Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Yamada/Beall	Analyst:	Matthew Cooling	Bill Number:	AB 827
Related Bills:	See Legislative History	Telephone:	845-5983	Amended Date:	June 24, 2009 & July 7, 2009
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Property-Related Document Recording Fees Shall Not Exceed $3 Per Document

SUMMARY

This bill would authorize the county board of supervisors to increase the fee to record property-related documents.

SUMMARY OF AMENDMENTS

The July 7, 2009, amendments made changes related to the authority to expend funds collected, as specified.

The June 24, 2009, amendments, related to recording documents of general public or historical interest, removed a provision that would have allowed a fee increase equal to $3 for the first page and $1 dollar for each additional page and inserted a provision that would establish a flat fee increase not to exceed $3 per document recorded.

This is the department's first analysis of the bill.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to provide a stable source of funding for archiving county public records in order to preserve historical information for public use.

EFFECTIVE/OPERATIVE DATE

Assuming enactment in 2009, this bill would become effective on January 1, 2010, and operative on that date.

POSITION

Pending.

Board Position:			Department Director	Date
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ANALYSIS

STATE LAW

Under current state law, when a person fails to pay any liability for taxes at the time a debt becomes due and payable, the unpaid amount becomes a perfected and enforceable state tax lien. A state tax lien attaches to all property and rights to property, including all after acquired property belonging to the person and located in California. Under the concept of "first in time, first in right," the lien is not valid against real property interests, such as a security interest or a lien holder interest properly filed and noticed prior to the recording of a Notice of State Tax Lien in the office of the county recorder of the county in which real property is located.

Government Code (GC) section 27383 states that no fee shall be paid by the state when a county recorder renders services to the state; however, GC section 27361.3 states that for any release of lien or encumbrance recorded in the county recorder's office for which section 27383 applies, a fee of $8 shall be imposed.

In addition, the California Revenue and Taxation Code (R&TC) allows the Franchise Tax Board (FTB) to release all or any portion of property subject to any lien once a taxpayer's liability has been satisfied. R&TC states that any fee associated with recording and releasing a lien from the taxpayer is the obligation of the taxpayer and may be collected in the same manner that the unpaid tax is collected.[1] Therefore, any lien fees associated with the state tax lien or its release are added to the taxpayer's tax account and collected in addition to the delinquent tax liability.

THIS BILL

This bill would allow the board of supervisors of the 58 counties in California to provide archiving of historical records, including records pertaining to real property, local agency meetings and actions, roads and other public works, and other records of general public or historical interest.

This bill would allow the boards of supervisors to adopt and impose a fee increase to offset the cost of archiving recorded public documents. This fee increase would not exceed $3 per document recorded and would be added to the fee each county currently imposes for recording documents. As a result, a taxpayer's delinquent liability would increase. The increase would be recorded on both the taxpayer's account and the Annual Notice[2] to the taxpayer.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to information systems, which could be accomplished during the normal annual update.

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[1] Revenue and Taxation Code (R&TC) section 19209
[2] The Taxpayer Bill of Rights (R&TC section 21026) requires that for taxable years beginning on or after January 1, 1998, the Franchise Tax Board must mail written notices to all taxpayers that have a delinquent balance due. The notices must be sent annually and inform the taxpayers of the amount due as of the date of the notice.

LEGISLATIVE HISTORY

AB 985 (De La Torre, 2009-2010) would allow a county recorder fee increase of $3 to fund the redaction of an unlawfully restrictive covenant agreement. This bill is currently in the Senate Appropriations Committee.

AB 2715 (Runner, Stats 2006, Ch. 423) authorized the transmission, filing, recording, and indexing of notices of state tax liens recorded or filed by electronic or magnetic means, using computerized data processing, telecommunications, or other similar information technologies available to the filing offices.

AB 911 (Chu, Stats 2005, Ch. 398) allowed FTB the discretion to extinguish certain taxpayer debts and established a 20-year statute of limitations on collections to extinguish uncollectible debts.

AB 578 (Leno, Stats 2004, Ch. 621) expanded the authorization for electronic filing of documents at a county recorder's office to include instruments of reconveyance, substitution of trustee, or assignment of deed of trust.

PROGRAM BACKGROUND

When FTB records a state tax lien with the county recorder, a taxpayer notification is mailed that indicates the total tax liability due, including collection fees, which include the lien release recording fee. When the liability is paid, FTB files a certificate of lien release in the recorder's office. Because the tax lien is released upon full payment of delinquent taxes and the delinquency amount includes the collection fee, FTB does not normally incur any costs for filing the release of state tax liens. Historically, if a lien release fee is increased by a county, FTB has only collected the amount initially referenced in the notice sent to the taxpayer and has absorbed any additional fee charged by the county.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York.* These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida Department of Revenue pays the lien recording fee of $10 when the lien is filed and recorded and includes the fee in the amount of tax due when the lien is filed. *Illinois*, *Michigan*, and *Minnesota* pay the recording fees, ranging from $10 to $38[3], to the county recorders offices when the lien is released and the cost for recording and releasing the lien is collected from the taxpayer when the tax liability is paid.

Massachusetts and *New York* do not impose a fee for recording tax liens.

[3] The recording fee assessed for these states is dependent on current state law and the various counties assessing the fee.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Impact

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 827 Assumed Enacted After June 30, 2009 Effective On or After January 1, 2010			
County Lien Fee	2009-10	2010-11	2011-12
Increase Of $3	-$130,000	-$70,000	-$60,000

Any possible changes in employment, personal income, or gross state product that might result from this bill are not taken into account.

Revenue Discussion

Departmental data show a current inventory of approximately one million tax liens. The liens are issued for taxpayers with tax debt of $1,000 or more, where that debt is six months old or older.

It is estimated there would be a one-time revenue loss of approximately $90,000 in 2009-10 until an FTB information system upgrade could be accomplished that would allow FTB to collect the additional $3 fee. There would be an additional loss of approximately $40,000 in 2009-10 for the fee increase associated with non-resident liens, for a total of approximately $130,000 ($90,000 + $40,000). The amount of loss in subsequent years would be associated with non-resident liens. It is estimated the net loss in 2010-11 would be approximately $70,000 and, in 2011-12 would be approximately $60,000, with declining losses in future years.

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