

AMENDED IN SENATE MAY 1, 2001
AMENDED IN SENATE APRIL 16, 2001

SENATE BILL

No. 366

Introduced by Senator Haynes

February 21, 2001

An act to amend Sections 19203 and 19221 of, to repeal Section 19024 of, and to add Section 21015.6 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 366, as amended, Haynes. Taxation: levy and lien: innocent partner.

Existing law provides that any unpaid personal income or bank and corporation tax liability that is due and payable shall become a perfected and enforceable state tax lien, and that any abstract or a copy of a judgment against a taxpayer that is recorded with the county recorder of any county constitutes a lien against the taxpayer's property. Under existing law, these liens continue for a period of 10 years and may be extended for additional 10-year periods.

This bill would provide that the lien period may not be extended after the expiration of the initial 10-year lien period. This bill would also specify, except under circumstances where a fraud penalty is imposed, that no lien shall attach against any property that qualifies as a "declared homestead", as defined by a specified statute.

The Katz-Harris Taxpayers' Bill of Rights Act provides various protections and rights to taxpayers for purposes of the Personal Income Tax Law and the Bank and Corporation Tax Law.

This bill would provide that no levy shall be made on the principal residence of an innocent partner, as defined, and would provide that a lien on that property, or the proceeds of the sale of that property, shall be released, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. *Section 19203 of the Revenue and Taxation*
 2 *Code is amended to read:*

3 19203. (a) An abstract or a copy of the judgment may be
 4 recorded with the county recorder of any county. From the time of
 5 the recording, the amount set forth constitutes a lien upon all real
 6 property of the taxpayer in the county, owned by the taxpayer or
 7 afterward and before the lien expires acquired by the taxpayer.
 8 Such lien has the force, effect, and priority of a judgment lien and
 9 continues for 10 years from the date of the recording unless sooner
 10 released or otherwise discharged.

11 (b) *Notwithstanding the provisions of Chapter 14 (commencing*
 12 *with Section 7150) of Division 7 of Title 1 of the Government Code,*
 13 *any abstract or copy of a judgment recorded with the county*
 14 *recorder of any county, may not be extended beyond the 10-year*
 15 *period authorized under subdivision (a).*

16 (c) (1) *Except as otherwise provided in paragraph (2), any*
 17 *abstract or copy of a judgment recorded with a county recorder*
 18 *does not constitute a lien against any property that qualifies as a*
 19 *“declared homestead” as defined in Section 704.910 of the Code*
 20 *of Civil Procedure.*

21 (2) *The exclusion set forth in paragraph (1) does not apply*
 22 *under circumstances where a penalty for fraud has been assessed*
 23 *against the owner or owners of property that qualifies as a*
 24 *“declared homestead” as defined in Section 704.910 of the Code*
 25 *of Civil Procedure.*

26 SEC. 2. Section 19204 of the Revenue and Taxation Code is
 27 repealed.

28 ~~19204. Within 10 years from the date of the recording or~~
 29 ~~within 10 years from the date of the last extension of the lien in the~~
 30 ~~manner provided in this section, the lien may be extended by~~
 31 ~~recording in the office of the county recorder of any county an~~



1 ~~abstract or copy of the judgment. From the time of the recording~~
2 ~~the lien extends to the property in the county for 10 years unless~~
3 ~~sooner released or otherwise discharged.~~

4 *SEC. 3. Section 19221 of the Revenue and Taxation Code is*
5 *amended to read:*

6 19221. (a) If any taxpayer or person fails to pay any liability
7 imposed under Part 10 (commencing with Section 17001) or Part
8 11 (commencing with Section 23001) at the time that it becomes
9 due and payable, the amount thereof, (including any interest,
10 additional amount, addition to tax, or penalty, together with any
11 costs that may accrue in addition thereto) shall thereupon be a
12 perfected and enforceable state tax lien. This lien is subject to
13 Chapter 14 (commencing with Section 7150) of Division 7 of Title
14 1 of the Government Code. *However, notwithstanding Section*
15 *7172 of the Government Code, any lien filed in accordance with*
16 *this section may not be extended beyond the initial 10-year period*
17 *authorized under Section 7171 of the Government Code.*

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

20 (1) For amounts of any liability disclosed on a return filed on
21 or before the date payment is due (with regard to any extension of
22 time to pay), the date the amount is established on the records of
23 the Franchise Tax Board, except that in no case will it be prior to
24 the day after the payment due date;

25 (2) For amounts of any liability disclosed on a return filed after
26 the date payment is due (with regard to any extension of time to
27 pay), the date the amount is established on the records of the
28 Franchise Tax Board;

29 (3) For amounts of any liability determined under Section
30 19081 or 19082 (pertaining to jeopardy assessments), the date the
31 notice of the Franchise Tax Board’s finding is mailed or issued;

32 (4) For all other amounts of liability, the date the assessment is
33 final.

34 (c) (1) Notwithstanding subdivision (a), during any period
35 that Section 362 of Title 11 of the United States Code applies, any
36 tax lien that would otherwise attach to property by reason of
37 subdivision (a) ~~shall~~ *may* not take effect, unless the tax is a debt of
38 the debtor that will not be discharged in the bankruptcy proceeding
39 and the property or its proceeds are transferred out of the
40 bankruptcy estate to, or otherwise revested in, the debtor.



1 (2) *Except under circumstances where the liability subject to*
2 *this section includes a penalty for fraud, any lien that would*
3 *otherwise attach to property by reason of subdivision (a) may not*
4 *take effect against any property that qualifies as a “declared*
5 *homestead” as defined in Section 704.910 of the Code of Civil*
6 *Procedure.*

7 SEC. 4. Section 21015.6 is added to the Revenue and Taxation
8 Code, to read:

9 21015.6. (a) No levy may be made on the principal residence
10 of any innocent partner if the basis for that levy is the fraudulent
11 action of another partner.

12 (b) Any state tax lien, as described under Chapter 14
13 (commencing with Section 7150) or Chapter 14.5 (commencing
14 with Section 7220) of Division 7 of Title 1 of the Government
15 Code, on the principal residence of an innocent partner, or on an
16 escrow or other account in which the proceeds from the sale of an
17 innocent partner’s principal residence are held, shall be released
18 upon substantiation that the owner of that principal residence is an
19 innocent partner.

20 (c) For purposes of this section, an “innocent partner” means
21 any partner or a spouse or former spouse of any partner, in a
22 partnership, limited partnership, or joint venture who did not
23 engage in any fraudulent action that resulted in the underpayment
24 of any tax to which the lien relates, and was not aware of any
25 fraudulent action, that resulted in the underpayment of any tax to
26 which the lien relates.

