

1/31/80

Memorandum 80-23

Subject: 1980 Legislative Program (State Tax Liens)

The staff distributed the recommendation relating to state tax liens to the interested state agencies. The reaction to the recommendation was favorable.

The Chief Counsel for the Franchise Tax Board sent us a letter (set out as Exhibit 1 attached) suggesting a number of technical changes. The changes reflect a careful study of the recommended legislation. The staff has made a careful review of the suggested changes, and all of them are necessary to correct technical defects in the recommended legislation. The Department of Employment Development also recommended a technical change, one also recommended by the Franchise Tax Board.

Absent some objection from a commissioner, the staff plans to amend the bill to make all of the technical changes suggested. We also plan to make one other technical change that we determined to be necessary when we reviewed the proposed legislation.

Respectfully submitted,

John H. DeMouilly
Executive Secretary



STATE OF CALIFORNIA

FRANCHISE TAX BOARD

SACRAMENTO, CALIFORNIA 95867

(916) 355-0756

In reply refer to
410:IR:jt

January 29, 1980

John H. DeMouilly
Executive Secretary
California Law Revision Commission
Stanford, CA 94305

Dear Mr. DeMouilly:

In response to your letter of January 9, 1980, we have reviewed the proposed staff recommendation concerning the amendment to the state tax lien law. We have several problems. The first problem concerns the definition of "person."

In AB 1803 last year we amended Sections 18881[c][2] and 18881[c][4] of the Revenue and Taxation Code to change the word "person" to "taxpayer" so that estates and trusts would be covered by the law. This amendment was enacted because the definition of person in Section 17007 of the Revenue and Taxation Code did not include estates and trusts, while the definition of taxpayer in Section 17004 of the Revenue and Taxation Code included them. There is also a special definition of person in Section 26161 of the Revenue and Taxation Code.

The word person is used in proposed Sections 7164, 7170[b], 7170[c][2] and 7170[c][4] of the Government Code. However, there is no definition of person included among the provisions of proposed Chapter 14 of Division 7 of Title 1 of the Government Code. The definition of person contained in Section 17 of the Government Code does not specifically refer to estates and trusts. It is our suggestion that the law include a definition of person. The one provided in Section 28, of the Revenue and Taxation Code would be appropriate.

The second problem involves your proposed repeal of Sections 18884, 18884.5 and 18885 of the Revenue and Taxation Code. These sections involve liens filed pursuant to Sections 18863 and 18864 of the Revenue and Taxation Code, as well as state tax liens created by Section 18881. In our opinion, the transfer of Sections 18884, 18884.5 and 18885 to proposed Section 7174 of the Government Code would cause these release and subordination provisions to apply only to state tax liens. There would be a serious question as to our authority to release or subordinate liens filed pursuant to Sections 18863 or 18864. We do not object to the Government Code provisions.

John H. DeMouilly
January 29, 1980
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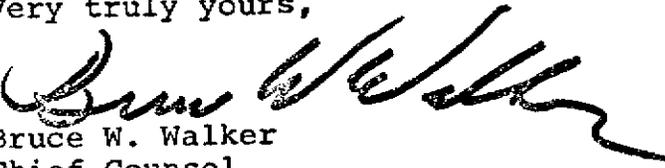
However, we want also to retain these release and subordination provisions in the Revenue and Taxation Code. It is our suggestion that Section 18884 be renumbered 18866 and that "this part" be changed to "this article." Section 18884.5 should be renumbered 18667 and the references to Sections 18881 and 18886 should be deleted. Finally, Section 18885 should be renumbered 18668. With these changes your objective of having all the provisions concerning state tax liens centralized in the Government Code will still be achieved, and our need for retaining release and subordination provisions in the Revenue and Taxation Code, for use in connection with liens established pursuant to Sections 18863 and 18864, will also be met.

The final substantive problem concerns Government Code Section 7171[d][3] where the words "if known" should be deleted. The amount of the lien should always be known. If some of the code sections imposing state tax liens leave the amount in doubt, then those statutes should be amended to provide certainty of amount. The inclusion of the words "if known" will only cause confusion.

In addition to the substantive problems, there are two technical corrections which should be made. In Section 7170[b] in the first line on page 11 of the recommendation, the word "or" should be changed to "of." In Section 7171[a] the word "section" should be changed to "article" as "agency" is also used in Section 7174.

If the changes recommended in this letter are made, your proposed legislation is acceptable. We appreciate the opportunity to review the staff recommendation. We would like to review any future changes.

Very truly yours,


Bruce W. Walker
Chief Counsel

cc: Ed Hollingshead

EMPLOYMENT DEVELOPMENT DEPARTMENT

(916) 445-7656



• January 24, 1980

REFER TO:

53:86:cu

- John H. DeMouilly
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Dear Mr. DeMouilly:

Thank you for submitting the Draft Recommendation relating to State Tax Liens to this department for review.

We have reviewed the recommendation and found it to be thorough and complete.

We would, however, recommend one change. Proposed Section 7171 of the Government Code, subdivision (b), subparagraph (3) provides as follows: "The amount of tax required to be paid, if known." Section 1703 of the Unemployment Insurance Code, as amended by this proposal, requires that the amount be "due and payable" and therefore "known" before the lien arises. The phrase "if known" in subparagraph (3) is, consequently, unnecessary and we recommend it be deleted.

Other than the above suggestion, the draft recommendation is acceptable to this department.

Sincerely,

A handwritten signature in cursive script, reading "Cecily B. Nyomarkay".

CECILY B. NYOMARKAY
CHIEF COUNSEL

Memorandum

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Date: January 17, 1980

From : Department of Fish and Game

Subject: Draft of Recommendations Re State Tax Liens

As requested in your letter of January 9, 1980, the Department of Fish and Game has reviewed those portions of the subject draft relating to liens filed under provisions of the Fish and Game Code and find them to be satisfactory. We have no suggestions for changes or corrections.



James D. Messersmith
Conservation Program Officer