

Delinquent Property Tax Penalty Cancellations: “A Day Late and a Dollar Short”

Summary

Who knew?

Have you ever paid a late property tax installment that included an additional 10% penalty? Did you know there is a County process that allows for the cancellation of the automatic State penalty?

Where is such information found and for what reasons may these penalties be cancelled?

Due to citizen concern for fairness, transparency, and lack of record keeping of the County’s waiver system, the Grand Jury sought accountability from the Tax Collector’s office for the granting or denying of penalty cancellations for delinquent tax payments.

The Grand Jury interviewed employees of various County offices to determine the consistency of their response to individual requests for relief by late-paying taxpayers, since it appears to vary with individual circumstances. Are the taxpayers being informed of the different waiver options available to them?

The Grand Jury found that the Tax Collector’s record keeping appeared inadequate and the present waiver system inconsistent, with missing documentation and/or waiver forms. To avoid the appearance of inconsistent application of tax penalty cancellations for delinquent taxpayers, the Grand Jury recommends that the Tax Collector implement the following improvements:

- Publish the process for the cancellation of penalties.
- Establish a transparent record keeping process to track delinquent tax penalties granted and denied for each fiscal year.
- With the Auditor-Controller Office, direct ISD to enable the new IT system to track tax penalty cancellation transactions (granted and denied).
- Be more transparent in applying the State Code.

Definitions

- **APN:** Assessor’s Parcel Number
- **Code:** State of California Tax and Revenue Code
- **ISD:** Santa Cruz County Information Systems Department
- **Secured Property:** Property in Santa Cruz County secured by real assets such as land, buildings, etc.
- **Tax Collector:** Santa Cruz County Tax Collector
- **Tax Delinquency Penalty:** Property Taxes not timely paid are subject to a delinquency penalty equal to 10% of the amount of the property tax due plus costs.

- **Tax Delinquency Penalty Cancellation:** The Cancellation of a Tax Delinquency Penalty under California Tax and Revenue Code Sections 4952(a, b, c).
- **Waiver Form:** A form filled out by the Tax Collector, which contains the details concerning a request for Tax Delinquency Penalty Cancellation.
- **Waived Penalty:** A Tax Delinquency Penalty Cancellation granted by the Santa Cruz County Tax Collector under California Tax and Revenue Code Section 4952(a). Definitions vary within the County due to the various reasons to cancel tax penalties, thus we have avoided using it because of its ambiguity.

Background

Each year, the Santa Cruz County Tax Collector's office prepares approximately 90,000 property tax bills for a total billing of \$398.8 million. Bills for the regular secured property assessment roll must be mailed by November 1 and are due in two equal installments. The first installment is due November 1 and becomes delinquent at the close of business or 5:00 p.m. on December 10. The second installment is due February 1 and becomes delinquent at the close of business or 5 p.m. on April 10. Every year in early April and early December, Santa Cruz County taxpayers pay their tax installments before the delinquent dates. The vast majority make their payment on time by rushing to the County Building or by obtaining the critical US Postal Service postmark. Some taxpayers miss the deadline and their taxes become delinquent. State law requires a 10% penalty be assessed for these delinquent taxes.

State law provides that under certain circumstances tax penalties can be cancelled (all references to a particular "Section" shall mean the Revenue and Taxation Code of the State of California^[1]). Section 4985.2^[2] states that any penalty, costs or other charges resulting from tax delinquency may be cancelled by the auditor or tax collector upon one of the following:

- Failure to make a timely payment is due to reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect, provided the principal payment for the proper amount of the tax due is made no later than June 30 of the fourth fiscal year following the fiscal year in which the tax became delinquent. Subdivision (a) of Section 4985.2.
- There was an inadvertent error in the amount of payment made by the taxpayer, provided the principal payment for the proper amount of the tax due is made within 10 days after the notice of shortage is mailed by the tax collector. Subdivision (b) of Section 4985.2.
- The cancellation was ordered by a local, state, or federal court. Subdivision (c) of Section 4985.2.

Section 2512^[3] also provides for penalty relief for payments mailed on time, but delivered after the deadline, stating, "the remittance shall be deemed received on the date shown by the post office cancellation mark stamped upon the envelope."

The Code^[2] provides the Auditor or Tax Collector^[2] the ability to cancel a tax delinquency penalty upon a finding that supports subsections 4985.2(a), 4985.2(b), or 4985.2(c) as described above.

Scope

Because of the discretion granted the Tax Collector, the Grand Jury was concerned about the possibility of preferential treatment given to selected taxpayers. After a review of the issue, the Grand Jury became interested in the tax delinquency penalty cancellation process and carried out an investigation to answer the following questions:

1. How many tax delinquency penalties were cancelled in Santa Cruz County over the past five years and were there any trends?
2. What was the total dollar value of these cancelled penalties?
3. Are controls in place to prevent the growth of tax delinquency penalties cancelled?
4. Is there a documented process, in the Tax Collector's Office, for the processing and granting of cancellations?
5. Are all taxpayers treated equally and without the perception of favoritism?

The scope of this report is limited to the question concerning the cancellation of tax delinquency penalties and the associated processes. We have not considered other functions of the Tax Collector's Office; thus, the report should not be used to evaluate all the activities of the Tax Collector.

Investigation

To start the investigation we contacted the Tax Collector's Office and the Auditor-Controller's Office and requested reports which detailed tax penalty cancellations over the past five years. The Grand Jury was informed by both departments that no such reports were available. The Auditor-Controller's office provided two reports, but they did not meet the investigation's needs. The inability to produce the requested reports was blamed on the antiquated tax system software currently in use.

Tax penalty cancellation information is only filed with the original tax payment documents and this is filed in batches based on the processing date. The Tax Collector Office does not maintain a separate reporting system for tax waivers. Any inquiries regarding waivers require a manual search through the paper files containing all 90,000 tax bills for any given year.

The Grand Jury requested all tax penalty cancellation records for 2010 on January 13, 2011. The Tax Collector admitted the records were difficult to access with his limited staff. During a site visit to the Tax Collector's Office, the Grand Jury observed the filing system and the difficulty of finding penalty cancellation information. The Grand Jury was informed the records would not be available until at least April 1, but received them in seven weeks, on March 4, 2011. The Tax Collector reported that all instructions to office staff regarding tax penalty cancellations were only given orally; there are no written procedures.

The Grand Jury was unable to find information on the County web page^[4] or at any other easily accessible location concerning the delinquent tax penalty cancellation. In contrast to Santa Cruz County, other counties, such as Riverside^[5] and Contra Costa,^[6] have forms available online which taxpayers fill out to request cancellations of penalties.

The Grand Jury learned from interviews that some County taxpayers who request penalty cancellations are denied without being told that the Code allows for cancellations with qualifying reasons. In other cases, taxpayers who demand appointments with the Tax Collector may get their penalties cancelled without completing the full process, without adequate documentation, or having a waiver form attached.

To evaluate the waivers the Grand Jury requested to see all the waivers for fiscal years 2008-09 and 2009-10. For these tax years, of the 1,156 tax penalty cancellations granted, approximately 289 cases were granted by the Tax Collector. The remaining 75% of the cancellations were granted by the office staff.

Based on the Grand Jury's request, the Tax Collector provided sixty-eight Assessor's Parcel Numbers (APNs) to the Grand Jury that were granted penalty cancellations. The records provided only covered the dates of August 8, 2009, through July 30, 2010. These included a list of four APNs which were noted by a letter from the Tax Collector at a later time. Of these sixty-eight, one was for an over-payment and refund and one was for unsecured property. This left our sample size at sixty-six.

The sixty-six APNs reviewed by the Grand Jury were accompanied by a broad range of supporting documentation. During interviews, the Grand Jury was told that for every tax penalty cancellation granted, the Waiver Form and the supporting documentation were filed with the tax payment record.

- Ten cancellations were given to taxpayers because they submitted checks for the incorrect amounts and were handled by office staff, thus Section 4985.2(a)^[2] does not apply.
- Twelve were cancelled due to taxpayer illness thus potentially qualifying for Section 4985.2(a).^[2] One had no documentation and one other had no Waiver Form.
- Twelve were due to banking difficulties such as insufficient funds in checking account. All included documentation, but four were without Waiver Forms and Section 4985.2(a)^[2] may potentially apply.
- Fourteen were cancelled due to claims of postal service errors, one without documentation and two without Waiver Forms.
- Nine were due to confusion, for example, first time homebuyers and supplemental tax misunderstandings. Three were without documentation and five were without Waiver Forms.
- One was directed by the Auditors-Controller's Office not the Tax Collector's Office due to a county addressing error, thus Section 4985.2(a)^[2] does not apply.
- Four were due to unforeseen circumstances including financial difficulties. One was without documentation and three were without Waiver Forms.
- Four additional cancellations were reported to the Grand Jury in a separate letter from the Tax Collector. The Grand Jury was given the APNs without any other documentation.

For each APN, we expected to be given a Waiver Form completed and signed by the Tax Collector accompanied by supporting documentation, for verification of health issues, mail, bank

and other special circumstances that may apply. As described above, the amount of documentation varied greatly.

The Grand Jury attempted to tally the cancellations handled solely by the Tax Collector. Of the sixty-six APNs reviewed, eleven were not considered because they were handled either by office staff or the Auditor-Controller. The remaining fifty-five APNs appeared to have been directly acted on by the Tax Collector. Based on the Tax Collector's policy, we expected each to have attached waiver forms and documentation. However, ten (18%) had no documentation and nineteen (34%) were without waiver forms. Without sufficient documentation, it was not possible to assess the appropriateness of the waivers granted.

The Code^[2] provides for a considerable amount of interpretation in tax penalty cancellations. The Santa Cruz County Tax Collector gives taxpayers the benefit of doubt. The tax penalty cancellation records given to the Grand Jury cited reasons by taxpayers of illness, death, confusion, postal issues, banking errors, and financial difficulties.

In other counties, penalty cancellations appear more likely to be denied, based on information obtained from their websites.^{[5][6][7][12][13][14]} For example, the Shasta County website^[7] had the following statement:

I placed my payment in the mailbox at the post office on the day my payment was due. Why was a late charge assessed?

Answer: *Placing the envelope in the post office box does not guarantee that the mail will be processed the same day/evening. State law requires that a payment be treated as if it had been received on the date shown by the post office cancellation mark on the envelope. Only U.S. Federal Government postmarks will be accepted. To avoid penalties, ask to have the envelope hand canceled by the post office. Metered mail is not accepted as a valid cancellation.*

The Grand Jury also asked to view the tax penalty cancellation requests that were denied. The Grand Jury was informed by the Tax Collector that no records of denied tax penalty cancellation requests are kept. This makes it impossible to determine if all applicants were treated consistently and fairly.

A report was requested from County Information Services Department (ISD) of all tax penalty cancellations granted and recorded in the Tax Collector's database. This report proved very useful but it also demonstrated further inconsistencies in the current system. For example, a custom report^[8] the Grand Jury received covered the dates July 1, 2009 through June 30, 2010 that included the time period of the waivers we received from the Tax Collector. The report listed 675 APNs with cancelled penalties for a total of \$177,389.57 including many not pertaining to Section 4985.2(a).^[2] Similar financial totals for other years were not available. However, thirteen of the parcels included in the records provided by the Tax Collector were missing from the report prepared by ISD. This demonstrates inaccuracies of the current property tax system.

The Santa Cruz County Grand Jury 2008-2009 issued a report on the ISD. The prior report included the following statement: “The new property tax system, used by the Auditor, Assessor and Tax Collector, is the third and final phase of the project plan and will be moved into production by 2011.”^[9] We interviewed representatives of ISD to determine the capabilities of the new system. It was found that the new system can be easily configured to track and report tax penalty cancellation. To date, no such requests have been made by the Tax Collector’s or Auditor-Controller’s offices.

The investigation discovered two special internal audit reports from the Auditor-Controller’s Office concerning tax penalty cancellations, one from 2005 and another from 2009. Besides the two special internal audits, there are no regular audits of the Tax Collector’s penalty cancellation process. Each audit contained several recommendations for improvements in the tax cancellation penalty process, of which only some have been implemented and some have not.

The key recommendation of the 2005 auditor report^[10] that has not been implemented is:

We recommend Treasurer-Tax Collector management work with programming staff to create a summary report by tax year that lists all fee waivers by type and reason code/source code. Current system reason/source codes could be expanded to allow for easier identification of types of penalty cancellations. This will allow the Treasurer-Tax collector to review the amounts and types of penalty fee waivers at a summary level.

The key recommendations of the 2009 audit report^[11] that have not been implemented are:

- 1. The Treasurer-Tax Collector should consider preparing a list of specific documents that taxpayers should be required to submit before penalties can be waived. For example, hospitalization will require an invoice from the hospital or insurance company, or a letter from the doctor. Such a list will ensure that sufficient documentation is provided and that penalties are consistently waived.*
- 2. The Treasurer-Tax Collector should consider modifying its current penalty waiver request form to those used by other counties, such as Contra Costa and Kern. These counties provide the forms to the taxpayers to complete. The form can include a list of documents as referenced in recommendation one. This, in conjunction with recommendation one, transfers the responsibility for meeting, and the scrutiny for allegedly not meeting, RTC 4985.2(a)^[2] from the Treasurer-Tax Collector to the taxpayer. This form could be made available on the Office's website for ease of access by the taxpayer. Samples of these two counties forms are attached as Exhibit A and B.*
- 3. The Treasurer-Tax Collector should regularly, perhaps quarterly, review a report of all penalty cancellations. This will ensure that the Treasurer-Tax Collector is aware of the total number and dollar value of penalties being cancelled.*

Findings

- F1.** The Tax Collector’s use of discretion in evaluating the reason to grant tax delinquency penalty cancellations appears inconsistent.

- F2.** The filing system used in the Tax Collector's Office does not allow tax penalty cancellation documents to be easily located.
- F3.** No records are retained of denied requests for tax penalty cancellations.
- F4.** The Tax Collector's Office does not appear to be consistently following the audit recommendations made by the Auditor-Controller Office.
- F5.** The Tax Collector's Office staff has no written procedure to follow for the processing of penalty cancellations.
- F6.** Information regarding delinquent tax penalty cancellation processes is not adequately publicized within the County.
- F7.** The new computer system has the capability to track details regarding tax penalty cancellations if requested by the Tax Collector or Auditor-Controller.

Recommendations

To avoid the appearance of inconsistent application of tax penalty cancellations for delinquent taxpayers, the Grand Jury makes the following recommendations:

- R1.** The Tax Collector should create a form for taxpayers requesting the cancellation of tax penalties that includes the recommendations of the internal audit reports, an explanation of the Tax Code,^{[1][2][3]} and the Tax Collector's response (i.e. granted or denied and reason).
- R2.** It should be compulsory for taxpayers to complete the new Waiver Form with supporting documentation when requesting a tax penalty cancellation.
- R3.** The Tax Collector should maintain a separate file containing copies of records of all tax penalty cancellation applications, with associated documentation, whether denied or approved.
- R4.** The Tax Collector should broadly publicize the delinquent tax penalty cancellation process.
- R5.** The County Auditor-Controller should add a review of tax penalty cancellations to the regular audit of the Tax Collector's Office.
- R6.** The Tax Collector should publish a semi-annual report documenting the number of requests and the dollar value of the cancelled tax penalties. The report should include a summary of reasons why tax penalties cancellations were approved and denied.
- R7.** The Tax Collector and the Auditor-Controller Office should direct ISD to enable the new IT system to track tax penalty cancellation transactions, both granted and denied.
- R8.** The Tax Collector should act in a more transparent manner when applying the State Code.

Commendations

ISD has kept the antiquated electronic tax filing system operating for many years past its useful life.

The Tax Collector's Office handles the County tax systems efficiently in spite of staff reductions.

Responses Required

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
County Treasurer- Tax Collector	F1- F7	R1-R4, R6-R8	60 Days September 1, 2011
County Auditor- Controller	F4	R5, R7	60 Days September 1, 2011
County Information Services Director	F7	R7	60 Days September 1, 2011

Sources

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<http://www.boe.ca.gov/lawguides/property/current/ptlg/rt/revenue-and-taxation-code.html>
2. Revenue and Taxation Code of the State of California Section 4985.2
<http://www.boe.ca.gov/lawguides/property/current/ptlg/rt/4985-2.html>
3. Revenue and Taxation Code of the State of California Section 2512
<http://www.boe.ca.gov/lawguides/property/archive/2010/rt/2512.html>
4. Santa Cruz County Tax Collector Information <http://www.co.santa-cruz.ca.us/ttc/>
5. Riverside County Treasurer-Tax Collector, "PROPERTY OWNER'S CANCEL PENALTY REQUEST," accessed: May 22, 2011, <http://www.treasurer-tax.co.riverside.ca.us/pdf/RequestCancelPenalty.pdf>
6. Contra Costa County Tax Collector, "Application for Tax Penalty Relief," accessed: May 22, 2011, <http://www.co.contra-costa.ca.us/DocumentView.aspx?DID=811>
7. Shasta County Tax Collector Frequently Asked Questions.
http://www.co.shasta.ca.us/index/tc_index/tc_faq.aspx
8. 422-01-002 ISD Special Report County of Santa Cruz, "Penalties Waived on Defaulted Taxbills,"run 04/26/11.
9. Santa Cruz County Grand Jury Final Report and Responses 2008-2009 accessed: May 25, 2011. http://www.co.santa-cruz.ca.us/grandjury/GJ2009_responses/index.html

10. County of Santa Cruz, Auditor-Controller's Office Interoffice Correspondence, To: Fred Keeley, Treasurer-Tax Collector From Gary Knutson, Auditor-Controller August 24, 2005, Subject: Whistleblower Hotline Report: Treasurer-Tax Collector's Waiving of Penalties.
11. County of Santa Cruz, Auditor-Controller's Office Interoffice Correspondence, To: Board of Supervisors Members Individually, From Mary Jo Walker, Auditor Controller, December 10, 2008, Subject: CONFIDENTIAL - Investigating Whistleblower Allegation - Waiving Penalties.
12. Tulare County Property Tax Services accessed: May 22, 2011, <http://www.tularecounty.ca.gov/government/property/default.asp>
13. Kern County Treasurer/Tax Collector, "Penalty Waiver Policy," August 5, 2003, accessed: May 22, 2011, <http://www.kcttc.co.kern.ca.us/index.cfm?fuseaction=kcttcinternet.showPenaltyWaiverPolicy>
14. Kern County Treasurer/Tax Collector, "Kern County Application for Tax Relief," January 2007, accessed: May 22, 2011, <http://www.kcttc.co.kern.ca.us/Forms/penwaiverapp.pdf>
15. Contra Costa County, "Treasurer - Tax Collector Home Page," accessed: May 22, 2011, <http://www.co.contra-costa.ca.us/index.aspx?NID=199>

Interviews

Administrators and Personnel:

County Auditor-Controller's Office
County Tax Collector's Office

Site Visits

County Tax Collector's Office

