



(916) 323-7714

August 31, 1981

Mr. G

Attn: Mr. F

Dear Mr. F :

Tax Liability When Uncollectible

In your letter of April 7, 1981, you ask a series of questions as to whether the assessor is obligated to attempt certain statutory duties under circumstances that indicate that any resulting tax liability would be uncollectible. Our general response is that the law would not require the performance of fruitless acts but we would cautiously advise that you be certain that the tax is uncollectible.

For example, you pose the case where a corporation no longer exists (dissolution by sale or bankruptcy) and ask whether an audit should be attempted and if determined, an escape assessment should be made. A similar situation did in fact arise in Yolo County and was properly disposed of by the county counsel. He relied on T.M. Cobb Co. v. County of Los Angeles, 16 Cal. 3d 606 (1976), for the holding that:

It is settled law in this state that the lien of a property tax exists only by virtue of statute and that taxes are not a lien on the property assessed unless expressly made so by statute. However, unlike taxes on real property (2187), the Revenue and Taxation Code does not specifically provide that a tax on personal property constitutes an automatic lien on the property assessed. Upon assessment such a tax under certain circumstances may constitute an automatic lien on real property belonging to the owner of the personal property

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(2189, 2189.3), but not a lien on the  
personalty itself. (at page 618)

Hence, it is clear that collectibility depends on  
whether or not real property subject to a lien is involved. If  
so, escapes should be pursued, but if there is no lien and the  
entity to be assessed no longer exists, then any obligation on  
the assessor's part should also cease to exist.

Your final question on change in ownership discovered  
after an estate has closed should be handled in the same manner.

Very truly yours,

James M. Williams  
Tax Counsel

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