6-33/000.00 Tax Collections and Liens

• 6-33/100.00 Tax Collections and Liens

When a tax debt is owed, California and federal law allows an automatically statutory lien that attaches to all real or personal property the taxpayer owns or has a right to. A Notice of (State or IRS) Lien is sent to the taxpayer. If the taxpayer does not respond to Notice, pay in full, or set up a payment plan, a Notice of (State or IRS) Tax Lien may be filed. This secures and protects the tax debt owed to the county, state, or Internal Revenue Service (IRS). A Notice of (State or IRS) Tax Lien does not actually create a lien, it merely informs others of a lien that already exists by statute. However, the date of the Notice filing is important for determining the priority against other creditors.

An IRS Notice of Federal Tax Lien is publicly filed with the state and county jurisdictions. A California Notice of State Tax Lien can be:

- Recorded with one or more county recorders (real property)
- Filed with the California Secretary of State (personal property)

• • 6-33/110.00 Priority of Tax Liens and Writs of Attachment or Execution

A tax claim of the State of California, or a county, does not have a preference over specific liens, such as those of attachments, created in favor of third parties before the state or county commences proceedings to enforce its claim, unless the statute creating the tax shows legislative intent to give it priority. (People v. Biscailuz, 95 CA 2d 635; Home Owners' Loan Corporation v. Hansen, 38 CA 2d 748) No general rule as to priority of such taxes can be given. The question as to whether a particular tax has priority over an attachment or execution levy can be determined only from the specific legislative enactment authorizing the tax involved. The legislative intent to give priority to a tax lien need not be declared in express terms if the intent appears by reasonable inference. (Guinn v. McReynolds, 177 CA 230)

• 6-33/200.00 County Taxes

• • 6-33/210.00 Property Taxes Secured by Real Estate

Every tax on real estate is a lien against the property assessed. (RTC 2187; GC 43001) Taxes on improvements may be made a lien on real estate of the owner of such improvement. (RTC 2188, 2188.2) A tax on personal property is a lien on the owner's real property in the county, if the fact of the lien is shown on the secured assessment roll opposite the description of the real estate. (RTC 2189; GC 43001) These tax liens attach annually at 12:01 a.m. on the first day of January preceding the fiscal year for which the taxes are levied. (RTC 2192) They have the effect of an execution duly levied against the property subject to the lien. (RTC 2193) The legislature has the power to make tax liens on real property have been held to be a paramount lien. (California Loan v. Weis, 118 C 489; Courtney v. Byram, 54 CA 2d 769)

• • 6-33/220.00 Unsecured Personal Property Taxes

Officials collecting taxes on unsecured personal property are authorized to file a certificate stating amount of tax, penalty, and interest due, together with information relating to assessee liable for amount due with the clerk of the court. (RTC 3101) The clerk of the court, immediately upon the filing of the certificate, shall enter a judgment for the county against the assessee in the amount of the tax, etc. (RTC 3102)

• • 6-33/230.00 Force and Effect

An abstract or copy of the judgment may be recorded in the office of the county recorder of any county. From the time of the recording, the amount of the tax, penalty, and interest constitutes a lien upon all property of the assessee in the county owned by him at the time, or acquired thereafter, before the lien expires. The lien has the force, effect and priority of a judgment lien and continues for ten years from the date of the recording, unless sooner released or otherwise discharged. Periodically, ten-year extensions of the lien may be had. (RTC 3103)

Upon the request of the official collecting the taxes, execution may issue upon such judgment, and levies and sales may be held thereunder, as prescribed in the Code of Civil Procedure. (RTC 3106)

• • 6-33/240.00 Seizure and Sale

Generally, the Sheriff's Department is not the levying officer and is not involved regarding seizing and selling of personal property. When taxes due on property are not secured by sufficient real estate, such taxes may be collected by the "seizure and sale," by the county Tax Collector of personal property, improvements and possessory interests belonging or assessed to the taxpayer. (RTC 2951, 134) Notice of the time and place of sale must be given at least one week before the sale by publication in a newspaper in the county, or by posting in three public places. (RTC 2957) On payment of the price bid for property sold, the delivery of the property with a bill of sale vests title in the purchaser even against a legal owner. (RTC 2960; R.C.A. Photophone, Inc. v. Huffman, 5 CA 2d 401) Incurred costs of seizing, sales advertisement, and keeper fees can be added to the sale of seized property. (REV 2958)

> However, if a Writ of Execution is issued under RTC 3106, the Sheriff's Department would have authority to act as levying officer as with other civil judgments. In such cases, refer to 6-27/000.00 EXECUTION SALE.

• 6-33/300.00 State of California Tax Collections and Tax Liens

• • 6-33/310.00 Unemployment Insurance Contributions

The Legislature therefore declares that in its considered judgment the public good and the general welfare of the citizens of the State require the enactment of this measure under the police power of the State, for the compulsory setting aside of funds to be used for a system of unemployment insurance

providing benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum. (UIC 100) The program is managed by the Employment Development Department (EDD).

• • • 6-33/310.10 State Tax Lien

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, shall be a perfected and enforceable state tax lien. (UIC 1703)

• • • 6-33/310.20 Priority of Lien

EDD has a priority where there has been a levy upon property of an absconding, concealed or absent employer even though he may be solvent. (UIC 1701(d)) It appears to have been a legislative intention to give the state priority over an attachment or execution levied in such cases. EDD does not have priority under any other circumstances over a prior attachment or execution, or a lien recorded or perfected prior to an EDD recorded lien. (UIC 1702, People v. Biscailuz 95 CA2d 635)

• • • 6-33/310.30 Notices of Levy

If an employer is delinquent in the payment of any contributions, EDD may collect on property under a State Tax Lien by serving, personally or by first-class mail, a Notice of Levy on third-parties having in their possession or under their control the property belonging to the employer. The third-party has five days from the service of the Notice of Levy to turn the property over to EDD. (UIC 1755)

• • • 6-33/310.40 Summary Judgments

If any employing unit is delinquent in the payment of any contributions, penalties or interest, EDD may file in the office of the Clerk of the Superior Court of Sacramento County, or with the clerk of the superior court of the county in which the employer has its 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 clerk of the court 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. (UIC 1815)

• • • 6-33/310.50 Execution

Execution shall issue upon such a judgment upon request of the director in the same manner as execution may issue upon other judgments and sales shall be held under such execution as prescribed in the Code of Civil Procedure. In all proceedings under this section the director or his authorized agents may act on behalf of the state. (UIC 1816)

• • • 6-33/310.60 Civil Action

In addition to any other procedures, EDD may file a regular civil action to collect delinquent contributions. (UIC 1852) EDD may obtain and collect on the judgment as in any other money judgment. The Sheriff's Department would have authority to act as levying officer as with other civil judgments. In such cases, refer to 6-20/000.00 WRIT OF EXECUTION (MONEY JUDGMENT) and/or 6-27/000.00 EXECUTION SALE.

• • • 6-33/310.70 Warrants for Collection

EDD may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state. The warrant shall be directed to any sheriff, marshal, member of the California State Police Division, 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. (UIC 1785) EDD is not exempt from the standard fee for service and must be provided in advance of the service. (UIC 1786, GC 6100, 26720, CCP 685.100) All Sheriff's Department's fees, commissions and expenses for such services may be added to the amount to satisfy the same as if levied under a writ of execution. (UIC 1787)

• • • 6-33/310.80 Preferred Labor Claims

Claims of the state for delinquent contributions are "subordinate" to preferred labor claims. (UIC 1701, CCP 1204(a)(1), 1206(a))

• • 6-33/320.00 Income Taxes

• • • 6-33/320.10 Tax Lien

If any taxpayer or person fails to pay any (Income Tax) liability imposed at the time that it becomes due and payable, the amount, (including any interest, additional amount, addition to tax, or penalty, together with any costs that may accrue in addition thereto) shall thereupon be a perfected and enforceable state tax lien. (RTC 19221(a))

• • • 6-33/320.30 Summary Judgment

If any amount due or any amount that may be collected by the FTB as though it were a tax, is not paid, the FTB may file in the Office of the Clerk of the Court of Sacramento County, or any other county, a certificate specifying the amount due, the name and last known address of the taxpayer liable for the amount due, and the fact that the FTB has complied with all provisions of the law in the computation and levy of the amount due, and a request that judgment be entered against the taxpayer in the amount set forth in the certificate. (RTC 19201) The clerk of the court immediately upon the filing of the certificate shall enter a judgment for the people of the State of California against the taxpayer in the amount set forth in the certificate. (RTC 19202)

• • • 6-33/320.40 Execution

Execution shall issue upon the judgment upon request of the Franchise Tax Board in the same manner as execution may issue upon other judgments, and sales shall be held under the execution as prescribed in the Code of Civil Procedure. (RTC 19205)

• • • 6-33/320.60 Warrants for Collection

The Franchise Tax Board or its authorized representative may issue a warrant for the collection of any tax, interest, or penalty and for the enforcement of any lien. (RTC 19231) The warrant shall be levied and sale made pursuant to it in the same manner and with the same force and effect as a levy of and sale pursuant to a writ of execution. (RTC 19232) The Sheriff's Department's fee for service and expenses shall be paid in advance by the FTB. (RTC 19233) However, no levy may be issued on any property or right to property to be sold in accordance with the Code of Civil Procedure until a thorough investigation of the status of the property has been completed by the Franchise Tax Board. (RTC 19236(a)(1))

• • 6-33/330.00 Sales Taxes

The State Board of Equalization has authority to collect delinquent state sales taxes similar to that provided for in the collection of state income taxes and unemployment insurance contributions. In addition, authorize the State Board of Equalization to seize and sell any property of the delinquent taxpayer not exempt from execution.

• • • 6-33/330.10 Tax Lien

If any person is delinquent in the payment of the amount required, the State Board of Equalization may, not later than three years after the payment became delinquent, or within 10 years after the last recording of an abstract, be a perfected and enforceable state tax lien. (RTC 6702(a))

• • • 6-33/330.20 Priority of Lien

No preference is given over prior attachments or executions except as to personal property where the taxpayer is an "absconding, concealed, or absent person. (REV 6756; Durkin v. Durkin 133 CA 2d 283) Preferred labor claims are expressly given priority. (REV 6756(d))

• • • 6-33/330.30 Notice of Levy

If any third-party possesses or controls credit or personal property belonging to a retailer or other person liable for the delinquent amount, the SBE may collect on property under a State Tax Lien by serving, personally or by first-class mail, a Notice of Levy on third-parties having in their possession or under their control the property belonging to the retailer or delinquent person. (RTC 6703(a))

• • • 6-33/330.40 Lawsuit for Tax

If any person is delinquent in the payment of the amount required, and a state tax lien is in force, the SBE 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. (RTC 6711)

• • • 6-33/330.50 Summary Judgment

If any person is delinquent in the payment of the amount required, the SBE may file in the Office of the Clerk of the Court of Sacramento County, or any other county, a certificate specifying the amount due, the name and last known address of the taxpayer liable for the amount due, and the fact that the SBE has complied with all provisions of the law in the computation and levy of the amount due, and a request that judgment be entered against the taxpayer in the amount set forth in the certificate. (RTC 6736) The clerk of the court immediately upon the filing of the certificate shall enter a judgment for the people of the State of California against the taxpayer in the amount set forth in the certificate. (RTC 6737)

• • • 6-33/330.60 Execution

Execution shall issue upon the judgment upon request of the board in the same manner as execution may issue upon other judgments, and sales shall be held under such execution as prescribed in the Code of Civil Procedure. (RTC 6739)

• • • 6-33/330.70 Warrants for Collection

The SBE may issue a warrant for the collection of any tax, interest, or penalty and for the enforcement of any lien. The warrant shall be levied and sale made pursuant to it in the same manner and with the same force and effect as a levy of and sale pursuant to a writ of execution. (RTC 6776) The Sheriff's Department's fee for service and expenses shall be paid in advance by the SBE. RTC 6777

• 6-33/400.00 Internal Revenue Service Taxes

An IRS tax lien is the government's legal claim against your property when you neglect or fail to pay a tax debt. The lien protects the government's interest in all your property, including real estate, personal property and financial assets. A federal tax lien exists after the IRS:

- Assesses the taxpayer's liability
- Sends the taxpayer a bill that explains how much is owed (Notice and Demand for Payment); and
- The taxpayer neglect or refuse to fully pay the debt

A lien is not a levy. A lien secures the government's interest in your property when you don't pay your tax debt. A levy actually takes the property to pay the tax debt. If you don't pay or make arrangements to settle your tax

debt, the IRS can levy, seize and sell any type of real or personal property that you own or have an interest in.

• • 6-33/400.10 Internal Revenue Tax Lien

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. (26 USC 6321) A United States Internal Revenue lien arises "at the time the assessment is made" and shall continue until the liability for the amount is satisfied or becomes unenforceable. (26 USC 6322) (see also CCP 2100, 2101)

• • 6-33/400.20 Priority over Attachment Liens

An unsecured creditor never has priority over an internal revenue lien if he is not a "judgment creditor." (26 USC 6323; United States v. Acri, 348 US 211; United States v. Security Trust & Savings Bank, 340 US 47)

• • 6-33/400.30 Priority as Against Execution Liens

A judgment creditor has priority over internal revenue taxes as to property on which the judgment creditor has obtained a lien before the government has filed its notice of tax lien. (26 USC 6323) Thus, as to personal property, the judgment creditor is not entitled to any priority unless an execution levy has been made before the government has recorded its lien. (Miller v. Bank of America 166 F 2d 415) As to real property the judgment creditor has priority only if an execution levy or abstract of judgment is recorded before the federal lien is recorded. (United States v. Spreckels, 50 F. Supp. 789)

• • 6-33/410.00 Procedure After Notice of Tax Lien

Upon receipt of notice of tax lien from the Internal Revenue Service, immediately notify the creditor's attorney by form letter "Internal Revenue Tax -Notice to Creditor" and enclose a copy of the notice, if available. The Office Supervisor or designee shall release property held under attachment or execution to the Internal Revenue Service, or to the debtor if it so directs, under any of the following conditions:

1. Upon receipt of release from the creditor's attorney.
2. Upon failure of the creditor to pay further deposits to cover expenses after demand under CCP 488.050 or 685.100.
3. Upon receipt from the Internal Revenue Service of its Final Notice and Demand, in the absence of an objection received from the creditor's attorney in reply to Sheriff's notice to creditor; provided, of course, that the tax lien has apparent priority. However, always allow the creditor's attorney at least 10 days' time after the mailing of the Sheriff's notice within which to dispute any tax priority.

• • • 6-33/410.10 Priority Disputes

If there is a dispute as to priorities, notify the Internal Revenue District Director that we hold the property under attachment or execution, giving the date of levy, general description of the property held, name and address of creditor's attorney, and a copy of the writ, if available. Forward a copy of this letter to the creditor's attorney. If the property is not released under as provided above, or sold under execution as authorized below, hold the property until the Internal Revenue Service gives a written release.

When a notice of execution sale has been posted before receiving an Internal Revenue notice of lien, the Internal Revenue Service has agreed that the sale may proceed if the judgment creditor so directs. The costs of such sale, including the costs of the levy, keeper's fees, notices, and conducting of the sale, shall be deducted from the proceeds of the sale, unless otherwise instructed in writing by the Internal Revenue Service prior to the date of sale. The balance of the proceeds shall be held until a final determination as to priorities. Should the judgment creditor be the successful bidder, he must pay cash the same as any other bidder as to any amount in excess of the Sheriff's costs.

No other execution sale shall be conducted after receiving an Internal Revenue notice unless the creditor desires to make a cash bid in an amount sufficient to pay off the tax lien in full or unless specifically authorized by the Internal Revenue Service.

• • 6-33/420.00 Warrant for Collection

Upon receipt of an Internal Revenue levy or notice of tax lien on moneys collected as a result of a levy for the State of California, Employment Development Department, immediately notify the Employment Development Department, giving them the information as to the amounts, date of assessment and date of recording of the lien. Send a copy of the notice to the Employment Development Department. Do not pay the money out.

Upon receipt of the Internal Revenue's Final Notice and Demand, immediately notify the Employment Development Department, but retain all property until a release is received.

State of California County Tax Collectors' Reference Manual

Franchise Tax Board – Personal Income Tax Collections Information