

Memorandum 95-20

Tolling Statute of Limitations When Defendant is Out of State

Attached is a staff draft of a tentative recommendation calling for repeal of Section 351 of the Code of Civil Procedure. In reviewing the draft, please consider the following:

- Under Section 68616 of the Government Code, delay reduction rules may require service of the complaint within 60 days after filing. Many superior courts have adopted such a requirement. The rules generally, but not universally, expressly provide a means of obtaining relief from the deadline for good cause shown. The draft tentative recommendation would amend Section 68616 to make this mandatory.

- “[S]ervice by publication, and default judgments based thereon, are subject to rigid scrutiny because there is less assurance that the defendant has received actual notice. Accordingly, courts tend to be super-technical and set such judgments aside wherever possible.” R. Weil & I. Brown, Jr., *Civil Procedure Before Trial*, *Summons* § 4:121.1 (Rutter Group 1994). As noted in the draft, in setting aside such a judgment courts may protect plaintiffs by granting the relief “on whatever terms as may be just.” Code Civ. Proc. § 473.5. Is this sufficient protection of plaintiffs’ interests?

- What if a plaintiff holds only a small claim, and knows in advance that the defendant is out of the country and achieving service is likely to be difficult? If Section 351 is repealed, the statute of limitations on such a claim will not be tolled, so the plaintiff will have to bring suit during the limitations period, even though the chances of recovery may be slim and the expense of preparing, filing, and attempting to prosecute the lawsuit may be prohibitive. Such a lawsuit may also be an irritant to courts bent on achieving delay reduction goals. The staff is unsure whether and how these problems could be alleviated, but hopes that the Commission will have some ideas.

- In an abundance of caution, the staff has included a transitional provision in the draft, although this is probably unnecessary. The staff intends to do further research on this point prior to the Commission's April 24 meeting.

Respectfully submitted,

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

TENTATIVE RECOMMENDATION

Tolling Statute of Limitations When Defendant Is Out of State

April 1995

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN June 14, 1995.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF RECOMMENDATION

This recommendation calls for repeal of Section 351 of the Code of Civil Procedure, which tolls statutes of limitations when the defendant is out of the state. Section 351 is based on outdated notions of personal jurisdiction and service of process, and it is unconstitutional as applied to cases involving interstate commerce. Repeal of Section 351 would further the policies underlying statutes of limitations, protect state courts from having to adjudicate stale claims lacking any meaningful connection to the state, and eliminate inequities that may arise when tolling is applied to brief periods of absence.

The recommendation also includes conforming revisions and a proposed amendment of Section 68616 of the Government Code, which would require courts to extend delay reduction deadlines for service of process when plaintiffs show good cause. The recommendation was prepared pursuant to Resolution Chapter 81 of the Statutes of 1994, continued in Resolution Chapter __ of the Statutes of 1995.

TOLLING STATUTE OF LIMITATIONS WHEN DEFENDANT IS OUT OF STATE

INTRODUCTION

Code of Civil Procedure Section 351 tolls the statute of limitations when the defendant is out of state:

351. If, when the cause of action accrues against a person, he is out of the State, the action may be commenced within the term herein limited, after his return to the State, and if, after the cause of action accrues, he departs from the State, the time of his absence is not part of the time limited for the commencement of the action.

Recent commentary and judicial decisions criticize Section 351.¹ The California Law Revision Commission has examined Section 351, its purposes and operation, and other mechanisms in the law available to achieve the same goals. The Commission has concluded that Section 351 causes substantial problems and no longer serves a useful purpose. It should be repealed.

PROBLEMS CAUSED BY SECTION 351

Section 351 Is Unconstitutional As Applied to Cases Involving Interstate Commerce

Section 351 "forces a nonresident individual engaged in interstate commerce to choose between being present in California for several years or forfeiture of the limitations defense, remaining subject to suit in California in perpetuity."² It is unconstitutional as applied to cases involving interstate commerce.³

Section 351 Can Lead to Unfair Results

Section 351 applies not only to extended periods of absence from California, but also to very brief absences.⁴ A defendant may be penalized for taking a legitimate vacation out of state, often long before the limitations period has run.⁵ "Such an

1. See *O'Laskey v. Sortino*, 224 Cal. App. 3d 241, 273 Cal. Rptr. 674 (1990) (Section 351 no longer makes sense and should be repealed); *Abramson v. Brownstein*, 897 F.2d 389 (9th Cir. 1990) (Section 351 is unconstitutional as applied to cases involving interstate commerce); Comment, *California Code of Civil Procedure Section 351: Who's Really Paying the Toll?*, 23 Pac. L.J. 1639 (1992).

2. *Abramson v. Brownstein*, 897 F.2d 389, 392 (9th Cir. 1990).

3. *Id.* at 393; see also *Bendix Corp. v. Midwesco Enterprises*, 486 U.S. 888 (1988).

4. See, e.g., *Mounts v. Uyeda*, 227 Cal. App. 3d 111, 114, 277 Cal. Rptr. 730 (1991) (four day absence); *Garcia v. Flores*, 64 Cal. App. 3d 705, 709, 134 Cal. Rptr. 712 (1976) (eight day absence).

5. Comment, *California Code of Civil Procedure Section 351: Who's Really Paying the Toll?*, 23 Pac. L.J. 1639, 1674-75 (1992).

absence rewards a tardy plaintiff who has failed to file an action within the statutory period.”⁶

Section 351 May Require California Courts to Adjudicate Stale Claims Lacking Any Meaningful Connection to California

Section 351 can toll a limitations period even if, at the time the cause of action accrued, the parties resided outside the state and did not move into the state until much later.⁷ “This creates situations where a cause of action, which has no legal nexus with California, other than the parties being residents of the state, may be brought in California an indefinite amount of time after it accrued.”⁸ Section 351 causes California courts to have to adjudicate such claims, diverting limited judicial resources from other matters.

SECTION 351 IS NO LONGER NECESSARY

Besides having serious drawbacks, Section 351 no longer serves a useful purpose.

History of Section 351

Section 351 was enacted in 1872. In that era, out-of-state service of process was insufficient to confer jurisdiction in an in personam action.⁹ “Without the enactment of tolling provisions such as section 351, a defendant could avoid liability by simply remaining outside the state where the cause of action accrued until the applicable statute of limitations ran, thereby escaping accountability for his or her conduct.”¹⁰ This result left a resident plaintiff, often times unable or unwilling to pursue a defendant in that defendant’s state of residence, without means of redressing the injury.¹¹ By tolling the limitations period during a defendant’s absence from the state, Section 351 preserved the plaintiffs’ right to redress until service could be made within the state.

Section 351 has never been amended, but its tolling doctrine is now riddled with exceptions. The tolling of Section 351 does not apply to corporations,¹² limited

6. *Id.* at 1675; *see also* Acts, Recommendation and Study relating to Application of Foreign Periods of Limitation and Tolling of the Statute of Limitations by Absence of Defendant, N.Y.L. Revision Commission Reports 127, 168 (1943).

7. Comment, *California Code of Civil Procedure Section 351: Who’s Really Paying the Toll?*, 23 Pac. L.J. 1639, 1672-73 (1992); *see also* *Kohan v. Cohan*, 204 Cal. App. 3d 915, 251 Cal. Rptr. 570 (1988).

8. Comment, *California Code of Civil Procedure Section 351: Who’s Really Paying the Toll?*, 23 Pac. L.J. 1639, 1672-73 (1992).

9. *See Pennoyer v. Neff*, 95 U.S. 14 (1877).

10. Comment, *California Code of Civil Procedure Section 351: Who’s Really Paying the Toll?*, 23 Pac. L.J. 1639, 1644 (1992).

11. *Id.*

12. *Epstein v. Frank*, 125 Cal. App. 3d 111, 119 n.4, 177 Cal. Rptr. 831 (1981) (“[n]either a foreign corporation nor a domestic corporation is deemed absent from the state when its officers are absent and the statute of limitations is not tolled pursuant to section 351 of the Code of Civil Procedure as to either of such

partnerships,¹³ certain tax proceedings,¹⁴ actions in rem,¹⁵ nonresident motorists,¹⁶ and, in some circumstances, resident motorists.¹⁷

Modern Concepts of Personal Jurisdiction and Service of Process Obviate the Need for Section 351

The United States Supreme Court has overturned the jurisdictional doctrine requiring service within the forum state; a state may now exercise personal jurisdiction over any person having minimum contacts with the state.¹⁸ Service may be achieved by a variety of means: Under California's longarm statute and other statutes regulating service of process,¹⁹ "any defendant *anywhere* can be served with summons--one way or another."²⁰ Section 351 is no longer necessary to preserve a plaintiff's rights to redress.²¹

Difficulties in serving particular defendants may still occur. But these problems are adequately addressed by other mechanisms in the law without the need to toll limitations periods:

- Delay reduction rules. Under Section 68616 of the Government Code, delay reduction rules may require service of the complaint within 60 days after filing. Many superior courts have adopted such a requirement, but the rules generally provide a means of obtaining relief from the deadline for good cause shown.²²

entities"); *see also* *Cardoso v. American Medical Systems, Inc.*, 183 Cal. App. 3d 994, 999, 228 Cal. Rptr. 627 (1986); *Loope v. Greyhound, Inc.*, 114 Cal. App. 2d 611, 250 P.2d 651 (1952).

13. *Epstein v. Frank*, 125 Cal. App. 3d 111, 120, 177 Cal. Rptr. 831 (1981).

14. *See* Rev. & Tax Code §§ 177, 3725, 3809.

15. *Ridgway v. Salrin*, 41 Cal. App. 2d 50, 54, 105 P.2d 1024 (1940).

16. *Bigelow v. Smik*, 6 Cal. App. 3d 10, 15, 85 Cal. Rptr. 613 (1970) ("since a nonresident motorist is amenable to service of process within the state and to the entry of personal judgment against him, the reason for section 351 is not present, the section does not apply, and the period of limitation for commencing suit against him does not suspend").

17. Vehicle Code Section 17460 provides that by accepting a California driver's license, a California resident consents to out-of-state service of process in any action arising out of the resident's "operation" of a motor vehicle in California. Vehicle Code Section 17459 is a similar provision pertaining to a resident's acceptance of a certificate of ownership or registration. Under Vehicle Code Section 17463, if service can be made pursuant to Vehicle Code Sections 17459 or 17460, then the tolling of Section 351 does not apply, "except when [the resident] is out of this State and cannot be located through the exercise of reasonable diligence."

18. Minimum contacts exist when the connection between the person and the state is such that exercising jurisdiction over the person does not offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

19. *See* Code Civ. Proc. §§ 410.10, 413.10, 413.30, 415.10-415.50.

20. R. Weil & I. Brown, Jr., *Civil Procedure Before Trial*, *Summons* § 4.3 (Rutter Group 1994) (emph. in original).

21. *O'Laskey v. Sortino*, 224 Cal. App. 3d 241, 252 n.8, 273 Cal. Rptr. 674 (1990); Comment, *California Code of Civil Procedure Section 351: Who's Really Paying the Toll?*, 23 Pac. L.J. 1639, 1648-49, 1676 (1992).

22. *See, e.g.*, Superior Court Rule 7.7, County of Los Angeles (complaint to be served in 60 days but court may extend time upon showing of good cause); Superior Court Rule 1.4, County of San Diego

- Two-year statute. Sections 583.410 and 583.420 of the Code of Civil Procedure authorize courts to dismiss actions for delay in prosecution if "[s]ervice is not made within two years after the action is commenced against the defendant." Such dismissals are discretionary, not mandatory, and the court must take into account the availability of parties for service of process and the diligence in seeking to effect service of process.²³
- Three-year statute. Section 583.210 of the Code of Civil Procedure provides that "[t]he summons and complaint shall be served upon a defendant within three years after the action is commenced against the defendant." In computing the three year deadline courts are to exclude, *inter alia*, any time during which "[t]he defendant was not amenable to the process of the court" or "[s]ervice, for any other reason, was impossible, impracticable, or futile due to causes beyond the plaintiff's control."²⁴
- Five-year statute. Every civil action "shall be brought to trial within five years after the action is commenced against the defendant."²⁵ Courts applying this deadline must exclude any time during which it was "impossible, impracticable, or futile" to bring the action to trial.²⁶
- Default judgments based on process other than personal service. A plaintiff that resorts to a method of service other than personal service may on occasion obtain a default judgment against a defendant who never got actual notice of the action. Within a reasonable time (up to two years) after entry of the judgment, the defendant may move to set it aside, and the court may grant the motion "on whatever terms as may be just."²⁷ Courts also have inherent, equitable power to set aside judgments due to extrinsic fraud or mistake.²⁸ These doctrines may be invoked to relieve defendants from the consequences of judgments entered without their participation, but any such relief is to be on equitable terms, protecting the interests of diligent plaintiffs who could not achieve personal service.

(complaint to be served in 60 days unless a Certificate of Progress has been filed "indicating why service has not been effected on all parties and what is being done to effect service"); Superior Court Rule 2.4, City and County of San Francisco (complaint to be served in 60 days unless an order extending time has been obtained "upon a written application therefor showing why service has not been effected, the steps that have been taken to effect service, and the proposed date by which service is expected to be effected"). To prevent injustice to diligent plaintiffs encountering difficulties serving process, Section 68616 of the Government Code should be amended to require courts to extend delay reduction deadlines for service of process when plaintiffs show good cause.

23. Rules 372 and 373 of the California Rules of Court outline the procedure for requesting such a dismissal and list factors the court should consider in ruling on the request.

24. Code Civ. Proc. § 583.240.

25. Code Civ. Proc. § 583.310.

26. Code Civ. Proc. § 583.340.

27. Code Civ. Proc. § 473.5.

28. R. Weil & I. Brown, Jr., *Civil Procedure Before Trial*, *Defaults* § 5:435 (Rutter Group 1994). The terms extrinsic fraud and mistake "are given a broad interpretation and cover almost any circumstance by which a party has been *deprived of a fair hearing*." *Id.* at *Defaults* § 5:438; *see also* *In re Marriage of Park*, 27 Cal. 3d 337, 612 P.2d 882, 165 Cal. Rptr. 792 (1980).

Section 351 is no longer needed to protect a plaintiff from difficulties encountered in serving an out-of-state defendant. The law provides other rules better-tailored to addressing difficulty of service of process and its aftermath.

CONCLUSION

Statutes of limitation protect defendants from being unfairly surprised by stale claims — claims that may no longer be fairly tried because evidence has been misplaced, witnesses have disappeared, and facts have been forgotten.²⁹ Statutes of limitations should not be tolled unless necessary to protect overriding conflicting interests.

The tolling required by Section 351 is unreasonably burdensome on limited judicial resources, unfair in its application, and unconstitutional as applied to cases involving interstate commerce. Under modern concepts of personal jurisdiction and service of process, there is no countervailing justification for these detriments. Section 351 is an anachronism that should be repealed.

29. *Order of R.R. Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 349 (1944).

RECOMMENDED LEGISLATION

An act to repeal Section 351 of the Code of Civil Procedure, to amend Section 68616 of the Government Code, to amend Sections 177, 3725, and 3809 of the Revenue and Taxation Code, and to repeal Section 17463 of the Vehicle Code.

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

Code Civ. Proc. § 351 (repealed). Tolling limitations period when defendant is absent

SECTION 1. Section 351 of the Code of Civil Procedure is repealed.

~~351. If, when the cause of action accrues against a person, he is out of the State, the action may be commenced within the term herein limited, after his return to the State, and if, after the cause of action accrues, he departs from the State, the time of his absence is not part of the time limited for the commencement of the action.~~

Comment. Section 351 is repealed consistent with modern concepts of personal jurisdiction and service of process. *See, e.g., International Shoe Co. v. Washington*, 326 U.S. 310 (1945); Cal. Code Civ. Proc. §§ 410.10, 413.10, 413.30, 415.20, 415.30, 415.40, 415.50; *cf. Pennoyer v. Neff*, 95 U.S. 14 (1877) (endorsing the now outmoded doctrine that defendant must be served in state to confer in personam jurisdiction). Section 351 is unconstitutional as applied to cases involving interstate commerce. *See Abramson v. Brownstein*, 897 F.2d 389 (9th Cir. 1990). In addition, the repeal furthers the policies underlying statutes of limitations, protects state courts from having to adjudicate stale claims lacking any connection to the state, and eliminates inequities that may arise when tolling is applied to brief periods of absence. *See Comment, California Code of Civil Procedure Section 351: Who's Really Paying the Toll*, 23 Pac. L.J. 1639 (1992); Case Note, *Limitations of Actions: Absence of the Defendant: Tolling the Statute of Limitations on a Foreign Cause of Action*, 1 UCLA L. Rev. 619 (1954).

The repeal, operative January 1, 1998, does not affect an action commenced before that date.

___ Cal. Stat. ___ § 8.

CONFORMING REVISIONS

Government Code § 68616 (operative until Jan. 1, 1999) (amended). Delay reduction deadlines and procedures

SEC. 2. Section 68616 of the Government Code (operative until Jan. 1, 1999) is amended to read:

68616. Delay reduction rules shall not require shorter time periods than as follows:

(a) Service of the complaint within 60 days after filing. Exceptions, for longer periods of time may be granted as authorized by local rule *and shall be granted for good cause.*

(b) Service of responsive pleadings within 30 days after service of the complaint. The parties may stipulate to an additional 15 days. Exceptions, for longer periods of time, may be granted as authorized by local rule.

(c) Time for service of notice or other paper under Sections 1005 and 1013 of the Code of Civil Procedure and time to plead after service of summons under

Section 412.20 of the Code of Civil Procedure shall not be shortened except as provided in those sections.

(d) Within 30 days of service of the responsive pleadings, the parties may, by stipulation filed with the court, agree to a single continuance not to exceed 30 days.

It is the intent of the Legislature that these stipulations not detract from the efforts of the courts to comply with standards of timely disposition. To this extent, the Judicial Council shall develop statistics that distinguish between cases involving, and not involving, these stipulations.

(e) No status conference, or similar event, other than a challenge to the jurisdiction of the court, may be required to be conducted sooner than 30 days after service of the first responsive pleadings, or no sooner than 30 days after expiration of a stipulated continuance, if any, pursuant to subdivision (d).

(f) Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall govern discovery, except in arbitration proceedings.

(g) An order referring an action to arbitration or mediation may be made at any status conference held in accordance with subdivision (e), provided that any arbitration ordered may not commence prior to 210 days after the filing of the complaint, exclusive of the stipulated period provided in subdivision (d). Any mediation ordered pursuant to Section 1775.3 of the Code of Civil Procedure may be commenced prior to 210 days after the filing of the complaint, exclusive of the stipulated period provided in subdivision (d). No rule adopted pursuant to this article may contravene Sections 638 and 639 of the Code of Civil Procedure.

(h) Unnamed (DOE) defendants shall not be dismissed prior to the conclusion of the introduction of evidence at trial, except upon stipulation or motion of the parties.

(i) Notwithstanding Section 170.6 of the Code of Civil Procedure, in direct calendar courts, challenges pursuant to that section shall be exercised within 15 days of the party's first appearance. Master calendar courts shall be governed solely by Section 170.6 of the Code of Civil Procedure.

(j) This section applies to all cases subject to this article which are filed on or after January 1, 1991.

(k) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

Comment. Subdivision (a) is amended to ensure that delay reduction deadlines for service of process are extended when plaintiffs are unable to achieve service within the prescribed period despite diligent efforts. Formerly, Section 351 of the Code of Civil Procedure (now repealed) tolled the statutes of limitation while a defendant was out of the state. Modern concepts of personal jurisdiction and service of process eliminate the need for such tolling, but difficulties in serving defendants, whether in the state or outside it, may still occur and delay reduction deadlines should account for this.

Government Code § 68616 (operative Jan. 1, 1999) (amended). Delay reduction deadlines and procedures

SEC. 3. Section 68616 of the Government Code (operative Jan. 1, 1999) is amended to read:

68616. Delay reduction rules shall not require shorter time periods than as follows:

(a) Service of the complaint within 60 days after filing. Exceptions, for longer periods of time may be granted as authorized by local rule *and shall be granted for good cause.*

(b) Service of responsive pleadings within 30 days after service of the complaint. The parties may stipulate to an additional 15 days. Exceptions, for longer periods of time, may be granted as authorized by local rule.

(c) Time for service of notice or other paper under Sections 1005 and 1013 of the Code of Civil Procedure and time to plead after service of summons under Section 412.20 of the Code of Civil Procedure shall not be shortened except as provided in those sections.

(d) Within 30 days of service of the responsive pleadings, the parties may, by stipulation filed with the court, agree to a single continuance not to exceed 30 days.

It is the intent of the Legislature that these stipulations not detract from the efforts of the courts to comply with standards of timely disposition. To this extent, the Judicial Council shall develop statistics that distinguish between cases involving, and not involving, these stipulations.

(e) No status conference, or similar event, other than a challenge to the jurisdiction of the court, may be required to be conducted sooner than 30 days after service of the first responsive pleadings, or no sooner than 30 days after expiration of a stipulated continuance, if any, pursuant to subdivision (d).

(f) Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall govern discovery, except in arbitration proceedings.

(g) No case may be referred to arbitration prior to 210 days after the filing of the complaint, exclusive of the stipulated period provided for in subdivision (d). No rule adopted pursuant to this article may contravene Sections 638 and 639 of the Code of Civil Procedure.

(h) Unnamed (DOE) defendants shall not be dismissed prior to the conclusion of the introduction of evidence at trial, except upon stipulation or motion of the parties.

(i) Notwithstanding Section 170.6 of the Code of Civil Procedure, in direct calendar courts, challenges pursuant to that section shall be exercised within 15 days of the party's first appearance. Master calendar courts shall be governed solely by Section 170.6 of the Code of Civil Procedure.

(j) This section applies to all cases subject to this article which are filed on or after January 1, 1991.

(k) This section shall become operative on January 1, 1999.

Comment. Subdivision (a) is amended to ensure that delay reduction deadlines for service of process are extended when plaintiffs are unable to achieve service within the prescribed period despite diligent efforts. Formerly, Section 351 of the Code of Civil Procedure (now repealed) tolled the statutes of limitation while a defendant was out of the state. Modern concepts of personal jurisdiction and service of process eliminate the need for such tolling, but difficulties in serving defendants, whether in the state or outside it, may still occur and delay reduction deadlines should account for this.

Rev. & Tax Code § 177 (amended). Deeds issued by taxing agencies

SEC. 4. Section 177 of the Revenue and Taxation Code is amended to read:

177. (a) A proceeding based on an alleged invalidity or irregularity of any deed heretofore or hereafter issued upon the sale of property by any taxing agency, including taxing agencies which have their own system for the levying and collection of taxes, in the enforcement of delinquent property taxes or assessments, or a proceeding based on an alleged invalidity or irregularity of any proceedings leading up to such *the* deed, can only be commenced within one year after the date of recording of such *the* deed in the county recorder's office ~~or within one year after June 1, 1954, whichever is later.~~

(b) A defense based on an alleged invalidity or irregularity of any deed heretofore or hereafter issued upon the sale of property by any taxing agency, including taxing agencies which have their own system for the levying and collection of taxes, in the enforcement of delinquent property taxes or assessments, or a defense based on an alleged invalidity or irregularity of any proceedings leading up to such *the* deed, can only be maintained in a proceeding commenced within one year after the date of recording of such *the* deed in the county recorder's office ~~or within one year after June 1, 1954, whichever is later.~~

(c) Sections ~~351~~ 352 to 358, inclusive, of the Code of Civil Procedure do not apply to the time within which a proceeding may be brought under the provisions of this section.

(d) Nothing in this section shall operate to extend the time within which any proceeding based on the alleged invalidity or irregularity of any tax deed may be brought under any other section of this code.

(e) This section shall not apply to any deed issued by a taxing agency within five years from the time the property was sold to said taxing agency.

Comment. Section 177 is amended to reflect the repeal of Section 351 of the Code of Civil Procedure. The amendment also deletes obsolete language and makes other technical revisions.

Rev. & Tax Code § 3725 (amended). Proceeding based on invalidity or irregularity

SEC. 5. Section 3625 of the Revenue and Taxation Code is amended to read:

3725. A proceeding based on alleged invalidity or irregularity of any proceedings instituted under this chapter can only be commenced within one year after the date of execution of the tax collector's deed.

Sections ~~351~~ 352 to 358, inclusive, of the Code of Civil Procedure do not apply to the time within which a proceeding may be brought under this section.

Comment. Section 3725 is amended to reflect the repeal of Section 351 of the Code of Civil Procedure.

Rev. & Tax Code § 3809 (amended). Proceeding based on invalidity or irregularity

SEC. 6. Section 3809 of the Revenue and Taxation Code is amended to read:

3809. A proceeding based on alleged invalidity or irregularity of any agreement or deed executed under this article can only be commenced within one year after the execution of the instrument.

Sections 351 352 to 358, inclusive, of the Code of Civil Procedure do not apply to the time within which a proceeding may be brought under this section.

Comment. Section 3809 is amended to reflect the repeal of Section 351 of the Code of Civil Procedure.

Veh. Code § 17463 (repealed). Computation of limitations period

SEC. 7. Section 17463 of the Vehicle Code is repealed.

~~17463. Notwithstanding any provisions of Section 351 of the Code of Civil Procedure to the contrary, when summons may be personally served upon a person as provided in Sections 17459 and 17460, the time of his absence from this State is part of the time limited for the commencement of the action described in those sections, except when he is out of this State and cannot be located through the exercise of reasonable diligence, except this section in no event shall be applicable in any action or proceeding commenced on or before September 7, 1956.~~

Comment. Section 17463 is repealed to reflect the repeal of Section 351 of the Code of Civil Procedure. The repeal, operative January 1, 1998, does not affect an action commenced before that date. __ Cal. Stat. __ § 8.

Operative date

SEC. 8. This act becomes operative on January 1, 1998. The repeals of Section 351 of the Code of Civil Procedure and Section 17463 of the Vehicle Code by this act do not affect an action commenced before January 1, 1998.

Comment. The operative date of this act is deferred to January 1, 1998, so that a plaintiff relying on the tolling of a repealed statute as a basis for delaying suit has adequate opportunity to commence an action before the repeal is operative.