Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	De La Torre/ Krekorian	Analyst:	Matthew Cooling	Bill Number:	AB 985
Related Bills:	See Legislative History	Telephone:	845-5983	Amended Date:	July 9, 2009
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Property-Related Document Recording Fees

SUMMARY

This bill would authorize the county recorders to increase the fee to record property-related documents.

SUMMARY OF AMENDMENTS

This bill as introduced February 27, 2009, would require Section 782.6 to be added to the Civil Code, which would require any restrictive language to be stricken from a deed when a property is transferred in ownership.

The June 9, 2009, and July 1, 2009, amendments removed the provision adding Section 782.6 to the Civil Code and amended Sections 12956.1,12956.2, and 27361, and added Article 3.6 of the Government Code, related to the treatment of restrictive covenants in previously recorded documents.

The July 7, 2009, and July 9, 2009, amendments removed the provisions that authorize the county board of supervisors to increase the fee for recording a document and would allow the county recorders to impose the fee increase, as specified. In addition, the July 9, 2009, amendments stated that the fee increase proposed by the bill would not exceed three dollars.

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 and independent source of funding for the redaction of an unlawfully restrictive covenant from all county public records.

EFFECTIVE/OPERATIVE DATE

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

Board Position:			Department Director	Date
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POSITION

Pending.

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 eight dollars 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 county recorder's to adopt and impose a fee increase to offset the cost of redacting unlawfully restrictive covenants from public county documents. The fee increase would not exceed three dollars per document recorded and would be added to the fee each county currently imposes for recording documents. As a result, a taxpayer's total liability, which includes taxes and fees, 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.

[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 827 (Yamada, 2009-2010) would authorize the county board of supervisors to increase the fee to record property-related documents. This bill is currently set for the third reading on the Senate Floor.

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 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, substation of trustee, or assignment of deed of trust.

PROGRAM BACKGROUND

When FTB records a state tax lien with the county recorder, notification is mailed to the taxpayer indicating the total tax liability due, including collection fees, which includes 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 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.

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[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 985 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 three dollar 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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