



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/25/11	Bill No:	Senate Bill 228
Tax Program:	Sales and Use Special Taxes and Fees	Author:	Wyland
Sponsor:	Senator George Runner (Ret.)	Code Sections:	See page 2
Related Bills:		Effective Date:	01/01/12

BILL SUMMARY

This bill would authorize the Board of Equalization (BOE) to withdraw a lien after a taxpayer, feepayer, or surcharge payer satisfies the delinquent liability for which the lien was filed under the applicable tax, fee and surcharge programs the BOE administers.

Similar provisions would apply also to liens filed by the Franchise Tax Board.

ANALYSIS

CURRENT LAW

Existing provisions in the Revenue and Taxation Code provide the BOE with various tools to collect delinquent tax, fee, and surcharge liabilities, including a state tax lien, with respect to the various programs administered by the BOE.

Under existing law, in general, on the day a tax, fee, or surcharge liability (referred to hereinafter as "tax") becomes due and payable but remains unpaid, a perfected and enforceable state tax lien is created for the amount due plus interest, penalties, and other costs. The lien attaches to real and personal property of a taxpayer. The lien is in force for 10 years, unless the liability is paid or a Notice of State Tax Lien is recorded with a county recorder's office or the Secretary of State. When a Notice of State Tax Lien is recorded, the taxpayers' creditors are publicly notified that the Board has a claim against all the taxpayers' personal or real property, including property the taxpayer acquires after the lien has been recorded. A lien is recorded in the county in which the business is located and in any other county in which the taxpayer may own real property. Once a state tax lien has been recorded, the law allows the lien to be renewed in 10-year increments for a maximum of up to 30 years.

Since the effect of a lien decreases credit ratings and attaches to property currently owned by the taxpayer and later acquired, generally a tax lien is not filed unless there have been documented efforts made to contact the taxpayer by telephone and in writing.

Under the law, the BOE is required to mail a preliminary notice to the taxpayer at least 30 days before filing a lien with the county recorder or the Secretary of State. The notice must specify the following: (1) the statutory authority for filing the lien; (2) the earliest date on which the lien may be recorded; and (3) the remedies available to the taxpayer to prevent the filing of the lien.

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Under current law, the BOE may *release* a lien under specified circumstances, including situations in which the lien was filed in error or in situations where the taxpayer pays the outstanding liability in full. However, unless the lien was filed in error, a *release* of lien does not remove the lien from a taxpayer's credit record. To remove the lien from a taxpayer's credit record, a *withdrawal* is required. Under existing law, the BOE has no statutory authority to *withdraw* a tax lien. A withdrawal of a tax lien essentially removes notice of the tax lien from the public record, thereby cancelling the lien from the taxpayer's credit record.

PROPOSED LAW

This bill would amend various provisions in the Revenue and Taxation Code to authorize the BOE to withdraw a lien after a taxpayer, feepayer, or surcharge payer pays the delinquent liability for which the lien was filed under the applicable tax, fee and surcharge programs the BOE administers, as follows:

- Sales and Use Tax, Section 6757
- Motor Vehicle Fuel Tax, Section 7872
- Use Fuel Tax, Section 8996
- Private Railroad Car Tax, Section 11496
- Cigarette and Tobacco Products Tax, Section 30322
- Alcoholic Beverage Tax, Section 32363
- Timber Yield Tax, Section 38532
- Energy Resources Surcharge, Section 40158
- Emergency Telephone Users Surcharge, Section 41124.1
- Hazardous Substance Tax, Section 43413
- Integrated Waste Management Fee, Section 45451
- Oil Spill Prevention and Administration Fee, Section 46421
- Oil Spill Response Fee, Section 46421
- Underground Storage Tank Maintenance Fee, Section 50123
- California Tire Fee, Section 55141
- Electronic Waste Recycling Fee, Section 55141
- Fee Collection Procedures Law, Section 55141
- Diesel Fuel Tax Law, Section 60445

The bill would, upon written request by the taxpayer with respect to whom a notice of a state tax lien was withdrawn, require the BOE to make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address are specified in that request, of the withdrawal of the notice.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by Senator George Runner (ret.). It was prompted by a recent announcement by the Internal Revenue Service (IRS) regarding its latest effort to help struggling taxpayers obtain a fresh start with their tax liabilities. Part of this effort included making changes to its lien filing practices, including withdrawing a lien when a taxpayer resolves his or her outstanding liability with the IRS. The IRS has determined that this approach is in the best interest of the government, and Senator Runner believes this approach should be made part of California's tax, fee and surcharge laws. Currently, even when a liability is paid in

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full, a tax lien can remain in a taxpayer's credit history for up to ten years and will only be shown as "released." And, a released tax lien can affect a taxpayer's credit just as an unpaid tax lien can. Under this bill, if a taxpayer pays the liability in full, the withdrawn lien may be removed from the taxpayer's credit history much sooner, and, thus, would promote the taxpayer's financial recovery. In addition, this bill would provide a significant incentive for taxpayers to resolve their tax debts more expeditiously.

- 2. Bill would have some impact on workload.** Over the course of a year, the BOE releases about 3,000 state tax liens due to a taxpayer's resolution of his or her liabilities. Enactment of this bill would increase workload attributable to issuing withdrawals and notifying credit reporting agencies, financial institutions, and creditors. However, these tasks could be performed with existing staff.

COST ESTIMATE

The BOE would incur some minor costs to administer this bill with respect to postage and mailing, and possible programming changes. A specific cost estimate is pending.

REVENUE ESTIMATE

Enactment of this bill could have a positive impact to state and local revenues to the extent taxpayers would have an incentive to clear their tax debts more quickly. This effect, however, is difficult to quantify.

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