

Amend Revenue and Taxation Code Section 6757 of the Sales and Use Tax Law, and comparable statutes in BOE special tax and fee programs, to authorize the BOE to withdraw a lien after a taxpayer, feepayer, or surcharge payer pays the delinquent liability for which the lien was filed under the applicable tax, fee, and surcharge programs the BOE administers.

Source: Honorable George Runner

Existing Law. Existing law provides the BOE with various tools to collect delinquent tax, fee, and surcharge liabilities, including a state tax lien, with respect to the various programs administered by the BOE.

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

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

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

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

This Proposal. This proposal would authorize the BOE to withdraw a tax lien in situations where the taxpayer has resolved its outstanding debts with the BOE. These provisions would apply to all tax, fee, and surcharge programs where the BOE is authorized to file liens, as follows:

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

This proposal was prompted by a recent announcement by the Internal Revenue Service (IRS) regarding its latest effort to help struggling taxpayers obtain a fresh start with their tax liabilities. Part of this effort included making changes to its lien filing practices, including withdrawing a lien when a taxpayer resolves his or her outstanding liability with the IRS. The IRS has determined that this approach is in the best interest of the government.

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

A similar bill was considered during the 2011 Legislative Session. SB 228 (Wyland, as amended June 2, 2011), sponsored by BOE Member Runner, was held in the Senate Appropriations Committee.

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. The lien is subject to 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.

(c) The lien provided by this section shall not arise during any period that Section 362 of the United States Bankruptcy Code applies to the person against whom the lien would otherwise apply.

(d)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty, and fee, is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien was filed. A copy of the notice of withdrawal shall be provided to the taxpayer.

(2) Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in that request, of the withdrawal of the notice.

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. Such a lien is subject to 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 7698 (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.

(c)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty and fee, is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien was filed. A copy of the notice of withdrawal shall be provided to the taxpayer.

(2) Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in that request, of the withdrawal of the notice.

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. Such a lien is subject to 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.

(c)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty, and fee, is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien

was filed. A copy of the notice of withdrawal shall be provided to the taxpayer.

(2) Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in that request, of the withdrawal of the notice.

Section 11496 of the Revenue and Taxation Code is amended to read:

11496. (a) 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.

(b)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty, and fee, is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien was filed. A copy of the notice of withdrawal shall be provided to the taxpayer.

(2) Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in that request, of the withdrawal of the notice.

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. Such a lien is subject to 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.

(c)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty, and fee, is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien was filed. A copy of the notice of withdrawal shall be provided to the taxpayer.

(2) Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in that request, of the withdrawal of the notice.

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. Such a lien is subject to 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.

(c)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty, and fee, is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien was filed. A copy of the notice of withdrawal shall be provided to the taxpayer.

(2) Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in that request, of the withdrawal of the notice.

Section 38532 of the Revenue and Taxation Code is amended to read:

38532. (a) If any amount required to be paid to the state under this part is not paid 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. Such a lien is subject to 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 received under Section 38431 (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.

(c)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty, and fee, is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien was filed. A copy of the notice of withdrawal shall be provided to the taxpayer.

(2) Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in that request, of the withdrawal of the notice.

Section 40158 of the Revenue and Taxation Code is amended to read:

40158. (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. Such a lien is subject to 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 all other amounts, the date the assessment is final.

(c)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty, and fee, is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien was filed. A copy of the notice of withdrawal shall be provided to the taxpayer.

(2) Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in that request, of the withdrawal of the notice.

Section 41124.1 of the Revenue and Taxation Code is amended to read:

41124.1. (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. Such a lien is subject to 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 all other amounts, the date the assessment is final.

(c)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty, and fee, is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien was filed. A copy of the notice of withdrawal shall be provided to the taxpayer.

(2) Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose

name and address is specified in that request, of the withdrawal of the notice.

Section 43413 of the Revenue and Taxation Code is amended to read:

43413. (a) If any person fails to pay any amount imposed pursuant to 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. Such a lien is subject to 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 43350 (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.

(c)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty, and fee, is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien was filed. A copy of the notice of withdrawal shall be provided to the taxpayer.

(2) Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in that request, of the withdrawal of the notice.

Section 45451 of the Revenue and Taxation Code is amended to read:

45451. (a) If any person fails to pay any amount imposed pursuant to 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. A lien is subject to 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 report received by the board before the date the return is delinquent, the date the amount would have been due and payable.

(2) For amounts disclosed on a report filed on or after the date the return is delinquent, the date the return is received by the board or the year following the fee due date pursuant to Section 45151, whichever is later.

(3) For amounts determined under Section 45351, 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.

(c)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty, and fee, is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien was filed. A copy of the notice of withdrawal shall be provided to the taxpayer.

(2) Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in that request, of the withdrawal of the notice.

Section 46421 of the Revenue and Taxation Code is amended to read:

46421. (a) If any person fails to pay any amount imposed pursuant to 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 lien. The lien shall be subject to 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 amount would have been due and payable.

(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 46301 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.

(c)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty, and fee, is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien

was filed. A copy of the notice of withdrawal shall be provided to the taxpayer.

(2) Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in that request, of the withdrawal of the notice.

Section 50123 of the Revenue and Taxation Code is amended to read:

50123. (a) If any person fails to pay any amount imposed pursuant to this part at the time that it becomes due and payable, the amount, including interest and penalties, together with any costs in addition to the amount, are a perfected and enforceable state tax lien which is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty, and fee, is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien was filed. A copy of the notice of withdrawal shall be provided to the taxpayer.

(2) Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in that request, of the withdrawal of the notice.

Section 55141 of the Revenue and Taxation Code is amended to read:

55141. (a) If any person fails to pay any amount imposed pursuant to 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. Such a lien is subject to 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 55101, the date the notice of the board's finding is mailed or issued.

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

(c)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty, and fee is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien was filed. A copy of the notice of withdrawal shall be provided to the feepayer.

(2) Upon written request by the feepayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in that request, of the withdrawal of the notice.

Section 60445 of the Revenue and Taxation Code is amended to read:

60445. (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. That lien is subject to 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 60330 (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.

(c)(1) The board may withdraw notice of a state tax lien, and the withdrawal shall be applied as if notice of the state tax lien had not been filed, if the liability represented by the state tax lien, including any interest, penalty, and fee, is paid in full. A withdrawal shall be made by filing a notice of withdrawal at the same office in which the notice of state tax lien was filed. A copy of the notice of withdrawal shall be provided to the taxpayer.

(2) Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn, the board shall make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in that request, of the withdrawal of the notice.