

2/4/80

First Supplement to Memorandum 80-23

Subject: 1980 Legislative Program (State Tax Liens)

Attached to this supplement as Exhibit 1 is a letter from the State Board of Equalization concerning our recommendation relating to state tax liens. The board raises two objections concerning the provision requiring state agencies to record an acknowledgment of satisfaction when the tax liability is satisfied. First, the board suggests that the \$6 recording fee should be imposed on the taxpayer rather than the board. This suggestion seems sound, and the staff recommends revising proposed Government Code Section 7174 to require the agency to deliver the acknowledgment to the taxpayer rather than requiring the agency to record it (see revised Section 7174, attached as Exhibit 2). Second, the board suggests that 30 days is too short a period within which to require the acknowledgment of satisfaction to be given, because sometimes personal or business account checks will be dishonored more than 30 days after payment. The staff recommends adding a provision to proposed Section 7174 that when payment is by personal or business account check the 30-day period does not commence to run until the check has been paid by the financial institution upon which it was drawn (see Exhibit 2).

The board also requests revision of the definition of "taxpayer" in proposed Section 7164 to mean the person or persons liable for the tax. This revision seems to be unnecessary in view of Section 13 of the Revenue and Taxation Code (the singular number includes the plural). To make that change here would cast doubt on the meaning of the singular in the many other places in the statute where it is used. Moreover, the existing statutes which govern the Board of Equalization use the terms "person" and "taxpayer" in the singular and not in the plural. See Rev. & Tax. Code §§ 6757, 8996, 30322, 32363. Accordingly, the staff recommends against adding the plural to proposed Section 7164.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel



STATE OF CALIFORNIA

EXHIBIT 1

STATE BOARD OF EQUALIZATION

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Third District, San Rafael
RICHARD NEVINS
Fourth District, Pasadena
KENNETH CORY
Controller, Sacramento
DOUGLAS D. BELL
Executive Secretary

January 30, 1980

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

Dear Mr. DeMouilly:

Re: Staff Draft, Recommendation
Relating to State Tax Liens

Your letter of January 9, 1980, to Mr. James J. Delaney, Chief Counsel, has been referred to me for response. Your draft has been reviewed by the legal staff and by the Supervisors of Collections and Compliance.

It is the intent of your Commission not to propose substantive changes in the laws relating to state tax liens; however, the staff of the Board believes that the two changes discussed below will have a substantive effect as to the Board.

1. Mandatory Recording of Release of Lien

Section 675(e) of the Code of Procedure is not now applicable to the Board. The deletion of this section (draft page 3) and inclusion of the substance of it in section 7174(c) applicable to all agencies (draft pages 15, 16), is a substantive change as to the Board of Equalization. It will impose an increased workload upon Board personnel, and add a cost increase of \$6.00 per document based on present county recorder fees. Since the cost of recording the lien, occasioned by the fault of the taxpayer, is paid by the Board, the cost of recording a release of lien for the benefit of the taxpayer should be paid by the taxpayer.

Also, it is the experience of the Board that "30 days after the liability is satisfied" is insufficient time to allow personal or business account checks to clear. In many instances checks are dishonored more than 30 days after payment. For that reason the Board, for more than a year, has not released liens in less than 60 days.

The Board therefore strongly opposes this amendment as it affects the Board.

2. Definition of Taxpayer, Section 7164

The staff believes that as to the Board this definition should read:

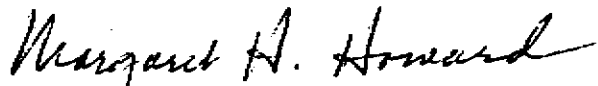
"Taxpayer" means the person
or persons liable for the
tax.

The word "the" is capable of interpretation as only one, or a specific single person, at a given point in time. In cases where there is joint and several liability (an individual and a corporation in an alter ego situation, or taxpayer-predecessor/successor, or purchaser/retailer in use tax situations), more than one person may be liable for the tax. The addition of the words "or persons" would encompass these situations.

Although the continuation of section 6757(c)(4)(E) (draft page 28), into section 7170(c)(4)(E) (draft page 11), is not a new change proposed by your staff, the Board's staff opposes it and may seek to have it changed by legislation because it gives priority over the Board's prior lien to the holder of a purchase money security interest, thereby violating the principle of "first in time, first in right."

Thank you for the opportunity to review and comment upon your proposed recommendations.

Very truly yours,



Margaret H. Howard
Tax Counsel

MHH:ba

First Supplement to
Memorandum 80-23

EXHIBIT 2

§ 7174. Release or subordination of lien

7174. (a) If the agency determines that the amount of tax, interest, and any penalty are sufficiently secured by a lien on other property or that the release or subordination of the state tax lien will not jeopardize the collection of the amount of the tax, including interest and penalty, the agency may at any time release all or any portion of the property subject to the state tax lien from the lien or may subordinate the state tax lien to other liens and encumbrances.

(b) If the agency finds that the liability represented by the state tax lien, including any interest accrued thereon, is legally unenforceable, the agency may release the lien.

(c) If the ~~agency has recorded or filed a notice of state tax lien as provided in Section 7171 and the~~ liability represented by the state tax lien, including any interest ~~or~~ and penalty, has been satisfied in full, the agency shall ~~record in the office of the county recorder where the notice of state tax lien is filed, or shall file with the Secretary of State, or both, an acknowledgment of satisfaction do the following~~ not later than 30 days after the liability is satisfied - :

(1) Deposit in the mail or otherwise deliver to the taxpayer an acknowledgment of satisfaction if the agency has recorded a notice of state tax lien with the county recorder as provided in Section 7171.

(2) File an acknowledgment of satisfaction with the Secretary of State if the agency has filed a notice of state tax lien with the Secretary of State as provided in Section 7171.

(d) For the purpose of subdivision (c), if payment of the liability is made by personal check or business account check, the liability is not satisfied until the check has been paid by the financial institution upon which it was drawn.

~~(d)~~ (e) A certificate by the agency to the effect that any property has been released from a state tax lien, that the lien has been subordinated to other liens and encumbrances, or that the liability has been satisfied, is conclusive evidence that the property has been released,

that the lien has been subordinated, or that the liability has been satisfied, as provided in the certificate.

Comment. Subdivisions (a), (b), and (e) of Section 7174 continue and generalize the substance of the following repealed sections:

- Subdivision (a) Fish & Game Code Code § 8052; Pub. Res. Code §§ 3423.8 (first sentence), 3772.8 (first sentence); Rev. & Tax. Code §§ 6758, 7873, 8997, 16066, 18884, 26162 (first sentence), 30323; Unemp. Ins. Code § 1704.
- Subdivision (b) Rev. & Tax. Code §§ 6758.5, 7873.5, 8997.5, 18884.5, 26162.5, 30323.5; Unemp. Ins. Code § 1704.5.
- Subdivision (e) Pub. Res. Code §§ 3423.8 (second sentence), 3772.8 (second sentence); Rev. & Tax. Code §§ 6759, 16067, 18885, 26162 (second sentence), 30324; Unemp. Ins. Code § 1705.

The continuation and generalization of these provisions in this chapter makes them applicable to all state tax liens as defined in Section 7162. Under former law, the provisions were applicable to some but not all state tax liens.

Subdivisions (c) and (d) supersede former subdivision (e) of Section 675 of the Code of Civil Procedure. Under paragraph (1) of subdivision (c) of Section 7174, the agency is merely required to furnish the acknowledgment of satisfaction to the taxpayer rather than recording it as under prior law. The requirement in paragraph (2) of subdivision (c) that the agency file the acknowledgment of satisfaction with the Secretary of State when appropriate is new. See also Section 7223 (filing of certificate of release, partial release, or subordination). Subdivision (d) of Section 7174 is new and is to protect the agency against the possibility that a personal or business account check may be dishonored several weeks after delivery of the check to the agency.

The application of subdivisions (c) and (d) to all agencies described in Section 7150.5 is an extension of former law: Former subdivision (e) of Section 675 of the Code of Civil Procedure applied only to the Franchise Tax Board and the Department of Employment Development.