

#36.56

11/10/77

Memorandum 77-79

Subject: Study 36.56 - Eminent Domain (Taxes)

Among the proposals in the Commission's recommendation relating to evidence of market value is an amendment of Revenue and Taxation Code Section 4986, relating to mention of unpaid taxes in an eminent domain proceeding. Section 4986 has a number of other defects, among which are that it is very long, difficult to understand, and deals with several unrelated subjects. (The text of Section 4986 can be found in the attached staff draft tentative recommendation.) The Commission has received suggestions that Section 4986 could stand improvement. See Exhibits 1 (pink) and 2 (yellow). The Commission has decided to attempt to improve Section 4986 if possible.

The attached staff draft tentative recommendation represents the staff's attempt to improve the drafting and organization of the taxation provisions. The draft makes only a very few substantive changes of a minor nature; most of the changes we would characterize as technical. The staff recommends that the Commission not spend a lot of time with this material, but, rather, send it out to our condemnation people and to the tax collectors and see what their reaction is.

Respectfully submitted,

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January 14, 1976

Mr. John DeMouilly
Executive Secretary
California Law Revision Commission
Stanford Law School
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RE: Evidence of Assessed Valuation in
Condemnation Proceedings; Cancellation
and Apportionment of Taxes.

Dear Mr. DeMouilly:

The purpose of this letter is to formalize the conversation which I had with Mr. Sterling recently about the problems created by Revenue and Taxation Code Section 4986, dealing with the cancellation, segregation and apportionment of property taxes. This section is one of the longest and most confusing sections in the California codes. Towards the end of the section there is a paragraph which is a product of the 1959 amendment to the section. It deals with cancellation and segregation of taxes, and with the admissibility of evidence of taxes due in condemnation proceedings.

The 1959 amendment provided that any mention of the subject of taxes due "shall not be considered relevant on any issue in the condemnation action." The amendment further provided that the mention of the subject was grounds for a mistrial. This section was unnoticed by the Commission in earlier studies of the Evidence Code (see "Reports, Recommendations and Studies", Vol. 3, pp. A-48 through A-50, California Law Revision Commission, 1961). It appears to conflict with Evidence Code Section 822, sub.(c), which permits consideration of taxes "actual or estimated" for the purpose of determining the reasonable net rental value. Section 4986 has been argued as precluding cross-examination on the actual taxes due where the witnesses used a grossly improper amount of "estimated taxes."

It should also be pointed out that prior to the 1959 amendment the issuance of an order for possession did

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not terminate the property owner's liability for real property taxes. The 1959 amendment did this, but some practical administrative problems have arisen out of the 1959 amendment which are not resolved by Code of Civil Procedures Sections 1252.1 and 1252.2 or its successor sections 1268.410, 1268.420 and 1268.430. The discussion to follow will be directed toward 1268.410 and 1268.420.

Section 1268.410 places liability upon the plaintiff for any ad valorem taxes, penalties, and costs upon the property acquired by eminent domain that would be subject to cancellation under Section 4986 of the Revenue and Taxation Code, assuming the plaintiff is a public agency.

Section 1268.420 authorizes segregation on the assessment role of properties being acquired by eminent domain. Such segregation, however, is authorized only after the taxes on the property are subject to cancellation pursuant to Section 4986 of the Revenue and Taxation Code. This choice of language creates certain problems. Section 4986 has been construed by some county counsels as authorizing cancellation only after judgment. Specifically, in these counties there is no cancellation of taxes after the issuance for the order of possession. Thus, in such counties by virtue of the language in Section 1268.420 it is arguable such taxes should not be subject to cancellation until after judgment. Such cancellation would, however, be retroactive. Incidentally, in the handling of some condemnation cases because of the oversight or inexperience of counsel the property owner continues to pay taxes and the agency does not necessarily refund this money to property owner at the conclusion of the case.

A further problem exists because of the language of Section 4986, which would appear to preclude cancellation of taxes where suit has been commenced and possession is by agreement between the parties rather than by order of possession. Once the property was acquired, cancellation would appear to be proper only as of the date of passage of title.

In conclusion, it would appear that the provision dealing with condemnation evidence should be deleted from Revenue and Taxation Code Section 4986. In addition, the

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section should be reorganized and perhaps split into several sections and the provisions dealing with cancellation, apportionment and segregation of taxes should be clearly spelled out.

Your consideration of the above matter would be appreciated.

Very truly yours,

THOMAS M. DANKERT

TMD:b1

Memorandum 77-79

EXHIBIT 2
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March 30, 1977

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Executive Secretary
The California Law Revision Commission
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Re: Revenue and Taxation Code, §4986 -
Assessment Bonds
Suggested Changes in Eminent Domain Law

Dear Mr. DeMouilly:

I note that the Commission plans to simplify Revenue and Taxation Code §4986 (note 31, "Tentative Evidence of Market Value of Property"). I think that the following should be considered in the course of a worthwhile project:

1. Revenue and Taxation Code §4986(b) should be repealed and re-enacted in part, probably as a new article 4.5 of Chapter 11 of the Eminent Domain Law, following present section 126B.340. To the extent that the present subsection (b) deals with negotiated purchases or gifts, in which eminent domain proceedings are not involved, the matter could be dealt with in a new Revenue and Taxation Code §4986.1.

2. I occasionally look at the companion Rev. and Tax. Code §4986.7 and wonder why it was placed in the Rev. and Tax. Code rather than in the Government Code. I also wonder what effect giving the prescribed notice to the County Tax Collector could have on adoption of local agency budgets, since the Tax Collector is at the far end of the local taxation process.

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ATTORNEYS AT LAW

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3. Rev. and Tax. Code §4986.9 should be repealed and added to the Eminent Domain Law, probably as a new Article in Chapter 5. The present wording of the statute imposes the duty on "the court", which means in practice that the Tax Collector is usually asked to make his computations after "final judgment". CCP 1258.610.

4. Rev. and Tax. Code §4986.9(c) states that the county or other taxing agencies need not be named as parties defendant in an eminent domain proceeding if the sole interest is a lien for ad valorem taxes. This should be moved to the Eminent Domain Law, in Chapter 5, Article 3. I think that CCP 1259.220 requires joinder of counties, cities or special districts that have issued and sold special assessment bonds. Assessment bonds are probably not "liens" within CCP §1265.210. See Redevelopment Agency of Fresno v. Penzner (1970) 8 Cal App 3d 417, 423-424, where my thoughts on this subject did not prevail.

In addition to the cases cited at 8 Cal App 3d 424, see:

People v. Lynch (1873) 51 Cal 15;

Northwestern Mut. Life v. State Board
(1946) 73 Cal App 2d 348;

Montgomery v. County of Contra Costa
(1965) 235 Cal App 2d 757, 768;

City of Pasadena v. Chamberlain (1934)
1 Cal App 2d 125;

City of Los Angeles v. Superior Court
(1934) 2 Cal 2d 138

People v. Cheda (1937) 154 Cal App 2d 531;

City of Vallejo v. Superior Court (1926)
199 Cal 408;

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City of Long Beach v. Aistrup (1958)
164 Cal App 2d 41 [which prompted Rev.
and Tax. Code §4986(b)].

Priority of assessment bonds and liens is dealt with in Government Code §§53930-53937. "Separation" of bond liens is covered by Rev. and Tax. Code §2821, fifth paragraph.

A condemnor's interest is usually to have an entire special assessment lien paid out of the condemnation award. The condemnee's interests usually lie in the other direction. In practice, the matter of whether the assessment is to be paid from the condemnation award first arises at the time of entry of the final judgment. One solution might be to expand present Rev. and Tax. Code §4986.9 to include assessment bonds and assessment liens, in addition to taxes.

5. When plaintiff has made payment of the amount of the final judgment into court, present law does not require notice to defendants. CCP §1268.010 should be amended to require giving of written notice forthwith.

6. I think that Special Assessment Liens should be included in the study. Treatment of outstanding assessment bonds issued under the 1911 Act, or special assessment liens under the 1915 Act in an eminent domain proceeding, is not at all clear.

7. CCP §1268.420 dealing with separate valuations does not belong in Chapter 11, Article 5 of the Eminent Domain Law, which deals with the unrelated subject of proration of property taxes. Perhaps a separate Article should cover the subject matter of CCP §1268.420 and the fifth paragraph of Rev. and Tax. Code §2821.

Sincerely,

Charles L. Hemmings

CLHkr
cc: Robert C. Brunzell, Esq

December 1, 1977

STAFF DRAFT

TENTATIVE RECOMMENDATION

relating to

AD VALOREM PROPERTY TAXES IN EMINENT DOMAIN PROCEEDINGS

The provisions governing the determination, apportionment, and payment of ad valorem property taxes in eminent domain proceedings are in need of revision.¹ They have developed haphazardly and are scattered randomly about the Code of Civil Procedure and the Revenue and Taxation Code.² They are intermingled with provisions governing taxes in acquisitions other than by eminent domain.³ They are unduly lengthy and deal with a number of unrelated subjects.⁴

The Commission recommends that these provisions be reorganized and redrafted for clarity. Several minor substantive and technical improvements should also be made.⁵ This will help to end the confusion that surrounds ad valorem tax questions in eminent domain proceedings and simplify the task of persons concerned in the proceedings.

1. See, e.g., Letters from Thomas M. Dankert, Esq. (January 14, 1976) and Charles L. Hemmings, Esq. (March 30, 1977) (on file in the Commission's office).
2. See, e.g., Code Civ. Proc. §§ 1265.220, 1268.410-1268.430; Rev. & Tax. Code §§ 4986, 4986.1, 4986.9, 5096.3.
3. See, e.g., Rev. & Tax. Code §§ 4986, 4986.1 (prescribing both general principles relating to acquisition of exempt property and special rules applicable only in eminent domain proceedings).
4. Revenue and Taxation Code Section 4986.9, for example, deals not only with certification of tax information by the tax collector in eminent domain proceedings, but also with payment of taxes out of the award, naming parties, and transfer of the tax lien whether in eminent domain or negotiated purchase. Likewise, Revenue and Taxation Code Section 4986 deals with mention of unpaid taxes as grounds for mistrial in an eminent domain proceeding as well as with cancellation of taxes on exempt property. The mistrial provision is the subject of a separate Commission Recommendation Relating to Evidence of Market Value of Property; the present recommendation, therefore, is not concerned with this provision.
5. The specific changes recommended by the Commission are noted in the Comments that follow the sections in the recommended legislation.

The Commission's recommendation would be effectuated by enactment of the following measure.

09044

An act to amend Section 1268.410 of, to add Sections 1250.250, 1260.250, and 1268.440 to, and to repeal Section 1268.420 of the Code of Civil Procedure, and to amend Sections 134, 2921.5, 2922, 4986, 4986.2, and 5096.7 of, to add Article 5 (commencing with Section 5081) to Chapter 4 of Part 9 of Division 1 of, and to repeal Sections 4986.1, 4986.7, 4986.9, and 5096.3 of the Revenue and Taxation Code, relating to ad valorem property taxes in eminent domain proceedings.

The people of the State of California do enact as follows:

Code of Civil Procedure § 1250.250 (added)

SECTION 1. Section 1250.250 is added to the Code of Civil Procedure, to read:

§ 1250.250. Holder of tax lien need not be named defendant

1250.250. (a) If the only interest of the county or other taxing agency in the property described in the complaint is a lien for ad valorem taxes, the county or other taxing agency need not be named as a defendant.

(b) The lien for ad valorm taxes is extinguished as a matter of law upon the acquisition of the property by the plaintiff.

Comment. Section 1250.250 continues the substance of former Revenue and Taxation Code Section 4986.9(c). In the case of exempt property, the lien for ad valorem taxes, when extinguished, immediately transfers and attaches to the proceeds constituting the award pursuant to Section 5089 of the Revenue and Taxation Code. The taxes may be collected either from the award (Section 1260.250(c)) or on the unsecured roll (Rev. & Tax. Code § 5086). See also Rev. & Tax. Code §§ 5083 (delinquent taxes), 5085 (current taxes).

09034

Code of Civil Procedure § 1260.250 (added)

SEC. 2. Section 1260.250 is added to the Code of Civil Procedure, to read:

§ 1260.250. Determination of property taxes

1260.250. (a) The court, either on the date it issues an order for possession or on or before the date set for trial, whichever is earlier, shall give the tax collector the legal description of the property sought to be taken and direct the tax collector to certify to the court the following information:

(1) The current assessed value of the property together with its assessed identification number. If the property does not have a separate valuation on the assessment roll, the direction shall be taken as an application for a separate valuation of the property in accordance with Article 3 (commencing with Section 2821) of Chapter 3 of Part 5 of Division 1 of the Revenue and Taxation Code, notwithstanding any provision in that article to the contrary.

(2) All unpaid taxes, penalties, and costs levied for prior tax years that constitute a lien on the property.

(3) All unpaid taxes, penalties, and costs levied for the current year that constitute a lien on the property prorated to, but not including, the date of acquisition as determined pursuant to Section 5082 of the Revenue and Taxation Code or the date of trial, whichever is earlier. If the amount of the current taxes is not ascertainable at the time of proration, the amount shall be estimated and computed based on the current assessed value and the tax rate levied on the property for the immediately prior year.

(4) The actual or estimated amount of taxes that are or will become a lien on the property in the next succeeding tax year prorated to, but not including, the date of acquisition as determined pursuant to Section 5082 of the Revenue and Taxation Code or the date of trial, whichever is earlier. Any estimated amount of taxes shall be premised upon the assessed value of the parcel for the current assessment year and the tax rate levied on the property for the current fiscal year.

(5) The amount of the taxes, penalties, and costs allocable to one day of the current tax year, and where applicable, the amount allocable to one day of the next succeeding tax year, hereinafter referred to as the "daily prorate."

(6) The total of paragraphs (2), (3), and (4), plus the applicable daily prorate.

(b) On or before the date set for trial, the tax collector shall, on a form approved by the board of supervisors, certify the required information to the court.

(c) The court, as part of the judgment, shall order that the amount certified pursuant to this section be paid to the tax collector from the award. If the amount so certified is prorated to the date of trial, the order shall include, in addition to the amount so certified, an amount equal to the applicable daily prorate multiplied by the number of days commencing on the date of trial and ending on and including the day before the date of acquisition as determined pursuant to Section 5082 of the Revenue and Taxation Code.

(d) Notwithstanding any other provision of this section, if the board of supervisors prescribes the procedure set forth in Section 5086 of the Revenue and Taxation Code, the court shall make no award of taxes in the judgment.

Comment. Subdivisions (a)-(c) of Section 1260.250 continue the substance of subdivisions (a)-(b) of former Section 4986.9. The second sentence of subdivision (a)(1) preserves the provision for separate valuation formerly found in Section 1268.420. Subdivision (d) continues the second sentence of subdivision (b) of former Section 4986.1.

Taxes not paid from the award pursuant to subdivision (c) may be collected on the unsecured roll. See Rev. & Tax. Code §§ 5083, 5085, 5086. For the rules governing reimbursement for taxes subject to cancellation and liability for taxes after the date of acquisition, see Article 5 (commencing with Section 1268.410) of Chapter 11.

09030

Code of Civil Procedure § 1268.410 (technical amendment)

SEC. 3. Section 1268.410 of the Code of Civil Procedure is amended to read:

1268.410. As between the plaintiff and defendant, the plaintiff is liable for any ad valorem taxes, penalties, and costs upon property acquired by eminent domain that would be subject to cancellation under ~~(Chapter 4 (commencing with Section 4986))~~ Article 5 (commencing with Section 5081) of Chapter 4 of Part 9 of Division 1 of the Revenue and Taxation Code if the plaintiff were a public entity and if such taxes, penalties, and costs had not been paid, whether or not the plaintiff is a public entity.

Comment. Section 1268.410 is amended to reflect the enactment of Article 5 (commencing with Section 5081) of Chapter 4 of Part 9 of Division 1 of the Revenue and Taxation Code relating to cancellation of taxes on exempt property.

968/653

Code of Civil Procedure § 1268.420 (repealed)

SEC. 4. Section 1268.420 of the Code of Civil Procedure is repealed.

~~1268.420. If property acquired by eminent domain does not have a separate valuation on the assessment roll; any party to the eminent domain proceeding may, at any time after the taxes on such property are subject to cancellation pursuant to Section 4986 of the Revenue and Taxation Code, apply to the tax collector for a separate valuation of such property in accordance with Article 3 (commencing with Section 2821) of Chapter 3 of Part 5 of Division 1 of the Revenue and Taxation Code notwithstanding any provision in such article to the contrary.~~

Comment. Former Section 1268.420 is superseded by Section 1260.250(a)(1).

405/808

Code of Civil Procedure § 1268.440 (added)

SEC. 5. Section 1268.440 is added to the Code of Civil Procedure, to read:

§ 1268.440. Refund of taxes paid by public entity

1268.440. (a) If a public entity has paid taxes on property that the public entity acquired by eminent domain after the lien date, the amount of the taxes that would have been subject to cancellation under Article 5 (commencing with Section 5180) of Chapter 4 of Part 9 of Division 1 of the Revenue and Taxation Code if unpaid shall be deemed to be erroneously collected and shall be refunded to the public entity in the manner provided in Article 1 (commencing with Section 5096) of Chapter 5 of Part 9 of Division 1 of the Revenue and Taxation Code.

(b) For the purposes of Article 1 (commencing with Section 5096) of Chapter 5 of Part 9 of Division 1 of the Revenue and Taxation Code, except Section 5096.7, the public entity shall be deemed to be the person who paid the taxes if the public entity reimbursed the defendant for the taxes pursuant to Section 1268.430 under a cost bill filed in the eminent domain proceeding. A claim for refund of taxes filed by a

public entity pursuant to this section shall contain a copy of the cost bill under which taxes were reimbursed or a declaration under penalty of perjury by the public entity that the taxes were reimbursed under a cost bill.

(c) Refunds pursuant to this section shall be applicable to taxes paid on either the secured or unsecured rolls.

Comment. Section 1268.440 continues the substance of former Section 5096.3 of the Revenue and Taxation Code. The term "lien date" is defined in Revenue and Taxation Code Section 117; the terms "secured roll" and "unsecured roll" are defined in Revenue and Taxation Code Section 109.

968/664

Revenue and Taxation Code § 134 (technical amendment)

SEC. 6. Section 134 of the Revenue and Taxation Code is amended to read:

134. "Unsecured property" is property:

(a) The taxes on which are not a lien on real property sufficient, in the opinion of the assessor, to secure payment of the taxes.

(b) The taxes on which were secured by real estate on the lien date and which real estate was later acquired by the ~~United States of America; the State; States, the state,~~ or by any county, city, school district or other public agency entity and the taxes transferred to the unsecured roll pursuant to ~~Section 4986 of this code; Article 5 (commencing with Section 5081) of Chapter 4 of Part 9.~~

Comment. Section 134 is amended to reflect the enactment of Article 5 (commencing with Section 5081) of Chapter 4 of Part 9 relating to cancellation of taxes on exempt property.

968/667

Revenue and Taxation Code § 2921.5 (technical amendment)

SEC. 7. Section 2921.5 of the Revenue and Taxation Code is amended to read:

2921.5. Taxes (a) Except as provided in subdivision (b), taxes on unsecured property as defined in subdivision (b) of Section 134, sub- ~~paragraph (b) of this code~~ shall be transferred from the "secured roll" to the "unsecured roll" of the corresponding year by the county auditor on order of the board of supervisors with the written consent of the ~~district attorney county legal adviser~~ pursuant to ~~Section 4986 of~~

~~this code~~ Article 5 (commencing with Section 5081) of Chapter 4 of Part 9 at the same time the taxes are canceled on the real estate, and shall be collected in the same manner as other delinquent taxes on the "unsecured roll"; ~~provided, that no roll.~~

(b) No delinquent penalty shall attach to such taxes so transferred, transferred pursuant to subdivision (a), except to those taxes which carried delinquent penalty on the secured roll at the time the real estate property involved was acquired by a public agency entity.

Comment. Section 2921.5 is amended to reflect the enactment of Article 5 (commencing with Section 5081) of Chapter 4 of Part 9 relating to cancellation of taxes on exempt property and to conform to the language of Section 4986.

968/668

Revenue and Taxation Code § 2922 (technical amendment)

SEC. 8. Section 2922 of the Revenue and Taxation Code is amended to read:

2922. (a) Taxes on the unsecured roll as of July 31st if unpaid are delinquent August 31st at 5 p.m., and thereafter a delinquent penalty of 6 percent attaches to them. Taxes added to the unsecured roll after July 31st, if unpaid are delinquent at 5 p.m. on the last day of the month succeeding the month in which the assessment was added to the unsecured roll and thereafter a delinquent penalty of 6 percent attaches to them, except that taxes transferred to the unsecured roll pursuant to Section 4986 of this code Article 5 (commencing with Section 5081) of Chapter 4 of Part 9 to which penalties had attached while on the secured roll and also were transferred shall be subject only to the additional penalties prescribed by subdivision (b). If August 31st or the last day of any month falls on Saturday, Sunday or a legal holiday, and if payment is received by 5 p.m. of the next business day, the 6 percent penalty shall not attach.

(b) If taxes on the unsecured roll are unpaid by 5 p.m. of the last day of the second succeeding month after the 6 percent penalty attaches pursuant to subdivision (a), an additional penalty of 1 percent attaches to them on the first day of each month thereafter to the time of payment or to the time a court judgment is entered for the amount of the unpaid taxes and penalties, whichever occurs first. If the last day of any month falls on Saturday, Sunday or a legal holiday, the additional

penalty of 1 percent shall attach after 5 p.m. on the next business day.

Comment. Section 2922 is amended to reflect the enactment of Article 5 (commencing with Section 5081) of Chapter 4 of Part 9, relating to cancellation of taxes on exempt property.

968/669

Revenue and Taxation Code § 4986 (amended)

SEC. 9. Section 4986 of the Revenue and Taxation Code is amended to read:

4986. (a) All or any portion of any tax, penalty, or costs, heretofore or hereafter levied, ~~may;~~ shall on satisfactory proof, be canceled by the auditor on order of the board of supervisors with the written consent of the county legal adviser if it was levied or charged:

(1) More than once.

(2) Erroneously or illegally.

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

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

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

(6) On property acquired ~~prior to September 18, 1959;~~ by the United States of America; ~~States,~~ the state, or by any county, city, school district or other ~~political subdivision and which;~~ because of such public ownership; ~~became not subject to sale for delinquent taxes;~~ public entity, to the extent provided in Article 5 (commencing with Section 5081).

~~(b) On property acquired after the lien date by the United States of America;~~ if such property upon such acquisition becomes exempt from taxation under the laws of the United States; or by the state or by any county, city, school district or other public entity; and because of such public ownership becomes not subject to sale for delinquent taxes; no cancellation shall be made in respect of all or any portion of any such unpaid tax; or penalties or costs; but such tax; together with such penalties and costs as may have accrued thereon while on the unsecured roll; shall be paid through escrow at the close of escrow or; if unpaid for any reason; they shall be

collected like any other taxes on the unsecured roll. If unpaid at the time set for the sale of property on the secured roll to the state, they shall be transferred to the unsecured roll pursuant to Section 2921-5, and collection thereof shall be made and had as provided therein; except that the statute of limitations on any suit brought to collect such taxes and penalties shall commence to run from the date of transfer of such taxes, penalties and costs to the unsecured roll; which date shall be entered on the roll by the auditor opposite the name of the assessee at the time such transfer is made. The foregoing toll of the statute of limitations shall apply retroactively to all such unpaid taxes and penalties so transferred; the delinquent dates of which are prior to the effective date of the amendment of this section at the 1959 Regular Session.

If any property described in this subdivision is acquired by a negotiated purchase and sale, gift, devise, or eminent domain proceeding after the lien date but prior to the commencement of the fiscal year for which current taxes are a lien on the property, the amount of such current taxes shall be canceled and neither the person from whom the property was acquired nor the public entity shall be liable for the payment of such taxes. If, however, the property is so acquired after the commencement of the fiscal year for which the current taxes are a lien on the property, that portion only of such current taxes, together with any allocable penalties and costs thereon, which are properly allocable to that part of the fiscal year which ends on the day before the date of acquisition of the property shall be paid through escrow at the close of escrow, or if unpaid for any reason, they, shall be transferred to the unsecured roll pursuant to Section 2921-5 and shall be collectible from the person from whom the property was acquired. The portion of such taxes, together with any penalties and costs thereon, which are allocable to that part of the fiscal year which begins on the date of the acquisition of the property, shall be canceled and shall not be collectible either from the person from whom the property was acquired nor from the public entity.

In no event shall any transfer of unpaid taxes, penalties or costs be made with respect to property which has been tax decided to the state for delinquency.

For purposes of this subdivision, if proceedings for acquisition of the property by eminent domain have not been commenced, the date of acquisition shall be the date that the conveyance is recorded in the name of the public entity or the date of actual possession by the public entity, whichever is earlier. If proceedings to acquire the property by eminent domain have been commenced and an order of immediate possession obtained prior to acquisition of the property by deed, the date of acquisition shall be the date upon or after which the plaintiff may take possession as authorized by such order of immediate possession.

The subject of the amount of the taxes which may be due on the property shall not be considered relevant on any issue in the condemnation action, and the mention of said subject, either on the voir dire examination of jurors, or during the examination of witnesses, or as a part of the court's instructions to the jury, or in argument of counsel, or otherwise, shall constitute grounds for a mistrial in any such action.

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

Comment. Section 4986 is amended to delete the provisions relating to cancellation of taxes on property acquired by public entities. These provisions are superseded by Article 5 (commencing with Section 5081). The language of Section 4986 is made mandatory, rather than permissive, to reflect existing law. Cf. 2 Ops. Cal. Atty. Gen. 526 (1943); 6 Ops. Cal. Atty. Gen. 72 (1945).

Note. The last paragraph of subdivision (a), relating to mention of unpaid taxes, is proposed for repeal in the Commission's Recommendation Relating to Evidence of Market Value of Property. The present draft, therefore, is not concerned with the last paragraph of subdivision (a).

Revenue and Taxation Code § 4986.1 (repealed)

SEC. 10. Section 4986.1 of the Revenue and Taxation Code is repealed.

~~4986.1. (a) The board of supervisors of any county may prescribe that where the amount of unpaid taxes, penalties and costs to be transferred to the unsecured roll pursuant to Section 4986 is less than ten dollars (\$10), such taxes, penalties and costs shall be canceled rather than transferred to the unsecured roll.~~

~~(b) The board of supervisors of any county may provide that all delinquent taxes, penalties and costs and a pro rata share of current taxes, penalties and costs as may be accrued thereon while on the secured roll which are computed in accordance with subdivision (2)(b) of Section 4986 shall be transferred to the unsecured roll and collected pursuant to Section 2921.5. In the event the board of supervisors of any county prescribes the procedure herein set forth, the court shall make no award of taxes in the eminent domain proceeding. The date for proration of current taxes and penalties shall be the date specified in subdivision (2)(b) of Section 4986.~~

Comment. Subdivision (a) of former Section 4986.1 is continued in Section 5088. Subdivision (b) is continued in Section 5086, with the exception of the second sentence, which is continued in Code of Civil Procedure Section 1260.250(d).

Revenue and Taxation Code § 4986.2 (technical amendment)

SEC. 11. Section 4986.2 of the Revenue and Taxation Code is amended to read:

4986.2. All or any portion of uncollected city taxes, penalties or costs ~~may~~ shall be canceled on any of the grounds specified in Section 4986. If the city taxes are collected by the county, the procedure outlined in Section 4986 for the cancellation of taxes, penalties or costs shall be followed, except that the consent of the city attorney, in lieu of the consent of the ~~district attorney~~, county legal adviser, is necessary before cancellation. If the taxes are collected by the city, the taxes, penalties, or costs shall be ~~canceled~~ canceled by the officer having custody of the records thereof on order of the governing body of the city, with the written consent of the city attorney.

Comment. Section 4986.2 is amended to conform to the language of Section 4986. The language of this section is made mandatory, rather than permissive, to reflect existing law. See, e.g., 2 Ops. Cal. Atty. Gen. 526 (1943); 6 Ops. Cal. Atty. Gen 72 (1945).

100/944

Revenue and Taxation Code § 4986.7 (repealed)

SEC. 12. Section 4986.7 of the Revenue and Taxation Code is repealed.

~~4986.7. Whenever a public agency proposes to acquire private property or properties for public use; and where such public use will make the property or properties exempt from taxation; the public agency shall notify the county tax collector and any other public agencies whose taxes are not collected by the county tax collector but who at that time exercised the right of assessment and taxation of the approximate extent of the proposed public project and the estimated time of completion of all acquisitions necessary therefor. Said notice shall be provided within a reasonable period of time following the initial budgeting of funds for the proposed acquisition or acquisitions.~~

~~The provisions of this section create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.~~

Comment. The substance of former Section 4986.7 is continued in Section 5090.

405/911

Revenue and Taxation Code § 4986.9 (repealed)

SEC. 13. Section 4986.9 of the Revenue and Taxation Code is repealed.

~~4986.9. (a) In an action in eminent domain; the court; either on the date it issues an order for possession or on or before the date set for trial relative to a particular parcel; whichever is earlier; shall direct the tax collector to certify to the court the following information:~~

~~(1) The current assessed value of the parcel together with its assessed identification number.~~

~~(2) All unpaid taxes; penalties and costs levied for prior tax years and constituting a lien upon such parcel.~~

(3) All unpaid taxes, penalties and costs levied for the current tax year which constitute a lien on such parcel prorated to, but not including, the date of possession as such date of possession is determined pursuant to Section 4986. If the amount of the current taxes is not ascertainable at the time of proration, the same shall be estimated and computed based upon the current assessed value and the tax rate levied on the property for the immediate prior year.

(4) If no order for possession has issued relative to such parcel, all unpaid taxes, penalties and costs levied for the current tax year which constitute a lien on such parcel prorated to, but not including, the date of trial, plus the amount of such taxes, penalties and costs allocable to one day of the tax year, hereinafter referred to as the "daily prorate." If the amount of the current taxes is not ascertainable at the time of proration, the same shall be estimated and computed based upon the current assessed value and the tax rate levied on the property for the immediate prior year.

(5) The actual or estimated amount of taxes which are or will become a lien on such parcel in the next succeeding tax year prorated to, but not including, the date of possession or the date of trial whichever is earlier plus, where applicable, a daily prorate of such taxes. Any estimated amount of taxes shall be premised upon the assessed value of the parcel for the current assessment year and the tax rate levied on the property for the current fiscal year.

(6) The total of paragraphs (2), (3), and (5) of this subdivision or the total of paragraphs (2), (4), and (5) of this subdivision, plus the applicable daily prorate.

A legal description of the parcel shall accompany the order.

(b) On or before the date set for trial, the tax collector shall, on a form approved by the board, certify such information to the court, and the court, as part of its judgment in eminent domain, shall order that the amounts so certified be paid to the tax collector from the award. In the event no order for possession has issued relative to such parcel, the court's order shall require an amount to be paid which shall be a sum certain to, but not including, the date of trial, plus an amount equal to the appropriate daily prorate multiplied by the number of days commencing on the date of trial and ending on and including the day before the date the final order of condemnation is recorded.

(c) Where the only interest of the county or any other taxing agency in the property being condemned is a lien for ad valorem taxes, the county or such other agency need not be named as a party in the eminent domain proceeding, but such lien shall be extinguished as a matter of law upon the acquisition of such property by the condemning agency.

(d) In any instance where real property is acquired either by negotiated purchase or in an action in eminent domain by the United States or any public entity in this state and because of such acquisition the lien for ad valorem taxes against such property is extinguished, such lien shall immediately transfer and attach to the proceeds constituting the purchase price or award.

Comment. Former subdivisions (a)-(b) of Section 4986.9 are continued in Code of Civil Procedure Section 1260.250. Former subdivision (c) is continued in Code of Civil Procedure Section 1250.250. Former subdivision (d) is continued in Revenue and Taxation Code Section 5089.

101/146

Revenue and Taxation Code §§ 5081-5090 (added)

SEC. 14. Article 5 (commencing with Section 5081) is added to Chapter 4 of Part 9 of Division 1 of the Revenue and Taxation Code, to read:

Article 5. Cancellation of Taxes on Exempt Property

§ 5081. "Exempt property" defined

5081. As used in this article, "exempt property" means:

(a) Property acquired by the United States, if the property becomes exempt from taxation under the laws of the United States.

(b) Property acquired by the state or by a county, city, school district, or other public entity, if the property becomes exempt from taxation under the laws of the state.

Comment. Section 5081 continues the first portion of former subdivision (b) of Section 4986 except that the requirement that the property be "not subject to sale for delinquent taxes" is replaced by the requirement that the property be "exempt from taxation under the laws of the state."

§ 5082. Date of acquisition of exempt property

5082. For purposes of this article, the date of acquisition of exempt property is the earliest of the following times:

- (a) The date the conveyance is recorded in the name of the public entity.
- (b) The date of actual possession by the public entity.
- (c) The date upon or after which the public entity may take possession as authorized by an order for possession or by a declaration of taking.

Comment. Section 5082 supersedes the portion of former subdivision (b) of Section 4986 that defined the date of acquisition. Section 5082 makes clear that the date of acquisition is the earliest of the times listed, regardless whether an eminent domain proceeding has been commenced or an order for possession prior to judgment has been obtained.

§ 5083. Delinquent taxes, penalties, and costs

5083. (a) No cancellation shall be made of all or any portion of any unpaid taxes, or of any penalties or costs that have accrued thereon while on the secured roll, levied for prior tax years that constitute a lien on exempt property acquired after the lien date.

(b) Such unpaid taxes, penalties, and costs shall be paid through escrow at the close of escrow or from the award in eminent domain, or if unpaid for any reason, shall be collected like any other taxes, penalties, and costs on the unsecured roll.

(c) If such unpaid taxes, penalties, and costs are unpaid at the time set for the sale of property on the secured roll to the state, they shall be transferred to the unsecured roll pursuant to Section 2921.5, and collection shall be made as provided therein. The statute of limitations on any suit brought to collect such unpaid taxes, penalties, and costs shall commence to run from the date of transfer to the unsecured roll, which date shall be entered on the unsecured roll by the auditor opposite the name of the assessee at the time the transfer is made.

Comment. Section 5083 continues the substance of the first paragraph of former subdivision (b) of Section 4986. The term "exempt property" is defined in Section 5081. For collection and cancellation of current taxes on exempt property, see Sections 5084 and 5085.

§ 5084. Current taxes: prior to commencement of fiscal year

5084. If exempt property is acquired by negotiated purchase and sale, gift, devise, or eminent domain after the lien date but prior to the commencement of the fiscal year for which current taxes are a lien on the property, the amount of the current taxes shall be canceled and neither the person from whom the property was acquired nor the public entity that acquired the property is liable for the payment of the taxes.

Comment. Section 5084 continues the substance of the first sentence of the second paragraph of former subdivision (b) of Section 4986. The term "exempt property" is defined in Section 5081.

§ 5085. Current taxes, penalties, and costs: after commencement of fiscal year

5085. If exempt property is acquired by negotiated purchase and sale, gift, devise, or eminent domain after commencement of the fiscal year for which the current taxes are a lien on the property:

(a) The portion of the current taxes, together with any penalties and costs that have accrued thereon while on the secured roll that is allocable to the part of the fiscal year that ends on the day before the date of the acquisition of the property, shall be paid through escrow at the close of escrow or from the award in eminent domain, or if unpaid for any reason, shall be transferred to the unsecured roll pursuant to Section 2921.5 and shall be collectible from the person from whom the property was acquired.

(b) The portion of the current taxes, together with any penalties and costs that have accrued thereon while on the secured roll that is allocable to the part of the fiscal year that begins on the date of the acquisition of the property, shall be canceled and shall not be collectible either from the person from whom the property was acquired or from the public entity that acquired the property.

Comment. Section 5085 continues the substance of the second and third sentences of former subdivision (b) of Section 4986. The term "exempt property" is defined in Section 5081. The "date of acquisition" of exempt property is defined in Section 5082.

§ 5086. Collection of taxes, penalties, and costs

5086. The board of supervisors of a county may provide that all unpaid taxes, penalties, and costs and the allocable portion of current taxes, penalties, and costs computed in accordance with this article shall not be paid through escrow at the close of escrow or from the award in eminent domain, but shall be transferred to the unsecured roll and collected pursuant to Section 2921.5.

Comment. Section 5086 continues the substance of former Section 4986.1, with the exception of the provision relating to eminent domain which is continued in Code of Civil Procedure Section 1260.250(d).

§ 5087. Tax deeded property

5087. Notwithstanding any other provision of this article unpaid taxes, penalties, or costs shall not be transferred to the unsecured roll with respect to property that has been tax deeded to the state for delinquency.

Comment. Section 5087 continues the substance of the third paragraph of former subdivision (b) of Section 4986.

§ 5088. Cancellation of nominal amounts

5088. The board of supervisors of a county may prescribe that, where the amount of unpaid taxes, penalties, and costs to be transferred to the unsecured roll pursuant to this article is less than ten dollars (\$10), such taxes, penalties, and costs shall be canceled rather than transferred to the unsecured roll.

Comment. Section 5088 continues the substance of former Section 4986.1(a).

§ 5089. Transfer of lien

5089. If because of the acquisition of exempt property either by negotiated purchase or eminent domain the lien for ad valorem taxes on the property is extinguished, the lien immediately transfers and attaches to the proceeds constituting the purchase price or award.

Comment. Section 5089 continues the substance of subdivision (d) of former Section 4986.9. The term "exempt property" is defined in Section 5081.

§ 5090. Notice of proposed acquisition of property

5090. (a) If a public entity proposes to acquire property for a public use that will make the property exempt from taxation, the public entity shall give notice to all of the following:

(1) The county tax collector.

(2) Any other public entities whose taxes are not collected by the county tax collector but who at the time exercise the right of assessment and taxation.

(b) The notice shall be given within a reasonable time following the initial budgeting of funds for the proposed acquisition, and shall state all of the following:

(1) The approximate extent of the proposed project.

(2) The estimated time of completion of all acquisitions necessary for the proposed project.

(c) This section creates no rights or liabilities and does not affect the validity of any property acquisitions by purchase or eminent domain.

Comment. Section 5090 continues the substance of former Section 4986.7.

Revenue and Taxation Code § 5096.3 (repealed)

SEC. 15. Section 5096.3 of the Revenue and Taxation Code is repealed.

~~5096.3. If taxes have been paid on property which is acquired by eminent domain after the lien date by the state or by any county, city, school district or other public agency of this state, the amount of such taxes which would have been subject to cancellation under Section 4986 if unpaid shall be deemed to be erroneously collected and shall be refunded to such public agency. For the purposes of this article, except Section 5096.7, such public agency shall be deemed to be the person who paid the taxes if such public agency reimbursed the condemnee for such taxes through payment under a cost bill filed in the eminent domain action. A claim for refund of taxes filed by a public agency pursuant to this section shall contain a copy of the cost bill under which taxes were reimbursed or a declaration~~

under penalty of perjury by the public agency that such taxes were reimbursed under a cost bill.

Refunds under this section shall be applicable to taxes paid on either the secured or unsecured rolls.

Comment. The substance of former Section 5096.3 is continued in Section 1268.440 of the Code of Civil Procedure.

405/908

Revenue and Taxation Code § 5096.7 (technical amendment)

SEC. 16. Section 5096.7 of the Revenue and Taxation Code is amended to read:

5096.7. If taxes have been paid on property acquired by negotiated purchase by any public entity designated in ~~subdivision (b) of Section 4986~~ Section 5081 after the commencement of the fiscal year for which the taxes are a lien on the property, the portion of such taxes which are allocable to that part of the fiscal year which begins on the date of the acquisition of the property and made uncollectible if unpaid by virtue of ~~Section 4986,~~ 5085, shall be deemed erroneously collected and shall be refunded to ~~such~~ the person who has paid the tax, where ~~such~~ the person was not otherwise reimbursed for ~~such~~ that portion of the taxes by the public entity which acquired the property.

Refunds under this section shall be applicable to taxes paid on either the secured or unsecured rolls.

Comment. Section 5096.7 is amended to reflect the enactment of Article 5 (commencing with Section 5081) of Chapter 4 relating to cancellation of taxes on exempt property.