

**170.0009.550**

SAN FRANCISCO, April 22, 1940

Honorable Harry B. Riley  
State Controller  
Sacramento, California

Dear Sir:

We have your letter of April 17 asking for an interpretation of the application of Section 1034 of the Political Code to the following state of facts:

A certain tax or assessment was due and payable at the office of the Treasurer in Sacramento on August 15. Subsequent to that date you received a check in the mail, in an envelope post-marked August 17. It appears that the check was originally mailed August 14 in Los Angeles but the envelope apparently was mis-addressed to the Treasurer at Los Angeles instead of Sacramento and was returned to the sender who remailed the check in the envelope which you received and which was postmarked the 17th.

The section in question reads as follows:

“If a remittance to cover a payment required by law to be made to the State or to a State agency is sent through the United States mail, the State or the State agency shall treat the remittance as if it had been received on the date shown by the Post office cancellation mark stamped upon the envelope containing the remittance.”

We are of the opinion that under the statute only the second mailing, that is, the mailing where the envelope was properly addressed, can be considered. A mailing to an improper address does not meet the requirements of the statute. While the code does not specifically state that it must be properly addressed, we believe that this is implied, for it is obvious that a mailing that never reaches the State cannot be considered as a payment of the tax.

We therefore believe that you have properly rejected the first mailing and imposed a penalty because the second mailing was not within the time permitted within the statute.

Very truly yours,

EARL WARREN, Attorney General

By R. L. CHAMBERLAIN

Deputy

RLC:MM