration of the lien ([Rev. & Tax. Code §3103](#)).

**EXCEPTION:** If the judgment debtor sells all personal property [encumbered](#) by the recorded judgment, the lien is not valid against a purchaser of the personal property unless he/she has actual knowledge of the lien ([Rev. & Tax. Code §3103](#)).

**2351. NOTICE OF INTENT TO FILE A CERTIFICATE**

A "Notice of Intent to File a Certificate Seeking Summary Judgment" must first be sent to the assessee, by registered or [certified mail](#) to his/her last known address, not less than ten (10) days prior to the filing of the tax collector's certificate ([Rev. & Tax. Code §3101\(a\)](#)).

**2352. CONTENTS OF NOTICE**

[Revenue and Taxation Code section 3101\(b\)](#) requires the notice to contain the following:

- 1) The names of all of the assesseees;
- 2) The description of the property assessed;
- 3) The assessed value of the property;
- 4) The fact that judgment will be sought in the amount of the tax, penalty, and interest that is unpaid at the time of the filing of the certificate;
- 5) The fact that, following issuance and [recordation](#) of such judgment, additional penalties will continue to accrue at the rate prescribed by law, and any bond premium posted or other costs to enforce the judgment are an added charge; and
- 6) The fact that a fee, as provided in [Government Code section 27361.3](#), must be paid for the purpose of the recordation of any satisfaction of the judgment lien. Use of form [SCO 2-11](#) is recommended.

### **2353. PROPERTY NOT SUBJECT TO EXECUTION**

The following types of property are not subject to execution ([Code Civ. Proc. §699.720](#)):

- 1) An alcoholic beverage license without the appointment of a receiver under the [Code of Civil Procedure section 708.630](#) (However, a hold can be placed on an on-sale liquor license; see [M-2520 - M-2523](#));
- 2) An interest of a partner where the partnership is not a judgment debtor;
- 3) A cause of action that is the subject of a pending action or special proceeding (this does not apply to a cause of action for money or property ([Code Civ. Proc. §708.630](#)));
- 4) A judgment in favor of the judgment debtor prior to the expiration of the time for appeal or prior to the determination of an appeal;
- 5) A debt (other than earnings) owing and unpaid by a public entity;
- 6) The loan value of an unexpired life insurance, endowment, or annuity policy;
- 7) A franchise granted by a public agency;
- 8) The interest of a trust beneficiary;
- 9) Any interest that is not vested; and
- 10) Property in a guardianship or conservatorship estate.

**NOTE:** These exemptions do not necessarily apply to means of collection other than execution, i.e., seizure and sale under [Revenue and Taxation section 2951](#). For immediate action, control over assets, and the absence of exemption and litigation, seizure under Revenue and Taxation Code section 2951 is generally more advantageous than execution on judgments. However, after the three-year statute of limitations has expired for seizure, execution on judgment can still be effected. See [M-2375](#) for additional exemptions.

### **2354. FILING OF CERTIFICATE SEEKING SUMMARY JUDGMENT**

If any tax, interest, or penalty is not paid by the last day of the month succeeding the delinquency date and not less than ten days following mailing of the Notice of Intent ([M-2351](#) and [M-2352](#)), a certificate may be filed (without fee) with the county clerk.

**2355. CONTENTS OF CERTIFICATE**

The certificate seeking summary judgment must state the following:

- 1) That a Notice of Intent to file a certificate seeking summary judgment was sent by registered or [certified mail](#) to each assessee at his/her last known address not less than ten days prior to the filing of this certificate;
- 2) That the Notice of Intent set forth the information required, pursuant to ([Rev. & Tax. Code §3101\(b\)](#));
- 3) The names of all of the assessees ([M-2352](#));
- 4) The amount for which judgment is sought;
- 5) The fact that the county has complied with all of the provisions of Part 5, Division 1, Revenue and Taxation Code, in the computation and levy of the tax, penalty, or interest; and
- 6) The fact that a request was therein made that judgment be issued and entry be made against the named assessee ([Rev. & Tax. Code §3101](#)).

Form [SCO 2-12](#) is recommended.

## 2360-2364 Delinquent Payment Enforcement: Summary Judgement – Processing

**2360. ENTRY OF JUDGMENT**

Immediately after the filing of the certificate, the county clerk enters a judgment for the county against the assessee for the total amount specified ([Rev. & Tax. Code §3102](#)).

See form [SCO 2-12](#) .

**2361. FILING OF JUDGMENT BY COUNTY CLERK**

The county clerk may file the judgment in a loose-leaf book entitled, "County Unsecured Property Tax Judgments" ([Rev. & Tax. Code §3102](#)).

**2362. RECORDING OF JUDGMENT**

An abstract or a copy of the judgment with respect to unsecured taxes shall be recorded (without fee) in the office of the recorder of any county ([Rev. & Tax. Code §3103](#)).

Form [SCO 2-13](#) is recommended.

**2363. PERIOD OF LIEN**

The [lien](#) continues for a period of ten years from the date of [recording](#) unless, released or otherwise discharged before then ([Rev. & Tax. Code §3103](#)) and ([M-2383](#)). Prior to the expiration of the first period of the judgment lien, the abstract or copy of the judgment may be re-recorded. Doing this extends the judgment lien for an additional ten years. A subsequent ten-year extension may be obtained in like manner unless the lien is released or otherwise discharged sooner ([Rev. & Tax. Code §3105](#)).

**2364. EXECUTION ON JUDGMENT - PURPOSE AND EFFECT**

After a judgment has been recorded, execution on the judgment can be commenced through a writ of execution, writ of possession, writ of sale, or application for earnings withholding order. This is the enforcement area of the judgment, which allows active pursuit of assets to satisfy the judgment. The application request is

made to the clerk of the court where the judgment was obtained, and the signed writ is effective for a six-month period.

## 2370-2376 Delinquent Payment Enforcement: Writ of Execution

### 2370. GENERAL INFORMATION

Use Judicial Council of California form [EJ-130](#) to apply to the clerk of the court for the writ. Be sure to apply to the court where the judgment was obtained: superior court for [summary judgments](#) or small claims court for small claims judgments.

A copy of the writ of execution must be mailed by the levying officer to each judgment debtor on each [levy](#) as well as to each garnishee. Prepare sufficient copies of form EJ-130 to permit one for each judgment debtor, garnishee, levying officer, and tax collector. The original form is retained by the clerk of the court.

**NOTE:** The court may require a fee for issuance of the writ. Contact the clerk of the superior court to determine if a fee is required.

Generally, all property not tax-exempt is subject to enforcement of a money judgment ([Code Civ. Proc. §695.010](#)). [Community property](#) and certain real property [leases](#) are subject to execution ([Code Civ. Proc. §§695.020, 695.035](#)).

**EXCEPTION:** A money judgment against a public entity is not subject to execution ([Code Civ. Proc. §695.030](#)).

**NOTE:** It is recommended that each county issuing a writ of execution contact the sheriff's civil division or marshal's office for the procedure to be used within that county. Each county requires instructions for [levy](#) that must be completed and furnished with the necessary copies of the writ. Review of the Marshal's Manual of Procedure or the California State Sheriff's Civil Procedure Manual is also helpful. County law libraries usually have the CEB (Continuing Education of the Bar) California Debt Collection Manual available for review.

### 2371. FEES NECESSARY FOR EXECUTION OF WRIT

A fee for execution of the writ is required by the levying officer. Fees can vary from county to county, and some counties require the fees to be paid before the writ is executed. The county levying officer within the county where the execution of the writ will take place should be contacted prior to issuance of the writ for information on the fee requirements. This fee is to be added to the amount owed by the assessee.

### 2372. SUGGESTED PROPERTY FOR LEVY OF A MONEY JUDGMENT

Typical properties that creditors obtain money judgments against:

- 1) A "till tap" of a business concern;
- 2) Automobiles, boats or aircraft. Make a prior determination of any lienholders before requesting a [levy](#) on these properties. This can be verified through the Secretary of the State and UCC. For automobiles, see EXEMPTIONS [M-2374](#) and [M-2375](#);
- 3) Bank accounts;
- 4) Safety deposit boxes; and,
- 5) Monies held in [escrow](#) by a title company

**NOTE:** Refer to [Code of Civil Procedure section 700.030 et seq.](#) or CEB (Continuing Education of the Bar) California Debt Collection Manual for other possible property or choices of action for levies.

**2373. WRIT OF POSSESSION**

This is used to obtain actual possession of personal or real property and is generally not used by tax collectors. See the county legal officer if possession of specific property is desired.

**2374. SALE OF LEVIED PROPERTIES**

The county enforcement officer, under local procedures, can provide for a sale of levied properties ([Code Civ. Proc. §§701.520, 701.630 et seq.](#)).

**2375. EXEMPTIONS**

Earnings and many items of property are subject to exemptions under a writ of execution or other enforcement of judgment, including:

- 1) Motor vehicles – up to \$2,300 ([Code Civ. Proc. §704.010](#));
- 2) Household furnishings and personal effects ([Code Civ. Proc. §704.020](#));
- 3) Materials that are to be applied to the repair or improvement of a residence – up to \$2,425 ([Code Civ. Proc. §704.030](#));
- 4) Jewelry, heirlooms, and works of art – the aggregate, up to \$6,075 ([Code Civ. Proc. §704.040](#));
- 5) Health aids ([Code Civ. Proc. §704.050](#));
- 6) Tools of a trade – up to \$6,075 (\$12,150 if the judgment debtor and the spouse exercise the same trade) ([Code Civ. Proc. §704.060](#));
- 7) Deposit account for Social Security – There are several exemption amounts, depending on the circumstances; see [Code Civ. Proc. §704.080](#) to determine the amount of the exemption;
- 8) Life insurance policies – A loan value of up to \$9,700 is also exempt ([Code Civ. Proc. §704.100](#));
- 9) Public retirement benefits ([Code Civ. Proc. §704.110](#));
- 10) Homestead or primary residence – from \$75,000 to \$175,000 ([Code Civ. Proc. §704.730](#));
- 11) Paid earnings, subject to withholding for child support ([Code Civ. Proc. §704.070](#));
- 12) Funds held in trust for an inmate of a correctional facility – up to \$1,225 ([Code Civ. Proc. §704.090](#));
- 13) Vacation credits accumulated by a state employee ([Code Civ. Proc. §704.113](#));
- 14) Private pension plan ([Code Civ. Proc. §704.115](#));
- 15) Unemployment compensation ([Code Civ. Proc. §704.120](#));
- 16) Disability or health insurance benefits ([Code Civ. Proc. §704.130](#)); and,
- 17) Workers' compensation awards ([Code Civ. Proc. §704.160](#)).

**NOTE:** These exemptions do not apply to seizures under [Revenue and Taxation Code section 2951](#), except that seizure of real property (other than [possessory interests](#) or improvements) is not authorized ([Code Civ. Proc. §703.010](#)).

**2376. RECOVERY OF ADDITIONAL COST**

[Government Code section 6103.5](#) requires the clerk of the court to include in the judgment the amount of the filing fee. No interest ([M-2332](#)) is charged on this fee ([M-2327](#)).

Revenue and Taxation Code section 3005 requires that costs to which a sheriff, marshal, or constable is entitled must be made part of the judgment. Upon payment, such costs are deposited in the county general fund. The court clerk's attention should be directed to these provisions to assure that costs are included in any judgment rendered ([Rev. & Tax. Code §3005](#)).

The prevailing party in any [action](#) in a small claims court is entitled to costs of the action and costs of executing the judgment. Costs include service of the order for the defendant's appearance ([Code Civ. Proc. §116.610\(g\)](#)).

## 2380-2386 Delinquent Payment Enforcement: Satisfaction/Payment

### 2380. PAYMENT TO THE COURT

A writ of execution, issued by the court from which a judgment was obtained, must be returned to the court showing that the judgment has been satisfied. If no writ of execution was issued but the judgment has been satisfied by some method, an [acknowledgment](#) of satisfaction must be filed with the court; or the tax collector or the county's legal officer must acknowledge satisfaction of the judgment by endorsing the court's records ([Code Civ. Proc. §697.640](#)).

Whenever an [abstract of judgment](#) has been filed with any county recorder, an acknowledgment of satisfaction, whether by execution or by any other means, must be delivered to the judgment debtor not later than 30 days after the judgment has been satisfied in full. The satisfaction of judgment (acknowledgment) must identify the county (or counties) where the abstract was recorded and include the book and page of the official [recording](#). It should be accompanied by a statement advising the recording, at the expense of the judgment debtor, to release the judgment lien.

When judgment or order is issued against a defendant, he/she must pay immediately, according to terms and conditions prescribed by the judge. Immediately upon receipt of payment, the judgment creditor or his/her assignee must file with the court an acknowledgment of satisfaction of judgment.

Any judgment creditor or assignee who, after payment in full of the judgment and after written demand by the judgment debtor, fails without just cause and for a period of 15 days to [execute](#) and file such acknowledgment of satisfaction with the court, is liable to the judgment debtor or his/her [grantees](#) or [heirs](#) for all damages that may be sustained by reason of such failure ([Code Civ. Proc. §116.860](#)).

### 2381. PAYMENT TO THE COUNTY

The judgment is satisfied and the lien removed upon payment of:

- 1) The judgment amount;
- 2) The additional penalty imposed pursuant to [Revenue and Taxation Code section 3104](#); plus,
- 3) A fee, as provided in [Government Code section 27361.3](#), for the [recording](#) of a satisfaction of judgment in each county where the judgment was recorded. This recording fee is transmitted to the county recorder with the discharge from the county judgment lien ([Rev. & Tax. Code §3107](#)).

**NOTE:** Some counties mail the release to the assessee for recording and payment of fees directly to the county recorder.

Form [SCO 2-14](#) is recommended.

### 2382. ADDITIONAL PENALTY IMPOSED

Interest authorized or allowed on court judgments is not to be collected on an unsecured roll summary judgment ([Rev. & Tax. Code §3104](#)).

In lieu of interest, the additional penalty provided for in [Revenue and Taxation Code section 2922\(d\)](#) is computed and applied to the unpaid taxes ([M-2202](#)). Any bond premiums posted or other costs to enforce the judgment are an added charge ([Rev. & Tax. Code §3104.5](#)).

### 2383. IF TAXES CANCELED

The judgment is also satisfied and the lien removed when the tax is legally canceled by the board of supervisors and a discharge from the judgment is recorded in any county where such judgment was [recorded](#). No recording fee is required in this instance ([Rev. & Tax. Code §3107\(b\)](#)).

### 2384. PARTIAL SATISFACTION

As a judgment creditor, the tax collector may file a partial satisfaction of a judgment as to specific property. The [instrument](#) should be [recorded](#), with the appropriate fees, in the county recorder's office.

### 2385. SATISFACTION AND RELEASE OF CERTIFICATE OF LIEN

Except as provided in [Revenue and Taxation Code section 2191.4](#), the [lien](#) resulting from recording the certificate pursuant to [Revenue and Taxation Code section 2191.3](#) is discharged or removed in the following situations.

- 1) The lien is discharged/removed upon payment of the tax, including applicable penalty and interest and a recording fee, as provided in [Government Code section 27361.3](#). The lien for taxes is removed upon recordation of a certificate of release or discharge of the lien with the recorder. The lien should be removed in each county in which the certificate was filed.

The recording fee should be collected by the tax collector and, together with the certificate of release or discharge of the lien, transmitted to the county recorder, who records the certificate. Recording fees vary from county to county, so the county recorder in each county involved should be contacted to determine the appropriate fee to be collected.

- 1) The lien is discharged/removed when the tax is legally canceled and a release of the certificate of lien is recorded in the office of the county recorder. A recording under this subdivision is made without fee ([Rev. & Tax. Code §2191.6](#) and [SCO 2-03](#)).

No fee is charged for recording a release of certificate of lien if the original lien is recorded in error ([Gov. Code §27361.3](#)) or if the taxes have been legally canceled ([Rev. & Tax. Code §2191.6\(b\)](#)).

### 2386. REMOVAL OF INVALID LIEN

The tax collector may determine, upon presentation of evidence or by roll correction by the assessor, that a [lien](#) has been erroneously recorded against the assessee. In such case, the tax collector must send a document to the recorder stating the facts that indicate an erroneous filing. The document must be clearly labeled with the words, "Removal of Invalid Lien," and must be signed by either the tax collector or his/her deputy ([Rev. & Tax. Code §2196](#)). Form [SCO 2-21](#) is recommended.

The recorder must mail notice of the removal of the lien, after it is recorded, to the owner of the property. If the recorder does not do this, the tax collector should send notice ([Rev. & Tax. Code §2196](#)).

## 2400-2405 Delinquent Payment Enforcement: Property Seizure and Sale

### 2400. PURPOSE AND EFFECT

Physical seizure of property allows for the immediate possession of property. Prior to seizure and as soon after delinquency as possible, record a certificate of [tax lien](#). The filing of a certificate of tax lien for delinquent taxes constitutes a lien on all personal and real property belonging to the assessee at the time of seizure and acquired thereafter. Once the asset has been seized by the tax collector, the property cannot be sold by the assessee until the taxes are paid.

**NOTE:** The certificate of lien is not valid for personal property against a bona fide purchaser for value without specific knowledge of the lien.

Seizure will usually provide immediate payment on businesses and boats ahead of other creditors. However, tax bills that are more than one year delinquent may lose their priority status in subsequent [bankruptcy](#) cases.

The [seizure and sale](#) process can be done in a short period of time and is a much faster process than enforcement through a writ of execution. Seizure avoids the posting of costs with the sheriff or marshal where such posting is required. Seizure also avoids judicial deductions and litigation over possible defenses permitted by executions of judgments. No prior judgment or lien is required.

Property owners are entitled to an administrative hearing prior to sale; however, any necessary administrative hearing can be relatively informal.

#### **2401. PRE-SEIZURE REVIEW**

Determine whether the assessee is in [bankruptcy](#). If so, suspend further collection activity, except for ABC liquor license holds. Flag the account for monthly review and file a claim with the bankruptcy court.

The following steps should be taken prior to actually seizing the property.

- 1) Check with the [California Secretary of State](#) for [UCC](#) liens and with the recorder's records for other liens.
- 2) Use records of previous years' processed checks to determine if a bank account can be located.
- 3) Search for other assets/holdings. Sources to accomplish this include:
  - a. Property statement filed with the assessor, with the assessor's permission;
  - b. DMV or FAA records; and
  - c. Field inspection.

#### **2402. SEIZURE PRIOR TO TAX DELINQUENCY**

The tax collector may initiate seizure and sale action prior to the delinquency date (normally August 31) by filing a written declaration, made under penalty of perjury, with the clerk of the board of supervisors. The declaration must set forth the grounds and necessity for seizure ([Rev. & Tax. Code §2953](#)). See form [SCO 2-05](#). The tax collector must deliver a copy of the declaration to the assessee at the time of seizure.

**EXCEPTION:** If any property has been assessed on the unsecured roll and advertised for sale pursuant to [California Uniform Commercial Code sections 6101-6107](#), inclusive, or advertised to be sold at public auction, or seized for prior-year delinquent taxes, it may be seized by the tax collector prior to delinquency without filing a declaration with the clerk of the board of supervisors ([Rev. & Tax. Code §2953.1](#)).

The tax collector should have justifiable reasons for determining that seizure and sale prior to the date of delinquency are necessary. It must be clear that the prospect of collecting the tax is in jeopardy.

Examples of suitable reasons for seizure prior to delinquency include:

- 1) The taxpayer's financial condition;
- 2) The taxpayer's attempt to conceal, dispose of, or ruin the property;
- 3) The assessee's attempt to remove the property from the county; and
- 4) The assessee's obvious pending loss of income (i.e., jail sentence, seasonal work, etc.).



**2403. SEIZURE**

Once the declaration of seizure has been delivered to the assessee, the tax collector should provide a copy to any other person who may be in possession of the property to be seized. No notice is statutorily required; however, a reasonable effort should be made to notify the assessee to provide opportunities for payment prior to the sale.

If it is necessary to safeguard seized property, it should be put in the custody of a keeper. The keeper holds the property until relieved from that duty. A record should be kept of all property seized ([Rev. & Tax. Code §2952](#)). Form [SCO 2-07](#) is recommended.

A seized business in operation should be allowed to continue to operate, with merchandise and money available for operation. If the assessee does not pay the taxes and fees shortly after a business seizure, the keeper should remove all cash not necessary to operate the business, as partial payment of taxes and fees.

As a precautionary measure against incurring liability for damages, any vehicle that is seized should be towed by a professional towing service rather than moved under its own power. Local law enforcement officials should be contacted before a vehicle is towed.

Other property available for seizure can include the assessee's bank account, rents, accounts receivable, etc., property that is often in the possession of third parties ([M-2401](#)).

**NOTE:** Two witnesses should be present when seizure is made.

**2404. RECORD OF SEIZURE AND SALE**

A record must be kept of property seized and sold ([Rev. & Tax. Code §2952](#)). Form [SCO 2-06](#) is recommended ([M-9911](#)).

**2405. PROTESTING PRE-DELINQUENCY SEIZURE**

In the case of a pre-delinquency seizure, the assessee may challenge the seizure by filing a petition in the superior court. To obtain release of the property from custody by the county, the assessee must file a bond sufficient to pay the taxes, fees and charges incurred by the tax collector in seizing the asset ([Rev. & Tax. Code §2954](#)).

If the assessee's challenge prevails, he/she is entitled to recover from the county all costs, including attorney fees incurred by virtue of the seizure and subsequent actions; in such an instance, the county bears all costs of seizure and any fees and expenses of keeping the property ([Rev. & Tax. Code §2955](#)).

The courts usually give a speedy hearing when seizure of property is challenged by an assessee ([Rev. & Tax. Code §2956](#)).

Although there is no period set in law for protesting seizure, such action would of necessity fall within, or before, the minimum seven-day framework that is imposed by the publication/posting statute before a sale can be conducted ([M-2420](#)).

## 2410-2416 Delinquent Payment Enforcement: Property Seizure and Sale – Eligible Property Types

**2410. GENERAL INFORMATION**

Taxes due on unsecured property may be collected by seizure and sale of any of the following property belonging to the assessee:

- 1) Personal property (includes money in bank accounts, rent, and trust deed payments due to delinquent taxpayers)

- a. Leased equipment
  - b. Rental payments
  - c. Sheriff's levy (seizure of property by judicial process)
- 2) [Improvements](#)
- 3) Possessory interest ([Rev. & Tax. Code §2951](#))

Revenue and Taxation Code section 2951 does not limit seizure to the property assessed.

[Revenue and Taxation Code sections 107](#) and [2189.5](#) authorize the seizure of [leasehold estates](#) for the production of gas, petroleum, or other hydrocarbon substances from beneath the surface of the earth, and of personal property improvements.

Leasehold estates as defined in [Revenue and Taxation Code section 107](#) become subject to seizure and sale upon the delinquency of any installment of taxes.

When assessed to a person other than the owner of the underlying land, taxes on water system improvements on the secured roll are subject to unsecured collection procedures after any installment of secured taxes becomes delinquent ([Rev. & Tax. Code §2189.6](#)).

The [assessments](#) on these improvements cannot be a lien on the land, and such fact must be noted on the secured roll.

**NOTE:** If the tax remains unpaid at the time set for tax-defaulting, such tax, together with the first-year secured penalty and costs accrued while on the secured roll, must be transferred to the unsecured roll.

#### 2411. TIME LIMITATION

Property shall not be seized and sold for unsecured taxes after three years ([Rev. & Tax. Code §2963](#)).

**EXCEPTIONS:** The three-year statute relative to leasehold estates ([M-2329](#)) begins to run on the delinquency date ([Rev. & Tax. Code §107](#)). The limitation period shall be extended for any period during which collection actions are prohibited by [bankruptcy](#) laws or rules, or by court order.

#### 2412. BANK ACCOUNTS

Bank accounts are personal property subject to seizure. Researching county records for a prior payment of taxes may be helpful in obtaining bank account numbers. Confirm that the named assessee is a signatory on the bank account.

#### 2413. IMPROVEMENTS

Improvements can be buildings, structures, and fixtures erected or affixed to the land, together with all fruit, nut-bearing or ornamental trees and vines not of natural growth and not exempt from taxation ([Rev. & Tax. Code §105](#)).

#### 2414. POSSESSORY INTEREST

[Possessory interests](#) can include any taxable improvement or tax-exempt land, together with any [leasehold estates](#) for the production of gas, petroleum and other hydrocarbon substances that constitute incorporeal [hereditaments](#) or profits a prendre ([Rev. & Tax. Code §107](#)).

#### 2415. TRUST DEED PAYMENTS

This is useful for supplemental real property bills where the property was sold before the bill was issued. The next document after the deed of transfer may disclose evidence that the new owner is paying the former owner on a second or other [deed of trust](#).

**2416. THIRD-PARTY PAYMENTS**

If there is a situation where an assessee with delinquent taxes has income-generating property such as leased equipment, it is possible to collect the lease payments. To do this, seize the property, make the [lessee](#) the keeper, and have him/her make the lease payment to the tax collector instead of the [lessor](#).

## 2420-2427 Delinquent Payment Enforcement: Property Seizure and Sale – Sale Process

**2420. NOTIFICATION OF SALE**

The tax collector must give notice, either by publication or by posting in three public places, at least one week (seven days) prior to selling any seized property ([Rev. & Tax. Code §2957](#) and [M-9912](#)). The form and content of the notice are covered in [M-9900](#) et seq.

**2421. REDEMPTION**

The owner may [redeem](#) seized property at any time before it is sold ([Rev. & Tax. Code §2959](#)). The amount necessary to redeem includes:

- 1) The original tax;
- 2) The delinquency penalty;
- 3) Additional penalties;
- 4) A \$10 cost, pursuant to [Revenue and Taxation Code sections 2621](#) or [2706](#), that which may have been transferred from the secured roll;
- 5) A \$15 tax collector's seizure fee;
- 6) Mileage fees and costs of the keeper/marshal/sheriff ([Gov. Code §26726](#));
- 7) The cost of advertising (publishing or posting); and
- 8) Other costs incurred that are directly attributable to the seizure and sale procedure ([Rev. & Tax. Code §§2922\(e\), 2958](#); [Gov. Code §26720 et seq.](#)); e.g., a locksmith hired to change a lock or gain entrance to the property.

**2422. CONDUCTING SALE**

The public auction must be held at the exact time and location specified in the notice. A sufficient amount of the property shall be sold to pay the taxes, penalties and costs. It is suggested that appropriate retailers, as indicated in the telephone yellow pages, be contacted as potential bidders.

The person conducting the sale begins by reading the notice of the tax collector's seizure in full (form [SCO 9-06](#)) and then proceeds to sell the seized property at the highest bid obtainable ([Rev. & Tax. Code §2958](#)).

If the seized property consists of more than one article, the articles may be offered for sale separately or collectively, until the required amount has been received. A minimum bid may be established. This is especially appropriate when selling [encumbered](#) equipment.

**2423. COSTS OF SALE**

Costs of sale include, but are not limited to, the costs of advertising, the same mileage and keepers fees as allowed by law to the sheriff for seizing and keeping property under [attachment](#) ([Gov. Code §26720 et seq.](#)), and a fee not exceeding \$15 for each seizure, which may be charged by the tax collector making the seizure ([Rev. & Tax. Code §2958](#)).

**2424. ADMINISTRATIVE HEARING**

It is unconstitutional to sell seized property without giving the owner an administrative hearing (*T.M. Cobb Co. v. County of Los Angeles*, 128 Cal. Rptr. 655; 16 Cal. 3d 606).

The law provides no formal requirements for conducting the hearing.

**2425. SALE OF SEIZED PROPERTY**

The actual sale of property is usually unnecessary in pre-delinquency seizures where the assessee has taken the matter to court, because the assessee's bond covers the taxes and costs when the county prevails. However, when the assessee prevails in court and subsequently fails to pay the tax, his/ her assets may again be seized. The assessee is then additionally liable for all the costs the county incurred in connection with the original seizure and its aftermath ([Rev. & Tax. Code §2955](#)).

The auction should be held at the time and location specified in the public notice. Commence the sale by reading the notice of sale in full (form [SCO 9-06](#) ).

There is no legal requirement to have seized assets [appraised](#) or to obtain a minimum bid for each item. An item is sold for the highest bid obtainable. Terminate the sale when enough money has been raised to cover all taxes and costs.

**2426. MEDIUM OF PAYMENT**

Payment shall be in the medium specified in the notice and as announced prior to the beginning of the sale. If payment is made by personal check, it is suggested that the bill of sale not be [executed](#) and delivered until the check has cleared the bank.

**2427. ACCEPTANCE OF BID/BILL OF SALE**

The property is sold when the final bid is accepted by the auctioneer ([Rev. & Tax. Code §2959](#)). Opening and subsequent bids are only "received," whereas the final bid is "accepted." By coincidence, the opening and closing bids might be the same.

"A sale at public auction is completed when the auctioneer publicly announces, by the fall of the hammer, or in any other customary manner, that the item is sold." (*Young v. Patterson* (1908) 9 Cal. App. 469).

**NOTE:** In *Gentillalli v. San Diego County* (1966) 240 Cal. App. 2d 456, the court ruled that the owner had the right to redeem property up to the time of payment of the price bid for the property sold and delivery thereof to the buyer, along with a bill of sale; however, [Revenue and Taxation Code section 2959](#) provides that the right of redemption is terminated when the auctioneer accepts the final bid. A copy of the bill of sale should be retained in the records of the sale ([M-2404](#)). Form [SCO 2-08](#) is recommended.

## 2430-2432 Delinquent Payment Enforcement: Property Seizure and Sale – Post-Sale Process

**2430. UNSOLD PROPERTY**

The unsold portion of any seized property may be left at the place of sale at the risk of the owner ([Rev. & Tax. Code §2962](#)). Nevertheless, the property owner should be notified in order to safeguard or reclaim the property.

**2431. DEPOSIT OF PROCEEDS**

The portion representing taxes and penalties is apportioned like other receipts on the unsecured roll.

That portion of the costs representing keeper's fees should be credited to a trust fund, against which warrants may be drawn for paying keepers. The balance of the costs specified in [Revenue and Taxation Code section 2958](#) is deposited in the county general fund.

**2432. EXCESS PROCEEDS**

Proceeds of the sale in excess of taxes, penalties, and costs are credited to the property owner and deposited in the county treasury. If not claimed within three years after the date of sale, such proceeds revert to the county ([Rev. & Tax. Code §2961](#)).

## 2500-2507 Special Collection Procedures: Aircraft

**2500. GENERAL INFORMATION**

Taxes on aircraft are entered on the unsecured roll and collected in the same manner and at the same rate as other taxes on the unsecured roll. For details on the assessment, [levy](#), and collection of taxes on aircraft, refer to [Revenue and Taxation Code sections 5301-5392](#).

**2501. FEDERAL AVIATION ADMINISTRATION**

Federal law provides for the filing of a lien against an aircraft, pursuant to Parts 47 and 49 of the Federal Aviation Regulations (14CFR). The filing of a lien with the Federal Aviation Administration (FAA) provides notice of delinquent taxes against the individual aircraft when recorded with the Federal Aircraft Registry. The FAA will accept either a specially designed certificate of lien or any judgment.

**NOTE:** The judgment lien granted in a [summary judgment](#) is a lien against the property (in this case the aircraft). However, [Revenue and Taxation Code section 3103](#) provides: "The lien imposed by this section shall not be valid insofar as personal property is concerned as against a purchaser for value without actual knowledge of the lien." Therefore, the filing of a lien with the FAA may not guarantee that the lien attaches to the aircraft. If a purchaser of the aircraft has no actual knowledge of the lien, said purchaser may not be bound by it. However, filing of a lien with the FAA gives the tax collector a greater chance of collecting the taxes, since most persons check with the FAA for liens prior to purchasing.

**2502. REQUIREMENTS FOR FILING WITH FAA**

The general requirements for filing with the FAA are as follows:

- 1) The security instrument must be in accordance with the law of the state where the judgment may be enforced;
- 2) The judgment must describe the aircraft by make and model, manufacturer's serial number, United States registration number, or other detailed information that makes identification possible (14 CFR §49.33);
- 3) The judgment must be the original document or a duplicate original (if the tax collector wishes the original returned, he/she should submit a true copy with the original; attached to the copy must be a certification signed by the tax collector stating that the copy has been compared with the original and is a true copy (14 CFR §49.21, [M-2305](#)));
- 4) The filing must be accompanied by a filing fee (14 CFR §49.15);
- 5) The owner's name must be spelled correctly and completely (the FAA will not record a judgment if the name on the judgment does not match the name on the registration or if the assessee is no longer the registered owner of the aircraft); and
- 6) The judgment must be recorded with the Federal Aircraft Registry.

Form [SCO 2-15](#) contains the required information that is acceptable to the FAA for recording.

**2503. WHERE TO RECORD JUDGMENT**

The judgment must be recorded with the FAA at:

The Department of Transportation  
 Federal Aviation Administration  
 Federal Aircraft Registry  
 PO Box 25504  
 Oklahoma City, OK 73125

**2504. RECORDATION OF THE LIEN WITH THE FAA**

When the FAA records a lien, it sends an [acknowledgment](#) to the tax collector. Since the FAA normally does not return the original document, retain the FAA notice on file. The notice is proof of the filing and contains recording information needed to release the lien.

**NOTE:** A list of all aircraft in California is available from the FAA via the internet.

**2505. RETURN OF ORIGINAL COPY OF THE JUDGMENT**

If the tax collector wants to retain the original copy of the judgment, a [certified copy](#) must be submitted with the original to the FAA. After recordation, the copy is kept by the FAA and the original is returned to the tax collector with the date and time of recordation stamped on it. The certified copy must be a complete copy of the original and must have a signed statement attached that the copy has been compared with the original and is a true copy. The copy must be printed clearly on long-lasting paper.

**2506. RECORDATION OF THE RELEASE OF JUDGMENT**

If an unsecured property tax judgment has been recorded with the county recorder, a satisfaction of the judgment must also be recorded ([M-2380](#) and [Rev. & Tax. Code §3107](#)). (See form [SCO 2-20](#) .)

**2507. FAA MICROFICHE INFORMATION**

Several series of FAA microfiche on registered aircraft are available at no cost to state, county, and city assessment and tax collection officials.

The most usable series is the monthly registered owner listing, a numerical and alphabetical listing by registration number (N number). By retaining each March 1 edition of the listing, plus the prior month's report, the tax collector may obtain ownership verification on the appropriate lien date plus the current address information available from FAA files on any assessee.

Other series; e.g., western region, motor vehicle numbers, etc., are not recommended. To order the FAA microfiche, a written request on county letterhead should be sent to:

FAA Aeronautical Center AAC 250  
 PO Box 25082  
 Oklahoma City, OK 73125

The official requirement should be indicated on the request, such as tax collection purposes, along with the series and frequency of reports desired.

## 2510-2517 Special Collection Procedures: Vessel

**2510. GENERAL INFORMATION**

Vessel property tax, when unsecured, must be paid to renew vessel registration, which expires on December 31<sup>st</sup> of every odd-numbered year (biennial renewal fee) and must be renewed on or before midnight of that date to avoid a 50% penalty. Renewal billing notices are mailed by the Department of Motor Vehicles (DMV) approximately 60-90 days before the expiration date. A vessel must be located in California to be renewed. Vessels (boats) assessed by July 31 are delinquent August 31 at 5 p.m. Vessels assessed after July 31 become tax-delinquent at 5 p.m. or the close of business, whichever is later, on the last day of the month after the month in which they are enrolled.

## 2511. PROGRAM DEFINITION AND PERTINENT LAWS

The tax-delinquent vessel program is administered by county tax collectors in cooperation with the [DMV](#). The program is primarily aimed at reducing the high rate of unpaid property taxes attributable to unsecured boat assessments. The county tax collector may, within 30 days after the delinquency date, begin standard county delinquent property tax procedures; and the renewal of the certificate of number of, and the transfer of any title to or interest in, that vessel will be withheld by the DMV, as provided in [Vehicle Code section 9880](#), until the delinquent taxes have been paid on the vessel ([Rev. & Tax. Code §3205](#)).

If the county tax collector has given written notice of the delinquency to the assessee, pursuant to section 3205, written notice must be given, by electronic transmission or otherwise, to the DMV for recordation, pursuant to [Vehicle Code section 9880](#).

Under Vehicle Code section 9880, the DMV must not renew or transfer title to or interest in a vessel if the county tax collector has notified the DMV that taxes for the vessel are delinquent. The DMV will record the notice of delinquent taxes on the vessel. After the delinquent taxes have been paid or the delinquency is otherwise satisfied, the tax collector will issue a Vessel Tax Disposition (BOAT 120) form to the vessel owner or update the department's vessel record and remove the vessel tax hold. If a vessel is transferred, or not renewed for 26 months, the DMV must notify the county tax collector (Veh. Code § 9880).

Upon receiving a possessory lien sale application file with respect to a vessel, pursuant to subdivision (a) of [Harbors and Navigation Code section 503](#), the DMV shall, in accordance with paragraph (4) of subdivision (b) of that section, notify the applicant of any outstanding property tax lien on the vessel of which the department has been notified.

## 2512. TAX COLLECTOR'S NOTICE TO TAXPAYER

A county tax collector may provide written notice, within 30 days after tax delinquency, to all owners of property-tax-delinquent vessels that renewal of the certificate of number issued by the DMV will be withheld until the delinquent taxes for the vessel have been paid ([Rev. & Tax. Code §3205](#)). Form [SCO 2-23](#) should be used.

**NOTE:** Do not request that the DMV withhold renewal of the certificate of number unless a written notice has first been mailed to the assessee.

**NOTE:** A "blanket notice" printed on the annual county property tax bill does not constitute adequate notice of delinquent vessel taxes to the assessee. Form SCO 2-23 is recommended.

## 2513. NOTICE OF INTENT TO SUBMIT TAX-DELINQUENT VESSELS DATA

Interested tax collectors must first notify the DMV of their intention to participate in the program by preparing a Notification of Intent form.

One of the three following forms, corresponding to the method to be used when transmitting tax-delinquent-vessel information to the DMV, should be used.

- 1) Notification of Intent to Submit Tax-Delinquent Vessel Data by Hard Copy Manual Abstracting (DMV form BOAT 114 -- This form can be obtained by calling the DMV's Registration Abstract section at (916) 657-6893. It should be submitted 30 days prior to implementation.

Two additional forms are provided by DMV: (1) form BOAT 119, used for Notice of Delinquent County Vessel Tax, and (2) form BOAT 120, Vessel Tax Disposition, which informs the DMV of actions taken in the county, releasing the withholding of registration. Technical questions regarding the implementation of this program may be directed to the DMV's Registration Abstract section at (916) 657-6893.

- 2) Notification of Intent to Submit Tax-Delinquent Vessel Data Via Magnetic Tape (DMV form BOAT 115) -- This form can be obtained by calling the DMV's EDP Staff Support section at (916) 657-6739. It should be submitted 30 days prior to implementation.

- 3) Direct Access/Update (DA/U) Application -- This form can be obtained by calling the DMV's Vessel Unit, Justice and Government Liaison Branch, at (916) 657-7732.

#### **2514. TRANSMISSION OF TAX-DELINQUENT VESSEL INFORMATION TO THE DMV**

Transmission of the tax-delinquent vessel information to the DMV causes the DMV to withhold renewal of the certificates of number of those vessels.

Transmit delinquent vessel information to the DMV by the method agreed upon when the Notification of Intent was completed (see [M-2513](#)).

The DMV typically mails its renewal notices in October, but it may mail printed notices much earlier. Depending on your method of notifying the DMV, your notice of delinquent vessel taxes may not be processed and recorded on the DMV's database for several weeks. Therefore, the notice of the stop on the vessel renewal may not be printed in time to notify the assessee that a hold has been placed by the county tax collector. However, input may be transferred to the DMV at any time during the year to achieve a stop on renewal of a certificate of number, and the tax collector's notice will be recorded in the DMV database. In such cases, the DMV will include a statement on the next renewal notice to the assessee that, because of delinquent property taxes, renewal will be withheld.

#### **2515. REPORTS TO AND FROM DMV**

For input to the DMV, report the last name first. If the last name is comprised of fewer than five letters, leave a blank space between the last name and the first name. Do not leave blank spaces in names such as "Mc Hale." Eliminate apostrophes from names such as "D'Amato;" doing so is especially important if magnetic tape is used as the input method.

1. Matched Records – Matched records do not result in a report from the DMV until the stop created is deleted from its record, as specified in the DMV's deletions report.
2. Update Errors Report (unmatched records) – After input processing, unmatched records result in a DMV report entitled "Update Errors," indicating requests for withholding certificates of number that do not match the DMV records.

**NOTE:** Three fields where mismatches commonly occur are county code, vessel number, or positions of the first five letters of the name.

3. When the county code causes a mismatch, the DMV prints the county code number from its file on the update errors listing. Contact either the assessor or the tax collector of the other county for a current address or for assistance in collecting the delinquency.
4. Deletions Report (transmittal of deletions) – The DMV sends a listing of delinquent vessel stops that are being deleted when one of the following conditions occurs:
  - a. Vessel ownership is transferred (change of ownership);
  - b. Vessel registration is not renewed for 26 months. However, the stop request may be resubmitted after receiving the deletion report, identifying removal of a stop because the time period has elapsed; or
  - c. Clearance is received as evidence of payment or cancellation of the delinquent tax. The DMV removes the stop and renews the certificate of number by accepting from an assessee evidence of satisfaction of delinquent taxes (form BOAT 120).

#### **2516. REMOVAL OF STOP (WITHHELD RENEWAL)**

The tax collector must provide notice to the DMV when the delinquency has been paid or canceled. This should be done at least once a week.



Transmit vessel tax disposition data to the DMV by one of the following methods:

- 1) Hard copy (manual abstracting) – Use form BOAT 120 in all cases where hardcopy input has been the method of data input to the DMV. Use hardcopy for small volume transmittals also, such as occasional over-the-counter transactions, even though the agreed-upon transmittal method with the DMV was either magnetic tape or direct electronic access. Form BOAT 120 is a three-part form: send the original copy to the DMV, give the second part to the taxpayer, and retain the third part for your records.
- 2) Magnetic tape – If data is transmitted to the DMV by magnetic tape input, use tape to report vessel tax disposition, unless the small volume of such transactions warrants using form BOAT 120 (hardcopy).
- 3) Direct access update – Like magnetic tape input, this is one of the principal methods of input to the DMV, but it can be supplemented with form BOAT 120.

#### **2517. PAYMENTS TO DMV FOR WITHHOLDING OF VESSEL INFORMATION**

The DMV charges one dollar (\$1) for each record successfully matched when placing the stop. With hardcopy and magnetic tape procedures, there is no charge for removing a stop or for attempts to match records. The DMV bills the county monthly, normally the month after the month when the stop is requested and completed.

## 2520-2523 Special Collection Procedures: ABC Liquor License Transfer

#### **2520. PROGRAM DEFINITION AND PERTINENT LAWS**

Rule 68.2 of the Department of Alcoholic Beverage Control (ABC) states that the department may refuse to transfer any liquor license limited under Article 2 (commencing with [§23815](#)), Chapter 5, Division 9, Business and Professions Code, or any on-sale general seasonal license while delinquent city and/or county unsecured personal property taxes exist against the transferor, pursuant to [Business and Professions Code section 24049](#), provided that notice of such delinquency has been filed with the department.

**NOTE:** For transfers that occur after the [lien date](#), bills should be prepared based on estimated amounts and payment should be sought within the [escrow](#) period.

#### **2521. NOTIFICATION OF DELINQUENCY TO ABC**

Standard forms approved by ABC must be used in establishing the claim. The phraseology of the forms, modified for city or county usage, is set forth in the forms at the end of this manual. The forms may be reproduced using the tax collector's letterhead.

Submit form [SCO 2-16](#), in duplicate, to the Department of Alcoholic Beverage Control, 3927 Lennare Drive, Sacramento, California 95834, when a delinquency exists. When an application for transfer is filed, ABC returns the duplicate to the taxing agency, along with all pertinent information. This hold procedure does not violate the [bankruptcy](#) automatic stay.

#### **2522. NOTIFICATION OF ESCROW HOLDER**

Within 30 days after ABC returns the duplicate of form [SCO 2-16](#), the taxing agency must send form [SCO 2-17](#) to the escrow holder, making demand for the amount due the taxing agency. Copies of this demand are sent to the transferor, the transferee, ABC's Sacramento office, and ABC's district office.

#### **2523. RELEASE FOR LIQUOR LICENSE TRANSFER**

Form [SCO 2-18](#) in duplicate must accompany form [SCO 2-17](#). This is a notice from the escrow holder that the delinquent tax has been paid and that the withhold is to be released. Upon payment to the taxing agency, the escrow holder forwards the original of this form to ABC in Sacramento.

If the total of all agencies' tax holds exceeds the sale price, the taxing agency with the largest lien prorates the taxes for all agencies with holds. Be sure to include all bills, current and delinquent, plus an estimate for any

bills due after the lien date but not yet assessed. Be sure penalty amounts are current to the distribution date. Generally, the county holds are the smallest amounts and suffer a great reduction in pro rata situations.

## 2530-2532 Special Collection Procedures: Bulk Transfers

### 2530. NOTICE TO TAX COLLECTOR OF PENDING BULK TRANSFER

When a bulk transfer, as defined in [California Uniform Commercial Code section 6102](#), is to be made, the tax collector receives a Notice to Creditors, by [certified](#) or [registered mail](#), at least ten days prior to the time the transfer is consummated ([Cal. U. Com. Code §6107](#)). The notice is sent by the transferee (buyer) of the goods if the transfer is between private parties, or by the "auctioneer," as defined in California Uniform Commercial Code section 6108, if the transfer is to be by sale at auction ([Cal. U. Com. Code §§6105](#) and [6108](#)).

The tax collector should review Notices of Intended Sale published in newspapers and recorded with the county, as a precaution against failure of the buyer or the auctioneer to notify the tax collector.

### 2531. CONTENTS OF NOTICE

The notice must state:

- 1) That a bulk transfer is about to be made;
- 2) The name and business address of the transferor and, except in the case of a sale at auction, the transferee, and all other business names and addresses used by the transferor within the past three years so far as is known to the transferee;
- 3) The location and general description of the property to be transferred; and
- 4) The place and the date on or after which the bulk transfer is to be consummated ([Cal. U. Com. Code §6107](#)).

**NOTE:** If the Notice of Bulk Transfer is delivered during the period from January 1 to May 7, inclusive, the notice shall be accompanied by a completed business property statement with respect to property involved in the bulk sale, pursuant to [Revenue and Taxation Code section 441](#) ([Cal. U. Com. Code §6105\(3\)](#)).

### 2532. DETERMINATION OF UNPAID TAX AND FILING OF CLAIM

Upon receipt of the notice of pending bulk transfer, the tax collector should determine if there are any delinquent or due and payable unsecured property taxes against the property to be transferred. If taxes are due or delinquent, file a claim for the amount of the county's lien with the person named in the notice to receive such claims or, in the absence of such a person, to the person required to send the notice. Estimate an amount for the current year if the assessor has not enrolled the assessment. Include estimated amounts for any tax liability that may accrue if [escrow](#) extends beyond January 1. The tax collector must file this demand with the transfer agent within 12 working days of the original notice date.

**NOTE:** If the property is transferred without payment of the county's claim, the tax collector should seek the guidance of the county legal advisor as to the proper manner of enforcing payment of the claim. The procedures to follow may differ, depending on whether the transfer was between private parties or by sale at auction.

## 2540-2541 Special Collection Procedures: Mining Claim

**2540. PROOF OF PAYMENT**

The board of supervisors may require, by resolution, that any person filing an [affidavit](#) pursuant to the [Public Resources Code section 3914](#), demonstrate, prior to recordation of the affidavit, proof of payment of any unsecured tax levied against the mining claim for which the affidavit is filed along with any delinquent unsecured taxes levied against the person filing the affidavit.

**2541. ADOPTION OF RESOLUTION**

If a resolution is adopted by the board of supervisors pursuant to the [Public Resources Code section 3914](#), it may include the following provisions and any other provisions determined by the board as necessary to carry out the intent of this section:

- 1) A provision prohibiting the county recorder from accepting the [affidavit](#) for [recordation](#) without the tax collector's certification that the taxes have been paid; and
- 2) Provisions requiring that:
  - a. When taxes are paid, the tax collector issues a receipt or certificate of payment for use in certification of the affidavit;
  - b. The county recorder forwards the affidavit to the tax collector if the recorder receives an affidavit for recording by mail and the affidavit does not contain the tax collector's certification that the taxes have been paid;
  - c. If applicable, the tax collector then certifies that the taxes have been paid on the face of the affidavit and returns the document to the county recorder for recording; and,
  - d. If the taxes have not been paid, the tax collector returns the affidavit unrecorded to the filer.

## 2550-2551 Special Collection Procedures: Rubber-Tired Equipment

**2550. GENERAL INFORMATION**

In the absence of statutory directions, it is desirable to have some method of standard procedure to implement the requirements of [Revenue and Taxation Code section 994\(b\)](#) and to maintain control of the deduction.

The recommended procedure outlined below incorporates suggestions and recommendations from: the Assessment Standards Division of the State Board of Equalization, the Department of Motor Vehicles, and the Committee on County Tax Collecting Procedures. The procedure has received the committee's approval.

Although the major burden of implementing the procedure falls on the assessor and the auditor, the procedures they will follow are included in this manual so that there is a general understanding of the measures taken to ensure that the proper deduction is made.

**2551. RECOMMENDED PROCEDURE****Assessor's Duties:**

- 1) When the assessor receives a business property statement on which the assessee reports rubber-tired equipment that requires a permit (vehicle is oversize or overweight) to be moved or operated on public streets or highways, the assessor immediately mails an Application for Deduction of Vehicle License Fees from Property Tax (form [SCO 2-19](#)) to the assessee.

- 2) The assessee completes and signs the application form and files the application with either the tax collector or the assessor.
- 3) If the application is filed with the tax collector, the tax collector forwards the application to the assessor.
- 4) The assessor holds the application on file until the property reported by the applicant on his/her business property statement has been assessed.

When the assessment has been completed, the assessor enters, in Column (8) on the application form, the [assessed value](#) of each vehicle listed by the applicant that has been assessed.

If the applicant has listed vehicles that have not been assessed, the assessor enters "N.A." (not assessed) in Column (8) opposite the applicant's entry of the unassessed vehicles. After completing Column (8), the assessor signs the certification at the bottom of the application and forwards the application to the auditor.

- 5) The auditor determines the net tax due after deduction of the vehicle license fees from the property tax.

To arrive at the net tax due, the auditor determines the property tax, the vehicle license fee paid, and the deduction for each assessed vehicle. The property tax, license fee, tax deduction, and net tax due may be determined as follows.

6) Property Tax

- a. The applicable tax rate must be entered in Column (9), opposite each assessed vehicle.
- b. The tax applicable to each assessed vehicle must be computed and the tax entered in Column (10).

7) License Fee

There are two procedures for determining the license fee paid on vehicles listed on the application. The procedure used depends on whether the vehicle has a normal passenger license or a commercial license.

The type of license is determined from the license numbers shown in Column (2) on the application.

With the exception of personalized plates, passenger vehicle license identification has three or four numbers and three alphabetical letters. For example:

"123 ABC," "ABC 123" or "1CES938"

With the exception of personalized plates, commercial vehicle license identification has one alphabetical letter and five numbers. For example:

"Z 12345" or "12345 Z"

- a. Vehicles with Passenger License:
  - i. Enter "\$22.00" in Column (11) on the application.
  - ii. Subtract the amount in Column (11) from the amount in Column (6). The result is the amount of the vehicle license fee.
  - iii. Enter the amount of the vehicle license fee in Column (13).
- b. Vehicles with Commercial License:

- i. Enter "\$22.00" in Column (11) on the application.
  - ii. Determine the weight fee by comparing the information provided by the applicant in Columns (3), (4), (5), and (7) of the application with a Schedule of Weight Fee. A copy of the schedule may be obtained from DMV.
  - iii. Subtract the amounts in Columns (11) and (12) from the amount in Column (6). The result is the amount of the vehicle license fee.
  - iv. Enter the amount of the vehicle license fee in Column (13).
- 8) Tax Deduction

The amount of tax deduction allowed per vehicle is the amount of the vehicle license fee paid on the vehicle, EXCEPT that the tax deduction per vehicle shall in no case be greater than the tax applicable to the vehicle. Therefore, enter the lesser of the amounts shown in Columns (10) and (13) in Column (14).

9) Net Tax Due

- a. Enter the amount of tax due, as shown on the applicant's tax bill, in Box (15) at the bottom of the application form.
- b. Total and enter the amounts in Column (14) in Box (16) at the bottom of the application.
- c. Subtract the amount in Box (16) from the amount in Box (15); enter the result in Box (17).

When the net tax due has been determined, the auditor corrects the tax roll to reflect the deduction and credits the tax collector with the amount deducted

The auditor then signs the certification at the bottom of the application and forwards the application to the tax collector.

10) Tax Collector's Duties:

- i. After receiving the completed application signed by the applicant, the assessor, and the auditor, the tax collector collects the net tax due.

## 2560-2568 Special Collection Procedures: Racehorses

### 2560. GENERAL PROVISIONS

In 1971, the Legislature found that subjecting ownership of racehorses to the general property tax resulted in a serious lack of uniformity between counties in assessment practices and taxation of racehorses. In enacting the new taxation scheme, the Legislature intended to establish a more equitable method of taxing racehorses and to provide incentives for owners to maintain their horses within the state ([Rev. & Tax. Code §5701](#)).

The tax imposed is on the privilege of breeding, training, caring for, or racing a racehorse and is in lieu of any property tax ([Rev. & Tax. Code §5721](#)).

### 2561. DEFINITION

"Racehorse" means each live horse, including a stallion, mare, gelding, ridgeling, colt, filly, or foal, that is or will be eligible to participate in or produce foals that will be eligible to participate in a horseracing contest in California wherein parimutuel racing is permitted under rules and regulations prescribed by the California Horse Racing Board. (See [Rev. & Tax. Code §5703](#) for complete definition.)

**2562. ANNUAL TAX**

The annual tax is imposed on and shall be paid by the owner on the basis shown in [Revenue and Taxation Code section 5722](#).

**2562.1 EXEMPTION**

Foals born to a racehorse mare during the current calendar year are exempt from the tax imposed by this part or by any other part of the Revenue and Taxation Code ([Rev. & Tax. Code §5741](#)).

**2562.2 COLLECTION**

The tax is determined as of 12:01 am on January 1 of the calendar year for which it is imposed, and it is immediately due and payable to the tax collector of the county in which the racehorse is domiciled ([Rev. & Tax. Code §5761](#)). The owner's declaration of domicile dictates the county of taxation. Temporary training or racing in another county does not affect the place of permanent domicile.

**2562.3 DELINQUENCY**

The tax imposed becomes delinquent at 5 pm on February 15 of the calendar year for which it is imposed ([Rev. & Tax. Code §5762](#)).

A delinquent penalty of six percent attaches at 5 pm on the day any tax imposed by this part becomes delinquent. An additional penalty of one percent attaches to the tax on the first day of the first calendar month commencing after the tax becomes delinquent and on the first day of each subsequent calendar month until the delinquent tax and penalties have been paid in full ([Rev. & Tax. Code §5763](#)).

**2562.4 JEOPARDY DETERMINATION**

If it is determined that payment of the tax will be jeopardized by delay, a computation should be made of the tax amount to be collected. The amount so determined shall be immediately due and payable. The tax due may be collected under such jeopardy determinations by any legal means, including the procedures established pursuant to Chapter 3.3 (commencing with [Rev. & Tax. Code §2851](#)), Chapter 4 (commencing with [Rev. & Tax. Code §2901](#)), Chapter 5 (commencing with [Rev. & Tax. Code §3002](#)), and Chapter 6 (commencing with [Rev. & Tax. Code §3101](#)) of Part 5 of Division 1 ([Rev. & Tax. Code §5764](#)).

**2562.5 STATUTE OF LIMITATION**

The tax described in this part may be imposed at any time within five years after the tax would have otherwise become due, and the penalties shall date from the time described in [Revenue and Taxation Code section 5763](#) ([Rev. & Tax. Code §5766](#)).

**2562.6 PENALTIES**

If any person required by [Revenue and Taxation Code section 5782](#) to file a report fails to file by the time specified, a penalty equal to ten percent of the tax and the penalties provided by [Revenue and Taxation Code section 5763](#) may be imposed. If any person required to file the report by [Revenue and Taxation Code section 5782](#) files any false or fraudulent report with intent to defeat or evade any tax due under this part, a penalty equal to 25 percent of the tax and the penalties provided by [Revenue and Taxation Code section 5763](#) may also be imposed ([Rev. & Tax. Code §5765](#)).

**2563. AUDITS BY ASSESSOR**

The assessor may perform audits of the books and records of any racehorse owner who is subject to the tax imposed by this part, pursuant to [Revenue and Taxation Code section 5765](#).

**2564. EXAMINATION OF BUSINESS RECORDS**

Upon the request of the assessor, an owner of racehorses of a type subject to the tax imposed by this part shall make available at his/her principal place of business, principal location, or principal address in California or at any place mutually agreeable to the assessor and the owner, a true copy of business records relevant to the number and type of racehorses located in any county of the state during any taxable period and the number of days spent in each county during that period. Records referred to in this section shall be retained by the owner

for a period of five years from the date that any tax to which they relate becomes due ([Rev. & Tax. Code §5768](#)).

#### **2565. ADMINISTRATION**

The State Board of Equalization makes rules and regulations and prepares forms necessary to carry out the intent and purposes of this part ([Rev. & Tax. Code §5781](#)).

#### **2566. REPORTING TAX DUE**

On forms provided through the office of the assessor, the owner of a racehorse, either in person, through his/her representative, or by mail, shall report the tax due. The required reports may be filed with the tax collector of the county in which the racehorse is domiciled.

The reports shall be filed on or before 5 pm on the day the tax due becomes delinquent ([Rev. & Tax. Code §5782](#)).

#### **2567. INTER-COUNTY COLLECTION REPORTING**

The auditor of the county in which a report is filed shall transfer any taxes paid pursuant to this part that belong to another county as shown on the report. A copy of the report should be included, in order that the auditor of any county receiving transferred funds can allocate them in the manner provided for in [Revenue and Taxation Code section 5790](#). See [M-2562.2](#) regarding the proper county of domicile. Funds do not have to be transferred to another county based on racehorse boarding records of the county.

The tax imposed is determined as of 12:01 am on January 1 of the year for which it is imposed, and it is immediately due and payable to the tax collector of the county in which the racehorse is domiciled ([Rev. & Tax. Code §5761](#)).

#### **2568. DISTRIBUTION OF PROCEEDS**

All proceeds derived from the tax, interest, and penalties imposed by this part are allocated by the auditor, as promptly as is feasible, in the following manner ([Rev. & Tax. Code §5790](#)).

- 1) If the domicile of the racehorse was located within a city and any school district, the tax proceeds from such racehorse shall be distributed one-third to the city, one-third to the school district, and one-third to the county.
- 2) If the domicile of the racehorse was located outside of any city but within one or more school districts, the tax proceeds from such racehorse shall be distributed one-half to the school district(s) and one-half to the county.
- 3) If the domicile of the racehorse was located in both an elementary school district and a high school district, the tax proceeds allocable to school districts shall be divided equally between the elementary and the high school districts to the exclusion of all other school districts.

**NOTE:** The details of the allocation are supplied by the county auditor and approved by the board of supervisors. The details must fairly carry out the purposes of this section.

## **2600-2603 Reporting and Distribution: General Information**

#### **2600. REPORT OF COLLECTION**

The tax collector shall account to the auditor for all money collected during the preceding reporting period. This report is due not less than once every 12 months and on dates approved by the auditor. On the same day, the tax collector shall file with the auditor a statement under oath, showing that all money collected has been paid as required by law.

Not less than once every 12 months 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 transactions and receipts since the last settlement, including the amount collected for each fund or district extended on the roll ([Rev. & Tax. Code §2616](#)).

**NOTE:** In counties using a mechanized management-reporting system in reporting information for a uniform four-week period, the board of supervisors, by [ordinance](#), may provide for the duties required by [Revenue and Taxation Code section 2616](#) to be performed in a corresponding uniform four-week period.

#### **2601. DISTRIBUTION OF CURRENT TAXES**

Taxes, including all taxes and [assessments](#) charged on the unsecured roll ([Rev. & Tax. Code §4655](#)), shall be distributed to each fund ([Rev. & Tax. Code §4651](#)) on the basis of the tax rate established for the [fiscal year](#) preceding that in which distribution is made and in the same proportion that the tax rate for each fund bears to the total tax rate applicable ([Rev. & Tax. Code §4655.2](#)).

#### **2602. DISTRIBUTION OF DELINQUENT UNSECURED TAXES**

The term "taxes" includes all taxes and [assessments](#) charged on either the delinquent unsecured roll or the [abstract list](#) ([Rev. & Tax. Code §4658](#)). Taxes are distributed to each fund ([Rev. & Tax. Code §4651](#)) on the basis of the [tax rate](#) established for the preceding [fiscal year](#) and in the same proportion that the tax rate for each fund bears to the total tax rate applicable ([Rev. & Tax. Code §4658.2](#)).

#### **2603. DISTRIBUTION OF PENALTIES AND LEGAL INTEREST**

Amounts paid as delinquent penalties (the delinquent penalty of ten percent provided for in [Revenue and Taxation Code section 2922\(a\)](#)) and the additional penalty provided for in [Revenue and Taxation Code section 2922\(d\)](#)) or accrued legal interest paid on judgments for the recovery of unpaid taxes rendered by the courts of this state shall be distributed to the county general fund ([Rev. & Tax. Code §4658.4](#)).

## 2610-2612 Reporting and Distribution: Special Circumstances

#### **2610. CALIFORNIA INTERAGENCY OFFSET PROGRAM**

When a judgment has been recorded for delinquent unsecured property taxes, the State Controller may offset, from a potential state refund to the taxpayer, any amount that the person owes a county for delinquent taxes.

**NOTE:** This procedure cannot be used if an automatic stay in a [bankruptcy](#) proceeding is in effect.

The Controller deducts and retains from any amount offset in favor of a county an amount sufficient to reimburse the Controller and the Franchise Tax Board for the administrative costs of processing the offset payment ([Gov. Code §12419.8](#)).

Upon the tax collector's request for taxpayer identification numbers required by the Controller's procedures, the assessor shall immediately notify the appropriate assessee, by registered or [certified mail](#), that the request has been made for the purpose of intercepting refunds from the state government due the taxpayer, in order to offset the delinquent property tax obligation.

The letter shall state that, if the assessee does not pay the outstanding tax amount to the tax collector within 20 days, the assessor will provide the required taxpayer identification number to the tax collector.

The assessor shall not be named in any action that may be brought as a result of compliance with this provision ([Gov. Code §12419.8](#)).

#### **2611. IN-LIEU TAXES PAID BY PUBLIC RETIREMENT SYSTEMS**

[Government Code section 7510](#) requires public retirement systems to reimburse cities and counties in an amount equal to the difference between the taxes that would have accrued and the taxes due for [possessory](#)



[interests](#) in the acquired property, for revenue loss resulting from their acquisition of real property. If a public retirement system acquires property within its boundaries--for example, if PERS or the State Teachers' Retirement System purchases real property anywhere in California-- this property is exempt from taxation except for private possessory interests.

[Government Code section 7510](#) does not apply to local public retirement systems that are already authorized by statute or [ordinance](#) to invest in real property.

The difference between the current market value tax and the possessory interest tax is paid as an annual in-lieu fee. The county is thereby guaranteed that the acquisition of real property within the county by a public retirement system will not cause a decline in tax revenue below the level that would have prevailed had the acquiring person or entity been taxable.

If the public retirement system acquires real property outside its boundaries, the property will not be removed from the local secured assessment roll.

The law is unclear as to billing and collection techniques and includes no delinquency provisions. Presumably, the in-lieu fee is computed and billed by the auditor once the assessment has been made. Should no payment be received, apparently the county's only recourse is court [action](#). See State Board of Equalization Letter No. 83-3 for more information.

## **2612. CALIFORNIA DEPARTMENT OF TRANSPORTATION (CalTrans) - POSSESSORY INTEREST**

For some years, CalTrans has been required to pay rent to counties in compensation for property tax revenues lost on lands held for future highway needs. Twenty-four percent of rental revenues received by the state on such lands has been paid to the counties.

In 1983, the Legislature amended [Streets and Highways Code section 104.13](#) of Division 1, Article 3. This statute requires CalTrans to pay [possessory interest](#) taxes to each county for leased (rental) property held for future highway needs. Formerly, the county billed individual [lessees](#) for possessory interest taxes. Now, each bill is transmitted directly to CalTrans. The department must collect enough extra "rent" from each lessee to cover the tax. The rental agreement between CalTrans and the holder of the possessory interest created by the lease must state that the department will pay all possessory interest taxes arising from the lease and that the rent charged reflects such extra cost.

CalTrans returns bill payment stubs to assist in reconciling the accounts. The 24-percent in-lieu reimbursement is calculated on gross revenue collected from leases before deduction of administrative expenses.

The tax collector should flag [possessory interest](#) assessments subject to [Streets and Highways Code section 104.13](#) so they will not become subject to regular lien-perfection techniques. Perhaps the best way to handle such accounts is as manual exceptions to the computerized system. Although no special distribution of these possessory interest revenues is required, delinquency charges should not be applied nor should the revenues be shown as reducing delinquent charges. Therefore, it seems desirable to establish a separate subaccount for these possessory interest tax billings.

Note that a provision of [Streets and Highways Code section 104.13](#) instructs CalTrans to make payment to the county "not later than the first day of November following the close of any fiscal year."