

May 4, 2010

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Assistant County Executive Officer

**Paul Derse**  
Chief Financial Officer

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Human Resources Director

Board of Supervisors  
County of Ventura  
800 South Victoria Avenue  
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**Subject:** Receive and File Report Back on Options to Address Impacts of Statutory Timing Requirements and Payment of Property Tax Bills.

**Recommendation:** Receive and file report back requested by the Board on options on how to address impacts of statutory timing requirements and payment of property tax bills.

**Fiscal Impact:** N/A

**Background:** On November 24, 2009 your Board requested County Counsel and the CEO's office to work together with the Treasurer-Tax Collector and Assessor to report back with potential solutions to address the impacts of statutory requirements affecting payment of property tax bills resulting from the purchase of homes after the rapid decline in property values. The request focused upon first-time homebuyers and the ability for these individuals to make partial payments on pending tax bills at the time of purchase, allowing for the rapid reduction in property values not reflected in the roll until after the sale has been processed and the roll updated, which may result in a refund sometime after the purchase.

Your Board requested staff to examine new and existing statutes to identify any such provision which allowed for the acceptance of partial payment of property tax owed by first-time homebuyers. In addition, your Board requested staff to carefully consider the unintended consequences resulting from changes to the current process.

**Discussion:** Our examination focused upon two issues, the time component involved in the reassessment of property values after a sale and the acceptance of partial payments of property tax bills with emphasis on first-time homebuyers. After review of the appropriate Revenue and Taxation Code sections and discussions with related Departments, our findings are as follows.

### **Summary of Findings**

To achieve reduction in time required to reassess property would require one of the following:

- Engage in significant reconfiguration of existing 30+ year old Property Tax Computer System to enable the processing of dual roll.
- Manually process dual roll resulting in increased staffing/costs with potential for increased errors.
- Purchase/Develop new Property Tax Computer System – estimated \$25 million.

Authority for acceptance of partial payments:

- Whereas the acceptance of partial payments may be allowable, limiting acceptance of partial payments to a defined group could be look upon as unfair and subject to potential legal challenge.
- Acceptance of partial payments does not relieve taxpayers from being charged penalties and interest on unpaid amounts.
- Cancellation of penalties and interest would not be permissible.
- R&T Code does not provide guidance on implementation of a partial payment program.

#### **Time Component in Reassessment of Property Value – Procedural Change**

Approximately five thousand supplemental reassessments, which prorate tax increases and decreases due to changes in assessed property value, are processed annually. Under current procedures supplemental reassessments for events occurring between Jan 1<sup>st</sup> and Jun 30<sup>th</sup>, are not processed until after the close of the Annual Roll on July 1<sup>st</sup>. This is due to limitations in the current property tax computer system's ability to process a dual roll, that is, both the roll being prepared for next year and supplemental reassessments for the current year.

The processing of a dual roll could be accomplished manually. However, manual processing would require an increase in staff and appropriations. The Assessor, Treasurer-Tax Collector, and Auditor-Controller all work together to achieve proper billing and collection of property taxes. Therefore, any staff increase in one department would require a corresponding staffing increase in the other two departments, adding significant costs to the process. In addition, manual processing increases exposure to errors and the resulting inaccuracy of the Property Roll.

The most efficient and effective method to shorten the period of time for supplemental reassessments occurring between Jan 1<sup>st</sup> and Jun 30<sup>th</sup> is to have the capability within the computer system. As such there are two alternatives to updating the system.

1. Reconfiguration of the existing Property Tax System to handle the processing of a dual roll. The cost/time requirements as well as the adjustability of the 30+ year old Property Tax System are unknown at this time.

2. Purchase/Develop a new Property Tax System. A requirements analysis for this potential new system has been performed and included the ability to process a dual roll. Now that the requirements analysis has been completed, the Assessor, Treasurer-Tax Collector, Auditor-Controller, Information Technology Services Department, and the CEO are in the process of releasing a Request for Proposal (RFP) for a new Property Tax System. It is expected that the RFP will refine our \$25 million estimate of the cost associated with a new system and provide further analysis on the costs and potential advantages and shortcomings of reconfiguring the existing Property Tax System.

It is expected a new system would shorten the time period in which reassessments for increases or decreases in property values due to sales activity will be enrolled and corresponding bills or refunds are mailed.

#### **Authority of County in Acceptance of Partial Payments and Potential Issues**

Generally, according to the Revenue and Taxation Code ( R&T Code), the Treasurer-Tax Collector may only accept full payment of property taxes owing for a given tax year. However, in certain circumstances the R&T Code authorizes the acceptance of a partial payment. Specifically, R&T Code sections 2636 and 2708 state:

“Notwithstanding any other provision of law, in the case of a deficiency in the payment of taxes due and payable pursuant to this chapter, the tax collector, with the approval of the board of supervisors, may accept such partial payment from the taxpayer. Such partial payments are to be applied first to all penalties, interest and costs with the balance being applied to the taxes due. The difference between the amount paid by the taxpayer and the amount due shall be treated as a delinquent tax in the same manner as any other delinquent tax.”

Therefore, partial payments are only allowed if the Board authorizes the Treasurer-Tax Collector to accept partial payment. It appears the Treasurer-Tax Collector can initiate the request for partial payment to the Board with the Board having veto power over the Treasurer-Tax Collector’s power to accept partial payments. If the Board initiates the acceptance of partial payments, such action by the Board could be viewed as giving the Tax Collector the discretion to accept or not accept partial payments.

Your Board has indicated that if it authorizes partial tax payments, the authorization would be limited to only first-time homebuyers whose anticipated new base-year value in the property will be less than the seller’s assessed (enrolled) value. Limiting acceptance of partial payments to a defined group of taxpayers, such as first-time homebuyers, could be looked upon as unfair treatment of taxpayers. Furthermore, it is not clear whether the Code allows preferential treatment of certain taxpayers. There is

no law that directly addresses this issue. Thus, at this point, it cannot be predicted how a court would rule, just that there is potential for legal challenge on this issue.

### **Penalties Associated with Partial Payments**

The acceptance of partial payments does not relieve the taxpayer from being charged penalties and interest on unpaid amounts. The penalties (10%) and interest (18% after the first 12 months) the taxpayer must pay on the unpaid taxes will likely offset much or all of the benefit of making a partial payment. Since partial payments are to be applied first to all penalties, interest and costs with the balance being applied to the taxes due, making a partial payment and accruing penalties and interest on the balance may be financially disadvantageous for taxpayers. Furthermore, penalties and interest are due on the entire amount of tax liability unpaid at the time of sale. Therefore, the amount of penalties and interest owed will not be reduced, even if a lower property value (tax liability) is determined based upon updating of the roll.

The Treasurer-Tax Collector is authorized to cancel penalties and interest in some cases. R&T Code section 4985.2(a) provides that any penalty, costs, or other charges resulting from tax delinquency may be canceled by the auditor or the tax collector upon a finding that "Failure to make a timely payment is due to reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect".

Pursuant to this provision, in 1977 the Board adopted a resolution defining circumstances that would qualify as "reasonable cause" justifying cancellation of penalties. Excusable circumstances include a disability preventing timely payment, death of the taxpayer, and disasters. The resolution specifically provides, however, that "lack of funds" is not excusable, as reflected in the Revenue and Taxation Code. To revise the resolution, providing for additional excusable circumstances not consistent with the provisions in the Revenue and Taxation Code, would potentially expose the County to lawsuits from both taxpayers and other governmental bodies that would be difficult to defend.

Based on the above, cancellation of penalties and interest would not be permissible in a partial payment scenario. The failure to make a full payment of taxes owed would not be due to reasonable cause or circumstances beyond the taxpayer's control, but rather the taxpayer's conscious choice. The partial payment program would merely present the taxpayer the option of making a partial payment and paying penalties. If the taxpayer does not wish to accrue the penalties, the taxpayer could simply pay the entire tax owing and, if applicable, obtain a refund when the supplemental assessments are processed.

In addition the prior owner's higher assessment would not qualify as a circumstance beyond the taxpayer's control. Payment of taxes is an ordinary cost of escrow and a seller's tax liability should be known at closing.

### **Implementation**

The R&T Code does not provide guidance on implementation of a partial payment program but several steps will be necessary. First, a resolution authorizing acceptance of partial payments would have to be drafted and adopted. The resolution should be drafted carefully to specifically identify the scope of the partial payment program. Then an application form and procedure to identify qualified applicants would have to be adopted. Finally, a procedure would have to be adopted for estimating the amount of the partial payment to be made by the qualified applicant.

Qualified applicants would need to be made aware of the financial risks of electing to make partial payments. As noted above, because penalties and interest will be accruing, the overall cost to the taxpayer of electing to make a partial payment may exceed the cost of paying the taxes in full and awaiting the refund. Additionally, the timing and amount of an anticipated refund (if any) pursuant to a "negative" supplemental assessment will be unknown at the time the taxpayer elects to make a partial payment. Depending on these factors, the penalties and interest may exceed the amount of the refund. Therefore, the taxpayers should be advised of these financial ramifications to avoid any misunderstanding that cannot later be undone.

### **Summary**

Current procedures have been established to ensure fair and equal treatment of all property owners, while adhering to relevant statutes. These procedures take into account both the ups and downs in the housing market while providing the best possible outcome for those involved in every situation. Changing the procedure to offset one swing in the market may have an effect on the opposite swing in the market, thus requiring additional procedural changes at some later date. Our recommendation, at this time, would be maintain existing procedures with an emphasis toward acquiring a new Property Tax System.

This letter has been reviewed by the Assessor, Auditor-Controller, Treasurer-Tax Collector and County Counsel. If you have any questions, please contact Jeff Burgh at 477-1994.

Sincerely,



 Marty Robinson  
County Executive Officer