

**Kern County Policy Statement For Cancellation of Taxes,  
Penalties and Costs and for the Refund of Taxes  
(Revised February 2, 2016)**

**STATUTORY BACKGROUND AUTHORIZING RELIEF**

The provisions of Part 9, Chapters 1 through 5, commencing with Section 4801 of the California Revenue & Taxation Code (Corrections, Cancellations, and Refunds), authorize a county, through the board of supervisors, the assessor, auditor and tax collector, to make certain modifications, additions, deletions and corrections to the county's property tax rolls. California Revenue & Taxation Code section 4804 authorizes the county board of supervisors to delegate to any county officer, or group of officers acting as a committee, any or all duties of the board of supervisors dealing with corrections, cancellations, and refunds of taxes, so long as those duties are not assigned by the California Constitution.

California Revenue & Taxation Code section 2610.5 authorizes the county board of supervisors to delegate the review of the cancellation of tax penalties, interest and costs.

California Revenue & Taxation Code sections 3731 and 3731.1 authorize a county board of supervisors to delegate its authority to approve the rescission of the property tax sale of parcels that should not have been sold and the refund of the purchase price and recording costs associated with such rescinded sales.

California Revenue & Taxation Code section 4804 authorizes a county board of supervisors to delegate to the county administrative officer, or the county legal advisor, or the county auditor, or any other county officer, or a specified group of any county officers acting as a committee, to perform in its behalf any act required or authorized to be performed by the board of supervisors under this sections 4801 through 5170 (Part 9), if such act is not imposed upon the board of supervisors by the Constitution.

The Kern County Board of Supervisors has delegated such authority to the Auditor-Controller-County Clerk and Treasurer-Tax Collector since 1981 and vested these county officers with the power to develop and amend written policies for the exercise of such authority by means of Resolution 2003-316, adopted on August 5, 2003 and amended February 2, 2016 to add the Assessor-Recorder.

This policy is adopted to provide an administrative and procedural framework for the exercise of these powers. It is intended to provide guidance as to the application of the appropriate statutes not only to taxpayers, but to all county officers and employees

responsible for property tax collection and tax accounting. It has been reviewed and approved by the Assessor-Recorder, the Auditor-Controller-County Clerk, and the Treasurer-Tax Collector.

The Assessor-Recorder, Auditor-Controller-County Clerk, and the Treasurer-Tax Collector establish these uniform guidelines for their respective departments and for the special committees established here, within the legal mandates outlined in Board resolutions and the applicable statutes.

This policy is intended to facilitate the orderly and fair processing of:

(a) Taxpayer requests for cancellation of penalties, interest and costs imposed for failure to make timely payment of taxes (California Revenue & Taxation Code § 4985.2);

(b) City and other governmental entity requests for the cancellation of defaulted property taxes, tax penalties and tax collection costs due to the County as liens against real property after the city's or other governmental entity's foreclosure upon a parcel or the acquisition of a parcel by another governmental entity for the default of bond assessments or special taxes (California Revenue & Taxation Code section § 4986.3); and

(c) Taxpayer and/or property owner claims for the refund of taxes and tax penalties claimed under the provisions of California Revenue & Taxation Code section 5096.

This policy does not affect, modify or otherwise limit the exercise of other discretionary authority vested in these county officers by statute. Except as otherwise specifically provided here, this policy does not alter, add to, or detract from any county officer's ministerial duties imposed by statute, local ordinance, or local resolution.

## STATUTORY RESPONSIBILITIES OF COUNTY OFFICERS

The statutory duties of county officers with respect to the assessment of taxable real property, the determination of taxes and assessments due on such property and the billing and collection of the taxes and assessments due on such property is summarily illustrated by the block below.

ASSESSOR/RECORDER	AUDITOR/CONTROLLER/COUNTY CLERK	TREASURER-TAX COLLECTOR
Determines Owner as of Lien Date	Determines Tax Rate	Mails All Tax Bills
Determines Mailing Address for Tax Bills	Extends Tax Roll	Responsible for Collection of Taxes
Determines Location of Property	Charges Tax Collector with the Collection of Taxes	Conducts Sales of Tax Defaulted Properties
Determines Value of Property	Allocates property taxes to the County, cities, special districts, and schools	Cancels/rescinds Tax Sales Due to Error, upon Board of Supervisor's approval

This policy addresses the powers delegated to these officers when taxes have been defaulted.

## GENERAL OVERVIEW

### The California Property Tax System

Property taxes become a lien against the property taxed on the first day of January preceding the tax year (July 1-June 30) for which the taxes are due. (California Revenue & Taxation Code § 2192) Taxes imposed and secured by real property are entitled to super-priority against all other liens, encumbrances or charges (California Revenue & Taxation Code § 2192.1) and the penalties and costs imposed for default in the payment of such taxes must be paid to redeem such property from tax defaulted status. (California Revenue & Taxation Code § 4102)

The assessment of the *ad valorem* taxable value of all locally assessable taxable property is enrolled by the Assessor-Recorder on or before July 1 of the tax year. (California Revenue & Taxation Code §§ 601-616) The Assessor-Recorder then certifies the tax roll to the Auditor. (California Revenue & Taxation Code § 616) The assessment of all unitary property and all non-unitary property within the assessment jurisdiction of the State is performed by the California State Board of Equalization and the determined taxable value of such state assessed property is provided to the County Auditor on or before July 31 of the tax year (California Revenue & Taxation Code § 756).

The Auditor-Controller-County Clerk is charged with responsibility to total the assessed value of locally assessed property on the tax roll (California Revenue & Taxation Code § 1646), calculate the amount of taxes and assessments due on each tax parcel (California Revenue & Taxation Code § 2152), and to transmit this tax roll information to the Treasurer-Tax Collector for preparation and issuance of tax bills for real property. (California Revenue & Taxation Code §§ 2601)

The Treasurer-Tax Collector is required to issue and mail (or electronically transmit) tax bills for taxes on real property to the property owners of record at their address of record by November 1 of each year. (California Revenue & Taxation Code §2610.5) The Treasurer-Tax Collector is required to issue and mail (or electronically transmit) tax bills for taxes on unsecured property to the property owners of record at their address of record by July 31. (California Revenue & Taxation Code § 2910.1) The Tax Collector is then responsible for collecting the taxes and reporting collections to the Auditor. (California Revenue & Taxation Code § 2616)

## INTEREST, PENALTIES, COSTS AND COLLECTIONS

### Secured Taxes

Secured taxes are due and payable in two installments, with the first installment due on November 1 but payable without penalty until December 10 or the following business day if the 10<sup>th</sup> falls on a weekend, of the tax year assessed. The second installment is due the following February 1 but payable without penalty until April 10, or the following business day if the 10<sup>th</sup> falls on a weekend, of the following calendar year. (California Revenue & Taxation Code §§ 2605-2606, 2616-2617)

Secured property taxes not timely paid are subject to a delinquency penalty after the close of business on the December 10 and April 10 due dates. This penalty is equal to 10% of the amount of the property tax due. (California Revenue & Taxation Code §§ 2617 and 2618) California Revenue & Taxation Code section 2621 also imposes an additional \$10 charge for costs after the second installment becomes delinquent.

On July 1 of the calendar year following the lien date, the property taxed is subject to a declaration of tax default if either or both of the installments remain unpaid. (California Revenue & Taxation Code §§ 3436-3437).

After the declaration of default, penalties accrue at the rate of 1-½% per month until paid. The taxpayer must also pay all state and county costs associated with the delinquency. (California Revenue & Taxation Code §§ 2621 and 4103)

The defaulted property becomes subject to sale five years after the date of default unless redeemed by the payment of the total amount of all prior year defaulted taxes, all delinquent penalties and costs, redemption penalties (calculated at 1.5% per month on the amount of defaulted taxes), and fees. (California Revenue & Taxation Code §§ 4102-4103)

### Unsecured Taxes

Unsecured taxes which are billed by July 31 are last payable without delinquency on August 31. Any taxes added to the unsecured roll after July 31 are last payable without delinquency on the last day of the month following the month succeeding the month of enrollment (California Revenue & Taxation Code § 2922[b]).

Unsecured property taxes not timely paid are also subject to the 10% delinquency penalty after the close of business on the due date and are subject to a 1-½% per month penalty on the last day of the second month after the 10% penalty attached. In

addition to the delinquent taxes and penalties, the Treasurer-Tax Collector may add the actual costs of collection. (California Revenue & Taxation Code § 2622[d] and [e])

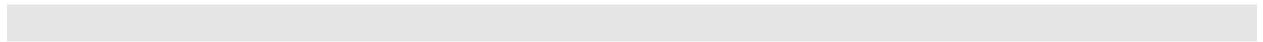
Property subject to defaulted unsecured taxes is subject to:

(a) Seizure and sale for the taxes due (California Revenue & Taxation Code §§ 2951 et seq.); or,

(b) The recording of a judgment lien secured by all real property in the county for the unpaid taxes and penalties due (California Revenue & Taxation Code §§ 2191.3 and 2191.4); or,

(c) The entry of a summary judgment for the amount of defaulted taxes (California Revenue & Taxation Code §§ 3101 et seq.); or,

(d) Suit for taxes. (California Revenue & Taxation Code §§ 3002 et seq.)



## **WAIVER OF TAX PENALTIES, INTEREST AND ASSOCIATED COSTS**

### **If Taxes Were Inadvertently Underpaid**

California Revenue & Taxation Code section 4985.2(b)

If the property is subject to delinquency penalties due to the inadvertent payment of the incorrect amount of a tax (which was timely submitted), that penalty may be waived if the Auditor and/or Tax Collector determines the erroneous payment was inadvertent and if the correct amount of the tax is paid within ten (10) days of giving the taxpayer notice of the error (California Revenue & Taxation Code § 4985.2[b]).

The taxpayer must pay the proper amount of taxes due within 10 days of notification by the Treasurer-Tax Collector. The Treasurer-Tax Collector will administratively resolve all tax delinquency penalty relief applications arising from the inadvertent underpayment of a tax installment by a taxpayer under California Revenue & Taxation Code section 4985.2(b).

The Auditor-Controller-County Clerk shall rely on and accept the Treasurer-Tax Collector's determinations of tax penalty relief in connection with such payments.

If the Treasurer-Tax Collector determines that the submission of the erroneous payment is not inadvertent, he will make a written summary factual finding of the property owner-taxpayer's ineligibility for relief and retain a copy of these findings in the Treasurer-Tax Collector's official records.

### **Court Orders Reducing A Tax Obligation**

California Revenue & Taxation Code section 4985.2(c)

If either a federal or state court has issued an order which reduces taxes, interest, penalties and or costs due, no application for waiver is necessary. The County will act upon the order when it's served upon the County.

The Treasurer-Tax Collector shall receive and review any judgment or order issued by any state or federal court canceling taxes, interest, and penalties that is served on the Clerk of the Board of Supervisors. After consultation with County Counsel, the Treasurer-Tax Collector may forward the judgment or order with a written penalty cancellation request to the Auditor-Controller-County Clerk for correction of the tax roll.

If, after consulting with County Counsel, the Treasurer-Tax Collector has reason to question the validity of any such Court order, the Treasurer-Tax Collector may defer complying with any such order pending the pursuit and exhaustion of any administrative or judicial means to challenge the questioned order or judgment before a Court of competent jurisdiction.

The Treasurer-Tax Collector's decision to comply with a received Court order for the cancellation of penalties or to seek further judicial review shall be final for all administrative purposes.

**If Taxes Were Not Paid on Time**

California Revenue & Taxation Code sections 2610.5, 2910.1, and 4985.2(a)

If a property is subject to the 10 percent penalty for late payment of a property tax or the 1-1/2% monthly penalty for default, the property owner may seek a waiver or cancellation of the imposed penalties and costs under California Revenue and Taxation Code section 4985.2(a). Waiver of interest, penalties and/or costs is available for both personal and secured property taxes. The waiver will not affect the amount of base taxes owing.

In order to apply for a waiver, the taxpayer must pay the entire amount of taxes, interest, penalties and costs due. The payment must be made no later than June 30 of the fourth fiscal year following the year in which the taxes originally became delinquent. Payment of the entire amount of the taxes due (including penalties and costs) is a precondition to consideration of an application for tax penalty cancellation.

California Revenue & Taxation Code section 4985.2 provides for waiver of interest, penalties and costs if:

- a. failure to make a timely payment is due to a reasonable cause and circumstances beyond the property owner's control;
- b. the failure to pay occurred notwithstanding the exercise of ordinary care; and,
- c. the failure to pay was not due to taxpayer neglect.

**Instructions for Filing a Waiver Application**

The taxpayer must file a claim with the Kern County Treasurer-Tax Collector. Applications by individuals and business entities for relief from property tax penalties and costs associated with tax delinquencies or defaults resulting from the claimed "excusable neglect" of the owner must be submitted in writing to the Treasurer-Tax Collector. Forms are available at that office or on-line at their website. **Anything that the taxpayer wishes to be considered by the County in determining whether or not the taxpayer is entitled to a waiver must be attached to the claim form.**

In order to provide speedy and complete consideration of such penalty relief requests, any taxpayer seeking to be relieved of a delinquent property tax penalty under this subsection must adhere to the following procedures:

1. APPLICATION FORMS. No request for cancellation of penalty shall be considered unless the Applicant submits a complete request on the application form provided by the County. All applications must be signed by the property owner<sup>1</sup> under penalty of perjury and filed with the Treasurer-Tax Collector. Any documents (or declarations of fact) necessary to fully and adequately consider the request for relief must be submitted with the written application for relief. A copy of that form is attached to the end of this policy as **Exhibit "1"**.
2. DEADLINE FOR APPLICATION AND PAYMENT OF TAXES DUE. The property owner (or his/her authorized agent) must file an application for cancellation of tax penalties and costs within four (4) years of the date of the original tax delinquency.

The Applicant must also submit:

- (a) The entire amount of the then due taxes, penalties and costs; or
- (b) An application of the property owner to initiate a tax redemption plan for tax defaulted property under California Revenue & Taxation Code sections 4216 et seq. and the initial payment of taxes, penalties and costs due under that redemption plan

If a redemption installment plan is initiated and the penalty waiver request is approved, no refund will be issued until all installment plan payments are made and/or all taxes are paid in full. If the redemption installment plan defaults for any reason, the penalty waiver request will automatically revert to denied status.

Applications for relief that are not accompanied by the payment of taxes (or the partial payment of taxes under a redemption plan) will be automatically denied and the reason for the denial will be recorded by the Treasurer-Tax Collector.

The Treasurer-Tax Collector, or his designee, shall review the application and make a preliminary ruling. Delinquent penalties for late payment *may* only be cancelled upon the Treasurer-Tax Collector's factual finding that the property owner's submitted application and supporting documents, shows reasonable and good cause for the taxpayer's failure to make the timely payment of the taxes due.

This statement of facts submitted on the claim form must also establish that the property owner's failure to make timely payment was due to circumstances beyond his or her

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<sup>1</sup> Or, if the property owner is a partnership, corporation or limited liability company, by an officer or agent of that property owner properly authorized to submit property tax related documents on behalf of the property owner. Such authorization must be demonstrated by written evidence from the property owner submitted with the signed application.

control that occurred notwithstanding his or her ordinary care and without willful neglect on his or her part.

Examples where waiver may be granted:

The Treasurer-Tax Collector will consider the following examples as circumstances which justify findings in support of cancellation of delinquent penalties:

- (a) Injury or illness of the taxpayer which prevents the payment of taxes prior to the tax deadline (either December 10 or April 10) under circumstances which preclude not only the taxpayer, but also the spouse, other family member, or agent from making timely payment. The nature and extent of the injury or illness must be supported by medical or other evidence and will be considered in whether to grant or deny the application.
- (b) Death of the taxpayer or person responsible for payment of the taxes that occurred on or within 90 days before the tax deadline under circumstances that results in a practical inability on the part of the heirs of the property owner to pay the tax in a timely manner.
- (c) Inclement weather precluding payment either in person or by mail. Such weather conditions must have commenced on or before the tax deadline and been of sufficient severity up to the date and time of the deadline so as to preclude such timely payment.
- (d) A disaster such as a fire, flood, earthquake, civil unrest, or other extraordinary event which commenced on or before the tax payment deadline and is of such severity up to the date and time of the deadline as to prevent the taxpayer from making timely payment.
- (e) An error on the part of the county assessor, auditor or tax collector in executing duties involving the tax assessment or collection procedure that causes the property not to be assessed or causes a tax bill not to issue to the owner of record and that failure to pay taxes is corrected by the taxpayer within 30 days of notice of the error (California Revenue & Taxation Code § 4985).
- (f) If the taxpayer demonstrates to the tax collector that the delinquency is due to the tax collector's failure to mail or electronically transmit the tax bill to the address provided on the tax roll. (California Revenue & Taxation Code §§ 2610.5 and 2910.1)
- (g) A property owner may also have delinquent tax penalties and costs cancelled upon a factual showing of "good cause" under (California Revenue & Taxation Code §4985.2)

The Treasurer-Tax Collector will exercise his or her discretion under this statute to grant or deny relief from penalties and costs and will be the sole judge of the existence or non-existence of “good cause.”

Examples where waiver won't be granted:

The Treasurer-Tax Collector will not consider the following examples as circumstances which justify findings in support of cancellation of penalties:

- (a) Lack of funds to have made timely payment of taxes.
- (b) Rejection of a negotiable instrument by a bank or other financial institution.
- (c) Failure to receive a tax bill if the bill was mailed to the property owner's last known address of record as reflected on the tax roll. (California Revenue & Taxation Code §§ 2610.5 and 2910.1)
- (d) Late payment because the taxpayer or other person responsible for payment is out of the country.
- (e) Late payment when the property is held in joint ownership and one owner erroneously relied on another owner or 3<sup>rd</sup> person to make payment.
- (f) Late payment when the property owner relied on a 3<sup>rd</sup> party to make the payment (i.e., employee, bookkeeper, attorney, C.P.A., mortgage service company, management company, bank, family member, friend, etc.) and that person failed to make the payment.
- (g) Late payment caused by the payment arriving by mail, delivery service or messenger after the installment delinquency date. While payments sent by U.S. Mail with the pre-paid postage on the letter cancelled prior to the delinquency date will be accepted as filed on the postmarked date, private postal meter cancellations will not be accepted as a valid postmark for timely submission of tax payments that are delivered after the tax delinquency date. Any payment without a valid postmark will be presumed to be mailed the day prior to receipt. Evidence to rebut the postmark presumptions should be included with the application for waiver.

The examples listed above are not exclusive and their application will depend upon the facts in each situation. This list is provided merely to outline various circumstances which have previously been addressed.

### Decision on Application

Upon receipt of the properly submitted application for tax penalty relief and payment of the taxes and penalties due,<sup>2</sup> the Treasurer-Tax Collector (or his or her designee) shall consider the application on the factual merits presented and exercise official discretion on the application.

Within thirty (30) days of receipt, the Treasurer-Tax Collector shall respond in writing to the property owner's application. This written response will inform the taxpayer whether the application has been granted or denied and provide the factual reasons for the grant or denial of the requested relief.

### Review of Decision

If a property owner-taxpayer is not satisfied with the Treasurer-Tax Collector's decision, the property owner may submit a written request for further administrative review within thirty (30) days of the date of mailing of the Treasurer-Tax Collector's decision.

The failure to seek further review within this period will waive further rights of appeal.

This review shall be considered and conducted by a three (3) person County of Kern Tax Penalty Review committee. This committee shall be composed of the Assessor-Recorder (or his or her designee), the Treasurer-Tax Collector (or his or her designee), the Auditor-Controller-County Clerk (or his or her designee). The Tax Penalty Review committee shall be advised by the County Counsel (or his or her designee). To minimize delays due to scheduling, the Tax Penalty Review committee members can submit their individual determinations via electronic means (cyber vote).

The member of the Treasurer-Tax Collector's office who denied the initial application for relief shall not participate in the administrative review conducted by this committee.

This review shall be conducted exclusively on the basis of the written documents submitted by the applicant, Kern County tax records, and anything else considered by the Treasurer-Tax Collector. No testimony or additional documents shall be considered unless such additional information is specifically requested by the committee. The review committee shall issue a written decision sustaining the original decision or granting the requested tax penalty relief within forty five (45) days of the receipt of the request for review.

### Finality of Decision

If a property owner-taxpayer does not file a timely request for further review of the Treasurer-Tax Collector's denial of relief, that decision will be final for all further administrative purposes.

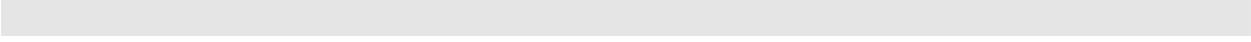
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<sup>2</sup> Or the portion of the taxes and penalties due under a tax defaulted property redemption plan.

If the property owner-taxpayer seeks administrative review from the County of Kern Tax Penalty Review committee, that committee's decision is final upon issuance and mailing. No further administrative review is available and, for purposes of further legal action pursuant to California Revenue & Taxation Code section 5140, all administrative remedies have been exhausted. This policy implements the permissive "rule-making" provisions of Section 2610.5.

#### Issuance of Refund

If an individual's application for relief from delinquent tax penalties and costs is approved, the Auditor-Controller-County Clerk shall issue and mail the refund of the waived penalties and/or costs to the taxpayer. If the claim is rejected and the property owner's submitted payment is sufficient to redeem the tax delinquent or tax defaulted property, the Treasurer-Tax Collector will apply the payment and a certificate of redemption will be issued upon request.



## CLAIMS FOR PROPERTY TAX REFUNDS

This section applies to taxpayers who are seeking a refund of property taxes, in addition to or rather than requesting that interest, penalties and costs associated with a late payment be waived. Please refer to the section of this policy entitled, "Waiver of Tax Penalties, Interest and Associated Costs" for a refund of penalties, interests or costs where the tax itself is not in dispute. Those disputing the amount of taxes owing must file an Application for Change in Assessment with the Clerk of the Board and complete the Assessment Appeals process prior to filing a claim for refund.

This process assumes that an Assessment Appeal Hearing has already taken place, if one was necessary, to establish the right to a tax refund.

If a property owner believes that a property tax (and any associated penalties, interest or costs associated with that tax) has been erroneously or illegally imposed, that property owner must pay that tax (or the amount of the installment of that tax then due) as a prerequisite to claiming a tax refund (California Revenue & Taxation Code §§ 5096 and 5145). A property owner may not dispute the legality of a tax or tax penalty without first paying the total tax due (or at least an installment of the taxes and penalties due).

The taxpayer must file a written and verified claim for refund with the Clerk of the Board of Supervisors. This claim must be filed by the person who paid the contested tax or tax penalty within four (4) years of the date that the tax or penalty was paid (California Revenue & Taxation Code §§ 5096 and 5097). In Kern County, property tax refunds are reviewed and acted upon by the Auditor-Controller-County Clerk.

The claim must set forth the amount claimed and the factual reasons why the claimant believes that the tax or penalty was illegally assessed or collected (California Revenue & Taxation Code §§ 5096 and 5097.2). The county has up to six (6) months to consider the claim after it is filed. The taxpayer may consider the claim denied if it is not acted upon within that period. (California Revenue & Taxation Code §§ 5141, 5142 and 5143). If a tax refund claim is rejected, the taxpayer must be given written notice of that rejection.

Within six (6) months of the rejection of a claim, the property owner may initiate suit for refund of the taxes or penalties claimed in the Kern County superior court. (California Revenue & Taxation Code §§ 5140, 5141 and 5143).

### Tax Refund Claims Applications

The person paying the tax, his or her guardian, executor, or administrator may seek the refund of property taxes and tax penalties previously paid by filing a written verified tax refund claim (either as part of an application for property tax equalization filed pursuant

to California Revenue & Taxation Code section 5097[b] or as a separate refund claim). The person who actually paid the tax is the only person who may file a claim. A tax refund claim form is available from the Clerk of the Board of Supervisors. The Clerk's office may be contacted either at the address below or by phone at (661) 868-3585.

Tax refund claims must be lodged with the Clerk of the Board of Supervisors, addressed as:

Clerk of the Board of Supervisors  
County of Kern  
1115 Truxtun Avenue, 5<sup>th</sup> Floor  
Bakersfield, CA 93301

While the Auditor-Controller-County Clerk or the Treasurer-Tax Collector may refund taxes or penalties resulting from their corrections of the tax roll (under the provisions of California Revenue & Taxation Code § 5097.2) all tax refund applications not resulting from tax roll corrections must be lodged with the Clerk of the Board of Supervisors to be valid claims against the County of Kern.

Taxes and tax penalties are subject to refund if the property owner-taxpayer files his or her claim (verified under penalty of perjury) within four (4) years of the date that the protested taxes were paid and alleges facts showing that the taxes claimed were:

- (a) Paid more than once;
- (b) Erroneously or illegally collected;
- (c) Illegally assessed or levied;
- (d) Paid on an assessment in excess of the ratio of assessed value to the full value of the property as provided in California Revenue & Taxation Code section 401 by reason of the assessor's clerical error or excessive or improper assessments attributable to erroneous property information supplied by the assessee;
- (e) Paid on an assessment of improvements when the improvements did not exist on the lien date;
- (f) Paid on an assessment in excess of the equalized value of the property as determined pursuant to California Revenue & Taxation Code section 1613 by the Kern County Assessment Appeals Board; or
- (g) Paid on an assessment in excess of the value of the property as determined by the assessor pursuant to California Revenue & Taxation Code section 469.

The responsibility to review tax refund claims was delegated to the Auditor-Controller-County Clerk by the Board of Supervisors through the adoption of Resolution 89-521, adopted June 10, 1989. This delegation of authority was affirmed by the adoption of Board Resolution 2003-082 on March 11, 2003 and by adoption of Resolution 2003-316 on August 5, 2003.

The Auditor-Controller-County Clerk shall review and consider all tax refund claims based upon the factual and legal merits, using his or her official discretion. The Auditor-Controller-County Clerk shall issue a written decision to the taxpayer granting or denying the refund claim within six (6) months of its submission. (California Revenue & Taxation Code § 5141) The Auditor-Controller-County Clerk may consult with County Counsel, the Board of Supervisors, or any other county officer in the process of reviewing the tax refund claim. The Auditor-Controller-County Clerk will notify the taxpayer of the decision on the submitted claim in writing within six (6) months of submission and provide a copy of any such decision to County Counsel and the Clerk of the Board of Supervisors.

If the Auditor-Controller-County Clerk allows the claim, the allowed amount of the claim shall be paid. If the Auditor-Controller-County Clerk denies the claim, that decision will be the final administrative decision of the County of Kern for purposes of judicial review under California Revenue & Taxation Code section 5141.

**CANCELLATION OF PROPERTY TAXES WHEN PROPERTY  
HAS BEEN DEEDED TO OR FORECLOSED UPON  
BY A CITY OR OTHER GOVERNMENTAL ENTITY**

Due to property owner defaults in 1915 Bond Act assessments or defaults in Mello-Roos (California Government Code § 53311 et seq.) special tax payments, cities and other governmental entities (including special districts, community service districts or school districts, collectively referred to here as “agency” or “agencies”) are forced to foreclose upon the real property to satisfy the defaulted indebtedness. The acquiring agency is frequently forced to discount the underlying debt in order to sell the property to 3<sup>rd</sup> parties. When such properties are also subject to defaulted county property taxes and penalties, the total property tax and debt burden on the property will frequently be greater than the property’s market value.

In order to return such properties to the active tax roll, the agency may seek and a county may grant relief from part, or in very extraordinary circumstances, all of the existing property tax liens, penalties and costs. While Kern County will cancel tax penalties and costs upon a showing of good cause, it will not cancel any part of the defaulted taxes absent extremely compelling circumstances.

A county may, but is not required to, grant tax debt relief under the provisions of California Revenue & Taxation Code section 4986.3, if the foreclosing agency presents satisfactory proof that it is necessary to cancel all or some portion of such taxes, penalties or costs to allow a liquidation sale to third parties or other economic use.

The burden is on the agencies to show that the foreclosed property will not and cannot be the subject of an economic “fair market value” sale unless the County of Kern grants relief. All applications for relief submitted by agencies under this section must clearly and convincingly establish to the satisfaction of the county that the foreclosed property cannot be put to reasonable economic use unless part or all of the outstanding penalties, costs or underlying taxes due the county are cancelled.

In Kern, the Board of Supervisors has delegated its authority to cancel such taxes, penalties and costs to the Auditor-Controller-County Clerk (California Revenue & Taxation Code §§ 4804, 4986.3).

Requirements:

An agency may seek a reduction in uncollected county property taxes, tax penalties and/or costs for property upon which the agency has foreclosed, if:

- (1) it foreclosed due to defaulted 1915 Bond Act assessments or defaulted special taxes levied under the Mello-Roos Community Facilities Act of 1982;
- (2) such relief is necessary to allow the sale or other economic use of the property;
- (3) the agency returns all Teeter Fund payments previously received from the County (if any) for the taxes billed in the defaulted tax years; and,
- (4) the agency agrees to reduce the delinquent special taxes, bond assessments, penalties and costs to be ultimately recovered by the bondholders through the sale of the property by at least the same amount that the agency asks the county to cancel or waive under California Revenue & Taxation Code section 4986.3.

County penalties, costs or the underlying taxes will not be cancelled or waived in order to make the agency “whole” to the prejudice of Kern County. The agency (and the bondholders) must be ready to surrender their financial claims against the property at least to the same extent as the county is asked to waive its tax penalties, costs and/or property taxes.

#### Written Application For Section 4986.3 Relief

The agency must follow the application and consideration procedure set forth below. The agency shall submit a *written* request for relief either on the form provided by the Auditor-Controller-County Clerk<sup>3</sup> or by a letter containing each of the information elements set out here:

- (a) Name, address, telephone number(s), fax number, e-mail address and responsible officer/contact person(s) for the agency;
- (b) The real properties for which the relief is sought (identified by street address, Kern Assessor’s Tax Parcel Number [“Kern ATN”] and legal description);
- (c) The amount (by Kern ATN) of the current, delinquent or defaulted property taxes, special assessments, penalties and costs due on each parcel as of the date of application and the names and mailing addresses of all county

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<sup>3</sup> The form is available from the Auditor-Controller-County Clerk. You may contact the office at (661) 868-3599 or by post at Auditor-Controller-County Clerk, 1115 Truxtun Ave., 2<sup>nd</sup> Floor, Bakersfield, CA 93301.

governmental agencies that receive a share of the general taxes, special taxes and assessments on the parcels;<sup>4</sup>

- (d) The date on which the agency foreclosed upon or otherwise obtained title to the tax defaulted parcel(s), together with a copy of the judgment of foreclosure, the order for judicial sale or the deed in lieu of foreclosure for each of the parcels subject to the Applicant's request for relief;
- (e) The amount of defaulted bond assessments or Mello-Roos special taxes, penalties and costs due on each parcel subject to the agency's request as of the date of foreclosure;
- (f) The current amount of bond assessments (and total bond indebtedness) or special taxes outstanding on each of the parcels;
- (g) A written current unconditional "fair market value" appraisal of each of the parcels (at the current or probable "highest and best use") prepared by an appraiser licensed by the California Office of Real Estate Appraisers (California Business & Professions Code § 11301 et seq.). The appraisal must be prepared in accordance with the then approved Uniform Standards of Appraisal Practice issued by the Appraisal Standards Board of the Appraisal Foundation;
- (h) The amounts of County of Kern Teeter Fund Payments (if any) that the agency has received from the County in anticipation of the payment of the delinquent or defaulted taxes on each of the parcels and the agency's plans (if any) to repay the County for those Teeter Funds received;
- (i) A narrative description containing a brief background description of the transaction giving rise to the creation of and purposes for the 1915 Bond Act or Mello-Roos debt for which the tax penalty relief is requested. The agency must outline the factual need and economic justification for the tax penalty relief sought. The agency must also describe, in detail, the nature and extent of the monetary relief sought from the County and the date on which the balance of the outstanding defaulted property taxes will be paid (if the requested relief were to be granted); and
- (j) The Committee is required to recover its actual costs and expenses of the county officers and staff expended in considering and processing any request for relief under this statute (Kern Admin. Bulletin No. 2). To this end, all applications for relief are to be accompanied by a processing fee.

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<sup>4</sup> This information may be obtained from the Treasurer-Tax Collector and the Auditor-Controller-County Clerk before submission of the application upon payment of a tax title research fee.

All costs to the County associated with the proceedings are to be advanced by the Applicant.

The agency shall submit an **initial deposit in an amount of not less than five thousand dollars (\$5,000)** with the completed application. The deposit shall be placed in a trust account held by the County. All costs expended by the County for staff time or other County resources expended during the review process are to be paid from this account. No application shall be considered if submitted without this deposit.

If, in the judgment of the Committee and the involved departments, the costs incurred or projected will cause the balance in this account to fall below two thousand dollars (\$2,000), the Committee shall request that the agency advance monies sufficient to bring the account to a balance that is projected to meet remaining costs required to complete the review process. Failure to advance the requested monies within ten (10) days of a written demand by the County will result in all processing of the application to cease and may (in the discretion of the Committee) cause the request to be denied.

Monies held in the trust account are to be applied to pay the County and its staff for all wages, costs and expenses incurred in reviewing and processing the application as well as the costs of any private consultants deemed necessary to conduct and complete the review process and notification of all other governmental entities that will be impacted by the relief requested by and granted to the Applicant.

Any unexpended part of the actual cost deposit will be refunded within 15 days of the issuance of a decision on the application.

- (k) Completed applications shall be submitted, together with the deposit of costs to:

Kern County Auditor-Controller-County Clerk  
1115 Truxtun Avenue, 2<sup>nd</sup> Floor  
Bakersfield, CA 93301  
Attn: California Revenue & Taxation Code section 4986.3  
Tax Application

#### Staff Review Of Applications And Staff Decision

Any completed application for relief under California Revenue & Taxation Code section 4986.3 shall be considered within 30 days of submission of a complete application. The agency will receive a written decision within that time granting all or part of the requested relief or denying the relief.

The agency's submission shall be considered by a three (3) person committee composed of:

- (a) The Auditor-Controller-County Clerk (or his or her designee);
- (b) The Treasurer-Tax Collector (or his or her designee); and
- (c) The County Administrative Officer (or his or her designee).

This Committee shall receive legal advice from the County Counsel (or his or her designee), who shall attend all Committee meetings.

The members of the Committee may select a rotating chair to calendar and notice meetings. The Committee may designate one member (or its legal advisor) to prepare written decisions on applications for relief. No formal minutes need be maintained. The Committee shall act based on the written submission of the agency and such other information, whether oral or written evidence, that the Committee may request the agency to present.

The agency may appear at the Committee Meeting at which its application is considered. The agency may present such additional written or oral information in support of its request that it believes to be relevant or material.

The Committee shall act on any application based on the Committee's determination, in its sole discretion, that the agency has presented "satisfactory proof" of good cause and economic need for relief to be granted so as to permit the agency to satisfy (or partially satisfy) any unpaid property taxes, assessments, special taxes, penalties, costs and secured governmental debt. Such proof shall include appraisals of the property and such other evidence of the need for tax relief as the Committee and agency may deem relevant.

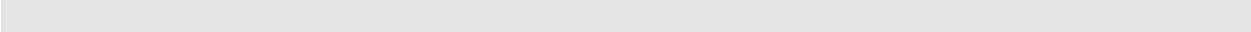
The Committee may grant full or partial relief to the agency conditioned upon the payment of all or any portion of any outstanding property taxes by a certain date.

If the Committee grants all or any part of the relief requested by the agency, the Committee (acting through the Auditor-Controller-County Clerk) shall, within 30 days of the submission of the application, give written notice of the relief granted and the fiscal impact of that relief to each governmental entity (other than the County of Kern) entitled to a portion of the taxes, assessments, penalties or costs waived or cancelled. The cost of such notice will be paid from the agency's deposit.

While the Committee may, in its sole discretion, seek and obtain advice, guidance or ratification of any act performed upon request made to the Board of Supervisors, the decisions of the Committee are not subject to further appeal to the Board of Supervisors. The Committee shall promptly mail a copy of its decision to the Applicant

and file any written decision on an application with the Clerk of the Board of Supervisors.

The decision of the Committee is final for all further administrative purposes and shall be evidenced by a written decision. The Auditor-Controller-County Clerk (or his or her designee) shall sign all decisions of the Committee.



**CANCELLATION OF PROPERTY TAXES UPON  
ACQUISITION BY THE STATE**

If real property is deeded to the California Department of Veteran's Affairs or escheated to the State of California subject to unpaid taxes, the county Auditor-Controller-County Clerk, acting under similar delegated authority, may cancel such taxes, penalties and costs. (California Revenue & Taxation Code §§ 4986.4 and 4986.5[a]).

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**RESCISSION OF TAX SALE BY THE TREASURER-  
TAX COLLECTOR AND REFUND OF THE PURCHASE PRICE**

When the Treasurer-Tax Collector has conducted a tax sale of tax defaulted property and determines that the property should not have been sold, the sale may be rescinded and the purchase price and any recording fees paid upon the execution of a rescission agreement and agreement for cancellation of the tax deed by the Treasurer-Tax Collector and tax sale purchaser. The agreement must be reviewed and approved by County Counsel. The authority to approve such rescissions has been delegated to the Treasurer-Tax Collector by the Board of Supervisors.

Rescission of Tax Sales

A county tax collector is authorized and required to attempt to sell tax defaulted property to satisfy the unpaid taxes. (California Revenue & Taxation Code § 3691 et seq.). A county tax collector is required to publish notice of the intent to sell the property, secure the consent of the board of supervisors and to secure the power to sell the property from the State Controller. (California Revenue & Taxation Code §§ 3361-3364, 3691.1-3691.6 and 3699). The tax collector must notify the last assessee of record, notify all governmental entities of the pending sale, and notify all “parties in interest” and occupants of the property prior to conducting a tax sale. (California Revenue & Taxation Code §§, 3694, 3695, 3701 and 3702)

If the tax collector fails to provide the requisite notice of the intent to sell the property, the title owners of record or other “parties in interest” may seek to invalidate the sale within one year of the execution of the tax deed for the property. (California Revenue & Taxation Code §§ 3725-3726)

If the tax collector determines that a rescission is not warranted, the taxpayer can request a hearing pursuant to California Revenue & Taxation Code sections 3731, 3731.1, & 3725.

If the tax collector determines that there has been a defect in the tax sales procedure or that there is some other reason why the property should not have been sold, the tax collector may seek to enter an agreement to rescind the sale if:

- (1) The property has not been transferred or conveyed by the purchaser to a bona fide purchaser for value; or,
- (2) The property has not become subject to a bona fide encumbrance for value subsequent to the recording of the tax deed. (California Revenue & Taxation Code § 3731)

In Kern, the authority to rescind tax sales under California Revenue & Taxation Code section 3731 has been delegated to the Kern County Treasurer-Tax Collector.

The Treasurer-Tax Collector shall prepare an "Agreement of Rescission" setting aside the tax sale and cancelling the tax deed once he or she has determined that:

- (1) the tax sale should be rescinded; and
- (2) there has not been a subsequent transfer to a bona fide purchaser for value; and,
- (3) the property has not become subject to a bona fide encumbrance for value; and,
- (4) the tax sale purchaser is in agreement with the rescission.

Upon review and approval of the "Agreement of Rescission" by County Counsel, the executed agreement shall be acknowledged by the Auditor-Controller-County Clerk and recorded, without fee, by the Assessor-Recorder. A copy of the recorded agreement shall be forwarded to the State Controller by the Treasurer-Tax Collector.

After the "Agreement of Rescission" has been recorded, the Auditor-Controller-County Clerk shall issue a refund of the purchase price and recording fee to the tax sale purchaser. That officer shall maintain a permanent record of all tax sale rescissions approved.



Jordan Kaufman  
Treasurer and Tax Collector

Chase Nunneley  
Assistant Treasurer and Tax Collector

## Application for Tax Penalty Relief Revenue & Taxation Code 4985.2(a)

Request for relief from tax delinquency penalties, tax-defaulted property penalties and/or costs associated with tax delinquencies or defaults must be completed on this application. Application must be accompanied by payment of taxes, penalties and applicable costs made payable to the Treasurer-Tax Collector.

**Applications that are not accompanied by the payment of taxes, penalties and applicable costs will be automatically denied.**

### Requestor Information:

Name: \_\_\_\_\_

Company (if applicable): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Daytime Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Other Phone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

### Property Information:

Assessor Tax Number(s) (ATN): \_\_\_\_\_

Tax Bill Number(s): \_\_\_\_\_

File Number: \_\_\_\_\_

Owner Of Record: \_\_\_\_\_

Property Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reason for Application for Tax Penalty Relief:

(A detailed, written explanation must include all supporting documentation at the time the application is submitted).

Multiple horizontal lines for providing a detailed written explanation.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

NOTE: Signature must be of the property owner or, if the property owner is a partnership, corporation or a limited liability company, by an officer or agent of that property owner properly authorized to submit property tax-related documents on behalf of the property owner. Such authorization must be demonstrated by written evidence from the property owner and submitted with this signed application.

*For Treasurer and Tax Collector Use Only*

Payment Submitted:  Yes  No

Date Received: \_\_\_\_\_

Date: \_\_\_\_\_ Approved: \_\_\_\_\_

Date: \_\_\_\_\_ Denied: \_\_\_\_\_

Reason for Denial:  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_