

Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author: DeSaulnier, et al. Analyst: Janet Jennings Bill Number: SB 391
 Related Bills: See Legislative History Telephone: 845-3495 Amended Date: May 20, 2013 and August 8, 2013
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: California Homes & Jobs Act of 2013/ Additional \$75 Real Estate Transaction Recording Fee

SUMMARY

This bill would impose a fee of \$75 on the recording of certain real estate-related documents, to fund the California Homes and Jobs Trust Fund.

RECOMMENDATION

No position.

Summary of Amendments

The May 20, 2013, amendments added a coauthor and requirements for the Department of Industrial Relations to monitor and enforce prevailing wage requirements for certain public works projects.

The August 8, 2013, amendments added co-authors, modified the administrative responsibilities of the Department of Housing and Community Development, the California Housing Finance Agency, the California Tax Credit Allocation Committee, the California Debt Limit Allocation Committee, and made a number of non-substantive technical changes.

This is the department’s first analysis of the bill. This analysis only addresses the provisions of this bill that impact the department’s programs and operations.

REASON FOR THE BILL

The reason for the bill is to provide funding dedicated to affordable housing development.

EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective immediately upon enactment and specifically operative for documents filed on and after January 1, 2014.

Board Position:	Executive Officer	Date
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ANALYSIS

FEDERAL/STATE LAW

Creation of a Tax Lien

Under both federal and state income tax laws, in general, if a taxpayer owes delinquent tax amounts, a tax lien automatically arises by operation of law for that amount, and is known as a statutory tax lien. A statutory tax lien is an unrecorded claim upon real and personal property for the satisfaction of a debt.

Recording of a Tax Lien

The recording of a tax lien is a public record and is against all real and personal property belonging to the taxpayer. With respect to real property, a Notice of State Tax Lien may be filed with the County Recorder's Office of the county in which the real property is located. For personal property, a Notice of State Tax Lien may be filed with the California Secretary of State. In general, credit bureaus monitor public records for recorded liens and notate such liens on credit reports. This may prevent or delay a taxpayer's ability to conduct various financial transactions such as buying, selling, or transferring real property, and obtaining additional credit.

Duration of a Tax Lien

For federal purposes, a statutory tax lien exists as long as the delinquency exists or until it is unenforceable due to the expiration of the general 10-year collection statute of limitations, without regard to whether the lien is recorded.

For state purposes, a statutory tax lien arises on the date of an assessment and exists for 10 years, unless the liability is satisfied or a Notice of State Tax Lien is recorded. A recorded Notice of State Tax Lien continues in effect for 10 years from the date of recording unless it is released or extended.

Extension of the Duration of a Tax Lien

A recorded federal tax lien can be refiled and therefore continue in effect, but only in the limited situations in which the general federal 10-year collection statute of limitations is extended.

When a Notice of State Tax Lien has been recorded, it can be extended for an additional 10 years and is released when the liability is satisfied or the state collection statute of limitations has expired.

Lien Fee

Generally, provisions of the Government Code prescribe that no fee shall be paid by the state when a county recorder renders services to the state. Exceptions are provided in instances where the taxpayers last known address is out of state or for any release of lien or encumbrance recorded in the county recorder's office. A lien release is subject to a fee of \$8.

Releasing a Lien

Under the California Revenue and Taxation Code (R&TC), the FTB may release all or any portion of property subject to any lien once a taxpayer's liability has been satisfied. The 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 As a result, 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 impose an additional \$75 fee for each recording of a release of state tax lien and partial release of state tax lien and state tax lien filed on taxpayers with an out of state address.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require modifications to the department's collection and notification systems, in addition to changes to current forms and notices. Additionally the department would incur the fee as an operational expense if the lien is released as filed in error. See the "Fiscal Impact" section of this analysis for associated costs.

LEGISLATIVE HISTORY

SB 1220 (DeSaulnier, et al., 2011/2012) was identical to this bill. SB 1220 failed to pass out of the Senate Appropriations Committee.

OTHER STATES' INFORMATION

Since this bill would increase specified county recorder fees a review of other states' income tax information would not be relevant.

FISCAL IMPACT

This bill would impose a \$75 fee when the FTB requests a state tax lien release or when the FTB records a lien against a taxpayer with an out of state last known address. As provided for under current law, the department would add the \$75 fee to the taxpayer's account for collection. In cases where a lien is filed in error, the department would be required to pay the associated fees. As a result, the department would be required to update current forms and send notifications regarding the new fee to taxpayers with existing liens, impacting the department's printing, processing, and postage costs. In addition, the department's accounting system would require changes, additional personnel needs, training, and equipment costs of \$148,000 for the current fiscal year (2013-14), \$2.9 million in the budget year (2014-15), and \$2 million in ongoing costs. It is recommended that the bill be amended to include appropriation language that would provide funding to implement this bill. Lack of an appropriation will require the department to secure the funding through the normal budgetary process, which could delay implementation of this bill.

¹ Revenue and Taxation Code (R&TC) section 19209

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

SUPPORT/OPPOSITION²

Support:

California Housing Consortium (co-source)
Housing California (co-source)
State Treasurer Bill Lockyer
A Community of Friends, et al.

Opposition:

Board of Equalization Member George Runner
Board of Equalization Member Michelle Steel
Butte County Clerk-Recorder
Calaveras County Clerk-Recorder
California Association of Legal Document Assistants
California Association of Realtors, et al.

ARGUMENTS

Proponents: Some could argue that this bill provides a way for California to increase the supply of affordable housing options.

Opponents: Some could argue that the responsibility to pay for affordable housing programs, previously paid with a combination of redevelopment funds, state bonds, federal funds, and proceeds from local exactions, should not be applied onto only those who record real estate documents.

LEGISLATIVE STAFF CONTACT

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² As reported by the Senate Floor Analysis as of June 6, 2013.