

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATIONS

relating to

Enforcement of Judgments

Interest Rate on Judgments
Married Women as Sole Traders
State Tax Liens

January 1980

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

THE CALIFORNIA LAW REVISION COMMISSION

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NOTE

The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 15 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published late in 1981.

Cite this pamphlet as *Recommendations Relating to Enforcement of Judgments*, 15 CAL. L. REVISION COMM'N REPORTS 1 (1980).

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PREFACE

The Law Revision Commission is engaged in a major study looking to the enactment of a comprehensive revision of the law relating to enforcement of judgments. Pending completion of this major study, the Commission has prepared recommendations dealing with particular aspects of the study. These recommendations will be submitted to the 1980 session of the Legislature rather than being delayed until the major study is completed. This publication contains three of these recommendations.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Interest Rate On Judgments

January 1980

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Stanford, California 94305

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Interest Rate on Judgments*, 15 CAL. L. REVISION COMM'N REPORTS 7 (1980).

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Ex Officio

January 18, 1980

To: THE HONORABLE EDMUND G. BROWN JR.
Governor of California and
THE LEGISLATURE OF CALIFORNIA

Pursuant to the legislative directive of Resolution Chapter 45 of the Statutes of 1974, the Commission herewith submits its recommendation relating to the interest rate on judgments. The Commission's recommendation is that the interest rate on judgments be increased from seven to 10 percent in order to more nearly approximate the market rate of interest.

Respectfully submitted,

BEATRICE P. LAWSON
Chairperson

RECOMMENDATION

relating to

INTEREST RATE ON JUDGMENTS

The California Constitution sets the rate of interest on judgments at seven percent, but gives the Legislature authority to set the rate at not more than 10 percent and to provide a variable rate.¹ The Legislature has not exercised this authority.

Postjudgment interest serves two important functions—it compensates the judgment creditor for the loss of use of the money until the judgment is paid and it acts as an incentive for the judgment debtor to pay the judgment promptly. These functions are served when the rate of interest on judgments approximates the prevailing interest rate in the money market. The judgment creditor is compensated at a rate that would be obtainable were the judgment satisfied and the funds available for investment; the judgment debtor has no incentive to delay payment since it would not be advantageous to invest the money elsewhere.

When the rate of interest on judgments is below the market rate, however, neither of the functions of postjudgment interest is accomplished. The judgment creditor is not fully compensated for the loss of use of the money and the judgment debtor is motivated to defer payment of the judgment as long as possible in order to make money by investing at the market rate. This is the situation in California at present. With the interest rate on judgments at seven percent and the market rate at 12 percent or higher, the judgment debtor may delay payment as long as possible and benefit from the five percent or greater interest differential during the period of delay.

The insurance industry is perhaps the most identifiable group that benefits from maintaining a below market rate of interest on judgments. Insurance company reserves for the payment of claims may be invested at the market rate, so any delay in payment of a judgment that accrues interest

¹ Cal. Const., Art. 15, § 1.

at a low rate is advantageous. The Commission is informed that when an insurance company loses a judgment, it frequently files a notice of appeal and obtains a stay of enforcement, thereby giving it the benefit of several months' delay in payment. Ordinarily the appeal is not pursued further unless there is a legitimate issue justifying an appeal in the case.² Where an appeal is pursued further, the process can take several years and the loss of money to the creditor and the gain to the debtor resulting from a low interest rate on the judgment can be substantial. For less responsible debtors than insurance companies, a low interest rate is also an incentive to avoid prompt and voluntary payment for as long as possible thereby forcing resort to execution with its delays.

For these reasons, most jurisdictions have increased the rate of interest on judgments. The following chart indicating the changes that have occurred in the various jurisdictions in the past decade is instructive.

<i>Rate (percent)</i>	<i>Number of States</i>	
	<i>1968</i>	<i>1979</i>
4	1	0
5	5	1
6	40	22
7	4	4
8	0	13
8.75	0	1
9	0	1
10	0	6
12	0	2

The Law Revision Commission believes that California's interest rate on judgments should be increased to a rate that more nearly approximates market rate. One possible approach is to adopt a flexible or variable interest rate on judgments based on a standard such as the prime rate, Federal Reserve Bank discount rate, or treasury bill

² Prosecution of an appeal for the sole reason of delaying payment of the judgment appears to be infrequent; the costs of appeal may outweigh any profit to be made by exploitation of the interest rate differential.

discount rate.³ Ideally, such a variable rate would be continuously revised by a state agency and the interest accruing on the judgment would continuously change. The Commission believes that such a scheme would be too complex and would be impractical to administer.

An alternative is to allow the interest rate to vary from time to time and to have a single rate for each judgment based on the rate in effect at the time of entry. This scheme would make the interest rate on a judgment a rough approximation of market rate at the time of entry, although if the judgment were not satisfied promptly this interest rate could easily become out of line with changing market rates. This scheme would also necessitate a procedure to preserve a record of the interest rate in effect at the time of entry of the judgment. The Commission believes that this scheme would require too much administration for too little benefit.

A third alternative—the one recommended by the Commission—is to fix the interest rate on judgments at 10 percent but to reserve to the Legislature the right to lower the rate at any time both as to judgments thereafter entered and judgments previously entered. The virtues of this scheme are:

(1) It is simple—there is no need for bureaucratic computations of market rates; there will be a single rate known by debtor, creditor, court clerk, and levying officer.

(2) It is accurate—it appears unlikely that the market rate will drop below 10 percent in the near future.

(3) It satisfies the functions of postjudgment interest—to compensate the judgment creditor as nearly as possible and remove the judgment debtor's incentive to delay payment.

Fixing the rate at 10 percent creates a danger of inequity should the market rate drop below 10 percent and the debtor in fact be unable to pay the judgment. But the proposed law allows the Legislature to enact legislation to

³ Senate Bill 101 (Rains) was introduced in the Legislature at the 1979 session to provide a variable interest rate based on the Federal Reserve Bank of San Francisco rate on advances to member banks. This rate would fluctuate monthly and thereby provide a constant corrective so that the legal rate of interest would approximate the market rate at the time of entry of judgment. The bill failed to obtain approval of the Judiciary Committee of the Senate.

change the interest rate on judgments and to make the new rate applicable to all judgments, whether entered before or after the rate change.⁴ This will avoid the inequity that might otherwise result.

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 682.1, 1710.15, and 1710.25 of, and to add Section 685.010 to, the Code of Civil Procedure, relating to the rate of interest on a judgment.

The people of the State of California do enact as follows:

Code of Civil Procedure § 682.1 (amended)

SECTION 1. Section 682.1 of the Code of Civil Procedure is amended to read:

682.1. A writ of execution issued on a judgment for the recovery of money must be substantially in the following form:

(Title of Court)
 (Number and abbreviated title of action)
 The People of the State of California:
 To the Sheriff, Constable or Marshal of,
 or Process Server Registered in,
 the _____ County of _____. Greeting:
 On _____ a judgment was entered
 by the above entitled court in the above entitled
 * action in favor of _____ as judgment creditor
 * and against _____ as judgment debtor
 and the judgment was duly entered in (referring to
 where entered) for
 ** \$ principal,
 ** \$ attorney fees,
 ** \$ interest, and
 ** \$_____ costs, making a total amount of
 ** \$ the judgment as entered, and

⁴ Cf. *White v. Lyons*, 42 Cal. 279 (1871) (prejudgment interest accrues at rate fixed by statute until time of change in statute and thereafter accrues at changed rate).

Whereas, according to an affidavit and/or a memorandum of costs after judgment filed herein, it appears that further sums have accrued since the entry of judgment, to wit:

- ** \$ _____ accrued interest, and
- ** \$ _____ accrued costs, together with \$ _____ fee for the issuance of this writ, making a total of
- ** \$ _____ as accrued costs, accrued interest, and fees.

Credit must be given for payments and partial satisfactions in the amount of \$ _____ which is to be first credited against the total accrued costs and accrued interest, with any excess credited against the judgment as entered, leaving a net balance actually due on the date of issuance of this writ of

- ** \$ _____
- of which \$ _____ is due on the judgment as entered and bears interest at 7 10 percent per annum, in the amount of \$ _____ per day, from the date of issuance of this writ to the date of levy, to which must be added the commissions and costs of the officer executing this writ.

Notice by mail of any sale under the writ of execution (has) (has not) been requested. The following named persons have requested such notice of sale:

Names	Addresses
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After the levy has been made, a copy of this writ of execution shall be mailed by the levying officer to the judgment debtor at the address below unless a copy has been served at the time of the levy:

Name	Address
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Notice to the Judgment Debtor: You may be entitled to file a claim exempting your property from execution. You may seek the advice of an attorney or may, within 10 days from the date your property was levied upon, deliver an affidavit to the levying officer

seeking to exempt such property, as provided in Section 690.50 of the Code of Civil Procedure.

These presents are therefore to command you to satisfy such judgment with interest and costs as provided by law and your costs and disbursements out of the personal property of the debtor not exempt from execution, and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the abstract of judgment was filed as provided in Section 674 of the Code of Civil Procedure, or at any time thereafter, make notice by mail of any levy pursuant to this writ of execution, and make return of this writ within not less than 10 days nor more than 60 days after your receipt thereof, with what you have done endorsed hereon. Given under my hand (and the seal of _____) on _____ 19__.

Note to printer: where the asterisk (*) appears in the foregoing form, it is intended that the printed form shall have the same arrangement and number of words in the line.

Where the double asterisk (**) appears in the foregoing form, it is intended that the dollar sign characters (\$) shall appear under one another in vertical column.

Comment. Section 682.1 is amended to reflect the change in the rate of interest on a judgment from seven to 10 percent. See Section 685.010.

Code of Civil Procedure § 685.010 (added)

SEC. 2. Section 685.010 is added to the Code of Civil Procedure, to read:

685.010. (a) Interest accrues at the rate of 10 percent per annum on the amount of a judgment remaining unsatisfied.

(b) The Legislature reserves the right to change the rate of interest provided in subdivision (a) at any time to a rate of not less than 7 percent per annum and not more

than 10 percent per annum regardless of the date of entry of the judgment or the date any obligation upon which the judgment is based was incurred. The change in the rate of interest may be made applicable only to the interest that accrues after the operative date of the act that changes the rate.

Comment. Subdivision (a) of Section 685.010 alters the legal rate of interest on judgments from seven to 10 percent as permitted by Section 1 of Article 15 of the California Constitution.

Subdivision (b) states the reserved power of the state to alter the interest rate as to both past and future judgments at any time. The rate change may apply only to interest that accrues after the operative date of the act that changes the rate.

Code of Civil Procedure § 1710.15 (amended)

SEC. 3. Section 1710.15 of the Code of Civil Procedure is amended to read:

1710.15. (a) A judgment creditor may apply for the entry of a judgment based on a sister state judgment by filing an application with the superior court for the county designated by Section 1710.20.

(b) The application shall be executed under oath and shall include all of the following:

(1) A statement that an action in this state on the sister state judgment is not barred by the applicable statute of limitations.

(2) A statement, based on the applicant's information and belief, that no stay of enforcement of the sister state judgment is currently in effect in the sister state.

(3) A statement of the amount remaining unpaid under the sister state judgment and, if accrued interest on the sister state judgment is to be included in the California judgment, a statement of the amount of interest accrued on the sister state judgment (computed at the rate of interest applicable to the judgment under the law of the sister state ; ~~but not at a rate in excess of 7 percent per annum~~), a statement of the rate of interest applicable to the judgment under the law of the sister state, and a citation to the law of the sister state establishing such rate of interest.

(4) A statement that no action based on the sister state judgment is currently pending in any court in this state and that no judgment based on the sister state judgment has previously been entered in any proceeding in this state.

(5) Where the judgment debtor is an individual, a statement setting forth the name and last known residence address of the judgment debtor. Where the judgment debtor is a corporation, a statement of the corporation's name, place of incorporation, and whether the corporation, if foreign, has qualified to do business in this state under the provisions of Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code. Where the judgment debtor is a partnership, a statement of the name of the partnership, whether it is a foreign partnership, and, if it is a foreign partnership, whether it has filed a statement pursuant to Section 15700 of the Corporations Code designating an agent for service of process. Except for facts which are matters of public record in this state, the statements required by this paragraph may be made on the basis of the judgment creditor's information and belief.

(6) A statement setting forth the name and address of the judgment creditor.

(c) A properly authenticated copy of the sister state judgment shall be attached to the application.

Comment. Section 1710.15 is amended to reflect the change in the rate of interest on a judgment from seven to 10 percent and to delete the seven percent limit on the rate at which interest accrues on a sister state judgment. See Section 685.010.

Code of Civil Procedure § 1710.25 (amended)

SEC. 4. Section 1710.25 of the Code of Civil Procedure is amended to read:

1710.25. (a) Upon the filing of the application, the clerk shall enter a judgment based upon the application for the total of the following amounts as shown therein:

(1) The amount remaining unpaid under the sister state judgment.

(2) The amount of interest accrued on the sister state judgment (computed at the rate of interest applicable to the judgment under the law of the sister state ; ~~but not at a rate in excess of 7 percent per annum~~).

(3) The amount of the fee for filing the application for entry of the sister state judgment.

(b) Entry shall be made in the same manner as entry of a judgment of the superior court. From the time of entry, interest shall accrue on the judgment so entered at the rate of ~~7 percent per annum~~ *interest applicable to a judgment entered in this state.*

Comment. Section 1710.25 is amended to reflect the change in the rate of interest on a judgment from seven to 10 percent and to conform to the change made in Section 1710.15. See Section 685.010.

SEC. 5. This act governs the rate of interest on a judgment entered on or after January 1, 1981, and the rate of interest (on and after January 1, 1981) on a judgment entered before January 1, 1981.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Married Women As Sole Traders

January 1980

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Married Women As Sole Traders*, 15 CAL. L. REVISION COMM'N REPORTS 21 (1980).

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Ex Officio

January 18, 1980

To: THE HONORABLE EDMUND G. BROWN JR.
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The Commission herewith submits its recommendation to repeal the California sole trader statute (Code of Civil Procedure Sections 1811-1821). The sole trader statute dates from an era of California law when married women had few property rights; it is inconsistent with community property concepts, is probably unconstitutional, and appears to be largely unused. The Commission wishes to express its appreciation to its consultant, Professor William A. Reppy, Jr., of Duke Law School, for preparing the background study on which this recommendation is based.

This recommendation is submitted pursuant to the Commission's legislative directives to study creditors' remedies (1974 Cal. Stats. res. ch. 45) and community property (1978 Cal. Stats. res. ch. 65).

Respectfully submitted,

BEATRICE P. LAWSON
Chairperson

RECOMMENDATION

relating to

MARRIED WOMEN AS SOLE TRADERS

The California sole trader statute¹ permits a married woman to obtain, and record in the counties where she proposes to do business, a judgment that she is authorized to carry on, in her own name and on her own account, a business as a sole trader. The effect of the recorded judgment is that up to \$500 of community property or the husband's separate property may be invested in the sole trader's business, and the property invested becomes the sole trader's separate property and is not subject to the husband's debts. Moreover, any income from the sole trader's business remains her separate property and does not become community property, and any business debts are her separate debts for which the husband is not liable. This statute is a relic of an era in California law when married women had few property rights; it is inconsistent with modern community property principles, is probably unconstitutional, and appears to be largely unused.

The sole trader statute was first enacted in 1852.² At that time the husband had management and control of both the community property and the wife's separate property. This situation no longer prevails. A married woman now has the sole management and control of her separate property³ and of community personal property in any business which she operates or manages.⁴

Under the sole trader statute, business income of the wife remains her separate property and the business property is not subject to the debts of her husband. These principles are inconsistent with the fundamental concepts of California community property law. As a general rule, earnings of a spouse during marriage are community

¹ Code Civ. Proc. §§ 1811-1821.

² 1852 Cal. Stats. ch. 42, p. 101.

³ Civil Code §§ 5102, 5107.

⁴ Civil Code § 5125(d) provides:

(d) A spouse who is operating or managing a business or an interest in a business which is community personal property has the sole management and control of the business or interest.

property;⁵ even where the spouse has a separate property business, that portion of the business income and property attributable to the labor, skill, or capacity of the spouse is community property.⁶ And community property is liable to satisfy the debts of either spouse.⁷

The inconsistency of the sole trader statute with general community property principles also makes the statute constitutionally suspect. The business or other earnings of a husband are community property, whereas the sole trader statute insulates the business earnings of the wife from the community. This discriminates without rational justification not only against husbands but also against other married women who are wage earners and thus cannot take advantage of the sole trader provisions.

In addition to the legal and constitutional defects of the sole trader statute, the statute appears to have little or no current vitality. The last reported case involving a sole trader occurred in 1926,⁸ before the enactment (commencing in 1927) of community property law reforms that have rendered the sole trader statute obsolete. Investigation by the Law Revision Commission staff with the county recorders' offices in San Francisco, Los Angeles, and Santa Clara counties indicates that no separate indices of sole trader judgments are maintained and that the employees in those offices do not recall a sole trader judgment ever having been recorded.

The sole trader statute is unnecessary, unfair, and obsolete, and should be repealed.

⁵ See, e.g., 7 B. Witkin, *Summary of California Law Community Property* § 12 (8th ed. 1974).

⁶ *Id.* at §§ 25-30.

⁷ Civil Code § 5116.

⁸ *Gray v. Perlis*, 76 Cal. App. 511, 245 P. 221 (1926) (wife adjudged a sole trader in 1916).

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to repeal Title 12 (commencing with Section 1811) of Part 3 of the Code of Civil Procedure, relating to sole traders.

The people of the State of California do enact as follows:

SECTION 1. Title 12 (commencing with Section 1811) of Part 3 of the Code of Civil Procedure is repealed.

Comment. Former Sections 1811 to 1821, inclusive, relating to married women as sole traders, are not continued. The sole trader statute was a relic of the 19th century California marital property system, was inconsistent with California's community property system, was constitutionally suspect, and was largely unused. See *Recommendation Relating to Married Women as Sole Traders*, 15 Cal. L. Revision Comm'n Reports 21 (1980). Under Civil Code Section 5125(d), a spouse who operates or manages a business which is community personal property has the sole management and control of the business.

SEC. 2. (a) A judgment made and entered under Title 12 (commencing with Section 1811) of Part 3 of the Code of Civil Procedure shall, on the effective date of this act, cease to have any effect for any purpose.

(b) Rights acquired prior to the effective date of this act are not affected by the repeal of Title 12 (commencing with Section 1811) of Part 3 of the Code of Civil Procedure and such rights shall be recognized to the same extent as they would have been recognized had the repeal not been made.

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

State Tax Liens

January 1980

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to State Tax Liens*, 15 CAL. L. REVISION COMM'N REPORTS 29 (1980).

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January 18, 1980

To: THE HONORABLE EDMUND G. BROWN JR.
Governor of California and
THE LEGISLATURE OF CALIFORNIA

Pursuant to Resolution Chapter 45 of the Statutes of 1974, the Law Revision Commission is preparing a comprehensive recommendation relating to enforcement of judgments. In connection with this project, the Commission has reviewed the provisions relating to state tax liens. As a result of this review, the Commission submits this recommendation to consolidate a number of duplicative state tax lien provisions into a single chapter of the Government Code. The recommended legislation will eliminate approximately 14,000 unnecessary words from the existing statutes and will greatly simplify future amendments to the state tax lien provisions.

Respectfully submitted,

BEATRICE P. LAWSON
Chairperson

RECOMMENDATION

relating to

STATE TAX LIENS

Recent legislation¹ revised many of the state tax lien provisions² to make them virtually identical with respect to the following matters:

- (1) Property to which a state tax lien attaches.
- (2) The procedure for recording or filing a notice of state tax lien.
- (3) The duration of a state tax lien.
- (4) The procedure for extending a state tax lien.
- (5) The release or subordination of a state tax lien.

The Commission recommends that these state tax lien provisions be consolidated into a single chapter in the Government Code. This new uniform statute will replace the many duplicative provisions that are now scattered throughout the Revenue and Taxation Code, the Fish and Game Code, the Public Resources Code, and the Unemployment Insurance Code. The enactment of the recommended uniform statute will simplify future amendments³ and additions⁴ to the state tax lien provisions

¹ 1977 Cal. Stats. ch. 481; 1979 Cal. Stats. ch. 322.

² Fish & Game Code §§ 8048-8052; Pub. Res. Code §§ 3423-3423.9, 3772-3772.8; Rev. & Tax. Code §§ 6757-6759, 7872-7873.5, 8996-8997.5, 16063-16068, 18881-18888, 26161-26162.5, 30322-30324, 32363; Unemp. Ins. Code §§ 1703-1705.

³ The existing statutory scheme creates a danger that the various provisions will inadvertently become inconsistent when a change is needed in the provisions but one or more of them is overlooked in making the amendments. Moreover, because many of the provisions are several pages in length, a lengthy bill is now required to make the same amendment to the various substantially identical provisions scattered in the various codes. The consolidation of state tax lien provisions will eliminate the need to make revisions in numerous identical statutes. For example, many of the state tax lien provisions now refer to Sections 688 and 688.1 of the Code of Civil Procedure relating to a lien or levy on a cause of action. See Fish & Game Code § 8048; Pub. Res. Code §§ 3423, 3772; Rev. & Tax. Code §§ 6757, 7872, 8996, 16063, 18881, 26161, 30322, 32363; Unemp. Ins. Code § 1703. Since Sections 688 and 688.1 would be renumbered in the comprehensive enforcement of judgments recommendation the Law Revision Commission plans to submit to a future session of the Legislature, conforming amendments would be required in all 12 of these sections. If the state tax lien provisions are consolidated as proposed in this recommendation, a conforming amendment will be needed in only one section.

⁴ Subdivision (e) of Code of Civil Procedure Section 675 requires the State Franchise Tax Board or the State Department of Employment Development to record an acknowledgment of satisfaction when either of these agencies has recorded a tax lien

and will eliminate over 14,000 words from the California codes.

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Section 675 of the Code of Civil Procedure, to amend Section 8048 and to repeal Section 8052 of the Fish and Game Code, to amend Sections 7221 and 27282 of, and to add Chapter 14 (commencing with Section 7150) to Division 7 of Title 1 of, the Government Code, to amend Sections 3356, 3423, 3423.6, 3768, 3772, and 3772.6 of, and to repeal Sections 3423.8 and 3772.8 of, the Public Resources Code, to amend Sections 6711, 6756, 6757, 6776, 7851, 7872, 7881, 8952, 8996, 9001, 16063, 16063.5, 16065, 16071, 18831, 18881, 18886, 18888, 18933, 26161, 26251, 26312, 30301, 30311, 30321, 30322, 30341, 32363, 32365, 32381, and 32386 of, and to repeal Sections 6758, 6758.5, 6759, 7873, 7873.5, 8997, 8997.5, 16066, 16067, 18884, 18884.5, 18885, 26162, 26162.5, 30323, 30323.5, and 30324 of, the Revenue and Taxation Code, to amend Sections 1702, 1703, 1755, 1785, 1815, and 1852 of, and to repeal Sections 1704, 1704.5, and 1705 of, the Unemployment Insurance Code, relating to state tax liens.

The people of the State of California do enact as follows:

Code of Civil Procedure § 675 (amended). Satisfaction of judgment

SECTION 1. Section 675 of the Code of Civil Procedure is amended to read:

675. (a) Satisfaction of a judgment may be entered upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk or

and the delinquency has been satisfied. This provision ought to be generalized to apply to all taxing agencies and be located in the statutory provisions relating to state tax liens rather than in the provisions relating to enforcement of judgments. Under the existing statutory scheme, it would be necessary to add the requirement of recording an acknowledgment of satisfaction to each of the numerous state tax lien provisions. However, the recommended legislation avoids this and requires the inclusion of only one short provision in the consolidated state tax lien provisions.

with the judge, if there be no clerk, which may recite payment of the judgment in full or the acceptance by the judgment creditor of any lesser sum in full satisfaction thereof, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor or assignee of record, or by endorsement by judgment creditor or assignees of record on the face, or on the margin of the record of the judgment, or by the attorney, unless a revocation of his authority is filed. Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney must give such acknowledgment, or make such endorsement, and, upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

In the superior, municipal, and justice courts such entry shall be made in the register of actions.

(b) Except in cases where demand has been made pursuant to subdivision (c), when an abstract of the judgment has been recorded with the recorder of any county, acknowledgment of satisfaction thereof by execution or other means shall be filed in the manner provided in subdivision (a) and either personally delivered, or sent by first-class mail, postage prepaid to the judgment debtor or his attorney by the judgment creditor or assignee not later than 30 days after the judgment has been in fact paid in full. Such acknowledgment shall identify the county in which the abstract has been recorded and the book and page of the official records thereof, and contain a statement that such acknowledgment will have to be recorded in such county in order to release the judgment lien. Such acknowledgment shall also show the full name of the judgment debtor being released and shall identify the judgment debtor as such. The judgment debtor's name shall appear on the acknowledgment as it appears on the abstract of judgment. Any such judgment creditor or assignee of record who fails without just cause to file or deliver such acknowledgment of satisfaction shall be liable to the judgment debtor or to the owner of the real property, as the case may be, or his grantees or heirs, for

all damages which he or they may sustain by reason of such failure, and shall also forfeit to him or them the sum of one hundred dollars (\$100).

(c) Any judgment creditor or assignee who, for a period of 15 days after actual receipt of a demand in writing for acknowledgment of satisfaction of judgment, which demand is made after the judgment has in fact been paid in full, refuses without just cause to execute, acknowledge and deliver such acknowledgment of satisfaction to the judgment debtor, or to the owner of the real property upon which the judgment has become a lien by reason of the recording of an abstract of a judgment in accordance with Section 674, is liable to the judgment debtor or to the owner of the real property, as the case may be, or his grantees or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of one hundred dollars (\$100).

(d) Any judgment creditor or assignee who intentionally conditions the delivery of an acknowledgment of satisfaction of judgment upon the performance of any act or the payment of any amount by a judgment debtor in excess of that to which the judgment creditor or assignee is entitled pursuant to the judgment, shall be liable to the judgment debtor or his grantees or heirs, for all damages sustained by reason of such action, but in no event shall this be less than two hundred fifty dollars (\$250).

This subdivision shall not apply where a judgment creditor or assignee has agreed to deliver an acknowledgment of satisfaction of judgment to the judgment debtor prior to full satisfaction of the judgment in consideration for the judgment debtor having agreed either to furnish security or to execute a promissory note, or both, the principal amount of which does not exceed that to which the judgment creditor or assignee is entitled pursuant to the judgment.

~~(e) Whenever a certificate has been recorded with the recorder of any county by a state agency under Article 4 (commencing with Section 18881), Chapter 19, Part 10,~~

~~Division 2 of, or Article 2 (commencing with Section 26161), Chapter 23, Part 11, Division 2 of, the Revenue and Taxation Code, or under Article 1 (commencing with Section 1701), Chapter 7, Part 1, Division 1 of the Unemployment Insurance Code, acknowledgment of satisfaction thereof by execution or other means shall be recorded by the state agency no later than 30 days after the delinquency evidenced by such certificate is satisfied.~~

~~(f)~~

(e) Where an abstract of judgment has been recorded which appears to create a judgment lien against property of a person who is not the judgment debtor, because the name of the property owner is the same or similar to that of the true judgment debtor, the erroneously identified property owner has the following remedies:

(1) The judgment creditor or assignee, within 15 days after actual receipt of a demand in writing made by the erroneously identified property owner and upon presentation of proof to the satisfaction of the judgment creditor or assignee that such property owner is not the true judgment debtor, shall prepare and deliver a recordable document releasing the lien against that person's property. If the judgment creditor or assignee fails to make such release he shall be liable to that person for all damages sustained by reason of such refusal, and shall also forfeit to him one hundred dollars (\$100).

(2) If after demand the judgment creditor or assignee fails to prepare and deliver a recordable document releasing the lien, the erroneously identified property owner may make a motion in court, and upon presentation of evidence to the satisfaction of the court that such property owner is not the true judgment debtor, the court shall compel the preparation and delivery of the document described in paragraph (1), or shall itself order the release of the judgment lien.

~~(g)~~

(f) In any action maintained pursuant to subdivisions (b), (c), (d), or (f) the court shall award reasonable attorney's fees to the prevailing party.

~~(h)~~

(g) The damages provided for in this section are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

Comment. Section 675 is amended to delete former subdivision (e) which is continued in subdivision (c) of Section 7174 of the Government Code.

Fish & Game Code § 8048 (amended). Lien of tax

SEC. 2. Section 8048 of the Fish and Game Code is amended to read:

8048. (a) If any person operating under a license issued pursuant to this article fails to pay any privilege tax imposed under this article at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien ~~upon all property and rights to property whether real or personal, tangible or intangible, including all after/acquired property and rights to property, belonging to such person and located in the state. Such lien shall not continue for more than 10 years unless recorded or filed as provided in this section as provided in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.~~

(b) For the purpose of this section only, "due and payable" means the date a return is required to be filed, without regard to any extension of time, without payment of the amount due or the date a determination or assessment made under this article becomes final, whichever is applicable.

~~(b) With respect to real property or any rights therein, at any time after creation of the lien pursuant to subdivision (a), the department may record in the office of the county recorder of the county in which such real property is located a notice of state tax lien as specified in subdivision (d).~~

The lien created by subdivision (a) shall not be valid against the right, title or interest of:

(1) A successor in interest of the taxpayer without knowledge of the lien;

(2) A holder of a security interest;
 (3) A mechanic's lienor; or
 (4) A judgment lien creditor;
 where such right, title or interest was acquired or perfected prior to recording of a notice of state tax lien as provided in this subdivision.

(e) With respect to personal property, whether tangible or intangible, at any time after creation of the lien pursuant to subdivision (a) the department may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code.

The lien created by subdivision (a) shall not be valid as to personal property against:

(1) The holder of a security interest therein whose interest is perfected pursuant to Section 9303 of the Uniform Commercial Code prior to the time the notice of the state tax lien is filed as herein provided;

(2) Any person, other than a person liable for the tax, who acquires his interest in the property under the law of this state without knowledge of the lien or who perfects his interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed with the Secretary of State;

(3) A buyer in the ordinary course of business, as defined in subdivision (9) of Section 1201 of the Uniform Commercial Code; who, under Section 9307 of such code, would take free of a security interest created by his seller;

(4) Any person, other than a person liable for the tax, who, notwithstanding the prior filing of the notice of state tax lien:

(A) Is a holder in due course of a negotiable instrument, as defined in Section 3302 of the Uniform Commercial Code;

(B) Is a holder to whom a negotiable document of title has been duly negotiated as provided in Section 7501 of the Uniform Commercial Code;

(C) Is a bona fide purchaser of a security, as defined in Section 8302 of the Uniform Commercial Code;

- (D) Is a purchaser of chattel paper, as defined in Section 9105(1)(b) of the Uniform Commercial Code, or an instrument, as defined in Section 9105(1)(i) of such code, who gives new value and takes possession of it in the ordinary course of business;
- (E) Is a holder of a purchase money security interest, as defined in Section 9107 of the Uniform Commercial Code;
- (F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Uniform Commercial Code;
- (G) Acquires a security interest in a deposit account, as defined in Section 9105(1)(e) of the Uniform Commercial Code, or in the beneficial interest in a trust or estate;
- (H) Acquires any right or interest in letters of credit, advices of credit or money;
- (I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums;
- (J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of such security interest;
- (k) The notice of state tax lien recorded or filed pursuant to subdivision (b) or (e) shall include the name and last known address of the person liable for the tax; the amount of the tax; a statement that the tax shall be a lien upon all real or personal property and rights to such property, including all after/acquired property and rights to property belonging to such person; and a statement that the department has complied with all the provisions of this part in the computation and levy of the amount assessed.
- (e) Any lien arising pursuant to this section shall continue for 10 years from the date of recording or filing of a notice of state tax lien pursuant to subdivision (b) or (e), unless sooner released or otherwise discharged. The

lien may, within 10 years from the date of the recording or filing of the notice of state tax lien or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by recording or filing a new notice of state tax lien in the office of the county recorder of any county or with the Secretary of State as provided in subdivision (b) or (c); and from the time of such recording or filing the lien shall be extended for 10 years unless sooner released or otherwise discharged.

(f) Notwithstanding the provisions of Sections 688 and 688.1 of the Code of Civil Procedure, in the event the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a lien created pursuant to subdivision (a) shall extend to the taxpayer's cause of action and any judgment in favor of the taxpayer subsequently procured in such action or proceeding. Notice of such a lien shall be given to all parties who prior thereto have made an appearance in the action and to judgment creditors who prior thereto have been granted a lien or an order permitting intervention under Section 688.1 of the Code of Civil Procedure. Such lien shall have priority from the time of filing of the notice in the action. No compromise, dismissal, settlement, or satisfaction shall be entered into by or on behalf of the taxpayer with any other party, lienor, or intervenor in the action without the consent of the department unless the lien is sooner satisfied or discharged. The judge or clerk of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the time of the filing of the notice in the action, and the place where entered, and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Sections 674 and 688.1 of the Code of Civil Procedure, a statement of the lien in favor of the department.

(g) Any lien, and any rights or causes of action under such lien, heretofore recorded in any county pursuant to former Section 8048, shall continue in full force and effect

for a period of 10 years from the date of last recordation or extension thereof and may, within such period of 10 years, be further extended in the manner provided for in subdivision (e) of this section. Upon recordation of an extension, the lien shall have the same effect as a lien filed pursuant to this section. Such extended lien shall have the same priority as it originally had under the law in effect prior to January 1, 1978.

Comment. Section 8048 is amended to delete provisions that are continued in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

Fish & Game Code § 8052 (repealed). Release or subordination of lien

SEC. 3. Section 8052 of the Fish and Game Code is repealed.

~~**8052.** The department may at any time release all or any portion of the property subject to any lien provided for in this article from the lien or subordinate the lien to other liens and encumbrances, if it determines that the amount of tax and any penalty added are sufficiently secured by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the tax and penalty.~~

Comment. Section 8052 is continued in subdivision (a) of Section 7174 of the Government Code.

Government Code §§ 7150-7191 (added). State tax liens

SEC. 4. Chapter 14 (commencing with Section 7150) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 14. STATE TAX LIENS

Comment. Chapter 14 (commencing with Section 7150) consolidates provisions relating to state tax liens that formerly were scattered throughout the Revenue and Taxation Code, the Fish and Game Code, the Public Resources Code, and the Unemployment Insurance Code. The Comments to the individual sections in Chapter 14 indicate where the former provisions were located.

Article 1. Definitions

§ 7150. Application of definitions

7150. Unless the context otherwise requires, the words and phrases defined in this article govern the construction of this chapter.

Comment. Sections 7150-7164 are new. These sections continue provisions formerly found in Section 8048 of the Fish and Game Code, Sections 3423 and 3772 of the Public Resources Code, Sections 6757, 7872, 8996, 16063, 18881, 26161, 30322, and 32363 of the Revenue and Taxation Code, and Section 1703 of the Unemployment Insurance Code.

§ 7151. Bona fide purchaser

7151. "Bona fide purchaser" has the same meaning as defined in Section 8302 of the Commercial Code.

Comment. See the Comment to Section 7150.

§ 7152. Buyer in the ordinary course of business

7152. "Buyer in the ordinary course of business" has the same meaning as defined in Section 1201(9) of the Commercial Code.

Comment. See the Comment to Section 7150.

§ 7153. Chattel paper

7153. "Chattel paper" has the same meaning as defined in Section 9105(1)(b) of the Commercial Code.

Comment. See the Comment to Section 7150.

§ 7154. Deposit account

7154. "Deposit account" has the same meaning as defined in Section 9105(1)(e) of the Commercial Code.

Comment. See the Comment to Section 7150.

§ 7155. Duly negotiated

7155. "Duly negotiated" has the same meaning as defined in Section 7501 of the Commercial Code.

Comment. See the Comment to Section 7150.

§ 7156. Holder in due course

7156. "Holder in due course" has the same meaning as defined in Section 3302 of the Commercial Code.

Comment. See the Comment to Section 7150.

§ 7157. Instrument

7157. "Instrument" has the same meaning as defined in Section 9105(1) (i) of the Commercial Code.

Comment. See the Comment to Section 7150.

§ 7158. Personal property

7158. "Personal property" includes both tangible and intangible personal property.

Comment. See the Comment to Section 7150.

§ 7159. Purchase money security interest

7159. "Purchase money security interest" has the same meaning as defined in Section 9107 of the Commercial Code.

Comment. See the Comment to Section 7150.

§ 7160. Real property

7160. "Real property" includes any rights in real property.

Comment. See the Comment to Section 7150.

§ 7161. Security

7161. "Security" has the same meaning as defined in Section 8102 of the Commercial Code.

Comment. See the Comment to Section 7150.

§ 7162. State tax lien

7162. "State tax lien" means a lien created pursuant to Section 8048 of the Fish and Game Code, Section 3423 or 3772 of the Public Resources Code, Section 6757, 7872, 8996, 16063, 18881, 26161, 30322, or 32363 of the Revenue and Taxation Code, or Section 1703 of the Unemployment Insurance Code.

Comment. See the Comment to Section 7150.

§ 7163. Tax

7163. "Tax" means a liability for which a state tax lien has been created.

Comment. Section 7163 is new. "State tax lien" is defined in Section 7162.

§ 7164. Taxpayer

7164. "Taxpayer" means the person liable for the tax.

Comment. Section 7164 is new.

Article 2. State Tax Liens**§ 7170. Property to which state tax lien attaches**

7170. (a) Except as provided in subdivisions (b) and (c), a state tax lien attaches to all property and rights to property whether real or personal, tangible or intangible, including all after-acquired property and rights to property, belonging to the taxpayer and located in this state.

(b) A state tax lien is not valid as to real property against the right, title, or interest of any of the following persons where the person's right, title, or interest was acquired or perfected prior to recording of the notice of state tax lien in the office of the county recorder or the county in which the real property is located pursuant to Section 7171:

(1) A successor in interest of the taxpayer without knowledge of the lien.

(2) A holder of a security interest.

(3) A mechanic's lienor.

(4) A judgment lien creditor.

(c) A state tax lien is not valid as to personal property against:

(1) The holder of a security interest in the property whose interest is perfected pursuant to Section 9303 of the Commercial Code prior to the time the notice of the state tax lien is filed with the Secretary of State pursuant to Section 7171.

(2) Any person (other than the taxpayer) who acquires an interest in the property under the law of this

state without knowledge of the lien or who perfects an interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed with the Secretary of State pursuant to Section 7171.

(3) A buyer in the ordinary course of business who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller.

(4) Any person (other than the taxpayer) who, notwithstanding the prior filing of the notice of the state tax lien:

(A) Is a holder in due course of a negotiable instrument.

(B) Is a holder to whom a negotiable document of title has been duly negotiated.

(C) Is a bona fide purchaser of a security.

(D) Is a purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business.

(E) Is a holder of a purchase money security interest.

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Commercial Code.

(G) Acquires a security interest in a deposit account or in the beneficial interest in a trust or estate.

(H) Acquires any right or interest in letters of credit, advices of credit, or money.

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums.

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of the security interest.

Comment. Section 7170 continues the substance of provisions formerly found in subdivisions (a), (b), and (c) of the following sections: Section 8048 of the Fish and Game Code, Sections 3423 and 3772 of the Public Resources Code, Sections 6757, 7872, 8996, 16063, 18881, 26161, 30322, and 32363 of the Revenue and Taxation

Code, and Section 1703 of the Unemployment Insurance Code. Terms used in Section 7170 are defined in Sections 7151-7164.

§ 7171. Recording or filing of notice of state tax lien

7171. (a) As used in this section, “agency” means:

(1) The Department of Fish and Game with respect to a state tax lien created under Section 8048 of the Fish and Game Code.

(2) The State Controller with respect to a state tax lien created under Section 3423 or 3772 of the Public Resources Code or Section 16063 of the Revenue and Taxation Code.

(3) The State Board of Equalization with respect to a state tax lien created under Section 6757, 7872, 8996, 30322, or 32363 of the Revenue and Taxation Code.

(4) The Franchise Tax Board with respect to a state tax lien created under Section 18881 or 26161 of the Revenue and Taxation Code.

(5) The Director of Employment Development with respect to a state tax lien created under Section 1703 of the Unemployment Insurance Code.

(b) With respect to real property, at any time after creation of a state tax lien, the agency may record in the office of the county recorder of the county in which the real property is located a notice of state tax lien.

(c) With respect to personal property, at any time after creation of a state tax lien the agency may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 7220).

(d) The notice of state tax lien recorded or filed pursuant to subdivision (b) or (c) shall include all of the following:

(1) The name and last known address of the taxpayer.

(2) The name of the agency asserting the lien.

(3) The amount of the tax required to be paid, if known.

(4) A statement that the amount of the tax required to be paid is a lien on all real or personal property and rights

to such property, including all after-acquired property and rights to property, belonging to the taxpayer.

(5) A statement that the agency has complied with all of the provisions of the applicable law for determining and assessing the amount required to be paid.

Comment. Section 7171 continues the substance of provisions formerly found in subdivisions (b), (c), and (d) of the following sections: Section 8048 of the Fish and Game Code, Sections 3423 and 3772 of the Public Resources Code, Sections 6757, 7872, 8996, 16063, 18881, 26161, 30322, and 32363 of the Revenue and Taxation Code, and Section 1703 of the Unemployment Insurance Code. Paragraph (2) of subdivision (d) of Section 7171 requiring that the notice of state tax lien identify the agency asserting the lien is new and continues a provision formerly found in Section 7221. Terms used in Section 7171 are defined in Sections 7151-7164.

§ 7172. Duration of state tax lien

7172. (a) A state tax lien continues in effect for 10 years from the date of its creation unless it is sooner released or otherwise discharged, and is extinguished 10 years from the date of its creation unless it is recorded or filed as provided in Section 7171.

(b) A state tax lien which is recorded or filed as provided in Section 7171 before it is extinguished pursuant to subdivision (a) continues in effect for 10 years from the date of recording or filing unless it is sooner released or otherwise discharged, and is extinguished 10 years from the date of recording or filing unless it is extended as provided in subdivision (c).

(c) A state tax lien may, within 10 years of the date of the recording or filing of the notice of state tax lien or within 10 years of the date of the last extension of the lien, be extended by recording or filing a new notice of state tax lien as provided in Section 7171, and from the time of such recording or filing the lien is extended for 10 years unless sooner released or otherwise discharged.

Comment. Section 7172 continues the substance of provisions formerly found in subdivisions (a) and (e) of the following sections: Section 8048 of the Fish and Game Code, Sections 3423 and 3772 of the Public Resources Code, Sections 6757, 7872, 8996,

16063, 18881, 26161, 30322, and 32363 of the Revenue and Taxation Code, and Section 1703 of the Unemployment Insurance Code. The provisions that determine when the liability is “due and payable” have been retained in these 12 sections. For the purpose of subdivision (a), the date of creation of a state tax lien is the date that the liability is “due and payable” under these 12 sections. See Section 7162.

§ 7173. Lien on cause of action and judgment

7173. (a) Notwithstanding Sections 688 and 688.1 of the Code of Civil Procedure, if the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a state tax lien extends to the taxpayer’s cause of action and any judgment in favor of the taxpayer subsequently procured in the action or proceeding. Notice of such a lien shall be given to all parties who, prior thereto, have made an appearance in the action or proceeding. The lien has priority from the time of filing of the notice in the action.

(b) No compromise, dismissal, settlement, or satisfaction shall be entered into by or on behalf of the taxpayer with any other party, lienor, or intervenor in the action or proceeding without the consent of the agency unless the lien is sooner satisfied or discharged.

(c) The judge or clerk of the court shall endorse upon the judgment recovered in the action or proceeding a statement of the existence of the lien, the time of the filing of the notice in the action or proceeding, and the place where entered. Any abstract issued on the judgment shall contain, in addition to the matters set forth in Sections 674 and 688.1 of the Code of Civil Procedure, a statement of the lien in favor of the agency.

Comment. Section 7173 continues the substance of provisions formerly found in subdivision (f) of the following sections: Section 8048 of the Fish and Game Code, Sections 3423 and 3772 of the Public Resources Code, Sections 6757, 7872, 8996, 16063, 18881, 26161, 30322, and 32363 of the Revenue and Taxation Code, and Section 1703 of the Unemployment Insurance Code.

§ 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 lien, including any interest or 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 acknowledgement of satisfaction not later than 30 days after the liability is satisfied.

(d) 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. Section 7174 continues and generalizes the substance of the following repealed sections:

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|-----------------|--|
| Subdivision (a) | Fish & Game 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 (c) | Code Civ. Proc. § 675(e). |

Subdivision (d) 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. The requirement in subdivision (c) that an acknowledgment of satisfaction be filed with the Secretary of State when appropriate is new. See also Section 7223 (filing of certificate of release, partial release, or subordination).

Article 3. Transitional Provisions

§ 7190. Continuation of preexisting state tax liens

7190. (a) As used in this section, "preexisting state tax lien" means a lien:

(1) Created, recorded in any county, or filed with the Secretary of State, prior to July 1, 1978, pursuant to any of the following sections as those sections existed prior to July 1, 1978: Section 8048 of the Fish and Game Code, Section 3423 or 3772 of the Public Resources Code, Section 6757, 6757.5, 7871, 7872, 8991, 8996, 16062, 16063, 18881, 18882.5, 26161, 26161.5, 30322, or 32363 of the Revenue and Taxation Code, or Section 1703 or 1703.5 of the Unemployment Insurance Code.

(2) Created, recorded in any county, or filed with the Secretary of State, prior to January 1, 1980, pursuant to Section 3423 of the Public Resources Code as that section existed prior to January 1, 1980.

(b) Any preexisting state tax lien, and any rights or causes of action under such lien, shall continue in full force and effect for a period of 10 years from the date of last recordation or filing or extension thereof and may, within such period of 10 years, be further extended in the manner provided in Section 7172. Upon recordation or filing of an extension, the preexisting state tax lien shall have the same effect as state tax liens have under this article. Such extended lien has the same priority it

originally had under the law in effect at the time of its creation or initial recordation or filing.

Comment. Section 7190 continues the substance of provisions formerly found in subdivision (g) of the following sections as those sections existed on December 31, 1980: Section 3423 of the Public Resources Code, Sections 6757, 7872, 8996, 16063, 18881, 26161, and 30322 of the Revenue and Taxation Code, and Section 1703 of the Unemployment Insurance Code. Section 7190 also continues the substance of provisions formerly found in subdivision (g) of Section 8048 of the Fish and Game Code and subdivision (g) of Section 3772 of the Public Resources Code, except that the relevant date has been changed from January 1, 1978, as it appeared in the former sections to July 1, 1978. July 1, 1978, was the operative date of the legislation which substantially revised those sections (see 1977 Cal. Stats. ch. 481, § 79) and the omission of those two sections from later legislation correcting the date reference (see 1979 Cal. Stats. ch. 322) appears to have been an oversight. The reference in Section 7190 to Section 32363 of the Revenue and Taxation Code is new; former Section 32363 did not contain a subdivision (g) to give effect to liens created under the section prior to its revision which was operative on July 1, 1978. This omission also appears to have been an oversight.

§ 7191. Continuation of liens in effect on December 31, 1980

7191. This chapter is a restatement and continuation of provisions formerly found in Sections 8048 and 8052 of the Fish and Game Code, Sections 3423, 3423.8, and 3772 of the Public Resources Code, Sections 6757, 6758, 6758.5, 6759, 7872, 7873, 7873.5, 8996, 8997, 8997.5, 16063, 16066, 16067, 18881, 18884, 18884.5, 18885, 26161, 26162, 26162.5, 30322, 30323, 30323.5, 30324, and 32363 of the Revenue and Taxation Code, and Sections 1703, 1704, 1704.5, and 1705 of the Unemployment Insurance Code, and with respect to such provisions is not a new enactment. All liens created pursuant to such provisions prior to the operative date of this act and in effect immediately prior to the operative date of this act continue in force and effect and are governed by the provisions of this chapter on and after the operative date of this act.

Comment. Section 7191 makes clear that liens created pursuant to the provisions referred to in the section and in effect

on the operative date of this act will continue in force and effect after the operative date of this act. See also Gov't Code § 9604 (effect of restatement and continuation of prior statute).

Government Code § 7221 (amended). Contents of notice of state tax lien

SEC. 5. Section 7221 of the Government Code is amended to read:

7221. The notice ~~must (1) identify the person or persons liable for the payment, (2) identify the agency asserting the lien, and (3) state the fact that the agency has complied with all provisions of law for the determination of the amount required to be paid. The notice may, but need not, state the unpaid amount of state tax lien shall set forth the matters required by subdivision (d) of Section 7171.~~

Comment. Section 7221 is amended to make it consistent with Section 7171.

Government Code § 27282 (technical amendment). Documents recordable without acknowledgment

SEC. 6. Section 27282 of the Government Code is amended to read:

27282. (a) The following documents may be recorded without acknowledgment, certificate of acknowledgment, or further proof:

(1) A judgment affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which the judgment was rendered.

(2) A notice of location of mining claim.

(3) Certificates of amounts of taxes, interest and penalties due, notices of state tax liens and extensions thereof executed by the state, county, or city taxing agencies or officials pursuant to *Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code*, Sections 2191.3, 2191.4, ~~6757, 7872, 8996, 10099, and 11495 ; 16062, 16064, 18881 through 18882, inclusive, 26161 and 30322~~ of the Revenue and Taxation Code, ~~and Section 1703 of the Unemployment Insurance Code~~, and releases or subordinations executed

pursuant to *Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code*, Sections 2191.4, ~~6758, 6759, 7873, 8997, 10100, 11496, 14307, and 14308~~; ~~16066, 16067, 18884, 18885, 26162, 30323 and 30324~~ of the Revenue and Taxation Code; and Sections ~~1704 and 1705~~ of the Unemployment Insurance Code.

(4) Notices of lien for postponed property taxes executed pursuant to Section 16182.

(5) A release, discharge, or subordination of a lien for postponed property taxes as authorized by Chapter 6 (commencing with Section 16180) of Part 1 of Division 4 of Title 2.

(b) Any document described in this section, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.

Comment. Section 27282 is amended to correct the cross-references to the state tax lien provisions which are now found in Sections 7150-7191. The former references to Sections 10099, 10100, 16064, 18882, and 18883 of the Revenue and Taxation Code have been deleted in view of the repeal of those sections. See 1972 Cal. Stats. ch. 563 (repealing former Sections 10099 and 10100 of the Revenue and Taxation Code); 1977 Cal. Stats. ch. 481 (repealing former Sections 16064, 18882, and 18883 of the Revenue and Taxation Code).

Public Resources Code § 3356 (technical amendment).

Lien on real or personal property

SEC. 7. Section 3356 of the Public Resources Code is amended to read:

3356. If a review is not taken within 10 days, or if taken, in case the decision of the director is affirmed, any charge, including penalty and interest thereon, imposed by the director shall constitute a lien which upon recordation or filing pursuant to ~~subdivision (e) or (d)~~ of Section ~~3423~~ 7171 of the Government Code, attaches to real or personal property. The lien upon the property shall be enforced in the same manner as are other liens on real property and personal property of the debtor. Upon the request of the supervisor, the State Controller

shall bring an action for the enforcement of the lien in the manner provided in this chapter.

Comment. Section 3356 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Public Resources Code § 3423 (amended). Lien of tax

SEC. 8. Section 3423 of the Public Resources Code is amended to read:

3423. (a) If any person fails to pay any charge or penalty imposed under this chapter at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien upon all property and rights to property whether real or personal, tangible or intangible, including all after/acquired property and rights to property, belonging to such person and located in the state. Such lien shall not continue for more than 10 years unless recorded or filed as provided in this section as provided in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section only, "due and payable" means the date the charges required to be paid pursuant to Section 3420 are assessed under this chapter.

~~(b) With respect to real property or any rights therein, at any time after creation of the lien pursuant to subdivision (a), the Controller may record in the office of the county recorder of the county in which such real property is located a notice of state tax lien as specified in subdivision (d).~~

The lien created by subdivision (a) shall not be valid as to real property against the right, title or interest of:

- ~~(1) A successor in interest of the taxpayer without knowledge of the lien;~~
 - ~~(2) A holder of a security interest;~~
 - ~~(3) A mechanic's lienor; or~~
 - ~~(4) A judgment lien creditor,~~
- where such right, title or interest was acquired or

perfected prior to recording of a notice of state tax lien as provided in this subdivision.

(e) With respect to personal property, whether tangible or intangible, at any time after creation of the lien pursuant to subdivision (a) the Controller may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 72290) of Division 7 of Title 1 of the Government Code.

The lien created by subdivision (a) shall not be valid as to personal property against:

(1) The holder of a security interest therein whose interest is perfected pursuant to Section 9303 of the Uniform Commercial Code prior to the time the notice of the state tax lien is filed as herein provided;

(2) Any person, other than a person liable for the tax, who acquires his interest in the property under the law of this state without knowledge of the lien or who perfects his interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed as herein provided;

(3) A buyer in the ordinary course of business, as defined in subdivision (9) of Section 1201 of the Uniform Commercial Code, who, under Section 9307 of such code, would take free of a security interest created by his seller;

(4) Any person, other than a person liable for the tax, who, notwithstanding the prior filing of the notice of state tax lien:

(A) Is holder in due course of a negotiable instrument, as defined in Section 3302 of the Uniform Commercial Code;

(B) Is a holder to whom a negotiable document of title has been duly negotiated as provided in Section 7501 of the Uniform Commercial Code;

(C) Is a bona fide purchaser of a security, as defined in Section 8302 of the Uniform Commercial Code;

(D) Is a purchaser of chattel paper, as defined in Section 9105(1)(b) of the Uniform Commercial Code, or an instrument, as defined in Section 9105(1)(i) of such code, who gives new value and takes possession of it in the ordinary course of business;

(E) Is a holder of a purchase money security interest, as defined in Section 9107 of the Uniform Commercial Code;

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Uniform Commercial Code;

(G) Acquires a security interest in a deposit account, as defined in Section 9105(1)(e) of the Uniform Commercial Code, or in the beneficial interest in a trust or estate;

(H) Acquires any right or interest in letters of credit, advices of credit or money;

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums;

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of such security interest.

(d) The notice of state tax lien recorded or filed pursuant to subdivision **(b)** or **(c)** shall include the name and last known address of the person liable for the tax, the amount of the tax, a statement that the tax shall be a lien upon all real or personal property and rights to such property, including all after/acquired property and rights to property belonging to such person, and a statement that the Controller has complied with all the provisions of this part in the computation and levy of the amount assessed.

(e) Any lien arising pursuant to this section shall continue for 10 years from the date of recording or filing of a notice of state tax lien pursuant to subdivision **(b)** or **(c)**, unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the recording or filing of the notice of state tax lien or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by recording or filing a new notice of state tax lien in the office of the

county recorder of any county or with the Secretary of State as provided in subdivision (b) or (c), and from the time of such recording or filing the lien shall be extended for 10 years unless sooner released or otherwise discharged.

(f) Notwithstanding the provisions of Sections 698 and 698.1 of the Code of Civil Procedure, in the event the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a lien created pursuant to subdivision (a) shall extend to the taxpayer's cause of action and any judgment in favor of the taxpayer subsequently procured in such action or proceeding. Notice of such a lien shall be given to all parties who prior thereto have made an appearance in the action and to judgment creditors who prior thereto have been granted a lien or an order permitting intervention under Section 698.1 of the Code of Civil Procedure. Such lien shall have priority from the time of filing of the notice in the action. No compromise, dismissal, settlement, or satisfaction shall be entered into by or on behalf of the taxpayer with any other party, lienor or intervenor in the action without the consent of the Controller unless the lien is sooner satisfied or discharged. The judge or clerk of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the time of the filing of the notice in the action and the place where entered, and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Sections 674 and 698.1 of the Code of Civil Procedure, a statement of the lien in favor of the Controller.

(g) Any lien, and any rights or causes of action under such lien, heretofore recorded in any county pursuant to former Section 2492, shall continue in full force and effect for a period of 10 years from the date of last recordation or extension thereof and may, within said period of 10 years, be further extended in the manner provided for in subdivision (c) of this section. Upon recordation of an

~~extension, the lien shall have the same effect as a lien filed pursuant to this section. Such extended lien shall have the same priority as it originally had under the law in effect prior to January 1, 1980.~~

Comment. Section 3423 is amended to delete provisions that are continued in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

Public Resources Code § 3423.6 (technical amendment).

Release of lien on specific parcels after payment of proportionate share

SEC. 9. Section 3423.6 of the Public Resources Code is amended to read:

3423.6. In the event that the lien of the charges, penalties or interest attaches to real property from which the oil or gas is extracted and more than one parcel of property is included within the lien, the Controller may release by certificate pursuant to Section ~~3423.8~~ 7174 of the Government Code from the lien of said charges, interest, penalties and costs, upon payment by the owner of any parcel or parcels of property of his proportionate share of the assessment of the oil or gas extracted from all land included within said lien owned by him.

Comment. Section 3423.6 is amended to revise the cross-reference in view of the repeal of former Section 3423.8 and the reenactment of those provisions in Government Code Section 7174.

Public Resources Code § 3423.8 (repealed). Release or subordination of lien

SEC. 10. Section 3423.8 of the Public Resources Code is repealed.

~~3423.8. The Controller may at any time release all or any portion of the property subject to the lien from the lien or subordinate the lien to other liens if he determines that the charges are sufficiently secured by a lien on other property of the taxpayer or that the release or subordination of the lien will not endanger or jeopardize the collection of such charges. A certificate by the~~

~~Controller to the effect that any property has been released from the lien herein provided for or that such lien has been subordinated to other liens shall be conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.~~

Comment. Former Section 3423.8 is continued in Section 7174 of the Government Code.

Public Resources Code § 3768 (technical amendment).

Lien on real or personal property

SEC. 11. Section 3768 of the Public Resources Code is amended to read:

3768. If a review is not taken within 10 days, or if taken, in case the decision of the board is affirmed, any charge, including penalty and interest thereon, imposed by the board shall constitute a lien which, upon recordation or filing pursuant to ~~subdivision (e) or (d) of Section 3772~~ *7171 of the Government Code*, attaches to real or personal property. The lien upon the property shall be enforced in the same manner as are other liens on real property and personal property of the debtor. Upon the request of the supervisor, the State Controller shall bring an action for the enforcement of the lien in the manner provided in this chapter.

Comment. Section 3768 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Public Resources Code § 3772 (amended). Lien of tax

SEC. 12. Section 3772 of the Public Resources Code is amended to read:

3772. (a) If any person fails to pay any charge or penalty imposed under this chapter at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien ~~upon all property and rights to property whether real or personal, tangible or intangible;~~

including all after/acquired property and rights to property, belonging to such person and located in the state. Such lien shall not continue for more than 10 years unless recorded or filed as provided in this section as provided in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section only, "due and payable" means the date a return is required to be filed, without regard to any extension of time, without payment of the amount due or the date a determination or assessment made under this chapter becomes final, whichever is applicable.

(b) With respect to real property or any rights therein, at any time after creation of the lien pursuant to subdivision (a), the Controller may record in the office of the county recorder of the county in which such real property is located a notice of state tax lien as specified in subdivision (d).

The lien created by subdivision (a) shall not be valid against the right, title or interest of:

- (1) A successor in interest of the taxpayer without knowledge of the lien;
- (2) A holder of a security interest;
- (3) A mechanic's lienor; or
- (4) A judgment lien creditor;

where such right, title or interest was acquired or perfected prior to recording of a notice of state tax lien as provided in this subdivision.

(c) With respect to personal property, whether tangible or intangible, at any time after creation of the lien pursuant to subdivision (a) the Controller may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code.

The lien created by subdivision (a) shall not be valid as to personal property against:

- (1) The holder of a security interest therein whose interest is perfected pursuant to Section 9303 of the Uniform Commercial Code prior to the time the notice of the state tax lien is filed as herein provided;

(2) Any person, other than a person liable for the tax, who acquires his interest in the property under the law of his state without knowledge of the lien or who perfects his interest in accordance with the law of his state prior to the time that the notice of state tax lien is filed with the Secretary of State;

(3) A buyer in the ordinary course of business, as defined in subdivision (9) of Section 1201 of the Uniform Commercial Code, who, under Section 9307 of such code, would take free of a security interest created by his seller;

(4) Any person, other than a person liable for the tax, who, notwithstanding the prior filing of the notice of state tax lien:

(A) Is holder in due course of a negotiable instrument, as defined in Section 3302 of the Uniform Commercial Code;

(B) Is a holder to whom a negotiable document of title has been duly negotiated as provided in Section 7501 of the Uniform Commercial Code;

(C) Is a bona fide purchaser of a security, as defined in Section 8302 of the Uniform Commercial Code;

(D) Is a purchaser of chattel paper, as defined in Section 9105 (1) (b) of the Uniform Commercial Code, or an instrument, as defined in Section 9105 (1) (i) of such code, who gives new value and takes possession of it in the ordinary course of business;

(E) Is a holder of a purchase money security interest, as defined in Section 9107 of the Uniform Commercial Code;

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Uniform Commercial Code;

(G) Acquires a security interest in a deposit account, as defined in Section 9105 (1) (e) of the Uniform Commercial Code, or in the beneficial interest in a trust or estate;

(H) Acquires any right or interest in letters of credit, advices of credit or money;

(f) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums;

(f) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of such security interest.

(d) The notice of state tax lien recorded or filed pursuant to subdivision (b) or (c) shall include the name and last known address of the person liable for the tax; the amount of the tax; a statement that the tax shall be a lien upon all real or personal property and rights to such property, including all after/acquired property and rights to property belonging to such person; and a statement that the Controller has complied with all the provisions of this part in the computation and levy of the amount assessed.

(e) Any lien arising pursuant to this section shall continue for 10 years from the date of recording or filing of a notice of state tax lien pursuant to subdivision (b) or (c), unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the recording or filing of the notice of state tax lien or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by recording or filing a new notice of state tax lien in the office of the county recorder of any county or with the Secretary of State as provided in subdivision (b) or (c); and from the time of such recording or filing the lien shall be extended for 10 years unless sooner released or otherwise discharged.

(f) Notwithstanding the provisions of Sections 688 and 688.1 of the Code of Civil Procedure, in the event the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a lien created pursuant to subdivision (a) shall extend to the taxpayer's cause of action and any judgment in favor of the taxpayer subsequently procured in such action or proceeding. Notice of such a lien shall

be given to all parties who prior thereto have made an appearance in the action and to judgment creditors who prior thereto have been granted a lien or an order permitting intervention under Section 688.1 of the Code of Civil Procedure. Such lien shall have priority from the time of filing of the notice in the action. No compromise, dismissal, settlement, or satisfaction shall be entered into by or on behalf of the taxpayer with any other party, lienor or intervenor in the action without the consent of the Controller unless the lien is sooner satisfied or discharged. The judge or clerk of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the time of the filing of the notice in the action and the place where entered, and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Sections 674 and 688.1 of the Code of Civil Procedure, a statement of the lien in favor of the Controller.

(g) Any lien, and any rights or causes of action under such lien, heretofore recorded in any county pursuant to former Section 3772, shall continue in full force and effect for a period of 10 years from the date of last recordation or extension thereof and may, within said period of 10 years, be further extended in the manner provided for in subdivision (e) of this section. Upon recordation of an extension, the lien shall have the same effect as a lien filed pursuant to this section. Such extended lien shall have the same priority as it originally had under the law in effect prior to January 1, 1978.

Comment. Section 3772 is amended to delete provisions that are continued in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

Public Resources Code § 3772.6 (technical amendment).

Release of lien on specific parcel after payment of proportionate share

SEC. 13. Section 3772.6 of the Public Resources Code is amended to read:

3772.6. In the event that the lien of the charges, penalties or interest attaches to real property from which geothermal energy is extracted and more than one parcel of property is included within the lien, the Controller may release by certificate pursuant to Section ~~3772.8~~ 7174 *of the Government Code* from the lien of such charges, interest, and penalties and costs, upon payment by the owner of any parcel or parcels of property of his proportionate share of the charges.

Comment. Section 3772.6 is amended to revise the cross-reference in view of the repeal of former Section 3772.8 and the reenactment of those provisions in Government Code Section 7174.

Public Resources Code § 3772.8 (repealed). Release or subordination of lien

SEC. 14. Section 3772.8 of the Public Resources Code is repealed.

~~3772.8. The Controller may at any time release all or any portion of the property subject to the lien from the lien or subordinate the lien to other liens if he determines that the charges are sufficiently secured by a lien on other property of the taxpayer or that the release or subordination of the lien will not endanger or jeopardize the collection of such charges. A certificate by the Controller to the effect that any property has been released from the lien herein provided for or that such lien has been subordinated to other liens shall be conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.~~

Comment. Former Section 3772.8 is continued in Section 7174 of the Government Code.

**Revenue & Taxation Code § 6711 (technical amendment).
Action to collect delinquent amount**

SEC. 15. Section 6711 of the Revenue and Taxation Code is amended to read:

6711. At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, or within the period during which a lien is in force as the result of the recording of an abstract under Section 6738 or the recording or filing of a notice of state tax lien under Section ~~6757~~ 7171 of the *Government Code*, the board may bring an action in the courts of this state, of any other state, or of the United States in the name of the people of the State of California to collect the amount delinquent together with penalties and interest.

Comment. Section 6711 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the *Government Code*.

**Revenue & Taxation Code § 6756 (technical amendment).
Priority of tax**

SEC. 16. Section 6756 of the Revenue and Taxation Code is amended to read:

6756. The amounts required to be paid by any person under this part together with interest and penalties shall be satisfied first in any of the following cases:

- (a) Whenever the person is insolvent.
- (b) Whenever the person makes a voluntary assignment of his assets.
- (c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.
- (d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

~~This section does not give the state a preference over any lien or security interest which was recorded or perfected prior to the time when the state records or files its lien pursuant to subdivision (b) or (c) of Section 6757.~~

The preference given to the state by this section shall be subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code

of Civil Procedure *and is subject to Section 7170 of the Government Code.*

Comment. Section 6756 is amended to substitute for the deleted portion a reference to the more detailed general state tax lien provision (Government Code Section 7170) which specifies the priority to be given to the prior interest of a holder of a security interest or lien.

Revenue & Taxation Code § 6757 (amended). Lien of tax

SEC. 17. Section 6757 of the Revenue and Taxation Code is amended to read:

6757. (a) If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien ~~upon all property and rights to property whether real or personal, tangible or intangible, including all afteracquired property and rights to property, belonging to such person and located in the state. Such lien shall not continue for more than 10 years unless recorded or filed as provided in this section as provided in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.~~

(b) For the purpose of this section, amounts are "due and payable" on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent;

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board;

(3) For amounts determined under Section 6536 (pertaining to jeopardy assessments), the date the notice of the board's finding is mailed or issued;

(4) For all other amounts, the date the assessment is final.

~~(b) With respect to real property or any rights therein, at any time after creation of the lien pursuant to subdivision (a), the board may record in the office of the~~

county recorder of the county in which such real property is located a notice of state tax lien as specified in subdivision (d).

The lien created by subdivision (a) shall not be valid against the right, title or interest of:

- (1) A successor in interest of the taxpayer without knowledge of the lien;
- (2) A holder of a security interest;
- (3) A mechanic's lienor; or
- (4) A judgment lien creditor;

where such right, title or interest was acquired or perfected prior to recording of a notice of state tax lien as provided in this subdivision.

(e) With respect to personal property, whether tangible or intangible, at any time after creation of the lien pursuant to subdivision (a) the board may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code.

The lien created by subdivision (a) shall not be valid as to personal property against:

(1) The holder of a security interest therein whose interest is perfected pursuant to Section 9303 of the Uniform Commercial Code prior to the time the notice of the state tax lien is filed as herein provided;

(2) Any person, other than a person liable for the tax, who acquires his interest in the property under the law of this state without knowledge of the lien or who perfects his interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed with the Secretary of State;

(3) A buyer in the ordinary course of business, as defined in subdivision (9) of Section 1201 of the Uniform Commercial Code, who, under Section 9307 of such code, would take free of a security interest created by his seller;

(4) Any person, other than a person liable for the tax, who, notwithstanding the prior filing of the notice of state tax lien:

(A) Is a holder in due course of a negotiable instrument, as defined in Section 3302 of the Uniform Commercial Code;

(B) Is a holder to whom a negotiable document of title has been duly negotiated as provided in Section 7501 of the Uniform Commercial Code;

(C) Is a bona fide purchaser of a security, as defined in Section 8302 of the Uniform Commercial Code;

(D) Is a purchaser of chattel paper, as defined in Section 9105(1)(b) of the Uniform Commercial Code, or an instrument, as defined in Section 9105(1)(i) of such code, who gives new value and takes possession of it in the ordinary course of business;

(E) Is a holder of a purchase money security interest, as defined in Section 9107 of the Uniform Commercial Code;

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Uniform Commercial Code;

(G) Acquires a security interest in a deposit account, as defined in Section 9105(1)(e) of the Uniform Commercial Code, or in the beneficial interest in a trust or estate;

(H) Acquires any right or interest in letters of credit, advices of credit or money;

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums;

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of such security interest.

(d) The notice of state tax lien recorded or filed pursuant to subdivision (b) or (c) shall include the name and last known address of the person liable for the tax, the amount of the tax, a statement that the tax shall be a lien upon all real or personal property and rights to such property, including all afteracquired property and rights to property belonging to such person, and a statement that the board has complied with all the provisions of this part in the computation and levy of the amount assessed.

(e) Any lien arising pursuant to this section shall continue for 10 years from the date of recording or filing of a notice of state tax lien pursuant to subdivision (b) or (c), unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the recording or filing of the notice of state tax lien or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by recording or filing a new notice of state tax lien in the office of the county recorder of any county or with the Secretary of State as provided in subdivision (b) or (c), and from the time of such recording or filing the lien shall be extended for 10 years unless sooner released or otherwise discharged.

(f) Notwithstanding the provisions of Sections 698 and 698.1 of the Code of Civil Procedure, in the event the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a lien created pursuant to subdivision (a) shall extend to the taxpayer's cause of action and any judgment in favor of the taxpayer subsequently procured in such action or proceeding. Notice of such a lien shall be given to all parties who prior thereto have made an appearance in the action. Such lien shall have priority from the time of filing of the notice in the action. No compromise, dismissal, settlement, or satisfaction shall be entered into by or on behalf of the taxpayer with any other party, lienor or intervenor in the action without the consent of the board unless the lien is sooner satisfied or discharged. The judge or clerk of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the time of the filing of the notice in the action, and the place where entered, and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Sections 674 and 688.1 of the Code of Civil Procedure, a statement of the lien in favor of the board.

(g) Any lien, and any rights or causes of action under such lien, heretofore recorded in any county pursuant to former Section 6757 or filed with the Secretary of State

pursuant to former Section 6757.5; shall continue in full force and effect for a period of 10 years from the date of last recordation or filing or extension thereof and may, within such period of 10 years, be further extended in the manner provided for in subdivision (e) of this section. Upon recordation or filing of an extension, the lien shall have the same effect as a lien filed pursuant to this section. Such extended lien shall have the same priority as it originally had under the law in effect prior to July 1, 1978.

Comment. Section 6757 is amended to delete provisions that are continued in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

Revenue & Taxation Code § 6758 (repealed). Release or subordination of lien

SEC. 18. Section 6758 of the Revenue and Taxation Code is repealed.

6758. The board may at any time release all or any portion of the property subject to any lien provided for in this part from the lien or subordinate the lien to other liens and encumbrances if it determines that the amount, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest, and penalties.

Comment. Former Section 6758 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 6758.5 (repealed). Release of lien when liability legally unenforceable

SEC. 19. Section 6758.5 of the Revenue and Taxation Code is repealed.

6758.5. The board may release any lien imposed under Section 6757 or 6757.5 if it finds that the liability represented by the lien, including any interest accrued thereon, is legally unenforceable.

Comment. Former Section 6758.5 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 6759 (repealed). Conclusive effect of certificate

SEC. 20. Section 6759 of the Revenue and Taxation Code is repealed.

~~6759. A certificate by the board to the effect that any property has been released from the lien or that the lien has been subordinated to other liens and encumbrances shall be conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.~~

Comment. Former Section 6759 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 6776 (technical amendment).

Warrant for collection of tax

SEC. 21. Section 6776 of the Revenue and Taxation Code is amended to read:

6776. At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within 10 years after the last recording of an abstract under Section 6738 or the recording or filing of a notice of state tax lien under Section ~~6757~~ 7171 of the Government Code, the board or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

Comment. Section 6776 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

**Revenue & Taxation Code § 7851 (technical amendment).
Notice of delinquency**

SEC. 22. Section 7851 of the Revenue and Taxation Code is amended to read:

7851. If any distributor is delinquent in the payment of his license tax, or in the event a determination has been made against him which remains unpaid, the Controller may, not later than 10 years after the payment became delinquent, or within 10 years after the last recording or filing of a notice of state tax lien under Section ~~7872~~ *7171 of the Government Code*, give notice thereof personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the distributor, or owing any debts to the distributor. In the case of any state officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the State Controller.

Comment. Section 7851 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Revenue & Taxation Code § 7872 (amended). Lien of tax

SEC. 23. Section 7872 of the Revenue and Taxation Code is amended to read:

7872. (a) If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien ~~upon all property and rights to property whether real or personal, tangible or intangible, including all afteracquired property and rights to property, belonging to such person and located in the state. Such lien shall not continue for more than 10 years unless recorded or filed as provided in this section as provided in Chapter 14 (commencing with Section 7150) of Division 9 of Title 1 of the Government Code.~~

(b) For the purpose of this section, amounts are "due and payable" on the following dates:

(1) For amounts disclosed on a return received by the Controller before the date the return is delinquent, the date the return would have been delinquent;

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the Controller;

(3) For amounts determined under Section 7698 (pertaining to jeopardy assessments), the date the notice of the Controller's finding is mailed or issued;

(4) For all other amounts, the date the assessment is final.

(b) With respect to real property or any rights therein, at any time after creation of the lien pursuant to subdivision (a), the Controller may record in the office of the county recorder of the county in which such real property is located a notice of state tax lien as specified in subdivision (d).

The lien created by subdivision (a) shall not be valid as to real property against the right, title or interest of:

(1) A successor in interest of the taxpayer without knowledge of the lien;

(2) A holder of a security interest;

(3) A mechanic's lienor; or

(4) A judgment lien creditor;

where such right, title or interest was acquired or perfected prior to recording of a notice of state tax lien as provided in this subdivision.

(c) With respect to personal property, whether tangible or intangible, at any time after creation of the lien pursuant to subdivision (a) the Controller may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code.

The lien created by subdivision (a) shall not be valid as to personal property against:

(1) The holder of a security interest therein whose interest is perfected pursuant to Section 9303 of the

Uniform Commercial Code prior to the time the notice of the state tax lien is filed as herein provided;

(2) Any person, other than a person liable for the tax, who acquires his interest in the property under the law of this state without knowledge of the lien or who perfects his interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed as herein provided;

(3) A buyer in the ordinary course of business, as defined in subdivision (9) of Section 1201 of the Uniform Commercial Code, who, under Section 9307 of such code, would take free of a security interest created by his seller;

(4) Any person, other than a person liable for the tax, who, notwithstanding the prior filing of the notice of state tax lien:

(A) Is a holder in due course of a negotiable instrument, as defined in Section 3302 of the Uniform Commercial Code;

(B) Is a holder to whom a negotiable document of title has been duly negotiated as provided in Section 7501 of the Uniform Commercial Code;

(C) Is a bona fide purchaser of a security, as defined in Section 8302 of the Uniform Commercial Code;

(D) Is a purchaser of chattel paper, as defined in Section 9105(1)-(b) of the Uniform Commercial Code, or an instrument, as defined in Section 9105(1)-(i) of such code, who gives new value and takes possession of it in the ordinary course of business;

(E) Is a holder of a purchase money security interest, as defined in Section 9107 of the Uniform Commercial Code;

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Uniform Commercial Code;

(G) Acquires a security interest in a deposit account, as defined in Section 9105(1)-(e) of the Uniform Commercial Code, or in the beneficial interest in a trust or estate;

(H) Acquires any right or interest in letters of credit, advices of credit or money;

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums;

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of such security interest.

(d) The notice of state tax lien recorded or filed pursuant to subdivision (b) or (c) shall include the name and last known address of the person liable for the tax; the amount of the tax; a statement that the tax shall be a lien upon all real or personal property and rights to such property, including all after/acquired property and rights to property belonging to such person; and a statement that the Controller has complied with all the provisions of this part in the computation and levy of the amount assessed.

(e) Any lien arising pursuant to this section shall continue for 10 years from the date of recording or filing of a notice of state tax lien pursuant to subdivision (b) or (c), unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the recording or filing of the notice of state tax lien or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by recording or filing a new notice of state tax lien in the office of the county recorder of any county or with the Secretary of State as provided in subdivision (b) or (c); and from the time of such recording or filing the lien shall be extended for 10 years unless sooner released or otherwise discharged.

(f) Notwithstanding the provisions of Sections 688 and 688.1 of the Code of Civil Procedure, in the event the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a lien created pursuant to subdivision

(a) shall extend to the taxpayer's cause of action and any judgment in favor of the taxpayer subsequently procured in such action or proceeding. Notice of such a lien shall be given to all parties who prior thereto have made an appearance in the action. Such lien shall have priority from the time of filing of the notice in the action. No compromise, dismissal, settlement, or satisfaction shall be entered into by or on behalf of the taxpayer with any other party, lienor or intervenor in the action without the consent of the Controller unless the lien is sooner satisfied or discharged. The judge or clerk of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the time of the filing of the notice in the action, and the place where entered, and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Sections 674 and 688.1 of the Code of Civil Procedure, a statement of the lien in favor of the Controller.

(g) Any lien, and any rights or causes of action under such lien, heretofore recorded in any county pursuant to former Section 7872 or arising pursuant to former Section 7871, shall continue in full force and effect for a period of 10 years from the date of last recordation or filing or extension thereof and may, within such period of 10 years, be further extended in the manner provided for in subdivision (e) of this section. Upon recordation or filing of an extension, the lien shall have the same effect as a lien filed pursuant to this section. Such extended lien shall have the same priority as it originally had under the law in effect prior to July 1, 1978.

Comment. Section 7872 is amended to delete provisions that are continued in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

Revenue & Taxation Code § 7873 (repealed). Release or subordination of lien

SEC. 24. Section 7873 of the Revenue and Taxation Code is repealed.

7873. The Controller may at any time release all or any portion of the property subject to any lien provided for in this part from the lien or subordinate the lien to other liens and encumbrances if he determines that the amount, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest, and penalties.

Comment. Former Section 7873 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 7873.5 (repealed). Release of lien when liability legally unenforceable

SEC. 25. Section 7873.5 of the Revenue and Taxation Code is repealed.

7873.5. The Controller may release any lien imposed under Section 7872 if he finds that the liability represented by the lien, including any interest accrued thereon, is legally unenforceable.

Comment. Former Section 7873.5 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 7881 (technical amendment). Warrant for collection of tax

SEC. 26. Section 7881 of the Revenue and Taxation Code is amended to read:

7881. At any time within three years after any person is delinquent in the payment of any amount herein required to be paid or within 10 years after the last recording or filing of a notice of state tax lien under Section ~~7872~~ *7171 of the Government Code* the Controller or his authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part.

Comment. Section 7881 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Revenue & Taxation Code § 8952 (technical amendment).**Notice of delinquency**

SEC. 27. Section 8952 of the Revenue and Taxation Code is amended to read:

8952. If any user is delinquent in the payment of any obligation imposed under this part, or in the event a determination has been made against such a user which remains unpaid, the board may, not later than three years after the payment becomes delinquent, or within 10 years after the last recording or filing of a notice of state tax lien under Section ~~8996~~ *7171 of the Government Code*, give notice thereof, personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the user, or owing any debts to the user. In the case of any state officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the State Controller.

Comment. Section 8952 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Revenue & Taxation Code § 8996 (amended). Lien of tax

SEC. 28. Section 8996 of the Revenue and Taxation Code is amended to read:

8996. (a) If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien ~~upon all property and rights to property whether real or personal, tangible or intangible, including all afteracquired property and rights to property, belonging to such person and located in the state. Such lien shall not continue for more than 10 years unless recorded or filed as provided in this section as provided in Chapter 14~~

(commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are "due and payable" on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent;

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board;

(3) For amounts determined under Section 8826 (pertaining to jeopardy assessments), the date the notice of the board's finding is mailed or issued;

(4) For all other amounts, the date the assessment is final.

(b) With respect to real property or any rights therein, at any time after creation of the lien pursuant to subdivision (a), the board may record in the office of the county recorder of the county in which such real property is located a notice of state tax lien as specified in subdivision (d).

The lien created by subdivision (a) shall not be valid against the right, title or interest of:

(1) A successor in interest of the taxpayer without knowledge of the lien;

(2) A holder of a security interest;

(3) A mechanic's lienor; or

(4) A judgment lien creditor,

where such right, title or interest was acquired or perfected prior to recording of a notice of state tax lien as provided in this subdivision.

(c) With respect to personal property, whether tangible or intangible, at any time after creation of the lien pursuant to subdivision (a) the board may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code.

The lien created by subdivision (a) shall not be valid as to personal property against:

(1) The holder of a security interest therein whose interest is perfected pursuant to Section 9303 of the Uniform Commercial Code prior to the time the notice of the state tax lien is filed as herein provided;

(2) Any person, other than a person liable for the tax, who acquires his interest in the property under the law of this state without knowledge of the lien or who perfects his interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed with the Secretary of State;

(3) A buyer in the ordinary course of business, as defined in subdivision (9) of Section 1201 of the Uniform Commercial Code, who, under Section 9307 of such code, would take free of a security interest created by his seller;

(4) Any person, other than a person liable for the tax, who, notwithstanding the prior filing of the notice of state tax lien:

(A) Is a holder in due course of a negotiable instrument, as defined in Section 3302 of the Uniform Commercial Code;

(B) Is a holder to whom a negotiable document of title has been duly negotiated as provided in Section 7501 of the Uniform Commercial Code;

(C) Is a bona fide purchaser of a security, as defined in Section 8302 of the Uniform Commercial Code;

(D) Is a purchaser of chattel paper, as defined in Section 9105(1)(b) of the Uniform Commercial Code, or an instrument, as defined in Section 9105(1)(i) of such code, who gives new value and takes possession of it in the ordinary course of business;

(E) Is a holder of a purchase money security interest, as defined in Section 9107 of the Uniform Commercial Code;

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Uniform Commercial Code;

(G) Acquires a security interest in a deposit account, as defined in Section 9105(1)(e) of the Uniform

Commercial Code, or in the beneficial interest in a trust or estate;

(H) Acquires any right or interest in letters of credit, advices of credit or money;

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums;

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of such security interest.

(d) The notice of state tax lien recorded or filed pursuant to subdivision (b) or (c) shall include the name and last known address of the person liable for the tax, the amount of the tax, a statement that the tax shall be a lien upon all real or personal property and rights to such property, including all afteracquired property and rights to property belonging to such person, and a statement that the board has complied with all the provisions of this part in the computation and levy of the amount assessed.

(e) Any lien arising pursuant to this section shall continue for 10 years from the date of recording or filing of a notice of state tax lien pursuant to subdivision (b) or (c); unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the recording or filing of the notice of state tax lien or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by recording or filing a new notice of state tax lien in the office of the county recorder of any county or with the Secretary of State as provided in subdivision (b) or (c); and from the time of such recording or filing the lien shall be extended for 10 years unless sooner released or otherwise discharged.

(f) Notwithstanding the provisions of Sections 688 and 688.1 of the Code of Civil Procedure, in the event the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a lien created pursuant to subdivision

~~(a)~~ shall extend to the taxpayer's cause of action and any judgment in favor of the taxpayer subsequently procured in such action or proceeding. Notice of such a lien shall be given to all parties who prior thereto have made an appearance in the action. Such lien shall have priority from the time of filing of the notice in the action. No compromise, dismissal, settlement, or satisfaction shall be entered into by or on behalf of the taxpayer with any other party, lienor or intervenor in the action without the consent of the board unless the lien is sooner satisfied or discharged. The judge or clerk of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the time of the filing of the notice in the action, and the place where entered, and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Sections 674 and 688.1 of the Code of Civil Procedure, a statement of the lien in favor of the board.

~~(g)~~ Any lien, and any rights or causes of action under such lien, theretofore recorded in any county pursuant to former Section 8996 or arising pursuant to former Section 8991, shall continue in full force and effect for a period of 10 years from the date of last recordation or filing or extension thereof and may, within such period of 10 years, be further extended in the manner provided for in subdivision ~~(e)~~ of this section. Upon recordation or filing of an extension, the lien shall have the same effect as a lien filed pursuant to this section. Such extended lien shall have the same priority as it originally had under the law in effect prior to July 1, 1978.

Comment. Section 8996 is amended to delete provisions that are continued in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

Revenue & Taxation Code § 8997 (repealed). Release or subordination of lien

SEC. 29. Section 8997 of the Revenue and Taxation Code is repealed.

8997. The board may at any time release all or any portion of the property subject to any lien provided for in this part from the lien or subordinate the lien to other liens and encumbrances if it determines that the amount, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest, and penalties.

Comment. Former Section 8997 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 8997.5 (repealed). Release of lien when liability unenforceable

SEC. 30. Section 8997.5 of the Revenue and Taxation Code is repealed.

8997.5. The board may release any lien imposed under Section 8996 if it finds that the liability represented by the lien, including any interest accrued thereon, is legally unenforceable.

Comment. Former Section 8997.5 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 9001 (technical amendment). Warrant for collection of tax

SEC. 31. Section 9001 of the Revenue and Taxation Code is amended to read:

9001. At any time within three years after any person is delinquent in the payment of any amount herein required to be paid or within 10 years after the last recording or filing of a notice of state tax lien under Section ~~8996~~ *7171 of the Government Code* the board or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff, marshal, or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

Comment. Section 9001 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Revenue & Taxation Code § 16063 (amended). Lien of tax

SEC. 32. Section 16063 of the Revenue and Taxation Code is amended to read:

16063. (a) If any donor or donee fails to pay any tax, interest, or penalty imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien ~~upon all property and rights to property whether real or personal, tangible or intangible, including all afteracquired property and rights to property, belonging to such donor or donee and located in the state. Such lien shall not continue for more than 10 years from and after the time a deficiency determination is issued pursuant to the provisions of this part unless recorded or filed as provided in this section as provided in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.~~

(b) For the purpose of this section, "due and payable" means the time the gift is made.

~~(b) With respect to real property or any rights therein, at any time after creation of the lien pursuant to subdivision (a), the Controller may record in the office of the county recorder of the county in which such real property is located a notice of state tax lien as specified in subdivision (d).~~

The lien created by subdivision (a) shall not be valid as to real property against the right, title or interest of:

- ~~(1) A successor in interest of the taxpayer without knowledge of the lien;~~
- ~~(2) A holder of a security interest;~~
- ~~(3) A mechanic's lienor; or~~
- ~~(4) A judgment lien creditor;~~

where such right, title or interest was acquired or perfected prior to recording of a notice of state tax lien as provided in this subdivision.

(e) With respect to personal property, whether tangible or intangible, at any time after creation of the lien pursuant to subdivision (a) the Controller may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code. The lien created by subdivision (a) shall not be valid as to personal property against:

(1) The holder of a security interest therein whose interest is perfected pursuant to Section 9303 of the Uniform Commercial Code prior to the time the notice of the state tax lien is filed as herein provided;

(2) Any person, other than a person liable for the tax, who acquires his interest in the property under the law of this state without knowledge of the lien or who perfects his interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed as herein provided;

(3) A buyer in the ordinary course of business, as defined in subdivision (9) of Section 1201 of the Uniform Commercial Code, who, under Section 9307 of such code, would take free of a security interest created by his seller;

(4) Any person, other than a person liable for the tax, who, notwithstanding the prior filing of the notice of state tax lien:

(A) Is a holder in due course of a negotiable instrument, as defined in Section 3302 of the Uniform Commercial Code;

(B) Is a holder to whom a negotiable document of title has been duly negotiated as provided in Section 7501 of the Uniform Commercial Code;

(C) Is a bona fide purchaser of a security, as defined in Section 8302 of the Uniform Commercial Code;

(D) Is a purchaser of chattel paper, as defined in Section 9105(1)(b) of the Uniform Commercial Code, or an instrument, as defined in Section 9105(1)(i) of such code, who gives new value and takes possession of it in the ordinary course of business;

(E) Is a holder of a purchase money security interest, as defined in Section 9107 of the Uniform Commercial Code;

- (F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Uniform Commercial Code;
- (G) Acquires a security interest in a deposit account, as defined in Section 9105(1)(e) of the Uniform Commercial Code, or in the beneficial interest in a trust or estate;
- (H) Acquires any right or interest in letters of credit, advices of credit or money;
- (I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums;
- (J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of such security interest.
- (d) The notice of state tax lien recorded or filed pursuant to subdivision (b) or (c) shall include the name and last known address of the person liable for the tax, the amount of the tax, a statement that the tax shall be a lien upon all real or personal property and rights to such property, including all afteracquired property and rights to property belonging to such person, and a statement that the Controller has complied with all the provisions of this part in the computation and levy of the amount assessed.
- (e) Any lien arising pursuant to this section shall continue for 10 years from the date of recording or filing of a notice of state tax lien pursuant to subdivision (b) or (c), unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the recording or filing of the notice of state tax lien or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by recording or filing a new notice of state tax lien in the office of the county recorder of any county or with the Secretary of State as provided in subdivision (b) or (c), and from the

time of such recording or filing the lien shall be extended for 10 years unless sooner released or otherwise discharged.

(4) Notwithstanding the provisions of Sections 698 and 698.1 of the Code of Civil Procedure, in the event the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a lien created pursuant to subdivision (a) shall extend to the taxpayer's cause of action and any judgment in favor of the taxpayer subsequently procured in such action or proceeding. Notice of such a lien shall be given to all parties who prior thereto have made an appearance in the action. Such lien shall have priority from the time of filing of the notice in the action. No compromise, dismissal, settlement, or satisfaction shall be entered into by or on behalf of the taxpayer with any other party, lienor or intervenor in the action without the consent of the Controller unless the lien is sooner satisfied or discharged. The judge or clerk of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the time of the filing of the notice in the action and the place where entered, and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Sections 674 and 698.1 of the Code of Civil Procedure, a statement of the lien in favor of the Controller.

(5) Any lien, and rights or causes of action under such lien, heretofore recorded in any county pursuant to former Section 16063 or created pursuant to former Section 16062, shall continue in full force and effect for a period of 10 years from the date of last recordation or filing or extension thereof and may, within such period of 10 years, be further extended in the manner provided for in subdivision (c) of this section. Upon recordation or filing of an extension, the lien shall have the same effect as a lien filed pursuant to this section. Such extended lien shall have the same priority as it originally had under the law in effect prior to July 1, 1978.

Comment. Section 16063 is amended to delete provisions that are continued in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

Revenue & Taxation Code § 16063.5 (technical amendment). Termination of lien as to resold gift

SEC. 33. Section 16063.5 of the Revenue and Taxation Code is amended to read:

16063.5. Subject to the provisions of ~~subdivision (e) of~~ Section ~~16063~~ 7171 of the Government Code, if any personal property embraced in a gift is sold by the donee or his successor in interest to a bona fide purchaser for an adequate and full consideration in money or money's worth, the lien ceases as to that property and attaches to all other personal property of the donee, including any after-acquired property, except such part of such other property as is also sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

Comment. Section 16063.5 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Revenue & Taxation Code § 16065 (technical amendment). Lien on certain gifts

SEC. 34. Section 16065 of the Revenue and Taxation Code is amended to read:

16065. In the case of any gift of an estate, income, or interest (a) for a term of years or for life, or (b) determinable upon any future or contingent event, or (c) constituting a remainder, reversion, or other expectancy, the tax imposed on the gift constitutes a lien which, upon recording or filing pursuant to ~~subdivision (b) or (e) of~~ Section ~~16063~~ 7171 of the Government Code, attaches to the entire property by which the estate, income, or interest is supported.

Comment. Section 16065 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Revenue & Taxation Code § 16066 (repealed). Release or subordination of lien

SEC. 35. Section 16066 of the Revenue and Taxation Code is repealed.

16066. The Controller may at any time release all or any portion of any property from any lien imposed by this part to which the property is subject, or may subordinate such lien to any other lien or interest, if he determines that the tax, interest, or penalty involved is sufficiently secured by a lien on other property or that the release or subordination will not endanger or jeopardize the collection of the tax, interest, or penalty.

Comment. Former Section 16066 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 16067 (repealed). Conclusive effect of certificate

SEC. 36. Section 16067 of the Revenue and Taxation Code is repealed.

16067. A certificate by the Controller to the effect that any property has been released from any lien imposed by this part, or that the lien has been subordinated to any other lien or interest, is conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.

Comment. Former Section 16067 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 16071 (technical amendment). Warrant for collection of tax

SEC. 37. Section 16071 of the Revenue and Taxation Code is amended to read:

16071. At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within ~~three~~ *ten* years after the last recording of a notice of state tax lien under Section ~~16063~~ *7171 of the Government Code*, the Controller or his authorized representative may issue a warrant for the enforcement of any liens and for the collection of any

amount required to be paid to the state under this part. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

Comment. Section 16071 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code and to change the period from three years to 10 years after the last recording of a notice of state tax lien during which a warrant may issue under this section. This latter change makes Section 16071 consistent with other comparable sections. See, *e.g.*, Rev. & Tax. Code §§ 6776, 7881, 9001, 30301, 30341, 32365, 32381; Unemp. Ins. Code §§ 1755, 1785, 1852.

Revenue & Taxation Code § 18831 (technical amendment). Action to collect tax

SEC. 38. Section 18831 of the Revenue and Taxation Code is amended to read:

18831. At any time within six years after the determination of liability for any tax, penalties, and interest, or within the period during which a lien is in force as the result of the recording of an abstract under Section 18863 or of the recording or filing of a notice of state tax lien under Section ~~18881~~ 7171 of the *Government Code*, the Franchise Tax Board may bring an action in the courts of this state, of any other state, or of the United States in the name of the people of the State of California to recover the amount of any taxes, penalties, and interest due and unpaid under this part.

Comment. Section 18831 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Revenue & Taxation Code § 18881 (amended). Lien of tax

SEC. 39. Section 18881 of the Revenue and Taxation Code is amended to read:

18881. (a) If any taxpayer fails to pay any liability imposed under this part at the time that it becomes due and payable, the amount thereof, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien ~~upon all property and rights to property whether real or personal, tangible, or intangible, including all afteracquired property and rights to property, belonging to such taxpayer and located in the state. Such lien shall not continue for more than 10 years unless recorded or filed as provided in this section as provided in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.~~

(b) For the purpose of this section, amounts are "due and payable" on the following dates:

(1) For amounts disclosed on a return filed on or before the date payment is due (with regard to any extension of time to pay), the day after such payment due date;

(2) For amounts disclosed on a return filed after the date payment is due (with regard to any extension of time to pay), the date the return is received by the Franchise Tax Board;

(3) For amounts determined under Section 18641 or 18642 (pertaining to jeopardy assessments), the date the notice of the Franchise Tax Board's finding is mailed or issued;

(4) For all other amounts, the date the assessment is final.

~~(b) With respect to real property or any rights therein, at any time after creation of the lien pursuant to subdivision (a), the Franchise Tax Board may record in the office of the county recorder of the county in which such real property is located a notice of state tax lien as specified in subdivision (d).~~

The lien created by subdivision (a) shall not be valid as to real property against the right, title or interest of:

~~(1) A successor in interest of the taxpayer without knowledge of the lien;~~

(2) A holder of a security interest;
(3) A mechanic's lienor; or
(4) A judgment lien creditor;
where such right, title or interest was acquired or perfected prior to recording of a notice of state tax lien as provided in this subdivision.
(e) With respect to personal property, whether tangible or intangible, at any time after creation of the lien pursuant to subdivision (a) the Franchise Tax Board may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code.

The lien created by subdivision (a) shall not be valid as to personal property against:

(1) The holder of a security interest therein whose interest is perfected pursuant to Section 9202 of the Uniform Commercial Code prior to the time the notice of the state tax lien is filed as herein provided;

(2) Any taxpayer, other than a taxpayer liable for the tax, who acquires his interest in the property under the law of this state without knowledge of the lien or who perfects his interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed as herein provided;

(3) A buyer in the ordinary course of business, as defined in subdivision (9) of Section 1201 of the Uniform Commercial Code, who, under Section 9307 of such code, would take free of a security interest created by his seller;

(4) Any taxpayer, other than a taxpayer liable for the tax, who, notwithstanding the prior filing of the notice of state tax lien:

(A) Is a holder in due course of a negotiable instrument, as defined in Section 3202 of the Uniform Commercial Code;

(B) Is a holder to whom a negotiable document of title has been duly negotiated as provided in Section 7501 of the Uniform Commercial Code;

(C) Is a bona fide purchaser of a security, as defined in Section 8202 of the Uniform Commercial Code;

(D) Is a purchaser of chattel paper, as defined in Section 9105(1)-(b) of the Uniform Commercial Code, or an instrument, as defined in Section 9105(1)-(i) of such code, who gives new value and takes possession of it in the ordinary course of business;

(E) Is a holder of a purchase money security interest, as defined in Section 9107 of the Uniform Commercial Code;

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Uniform Commercial Code;

(G) Acquires a security interest in a deposit account, as defined in Section 9105(1)-(e) of the Uniform Commercial Code, or in the beneficial interest in a trust or estate;

(H) Acquires any right or interest in letters of credit, advices of credit or money;

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums;

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of such security interest.

(d) The notice of state tax lien recorded or filed pursuant to subdivision (b) or (c) shall include the name and last known address of the taxpayer liable for the tax, the amount of the tax, a statement that the tax shall be a lien upon all real or personal property and rights to property, belonging to such taxpayer, and a statement that the Franchise Tax Board has complied with all the provisions of this part in the computation and levy of the amount assessed.

(e) Any lien arising pursuant to this section shall continue for 10 years from the date of recording or filing of a notice of state tax lien pursuant to subdivision (b) or (c), unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the recording

or filing of the notice of state tax lien or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by recording or filing a new notice of state tax lien in the office of the county recorder of any county or with the Secretary of State as provided in subdivision (b) or (c), and from the time of such recording or filing the lien shall be extended for 10 years unless sooner released or otherwise discharged.

(4) Notwithstanding the provisions of Sections 688 and 688.1 of the Code of Civil Procedure, in the event the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a lien created pursuant to subdivision (a) shall extend to the taxpayer's cause of action and any judgment in favor of the taxpayer subsequently procured in such action or proceeding. Notice of such a lien shall be given to all parties who prior thereto have made an appearance in the action. Such lien shall have priority from the time of filing of the notice in the action. No compromise, dismissal, settlement, or satisfaction shall be entered into by or on behalf of the taxpayer with any other party, lienor or intervenor in the action without the consent of the Franchise Tax Board unless the lien is sooner satisfied or discharged. The judge or clerk of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the time of the filing of the notice in the action, and the place where entered, and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Sections 674 and 688.1 of the Code of Civil Procedure, a statement of the lien in favor of the Franchise Tax Board.

(5) Any lien, and any rights or causes of action under such lien, heretofore recorded in any county pursuant to former Section 18891 or filed with the Secretary of State pursuant to former Section 18892.5, shall continue in full force and effect for a period of 10 years from the date of last recordation or filing or extension thereof and may, within such period of 10 years, be further extended in the

manner provided for in subdivision (c) of this section. Upon recordation or filing of an extension, the lien shall have the same effect as a lien filed pursuant to this section. Such extended lien shall have the same priority as it originally had under the law in effect prior to July 1, 1978.

Comment. Section 18881 is amended to delete provisions that are continued in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

Revenue & Taxation Code § 18884 (repealed). Release or subordination of lien

SEC. 40. Section 18884 of the Revenue and Taxation Code is repealed.

~~18884.~~ The Franchise Tax Board may, at any time, release all or any portion of the property subject to any lien provided for in this part from the lien or subordinate the lien to other liens if it determines that the taxes are sufficiently secured by a lien on other property of the taxpayer or that the release or subordination of the lien will not endanger or jeopardize the collection of the taxes.

Comment. Former Section 18884 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 18884.5 (repealed). Release of lien when liability unenforceable

SEC. 41. Section 18884.5 of the Revenue and Taxation Code is repealed.

~~18884.5.~~ The Franchise Tax Board may release any lien imposed under Section ~~18862, 18864, 18881, or 18886~~ if it finds that the liability represented by the lien, including any interest accrued thereon, is legally unenforceable.

Comment. Former Section 18884.5 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 18885 (repealed). Conclusive effect of certificate

SEC. 42. Section 18885 of the Revenue and Taxation Code is repealed.

~~18885. A certificate by the Franchise Tax Board to the effect that any property has been released from a lien or that the lien has been subordinated to other liens shall be conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.~~

Comment. Former Section 18885 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 18886 (technical amendment). Lien on trust property

SEC. 43. Section 18886 of the Revenue and Taxation Code is amended to read:

18886. Upon recordation or filing of a notice of state tax lien pursuant to ~~subdivision (b) or (c) of Section 18881~~ *7171 of the Government Code* by the Franchise Tax Board for any taxes due from the grantor of a trust on income of the trust which is taxable to the grantor under this part, and upon its giving notice of the recording or filing pursuant to ~~subdivision (b) or (c) of Section 18881~~ *7171 of the Government Code* to the fiduciary of the trust, or in case there is more than one fiduciary to any one of the fiduciaries, the amount of the taxes constitutes a lien upon all the real or personal property of the trust in the county owned by the trust or afterwards and before the lien expires acquired by the trust. The lien has the force, effect, and priority of a lien created pursuant to Section 18881.

Comment. Section 18886 is amended to correct the cross-references to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Revenue & Taxation Code § 18888 (technical amendment). Liability for recording release of lien

SEC. 44. Section 18888 of the Revenue and Taxation Code is amended to read:

18888. The cost of recording a release of a lien which is recorded pursuant to Section ~~18881~~ 7171 of the *Government Code* is an obligation of the taxpayer and may be collected from him in any manner provided in this part for the collection of a tax.

Comment. Section 18888 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the *Government Code*.

Revenue & Taxation Code § 18933 (amended). Priority of tax

SEC. 45. Section 18933 of the Revenue and Taxation Code is amended to read:

18933. The amounts required to be paid by any person under this part together with interest and penalties shall be satisfied first in any of the following cases:

- (a) Whenever the person is insolvent.
- (b) Whenever the person makes a voluntary assignment of his assets.
- (c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.
- (d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

~~This section does not give the state a preference over any lien or security interest which was recorded or perfected prior to the time when the state records or files its lien pursuant to subdivision (b) or (c) of Section 18881.~~

The preference given to the state by this section shall be subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure *and is subject to Section 7170 of the Government Code.*

Comment. Section 18933 is amended to substitute for the deleted portion a reference to the more detailed general state tax lien provision (*Government Code* Section 7170) which specifies the priority to be given to the prior interest of a holder of a security interest or lien.

Revenue & Taxation Code § 26161 (amended). Lien of tax

SEC. 46. Section 26161 of the Revenue and Taxation Code is amended to read:

26161. (a) If any person fails to pay any liability imposed under this part at the time that it becomes due and payable, the amount thereof, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien ~~upon all property and rights to property whether real or personal, tangible or intangible, including all afteracquired property and rights to property, belonging to such person and located in the state. Such lien shall not continue for more than 10 years unless recorded or filed as provided in this section as provided in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.~~

(b) For the purpose of this section, amounts are “due and payable” on the following dates:

(1) For amounts disclosed on a return filed on or before the date payment is due, the day after such payment due date;

(2) For amounts disclosed on a return filed after the payment is due, the date the return is received by the Franchise Tax Board;

(3) For amounts determined under Section 25761 (pertaining to jeopardy assessments), the date the notice of the Franchise Tax Board’s finding is mailed or issued;

(4) For all other amounts, the date the assessment is final.

~~(b) With respect to real property or any rights therein, at any time after creation of the lien pursuant to subdivision (a), the Franchise Tax Board may record in the office of the county recorder of the county in which such real property is located a notice of state tax lien as specified in subdivision (d).~~

The lien created by subdivision (a) shall not be valid as to real property against the right, title or interest of:

~~(1) A successor in interest of the taxpayer without knowledge of the lien;~~

~~(2) A holder of a security interest;~~

(3) A mechanic's lienor, or
(4) A judgment lien creditor;

where such right, title or interest was acquired or perfected prior to recording of a notice of state tax lien as provided in this subdivision.

(e) With respect to personal property, whether tangible or intangible, at any time after creation of the lien pursuant to subdivision (a) the Franchise Tax Board may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code.

The lien created by subdivision (a) shall not be valid as to personal property against:

(1) The holder of a security interest therein whose interest is perfected pursuant to Section 9302 of the Uniform Commercial Code prior to the time the notice of the state tax lien is filed as herein provided;

(2) Any person, other than a person liable for the tax, who acquires his interest in the property under the law of this state without knowledge of the lien or who perfects his interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed as herein provided;

(3) A buyer in the ordinary course of business, as defined in subdivision (9) of Section 1901 of the Uniform Commercial Code, who, under Section 9307 of such code, would take free of a security interest created by his seller;

(4) Any person, other than a person liable for the tax, who, notwithstanding the prior filing of the notice of state tax lien:

(A) Is a holder in due course of a negotiable instrument, as defined in Section 3202 of the Uniform Commercial Code;

(B) Is a holder to whom a negotiable document of title has been duly negotiated as provided in Section 7501 of the Uniform Commercial Code;

(C) Is a bona fide purchaser of a security, as defined in Section 8302 of the Uniform Commercial Code;

(D) Is a purchaser of chattel paper, as defined in Section 9105(1)(b) of the Uniform Commercial Code, or an instrument, as defined in Section 9105(1)(i) of such code, who gives new value and takes possession of it in the ordinary course of business;

(E) Is a holder of a purchase money security interest, as defined in Section 9107 of the Uniform Commercial Code;

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Uniform Commercial Code;

(G) Acquires a security interest in a deposit account, as defined in Section 9105(1)(e) of the Uniform Commercial Code, or in the beneficial interest in a trust or estate;

(H) Acquires any right or interest in letters of credit, advices of credit or money;

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums;

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of such security interest.

(K) The notice of state tax lien recorded or filed pursuant to subdivision (b) or (c) shall include the name and last known address of the person liable for the tax, the amount of the tax, a statement that the tax shall be a lien upon all real or personal property and rights to property, belonging to such person, and a statement that the Franchise Tax Board has complied with all the provisions of this part in the computation and levy of the amount assessed.

(L) Any lien arising pursuant to this section shall continue for 10 years from the date of recording or filing of a notice of state tax lien pursuant to subdivision (b) or (c), unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the recording

or filing of the notice of state tax lien or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by recording or filing a new notice of state tax lien in the office of the county recorder of any county or with the Secretary of State as provided in subdivision (b) or (c); and from the time of such recording or filing the lien shall be extended for 10 years unless sooner released or otherwise discharged.

(4) Notwithstanding the provisions of Section 698 and 698.1 of the Code of Civil Procedure, in the event the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a lien created pursuant to subdivision (c) shall extend to the taxpayer's cause of action and any judgment in favor of the taxpayer subsequently procured in such action or proceeding. Notice of such a lien shall be given to all parties who prior thereto have made an appearance in the action. Such lien shall have priority from the time of filing of the notice in the action. No compromise, dismissal, settlement, or satisfaction shall be entered into by or on behalf of the taxpayer with any other party, lienor or intervenor in the action without the consent of the Franchise Tax Board unless the lien is sooner satisfied or discharged. The judge or clerk of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the time of the filing of the notice in the action, and the place where entered, and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Section 674 and 698.1 of the Code of Civil Procedure, a statement of the lien in favor of the Franchise Tax Board.

(5) Any lien, and any rights or causes of action under such lien, heretofore recorded in any county pursuant to former Section 26161 or filed with the Secretary of State pursuant to former Section 26161.5, shall continue in full force and effect for a period of 10 years from the date of last recordation or filing or extension thereof and may, within such period of 10 years, be further extended in the

manner provided for in subdivision (e) of this section. Upon recordation or filing of an extension, the lien shall have the same effect as a lien filed pursuant to this section. Such extended lien shall have the same priority as it originally had under the law in effect prior to July 1, 1978.

~~(h)~~

(c) For purposes of this section, "person" includes a corporation, a bank or an organization exempt from taxation under Section 23701.

Comment. Section 26161 is amended to delete provisions that are continued in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

Revenue & Taxation Code § 26162 (repealed). Release or subordination of lien

SEC. 47. Section 26162 of the Revenue and Taxation Code is repealed.

~~26162. The Franchise Tax Board may, at any time, release all or any portion of the property subject to the lien from the lien or subordinate the lien to other liens if it determines that the taxes are sufficiently secured by a lien on other property of the taxpayer or that the release or subordination of the lien will not endanger or jeopardize the collection of such taxes. A certificate by the Franchise Tax Board to the effect that any property has been released from the lien or that such lien has been subordinated to other liens shall be conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.~~

Comment. Former Section 26162 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 26162.5 (repealed). Release of lien when liability unenforceable

SEC. 48. Section 26162.5 of the Revenue and Taxation Code is repealed.

~~26162.5. The Franchise Tax Board may release any lien imposed under Section 26161 if it finds that the~~

liability represented by the lien, including any interest accrued thereon, is legally unenforceable.

Comment. Former Section 26162.5 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 26251 (technical amendment). Action to collect tax

SEC. 49. Section 26251 of the Revenue and Taxation Code is amended to read:

26251. At any time within six years after the determination of liability for any tax, penalties, and interest or within the period during which a lien is in force as the result of the recording or filing of a notice of state tax lien under Section ~~26161~~ 7171 of the *Government Code* the Franchise Tax Board may bring an action in the courts of this state, of any other state, or of the United States in the name of the people of the State of California to collect the amount due, together with penalties, and interest. The Attorney General or counsel for the Franchise Tax Board shall prosecute the action. In such action a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure without the showing required by Section 485.010 of the Code of Civil Procedure.

Comment. Section 26251 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Revenue & Taxation Code § 26312 (amended). Priority of tax

SEC. 50. Section 26312 of the Revenue and Taxation Code is amended to read:

26312. The amount required to be paid by any taxpayer under this part together with interest and penalties shall be satisfied first in any of the following cases:

- (a) Whenever the taxpayer is insolvent.
- (b) Whenever the taxpayer makes a voluntary assignment of his assets.

(c) Whenever the estate of the taxpayer in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.

(d) Whenever the estate and effects of a absconding, concealed, or absent taxpayer required to pay any amount under this part are levied upon by process of law.

~~This section does not give the state a preference over any lien or security interest which was recorded or perfected prior to the time when the state records or files its lien pursuant to subdivision (b) or (c) of Section 26161.~~

The preference given to the state by this section shall be subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure *and is subject to Section 7170 of the Government Code.*

Comment. Section 26312 is amended to substitute for the deleted portion a reference to the more detailed general state tax lien provision (Government Code Section 7170) which specifies the priority to be given to the prior interest of a holder of a security interest or lien.

Revenue & Taxation Code § 30301 (technical amendment). Notice of delinquency

SEC. 51. Section 30301 of the Revenue and Taxation Code is amended to read:

30301. At any time within three years after any amount of tax becomes due and payable, and at any time within 10 years after the last recording or filing of a notice of state tax lien under Section ~~30322~~ *7171 of the Government Code*, the board may transmit notice of the delinquency to the Attorney General, who shall at once proceed by appropriate legal action to collect all sums due the state.

Comment. Section 30301 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Revenue & Taxation Code § 30311 (technical amendment). Notice of delinquency

SEC. 52. Section 30311 of the Revenue and Taxation Code is amended to read:

30311. If any person is delinquent in the payment of the amount required to be paid by him or in the event a determination has been made against him which remains unpaid, the board may, not later than three years after the payment became delinquent, or within 10 years after the last recording or filing of a notice of state tax lien under Section ~~30322~~ *7171 of the Government Code*, give notice thereof personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the delinquent, or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or such person. In the case of any state officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the State Controller.

Comment. Section 30311 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Revenue and Taxation Code.

Revenue & Taxation Code § 30321 (amended). Priority of tax

SEC. 53. Section 30321 of the Revenue and Taxation Code is amended to read:

30321. The amounts required to be paid by any person under this part together with interest and penalties shall be satisfied first in any of the following cases:

- (a) Whenever the person is insolvent.
- (b) Whenever the person makes a voluntary assignment of his assets.

(c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.

(d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

~~This section does not give the state a preference over any lien or security interest which was recorded or perfected prior to the time when the state records or files its lien pursuant to subdivision (b) or (c) of Section 30322.~~

The preference given to the state by this section shall be subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure *and is subject to Section 7170 of the Government Code.*

Comment. Section 30321 is amended to substitute for the deleted portion a reference to the more detailed general state tax lien provision (Government Code Section 7170) which specifies the priority to be given to the prior interest of a holder of a security interest or lien.

Revenue & Taxation Code § 30322 (amended). Lien of tax

SEC. 54. Section 30322 of the Revenue and Taxation Code is amended to read:

30322. (a) If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien ~~upon all property and rights to property whether real or personal, tangible or intangible, including all afteracquired property and rights to property, belonging to such person and located in the state. Such lien shall not continue for more than 10 years unless recorded or filed as provided in this section as provided in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.~~

(b) For the purpose of this section, amounts are "due and payable" on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent;

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board;

(3) For amounts determined under Section 30241 (pertaining to jeopardy assessments), the date the notice of the board's finding is mailed or issued;

(4) For all other amounts, the date the assessment is final.

~~(b) With respect to real property or any rights therein, at any time after creation of the lien pursuant to subdivision (a), the board may record in the office of the county recorder of the county in which such real property is located a notice of state tax lien as specified in subdivision (d).~~

The lien created by subdivision (a) shall not be valid against the right, title or interest of:

~~(1) A successor in interest of the taxpayer without knowledge of the lien;~~

~~(2) A holder of a security interest;~~

~~(3) A mechanic's lienor; or~~

~~(4) A judgment lien creditor;~~

where such right, title or interest was acquired or perfected prior to recording of a notice of state tax lien as provided in this subdivision.

~~(c) With respect to personal property, whether tangible or intangible, at any time after creation of the lien pursuant to subdivision (a) the board may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code.~~

The lien created by subdivision (a) shall not be valid as to personal property against:

~~(1) The holder of a security interest therein whose interest is perfected pursuant to Section 9303 of the Uniform Commercial Code prior to the time the notice of the state tax lien is filed as herein provided;~~

~~(2) Any person, other than a person liable for the tax, who acquires his interest in the property under the law~~

of this state without knowledge of the lien or who perfects his interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed with the Secretary of State;

(3) A buyer in the ordinary course of business, as defined in subdivision (9) of Section 1201 of the Uniform Commercial Code, who, under Section 9307 of such code, would take free of a security interest created by his seller;

(4) Any person, other than a person liable for the tax, who, notwithstanding the prior filing of the notice of state tax lien:

(A) Is a holder in due course of a negotiable instrument, as defined in Section 3302 of the Uniform Commercial Code;

(B) Is a holder to whom a negotiable document of title has been duly negotiated as provided in Section 7501 of the Uniform Commercial Code;

(C) Is a bona fide purchaser of a security, as defined in Section 8302 of the Uniform Commercial Code;

(D) Is a purchaser of chattel paper, as defined in Section 9105(1)-(b) of the Uniform Commercial Code, or an instrument, as defined in Section 9105(1)-(i) of such code, who gives new value and takes possession of it in the ordinary course of business;

(E) Is a holder of a purchase money security interest, as defined in Section 9107 of the Uniform Commercial Code;

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Uniform Commercial Code;

(G) Acquires a security interest in a deposit account, as defined in Section 9105(1)-(e) of the Uniform Commercial Code, or in the beneficial interest in a trust or estate;

(H) Acquires any right or interest in letters of credit, advices of credit or money;

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums;

(f) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of such security interest.

(d) The notice of state tax lien recorded or filed pursuant to subdivision (b) or (c) shall include the name and last known address of the person liable for the tax; the amount of the tax; a statement that the tax shall be a lien upon all real or personal property and rights to such property, including all afteracquired property and rights to property belonging to such person; and a statement that the board has complied with all the provisions of this part in the computation and levy of the amount assessed.

(e) Any lien arising pursuant to this section shall continue for 10 years from the date of recording or filing of a notice of state tax lien pursuant to subdivision (b) or (c), unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the recording or filing of the notice of state tax lien or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by recording or filing a new notice of state tax lien in the office of the county recorder of any county or with the Secretary of State as provided in subdivision (b) or (c), and from the time of such recording or filing the lien shall be extended for 10 years unless sooner released or otherwise discharged.

(f) Notwithstanding the provisions of Sections 698 and 698.1 of the Code of Civil Procedure, in the event the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a lien created pursuant to subdivision (a) shall extend to the taxpayer's cause of action and any judgment in favor of the taxpayer subsequently procured in such action or proceeding. Notice of such a lien shall be given to all parties who prior thereto have made an appearance in the action. Such lien shall have priority from the time of filing of the notice in the action. No compromise, dismissal, settlement, or satisfaction shall be

entered into by or on behalf of the taxpayer with any other party, lienor or intervenor in the action without the consent of the board unless the lien is sooner satisfied or discharged. The judge or clerk of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien; the time of the filing of the notice in the action; and the place where entered; and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Sections 674 and 688.1 of the Code of Civil Procedure, a statement of the lien in favor of the board.

(g) Any lien, and any rights or causes of action under such lien, heretofore recorded in any county pursuant to former Section 30322 shall continue in full force and effect for a period of 10 years from the date of last recordation or extension thereof and may, within such period of 10 years, be further extended in the manner provided for in subdivision (e) of this section. Upon recordation of an extension, the lien shall have the same effect as a lien filed pursuant to this section. Such extended lien shall have the same priority as it originally had under the law in effect prior to July 1, 1978.

Comment. Section 30322 is amended to delete provisions that are continued in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

Revenue & Taxation Code § 30323 (repealed). Release or subordination of lien

SEC. 55. Section 30323 of the Revenue and Taxation Code is repealed.

30323. The board may at any time release all or any portion of the property subject to any lien provided for in this part from the lien or subordinate the lien to other liens and encumbrances if it determines that the amount, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest, and penalties.

Comment. Former Section 30323 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 30323.5 (repealed). Release of lien when liability unenforceable

SEC. 56. Section 30323.5 of the Revenue and Taxation Code is repealed.

~~30323.5. The board may release any lien imposed under Section 30322 if it finds that the liability represented by the lien, including any interest accrued thereon, is legally unenforceable.~~

Comment. Former Section 30323.5 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 30324 (repealed). Conclusive effect of certificate

SEC. 57. Section 30324 of the Revenue and Taxation Code is repealed.

~~30324. A certificate by the board to the effect that any property has been released from the lien or that the lien has been subordinated to other liens and encumbrances shall be conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.~~

Comment. Former Section 30324 is continued in Section 7174 of the Government Code.

Revenue & Taxation Code § 30341 (technical amendment). Warrant for collection of tax

SEC. 58. Section 30341 of the Revenue and Taxation Code is amended to read:

30341. At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within 10 years after the last recording or filing of a notice of state tax lien under Section ~~30322~~ *7171 of the Government Code*, the board or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made

pursuant to it in the same manner and with the same effect as a levy and a sale pursuant to a writ of execution.

Comment. Section 30341 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Revenue & Taxation Code § 32363 (amended). Lien of tax

SEC. 59. Section 32363 of the Revenue and Taxation Code is amended to read:

32363. (a) If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien ~~upon all property and rights to property whether real or personal, tangible or intangible, including all afteracquired property and rights to property, belonging to such person and located in the state. Such lien shall not continue for more than 10 years unless recorded or filed as provided in this section as provided in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.~~

(b) For the purpose of this section, amounts are "due and payable" on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent;

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board;

(3) For amounts determined under Section 32311 (pertaining to jeopardy assessments), the date the notice of the board's finding is mailed or issued;

(4) For all other amounts, the date the assessment is final.

~~(b) With respect to real property or any rights therein, at any time after creation of the lien pursuant to subdivision (a), the board may record in the office of the county recorder of the county in which such real property is located a notice of state tax lien as specified in subdivision (d).~~

The lien created by subdivision (a) shall not be valid against the right, title or interest of:

(1) A successor in interest of the taxpayer without knowledge of the lien;

(2) A holder of a security interest;

(3) A mechanic's lienor; or

(4) A judgment lien creditor;

where such right, title or interest was acquired or perfected prior to recording of a notice of state tax lien as provided in this subdivision.

(e) With respect to personal property, whether tangible or intangible, at any time after creation of the lien pursuant to subdivision (a) the board may file a notice of state tax lien with the Secretary of State pursuant to Chapter 145 (commencing with Section 7200) of Division 7 of Title 1 of the Government Code. The lien created by subdivision (a) shall not be valid as to personal property against:

(1) The holder of a security interest therein whose interest is perfected pursuant to Section 9303 of the Uniform Commercial Code prior to the time the notice of the state tax lien is filed as herein provided;

(2) Any person, other than a person liable for the tax, who acquires his interest in the property under the law of this state without knowledge of the lien or who perfects his interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed with the Secretary of State;

(3) A buyer in the ordinary course of business, as defined in subdivision (9) of Section 1201 of the Uniform Commercial Code; who, under Section 9307 of such code, would take free of a security interest created by his seller;

(4) Any person, other than a person liable for the tax, who, notwithstanding the prior filing of the notice of state tax lien:

(A) Is a holder in due course of a negotiable instrument, as defined in Section 3302 of the Uniform Commercial Code;

(B) Is a holder to whom a negotiable document of title has been duly negotiated as provided in Section 7501 of the Uniform Commercial Code;

(G) Is a bona fide purchaser of a security, as defined in Section 8302 of the Uniform Commercial Code;

(D) Is a purchaser of chattel paper, as defined in Section 9105(1)(b) of the Uniform Commercial Code, or an instrument, as defined in Section 9105(1)(i) of such code, who gives new value and takes possession of it in the ordinary course of business;

(E) Is a holder of a purchase money security interest, as defined in Section 9107 of the Uniform Commercial Code;

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Uniform Commercial Code;

(G) Acquires a security interest in a deposit account, as defined in Section 9105(1)(e) of the Uniform Commercial Code, or in the beneficial interest in a trust or estate;

(H) Acquires any right or interest in letters of credit, advices of credit or money;

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums;

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of such security interest.

(d) The notice of state tax lien recorded or filed pursuant to subdivision (b) or (e) shall include the name and last known address of the person liable for the tax, the amount of the tax, a statement that the tax shall be a lien upon all real or personal property and rights to such property, including all afteracquired property and rights to property belonging to such person, and a statement that the board has complied with all the provisions of this part in the computation and levy of the amount assessed.

(e) Any lien arising pursuant to this section shall continue for 10 years from the date of recording or filing of a notice of state tax lien pursuant to subdivision (b) or

(e); unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the recording or filing of the notice of state tax lien or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by recording or filing a new notice of state tax lien in the office of the county recorder of any county or with the Secretary of State as provided in subdivision (b) or (c); and from the time of such recording or filing the lien shall be extended for 10 years unless sooner released or otherwise discharged.

(f) Notwithstanding the provisions of Section 698 and 698.1 of the Code of Civil Procedure, in the event the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a lien created pursuant to subdivision (a) shall extend to the taxpayer's cause of action and any judgment in favor of the taxpayer subsequently procured in such action or proceeding. Notice of such a lien shall be given to all parties who prior thereto have made an appearance in the action. Such lien shall have priority from the time of filing of the notice in the action. No compromise, dismissal, settlement, or satisfaction shall be entered into by or on behalf of the taxpayer with any other party, lienor or intervenor in the action without the consent of the board unless the lien is sooner satisfied or discharged. The judge or clerk of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien; the time of the filing of the notice in the action; and the place where entered; and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Sections 674 and 698.1 of the Code of Civil Procedure, a statement of the lien in favor of the board.

Comment. Section 32363 is amended to delete provisions that are continued in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

Revenue & Taxation Code § 32365 (technical amendment). Warrant for collection of tax

SEC. 60. Section 32365 of the Revenue and Taxation Code is amended to read:

32365. At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within 10 years after the last recording of an abstract under Section 32362 or the recording or filing of a notice of state tax lien under Section ~~32363~~ *7171 of the Government Code*, the board or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

Comment. Section 32365 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Revenue & Taxation Code § 32381 (technical amendment). Notice of delinquency

SEC. 61. Section 32381 of the Revenue and Taxation Code is amended to read:

32381. If any taxpayer is delinquent in the payment of any obligations imposed by this part, or in the event a determination has been made against such a taxpayer which remains unpaid, the board may, not later than three years after the payment becomes delinquent, or within 10 years after the last recording of an abstract or copy of judgment under Section 32362 or the recording or filing of a notice of state tax lien under Section ~~32363~~ *7171 of the Government Code*, give notice thereof, personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other

personal property belonging to the taxpayer, or owing any debts to the taxpayer. In the case of any state officer, department, or agency, the notice shall be given to such officer, department, or agency prior to the time it presents the claim of the delinquent taxpayer to the State Controller.

Comment. Section 32381 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Revenue & Taxation Code § 32386 (amended). Priority of tax

SEC. 62. Section 32386 of the Revenue and Taxation Code is amended to read:

32386. The amounts required to be paid by any person under this part together with interest and penalties shall be satisfied first in any of the following cases:

- (a) Whenever the person is insolvent.
- (b) Whenever the person makes a voluntary assignment of his assets.
- (c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.
- (d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

~~This section does not give the state a preference over any lien or security interest which was recorded or perfected prior to the time when the state records or files its lien pursuant to subdivision (b) or (c) of Section 32363.~~

The preference given to the state by this section shall be subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure and is subject to Section 7170 of the Government Code.

Comment. Section 32386 is amended (1) to substitute for the deleted portion a reference to the more detailed general state tax lien provision (Government Code Section 7170) which specifies the priority to be given to the prior interest of a holder of a

security interest or lien and (2) to make clear that the preference given to the state by Section 32386 is subordinate to claims for personal services under Sections 1204 and 1206 of the Code of Civil Procedure. This latter change makes Section 32386 consistent with other comparable provisions. See, *e.g.*, Rev. & Tax. Code §§ 18933, 26312, 30321; Unemp. Ins. Code § 1702.

**Unemployment Insurance Code § 1702 (amended).
Limitation on effect of Section 1701**

SEC. 63. Section 1702 of the Unemployment Insurance Code is amended to read:

1702. ~~Section 1701 does not give the state a preference over any lien or security interest which was recorded or perfected prior to the time when the state records or files its lien pursuant to subdivision (e) or (d) of Section 1703 and the~~ The preference given to the state by ~~that section~~ Section 1701 is subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure *and is subject to Section 7170 of the Government Code.*

Comment. Section 1702 is amended to substitute for the deleted portion a reference to the more detailed general state tax lien provision (Government Code Section 7170) which specifies the priority to be given to the prior interest of a holder of a security interest or lien.

Unemployment Insurance Code § 1703 (amended). Lien of tax

SEC. 64. Section 1703 of the Unemployment Insurance Code is amended to read:

1703. (a) If any employing unit or other person fails to pay any amount imposed under this division at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien ~~upon all property and rights to property whether real or personal, tangible or intangible, including all afteracquired property and rights to property, belonging to such person and located in the state. Such lien shall not continue for more than 10~~

years unless recorded or filed as provided in this section as provided in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are "due and payable" on the following dates:

(1) For amounts disclosed on a return received by the director before the date the return is delinquent, the date the return would have been delinquent;

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the director;

(3) For all other amounts, the date the assessment is final.

(b) With respect to real property or any rights therein, at any time after creation of the lien pursuant to subdivision (a), the director may record in the office of the county recorder of the county in which such real property is located a notice of state tax lien as specified in subdivision (d).

The lien created by subdivision (a) shall not be valid against the right, title or interest of:

(1) A successor in interest of the taxpayer without knowledge of the lien;

(2) A holder of a security interest;

(3) A mechanic's lienor; or

(4) A judgment lien creditor;

where such right, title or interest was acquired or perfected prior to recording of a notice of state tax lien as provided in this subdivision.

(c) With respect to personal property, whether tangible or intangible, at any time after creation of the lien pursuant to subdivision (a) the director may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code.

The lien created by subdivision (a) shall not be valid as to personal property against:

(1) The holder of a security interest therein whose interest is perfected pursuant to Section 9303 of the

Uniform Commercial Code prior to the time the notice of the state tax lien is filed as herein provided;

(2) Any person, other than a person liable for the tax, who acquires his interest in the property under the law of this state without knowledge of the lien or who perfects his interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed with the Secretary of State;

(3) A buyer in the ordinary course of business, as defined in subdivision (9) of Section 1201 of the Uniform Commercial Code, who, under Section 9307 of such code, would take free of a security interest created by his seller;

(4) Any person, other than a person liable for the tax, who, notwithstanding the prior filing of the notice of state tax lien:

(A) Is a holder in due course of a negotiable instrument, as defined in Section 3302 of the Uniform Commercial Code;

(B) Is a holder to whom a negotiable document of title has been duly negotiated as provided in Section 7501 of the Uniform Commercial Code;

(C) Is a bona fide purchaser of a security, as defined in Section 8302 of the Uniform Commercial Code;

(D) Is a purchaser of chattel paper, as defined in Section 9105(1)(b) of the Uniform Commercial Code, or an instrument, as defined in Section 9105(1)(i) of such code, who gives new value and takes possession of it in the ordinary course of business;

(E) Is a holder of a purchase money security interest, as defined in Section 9107 of the Uniform Commercial Code;

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4206 of the Uniform Commercial Code;

(G) Acquires a security interest in a deposit account, as defined in Section 9105(1)(e) of the Uniform Commercial Code, or in the beneficial interest in a trust or estate;

(H) Acquires any right or interest in letters of credit, advices of credit or money;

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums;

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of such security interest.

(d) The notice of state tax lien recorded or filed pursuant to subdivision (b) or (c) shall include the name and last known address of the person liable for the tax, the amount of the tax, a statement that the tax shall be a lien upon all real or personal property and rights to such property, including all afteracquired property and rights to property belonging to such person, and a statement that the director has complied with all the provisions of this part in the computation and levy of the amount assessed.

(e) Any lien arising pursuant to this section shall continue for 10 years from the date of recording or filing of a notice of state tax lien pursuant to subdivision (b) or (c), unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the recording or filing of the notice of state tax lien or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by recording or filing a new notice of state tax lien in the office of the county recorder of any county or with the Secretary of State as provided in subdivision (b) or (c), and from the time of such recording or filing the lien shall be extended for 10 years unless sooner released or otherwise discharged.

(f) Notwithstanding the provisions of Section 688 and 688.1 of the Code of Civil Procedure, in the event the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a lien created pursuant to subdivision (a) shall extend to the taxpayer's cause of action and any

judgment in favor of the taxpayer subsequently procured in such action or proceeding. Notice of such a lien shall be given to all parties who prior thereto have made an appearance in the action. Such lien shall have priority from the time of filing of the notice in the action. No compromise, dismissal, settlement, or satisfaction shall be entered into by or on behalf of the taxpayer with any other party, lienor or intervenor in the action without the consent of the director unless the lien is sooner satisfied or discharged. The judge or clerk of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the time of the filing of the notice in the action and the place where entered, and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Sections 674 and 688.1 of the Code of Civil Procedure, a statement of the lien in favor of the director.

(g) Any lien, and any rights or causes of action under such lien, heretofore recorded in any county pursuant to former Section 1703 or filed with the Secretary of State pursuant to former Section 1703.5, shall continue in full force and effect for a period of 10 years from the date of last recordation or filing or extension thereof and may, within such period of 10 years, be further extended in the manner provided for in subdivision (e) of this section. Upon recordation or filing of an extension, the lien shall have the same effect as a lien filed pursuant to this section. Such extended lien shall have the same priority as it originally had under the law in effect prior to July 1, 1978.

Comment. Section 1703 is amended to delete provisions that are continued in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

Unemployment Insurance Code § 1704 (repealed).

Release or subordination of liens

SEC. 65. Section 1704 of the Unemployment Insurance Code is repealed.

1704. The director may at any time release all or any portion of the property subject to any lien obtained under this chapter from such lien or subordinate the lien to other liens and encumbrances if he determines that the contributions, interest and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien will not endanger or jeopardize the collection of such contributions, interest and penalties.

Comment. Former Section 1704 is continued in Section 7174 of the Government Code.

Unemployment Insurance Code § 1704.5 (repealed).

Release of lien when liability unenforceable

SEC. 66. Section 1704.5 of the Unemployment Insurance Code is repealed.

1704.5. The director may release any lien imposed under Section 1703, or 1816 if he finds that the liability represented by the lien, including any interest accrued thereon, is legally unenforceable.

Comment. Former Section 1704.5 is continued in Section 7174 of the Government Code.

Unemployment Insurance Code § 1705 (repealed).

Conclusive effect of certificate

SEC. 67. Section 1705 of the Unemployment Insurance Code is repealed.

1705. A certificate by the director to the effect that any property has been released from a lien or that the lien has been subordinated to other liens is conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.

Comment. Former Section 1705 is continued in Section 7174 of the Government Code.

Unemployment Insurance Code § 1755 (technical amendment). Notice of levy; payment to director

SEC. 68. Section 1755 of the Unemployment Insurance Code is amended to read:

1755. If any person or employing unit is delinquent in the payment of any contributions, penalties or interest provided for in this division, the director may, not later than three years after the payment became delinquent or within 10 years after the last entry of a judgment under Article 5 (commencing with Section 1815) of this chapter or within 10 years after the last recording or filing of a notice of state tax lien under Section ~~1703~~ 7171 of the *Government Code*, collect the delinquency or enforce any liens by levy served either personally or by certified mail, to all persons having in their possession or under their control any credits or, with respect to a bank or savings and loan association, other personal property belonging to the delinquent person or employing unit, or owing any debts to such person or employing unit at the time of the receipt of the notice of levy. Any person upon whom a levy has been served having in his possession or under his control any credits, or with respect to a bank or savings and loan association other personal property, belonging to the delinquent person or employing unit or owing any debts to such person or employing unit at the time of the receipt of the levy, shall surrender such credits or other personal property to the director or pay to the director the amount of any debt owing the delinquent employer within five days of service of the levy. Any such person in possession of any credits or other personal property or owing any debts to the delinquent person or employing unit who surrenders such credits or other personal property or pays such debts owing the delinquent person or employing unit shall be discharged from any obligation or liability to the delinquent person or employing unit with respect to the credits or personal property surrendered or debts paid to the director. If the levy is made on a deposit or credits or other personal property in the possession or under the control of a bank or savings and loan association, the notice of levy shall be delivered or mailed to the branch or office of such bank or savings and loan association at which such deposit is carried or at which such credits or personal property is held.

Comment. Section 1755 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Unemployment Insurance Code § 1785 (technical amendment). Warrant for collection of tax

SEC. 69. Section 1785 of the Unemployment Insurance Code is amended to read:

1785. If any amount required to be paid under this division is not paid when due, the director or his authorized representative may, not later than three years after the payment became delinquent, or within 10 years after the last entry of a judgment under Article 5 of this chapter or within 10 years after the last recording or filing of a notice of state tax lien under Section ~~1703~~ 7171 of the *Government Code*, issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this division. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

Comment. Section 1785 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Unemployment Insurance Code § 1815 (technical amendment). Judgment upon filing of certificate

SEC. 70. Section 1815 of the Unemployment Insurance Code is amended to read:

1815. If any employing unit is delinquent in the payment of any contributions, penalties or interest provided for in this division, the director may, not later than 10 years after the payment became delinquent or within 10 years after the last entry of a judgment under this article or within 10 years after the last recording or filing of a notice of state tax lien under Section ~~1703~~ 7171 of the *Government Code*, file in the Office of the County

Clerk of Sacramento County, or with the county clerk of the county in which the employer has his principal place of business, a certificate specifying the amount of the contributions, interest and penalty due and the name and last known address of the employer liable therefor. The certificate shall also contain a statement that the director has complied with all the provisions of this division in relation to the computation and levy of the contributions, interest and penalty, and a request that judgment be entered against the employer in the amount set forth in the certificate. The county clerk immediately upon the filing of the certificate shall enter a judgment for the State of California against the employer in the amount set forth in the certificate. Such judgment may be filed by the county clerk in a looseleaf book entitled "Unemployment Contributions Judgments."

Comment. Section 1815 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

Unemployment Insurance Code § 1852 (technical amendment). Action to collect delinquent contributions; limitations

SEC. 71. Section 1852 of the Unemployment Insurance Code is amended to read:

1852. In addition to any other collection procedures authorized in this division, the director may bring an action in the courts of this or any other state or of the United States, in the name of the State of California, to collect the amount of any delinquent employer or worker contributions together with penalties and interest. No such action shall be commenced later than:

- (a) Three years after the date on which any amount due on a return filed by an employing unit or on an assessment made by the director becomes delinquent.
- (b) Ten years after:
 - (1) The date on which a judgment is last entered under Article 5 of this chapter.

(2) The date on which a notice of state tax lien is last recorded or filed under Section ~~1703~~ 7171 of the *Government Code*.

Comment. Section 1852 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the *Government Code*.

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