

ANALYSIS OF AMENDED BILL

Author: Atkins et al. Analyst: Janet Jennings Bill Number: AB 1335
 See Legislative
 Related Bills: History Telephone: 845-3495 Amended Date: April 30, 2015
 Attorney: Bruce Langston Sponsor _____

SUBJECT:	Building Home & Jobs Act/Additional \$75 Real Estate Transaction Fee
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SUMMARY

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

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

RECOMMENDATION

No position.

Summary of Amendments

The bill as introduced February 27, 2015 would impose a fee of \$75 on the recording of specified real estate-related documents. The bill as amended April 20, 2015, and April 30, 2015, made changes that do not impact the Franchise Tax Board. This is the department’s first analysis of the bill.

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, 2016.

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.

Board Position:	Executive Officer	Date
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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.

Subordination of a State Tax Lien

Government Code Section 7174 authorizes the Franchise Tax Board (FTB) to subordinate its state tax lien to another lien when it is determined that payment of the amount due is sufficiently secured by the state tax lien on other property or the subordination of lien will not jeopardize collection of the amount due.

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. 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 "real estate instrument, paper, or notice," which is defined as a document relating to real property, including, but not limited to, the following: deed, grant deed, trustee's deed, deed of trust, reconveyance, quit claim deed, fictitious deed of trust, assignment of deed of trust, request for notice of default, abstract of judgment, subordination agreement, declaration of homestead, abandonment of homestead, notice of default, release or discharge, easement, notice of trustee sale, notice of completion, UCC financing statement, mechanic's lien, maps, and covenants, conditions, and restrictions.

The fee would be specifically inapplicable to recordings of real estate instruments, papers, or notices related to a transfer of real property that is (1) subject to a documentary transfer tax, as defined, or (2) a residential dwelling to the owner-occupier of that dwelling.

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.

LEGISLATIVE HISTORY

SB 391 (DeSaulnier, et al., 2013/2014) was substantially similar to this bill. SB 391 failed to pass out of the Senate Appropriations Committee.

SB 1220 (DeSaulnier, et al., 2011/2012) was identical to SB 391. 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

If this bill is intended to impose a \$75 fee when the FTB issues a subordination of lien, requests an in state tax lien release, or records or releases 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. 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, resulting in additional personnel, training, and equipment costs.

The department's costs to implement this bill have yet to be determined, but are anticipated to be significant. As the bill moves through the legislative process, costs will be identified and an appropriation will be requested.

ECONOMIC IMPACT

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

SUPPORT/OPPOSITION¹

Support: Several organizations representing businesses, including the Bay Area Council, the Los Angeles Area Chamber of Commerce, and the Orange County Business Council.

¹ According to the Assembly Committee on Housing and Community Development bill analysis of the bill as amended April 20, 2015, <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml>.

Opposition: County recorders throughout the state are opposed to AB 1335, in addition to the Howard Jarvis Taxpayers Association and the Educational Community for Homeowners.

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 only onto those who record real estate documents.

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