

CHAPTER 8 TAX SALES

Process, Pertinent Elements, and Review Criteria



Presented by
The State Controller's Office
Burlingame, CA October, 2015

Introduction

This presentation will review the Chapter 8 Agreement Tax Sale, its general process and procedures.

Agreement Sale Overview

Overview

The agreement sale is designed to allow eligible taxing agencies or nonprofit organizations the opportunity to purchase tax-defaulted property for the purpose of public benefit and/or to offset the tax owed to them by utilizing some other characteristic of the property for financial compensation.

Overview

With the tax collector's power to sell, a Chapter 8 Agreement Tax Sale may take place:

- Five or more years or three or more years in the case of commercial property after the property becomes tax defaulted.
- Three years or more after the property becomes tax defaulted, if there is a recorded nuisance abatement lien.

Upon Receipt of Application

Pre-Sale Authorization

(Board of Supervisors and the State Controller)

Action	Days prior to SCO Approval
Review the Purchase Proposal Application	35 - 20 days
Prepare the Request for Approval from the Board of Supervisors	25 - 15 days
Submit the Approval Request to the Board of Supervisors	20 - 10 days
Prepare the Request for the State Controller's Office Authorization	10 - 5 days
Submit the Request for the State Controller's Authorization	Allow 45 days for authorization

Identifying the Purchasing Entity

Identifying the Purchasing Entity

At any time after the tax collector records a Notice of Power to Sell for a tax-defaulted property pursuant to section 3691, any eligible taxing agency, revenue district, city, special district, or nonprofit organization may submit a proposal to purchase the property (§3773).

Identifying the Purchasing Entity

There are two categories:

- **Public Agency:** State, counties, cities, taxing agencies, revenue districts, special districts, and other state agencies.
- **Nonprofit Organization:** An entity that includes among its bylaws an express purpose of acquiring property pursuant to Revenue and Taxation Code §3772.5

Initial Application and Parcel Review

Purchase Eligibility Review

Purchasing Scenarios

A public agency or a nonprofit organization may apply to purchase parcels as follows:

- Apply to purchase a parcel that is currently in tax default pursuant to §3691 but not yet approved for any other tax sale.
- Apply to purchase a parcel, **along with an objection to the sale** of that parcel if it is currently approved for public auction or sealed bid sale.

Purchase Eligibility Review Purchasing Scenarios

For a parcel currently approved for public auction or sealed bid:

If the application is submitted after the date of the first published or posted Notice of Sale

- Stop the review and return application to the entity
- Inform entity that the objection and agreement sale purchase proposal is not valid

Application to Purchase Tax-Defaulted Property

This application must be completed by an eligible purchasing entity to commence purchase of tax-defaulted property by agreement sale from the county under applicable provisions of the California Revenue and Taxation Code. Complete the following sections and supply supporting documentation accordingly. Completion of this application does not guarantee purchase approval.

A. Purchaser Information

1. Name of Organization: _____
2. Corporate Structure:
 - Nonprofit Organization
 - Public Agency

B. Purchasing Information

Is the parcel currently approved for a Chapter 7 tax sale?

- Yes No

The purchase is by: (Only check one box)

- A taxing agency, revenue district or special district A non-profit organization
- The State or County

The purpose of the purchase is: (Only check one box)

- To preserve a lien
- For public purpose Describe public purpose _____
- For low income housing
- To preserve open space

Application to Purchase Tax-Defaulted Property (continued)

C. Property Information

Provide the following information. (If more space is needed exhibits may be attached.)

1. County where the parcel(s) is located: _____

2. Assessor's Parcel Number (for each parcel): _____

D. Acknowledgement

Provide the signature of the purchasing entity's authorized officer

Authorized Signature

Title

Date

Purchase Eligibility Review Existing Parcel Conditions

Ensure that the parcel has no existing condition that would disqualify it from being offered at an agreement sale.

Purchase Eligibility Review Homeowner's Exemption Situs

Determine whether the parcel has a valid homeowner's exemption.

Public Agency Purchase Eligibility Review

Purchase Eligibility Review

Qualifications and Conditions of Sale

- **Taxing Agency that is not also a Revenue District**
 - State, a county and certain districts
- **Taxing Agency that is also a Revenue District**
 - A city and every district for which property taxes are assessed and, levied, and collected by county officers

Purchase Eligibility Review

Qualifications and Conditions of Sale

- **Special District**

- Formed for the local performance of governmental or proprietary functions within limited boundaries
- May have jurisdictional boundaries to consider.

Important: If the sphere of influence of the Special District does not include, or is not expanded to include the property, the taxes will not be exempt and the purchaser will have to pay taxes to the jurisdiction in which the property is located.

Purchase Eligibility Review Qualifications and Conditions of Sale

Note: Consider consulting county counsel as an additional measure to verify whether a public agency is qualified to purchase.

Public Agency Application Requirements

Public Agency Application Requirements

Eligible public agencies may purchase all or any portion of tax-defaulted property subject to the tax collector's power to sell

- including a right-of-way or other easement
- Multiple parcels may be consolidated into one purchase agreement
- an option to purchase tax-defaulted properties (limited to a period of three years)

Application Requirements Purchase Agreement

The purchase agreement should contain the five elements listed below:

- Date
- Name of the Purchasing Agency
- Property Description
- Purchase Amount
- Terms and Conditions
- Purchase Resolution

Application Requirements

Parties to the Agreement

Purchaser	Signatories to Agreement
A City	Governing body of the city, Board of Supervisors, the State Controller
A Taxing Agency	Governing body of taxing agency, Board of Supervisors, the State Controller
A Revenue District	Governing body of revenue district, Board of Supervisors, the State Controller
The State**	Director of the Department of General Services on behalf of the purchasing agency (or agency itself is authorized by law to purchase on its own behalf), Board of Supervisors, the State Controller

Application Requirements

Parties to the Agreement

(continued)

Purchaser	Signatories to Agreement
A County**	Board of Supervisors or their designee on behalf of the purchasing agency within the county, Board of Supervisors, the State Controller
A Special District*	Governing body of special district, Board of Supervisors, the State Controller

* If the property is within a city, the governing body of the city.

** If the purchaser is the State or a county, and the property lies within the boundaries of a city, the city must approve the purchase price (§ 3775).

Note: No Agreement is valid until it is approved by the State Controller (§ 3795)

Application Requirements Parties to the Agreement

Note: The facsimile signature of the chairperson of the Board of Supervisors is acceptable. A facsimile signature has the same authority as an original signature.

Application Requirements Parties to the Agreement

Note: If the agreement is with the State or a county, use this signature block:

Pursuant to the provisions of Revenue and Taxation Code section 3775, the Controller agrees to the selling price hereinbefore set forth and, pursuant to the provisions of section 3795, approves the foregoing agreement this _____ day of _____.

BETTY T. YEE, CALIFORNIA STATE CONTROLLER

By: _____

Note: For agreements with agencies other than the State or a county, use this signature block:

Pursuant to the provisions of Revenue and Taxation Code section 3795, the Controller approves the foregoing agreement this _____ day of _____.

BETTY T. YEE, CALIFORNIA STATE CONTROLLER

By: _____

Nonprofit Organization Purchase Eligibility Review

Nonprofit Organization Purchase Eligibility Review

Pursuant to revenue and taxation §3791.4 a nonprofit organization may purchase property for:

- Constructing or rehabilitating property to rent or sell to low-income persons, or otherwise using the property to serve low-income persons
- Dedicate vacant land to public purpose
- Dedicate vacant land for open space

Purchase Eligibility Review

Qualifications and Conditions of Sale

- Determine whether the nonprofit entity is incorporated in the State of California (§3772.5(b)).
- Verify that the entity is incorporated for the purpose of acquiring single-family or multi-family dwellings for rehabilitation and sale to low-income persons, vacant land for construction of low-income housing, or vacant land to be dedicated to public use.

Purchase Eligibility Review

Qualifications and Conditions of Sale

Note: Consult county counsel as an additional measure to verify whether a nonprofit corporation is qualified to purchase a property.

Nonprofit Organization Application Requirements

Nonprofit Organization Application Requirements

- Eligible nonprofit organizations may purchase all or any portion of residential or vacant tax-defaulted property subject to the Tax Collector's power to sell.

Application Requirements Purchase Agreement

The purchase agreement should contain the following elements:

- Date
- “Substandard Building” Documentation
- Property Description
- Purpose of Acquisition
- Purchase Amount
- Terms and Conditions (Project Compliance, Articles of Incorporation, etc.)

Application Requirements Purchase Agreement

RTC 3795.5.

In the case of an agreement involving a nonprofit organization, the board of supervisors **may** establish conditions of sale, including reporting, to assure the completion of rehabilitation within a reasonable time and maximum benefit to low-income persons. **These conditions shall include**, but are not limited to, the following:

- Requiring compliance with a jurisdiction's consolidated plan or a community development plan.
- Articles of incorporation filed with the Secretary of State, stating that the organization is incorporated for the purposes specified in subdivision (b) of Section 3772.5.

Application Requirements Purchase Agreement

Other terms or conditions not specifically outlined by statute, but granted to the board under the general authority of RTC §3795.5, may include:

- Require nonprofit to pay for certain sales costs
 - Publication cost
 - guaranty of title cost
 - proceedings to obtain a clear title
 - expenses incurred in the payment, compromise, or other method of removal of any liens or adverse claims against the property

Application Requirements Purchase Agreement

- Project References
 - a list of successful projects
 - references
 - any other documentation deemed necessary
- Purchase Resolution

Sale Price

(Public Agency and Nonprofit Organization)

Sale Price

Pursuant to revenue and taxation code §3793.1 include, at a minimum, the amounts of all of the following:

- All defaulted taxes and assessments, and all associated penalties and costs.
- Redemption penalties and fees incurred through the month of the sale.
- All costs of the sale.

Sale Price

(continued)

- The outstanding balance of any Property Tax Postponement (PTP) loan. Sum of the following:
 - Tax payments made by the State Controller's office on behalf of the claimant in the PTP Program.
 - Accrued interest pursuant to Section 16183 of the Government Code, subject to Sections 20644 and 20644.5.
 - Other associated fees and penalties as deemed appropriate by law.
 - Less any payments already made on the property tax postponement loan.

Sale Price

(Continue)

- If the property or property interests have been offered for sale under the provisions of Chapter 7 (commencing with Section 3691) at least once and no acceptable bids therefor have been received, **the tax collector may, in his or her discretion and with the approval of the board of supervisors, offer that property or those interests at a minimum price that the tax collector deems appropriate.**
- The board of supervisors may permit a nonprofit organization to purchase property or property interests by way of installment payments.

Requesting Board of Supervisors' Approval

Requesting Approval from the Board of Supervisors

Once the review of the purchase proposal is completed, submit a request to approve the agreement sale to the county Board of Supervisors for review.

Include in the request package the following items:

- A copy of the agreement for signature.
- All supporting documents.

State Controller's Office

Review and Authorization

State Controller's Authorization

The final step of the agreement sale approval process is to obtain the State Controller's Office authorization, pursuant to sections 3795 and 3795.5. In order to receive State Controller authorization, certain documents must be submitted, depending on the type of sale.

Documents required for Chapter 8 Agreement Sales

_____ Notice of Power to Sell (RTC §§3691, 3773)

- One per parcel

_____ Application (SCO Form 8-16) (RTC §§ 3695.4, 3695.5)

- List all parcels or include as an exhibit or attachment
- Must be dated prior to the first publication if the parcel is currently scheduled for a Chapter 7 Tax Sale

_____ Objection Letter (RTC §§3695.4, 3695.5)

- Only needed if the parcel is currently scheduled for a Chapter 7 Tax Sale

_____ Agreement (SCO Form 8-13 or 8-15) (RTC §3795)

- List all parcels or include as an exhibit or attachment
- Must be signed and dated

_____ Chapter 8 Purchase Resolution (RTC §3695)

- From purchasing entity

_____ County Board of Supervisors Resolution or Minute Order Approving the Sale (RTC §3794.3)

State Controller's Authorization (continued)

_____ Chapter 7 Tax Sale Resolution (RTC §3694)

- Only needed if the parcel is currently scheduled for a Chapter 7 Tax Sale

_____ Publication (RTC §3702)

- Only needed if the parcel is currently scheduled for a Chapter 7 Tax Sale

Additional Components for Nonprofit

_____ Articles of Incorporation (RTC §§3772.5, 3795.5)

_____ Document listing each parcel and intended use (RTC §§3772.5, 3695.5)

Send the materials to:

Betty T. Yee
California State Controller
Division of Accounting and Reporting
3301 C Street, Suite 740
Sacramento, CA 95816
Attn: GCC and Property Tax Standards Section

State Controller's Authorization Agreement Approved

Following review by the State Controller's Office:

- Original application packet returned to the county in addition to the following:
 - The agreement contract, signed, and affixed with the State Controller's seal.
 - Written authorization from the State Controller and direction to continue with the sale process.

State Controller's Authorization Agreement Not Approved

If the State Controller does not approve the agreement:

- The agreement will be returned **to each party** with a statement of objections to it.
- A new or modified agreement may be made (resubmittal). (§3795).

Statutory Requirements

Statutory Requirements for Processing Sale

Action	Days prior to...
• Search for Parties of Interest	40-30 days prior to mailing the <i>Notice to Parties of Interest</i>
• Notify Parties of Interest	45-60 days* prior to the effective date of sale
• Notify Assessee by Personal Contact	Not less than 10 days* prior to sale
• Notify the IRS	Not less than 25 days* prior to sale
• Publish/Post the Notice of Sale	Not less than 21 days* prior to sale
• Agreement Sale Becomes Effective	No sooner than 21st day* after 1st pub. of <i>Notice of Agreement</i>

Statutory Requirements

Publishing/Posting Notice of Sale

- A notice must be published once a week for three successive weeks in a newspaper published in the county where the property to be sold is located.
- If no newspaper is published in the county seat or in the judicial district, a notice may be posted in three public places (§3798).

Notice of Agreement Details

- Description of the property
- Name of the last assessee of the property.
- That an agreement for the sale of the property or for an option to purchase it, or both, as the case may be, has been made by the Board of Supervisors with taxing agency/nonprofit organization named in the agreement and has been approved by the Controller.
- A copy of the agreement is on file in the office of the Board of Supervisors.
- If not terminated, that unless the property is redeemed before the agreement becomes effective, the right of redemption will cease.

Notice of Sale Details

(continued)

- The date and time that the agreement will become effective.
- That parties of interest, as defined in Section 4675, have the right to file a claim with the county for any excess proceeds
- If excess proceeds result from the agreement, notice will be given to parties of interest pursuant to law.

Redemption and Other Issues Prior to the Sale

Redemption

- Terminates at the date and time the agreement becomes effective.
- If the parcel or any portion of the parcel is redeemed before the agreement becomes effective, the agreement is null as to the property redeemed.
- Valid redemption if received by mail and the postmark date is prior to or on the date of the effective date of sale.

Redemption

- If made 90 days or less prior to the sale date, add \$150 to the total amount to redeem.
- If Add cost for personal contact or a written notice served.

Parcels Withdrawn for Any Other Reason

The tax collector may withdraw a parcel from a tax sale, with consent of county counsel, if it is deemed to be in the best interest of the county to do so (§3698.8).

Injunction Brought Against Tax Sale

- An injunction, restraining order, or other legal action cannot be brought against the county to either prevent or enjoin the collection of property taxes sought to be collected (§4807).
- **However, an injunction can be used to stop the county from offering a parcel at a tax sale.**

Note: If an injunction for a particular parcel is brought against the tax sale, contact the county counsel.

Other Conditions

Additional factors that may require withdrawing property from the agreement sale are as follows:

- Property is determined not to be subject to tax default
- Assessee declares bankruptcy, even at the last minute.
- Power to Sell is cancelled.

Effective Date of the Sale

Effective Date of the Sale

- By operation of law, no sooner than 5:01 p.m. on the 21st day after the date of the first published or posted Notice of Agreement (§3802).
- Recommend payment, plus costs, be required no later than 14 days after the effective date.

Effective Date of Sale

- If the purchaser fails to pay the purchase price within the agreed-upon time, do not execute the deed to the purchaser.
- The right of redemption is automatically restored to the last assessee or his or her successor in interest.

Effective Date of the Sale

- If the agreement sale involves specific terms or conditions regarding the rehabilitation of the property, the Board of Supervisors may take measures to ensure compliance.
- The Board may direct the tax collector to execute these measures.

After the Sale

Post-Sale Statutory Requirements

Actions	Required timing
Execute a Deed to the Purchaser	Immediately* after receiving the full purchase price at the sale
Record the Deed with the County Recorder	Immediately* after executing the deed to the purchaser
Report to the County Treasurer and the County Auditor	Immediately* after depositing the money received from the sale
Report to the Assessor	Not less than 30 days* after sale
Mail the Notice of Excess Proceeds	Not less than 90 days* after sale
Publish the Notice of Excess Proceeds (Only if the last known address of a party of interest cannot be obtained)	Not less than 90 days* after the sale
Distribute the Excess Proceeds	No sooner than 1 year* following recordation of tax collector's deed to the purchaser

Additions to the Deed

- That the real property was subject to a power of sale pursuant to Section 3691 for nonpayment of taxes which had been legally levied and were a lien on the property.
- The name of the purchaser.
- Any condition deemed necessary to effect compliance with the agreement

Post-Sale Reports

- **Treasurer and Auditor** (report immediately)(§ 3718)
 - Cost of advertising
 - Sale price for each parcel
 - Cost of recording the deeds
 - Amount of transfer tax
 - State and County fees
- **Assessor** (report within 30 days)(§ 3716)
 - Name of purchaser
 - Date the property was sold
 - Sale Price
 - Description of the property

Excess Proceeds Notification

0-90 days after the sale

- Notification (§4676(b))
- Publication (§4676(c))
- Eligibility (§ 4675(e))
- Claim request processing (§4675)

Contact Information

Sharon Parker, Program Analyst

(916) 324-1713

SLParker@sco.ca.gov

For general inquiries please email propertytax@sco.ca.gov

Helpful Links

HUD Definition of Consolidated Plan

- http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/about/conplan

HUD approved California State & Local Consolidated Plan listings and links

- http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/about/conplan/local/ca

HUD Section 8 Housing Income Limits

- <http://www.huduser.gov/portal/datasets/il/il15/index.html>

IRS Notice of Nonjudicial Sale of Property (instructions and form)

- <http://www.irs.gov/pub/irs-pdf/p786.pdf>

Helpful Links

California Bankruptcy Courts and File Search Tool

http://www.casb.uscourts.gov/html/calif_bkrptcy_crts.htm

<http://www.casb.uscourts.gov/html/fileroom.htm>

Indian Allotment and Land Patent Search (U.S. Department of the Interior, Bureau of Land Management)

<http://www.glorerecords.blm.gov/search/default.aspx#searchTabIndex=0>

Questions

End