



CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

TAX POLICY BUREAU

450 N STREET, SACRAMENTO, CA 95814

PO BOX 942879, SACRAMENTO, CA 94279-0092

1-916-324-2373 • FAX 1-916-322-2958

www.cdtfa.ca.gov

GAVIN NEWSOM
Governor

NICOLAS MADUROS
Director

September 20, 2019

VIA INTERNET

Dear Interested Party:

The Compliance Policy and Procedures Manual (CPPM) is a guide for the California Department of Tax and Fee Administration (CDTFA) staff in administering tax and fee programs. It is available to the public and can be accessed from the CDTFA web page at <http://www.cdtfa.ca.gov/taxes-and-fees/staxmanuals.htm>.

The Business Tax and Fee Division is proposing to revise CPPM Chapter 7, *Collections*, to incorporate current policies and procedures regarding state tax liens.

The revision material is provided on the following pages for the convenience of interested parties who may wish to submit comments or suggestions. Please feel free to publish this information on your website or otherwise distribute it to your association/members.

If you have any comments or suggestions related to the proposed CPPM revisions, you may contact the CDTFA at CPPMRev@cdtfa.ca.gov. Your comments or suggestions must be received by the CDTFA no later than **October 21, 2019**, in order to be considered by staff. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Trista Gonzalez".

Trista Gonzalez, Chief
Tax Policy Bureau
Business Tax and Fee Division

[Staff Note – Additions to the text are in bold font. Deletions are shown with strikethrough.]

**NOTICES OF STATE TAX LIENS,
ABSTRACTS OF JUDGMENT AND LIENS** **757.000**

GENERAL **757.010**

Under Government Code section 7150, et seq., on the day a tax becomes due and payable but remains unpaid, a perfected and enforceable state tax lien is created for the amount due plus penalties, interest and costs, under the following laws:

Sales and Use Tax, section 6757

Motor Vehicle Fuel Tax, section 7872

Use Fuel Tax, section 8996

Cigarette and Tobacco Products Tax, section 30322

Alcoholic Beverage Tax, section 32363

Emergency Telephone Users Surcharge, section 41124.1

Energy Resources Surcharge, section 40158

Hazardous Substance Tax, section 43413

Integrated Waste Management Fee, section 45451

Oil Spill Response, Prevention, and Administration Fee, section 46421

~~Solid Waste Disposal Site Cleanup and Maintenance, section 45451~~

Underground Storage Tank Maintenance Fee, section 50123

Fee Collection Procedures, section 55141¹

~~Diesel Fuel Tax Law, section 60445~~

~~Electronic Waste Recycling, section 55141~~

~~Integrated Waste Management, section 45151~~

~~California Tire Fee, section 55141~~

~~Fee Collection Procedures Law, section 55141~~

Government Code section 7170 states, “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.”

¹ **The fees and taxes collected pursuant to the Fee Collection Procedures Law include the following programs: California Tire Fee, Cannabis Tax, Covered Electronic Waste Recycling Fee, Lead-Acid Battery Fees, Marine Invasive Species Fee, Natural Gas Surcharge, Prepaid Mobile Telephony Services Surcharge, Water Rights Fee, and Lumber Products Assessment.**

CPPM Chapter 7, Collections

The lien is in force for ten years and may be extended by re-recording the lien with any county recorder's office or re-recording a *Notice of State Tax Lien* with the office of the Secretary of State within the ten-year period.

The lien attaches to all property of a tax debtor by operation of law; nothing needs to be done to perfect the lien. However, Government Code section 7170~~1~~ requires the following action in order for a lien to be valid against specific interests in the same property:

As to real property, a *Notice of State Tax Lien* must be recorded in each county where the taxpayer's real property is located prior to the time that the four classes of persons listed in Section 7170(b) perfect their right, title, or interest in the property, in order for the lien to be valid against the property.

As to personal property, a *Notice of State Tax Lien* must be filed with the Secretary of State. The prior filing of a *Notice of State Tax Lien* with the Secretary of State defeats the claims of three classes of persons listed in Section 7170 (c), but cannot defeat the claims of numerous other classes of persons listed in the section.

General

(Cont.) 757.010

An additional method of recording a lien against real property under the Sales and Use Tax Law, ~~and the Alcoholic Beverage Tax Law, and the Timber Yield Tax Law,~~ is to follow the summary judgment procedure of RTC sections 6736, **32361, and 38521** ~~et seq., and 32361, et seq.,~~ **respectively**, and record an abstract of judgment in any county where the person owns or may be expected to own real property.

The abstract of judgment has the force, effect, and priority of a judgment lien and is effective for ten years from the time of filing with the county clerk for recordation unless sooner released by the California Department of Tax and Fee Administration (CDTFA). The time limit for requesting summary judgment is within three years after an amount becomes delinquent.

RTC section 6702 requires that a CDTFA-465, *Notice of Withhold*, must be issued not later than:

1. Three years from the date a payment becomes delinquent.
2. Within ten years after the last recording of an abstract of judgment or the recording or filing of a *Notice of State Tax Lien*.

RTC section 6776 **and equivalent special taxes and fees statutes** stipulates that all warrants be handled in the same manner, i.e., issued within three years from the date of delinquency or within ten years from the last lien recordation date. A certificate of lien (*Notice of State Tax Lien*) may be filed or recorded in any county or with the Secretary of State at any time during the ten-year automatic or statutory lien period established by RTC section 6757 **and equivalent special taxes and fees statutes**, following the date of delinquency.

In order for the CDTFA to take court action against a debtor, such as an Attorney General referral for an out-of-state judgment, the lien must have been filed or recorded within three years from the delinquency date (see RTC Sec. 6711 **and equivalent special taxes and fees statutes**). For this reason, current policy requires that liens are filed or recorded within this three-year period. Liens may be renewed twice, each for

CPPM Chapter 7, Collections

ten-year terms, after the initial ten-year lien period has expired (see Government Code section 7172). The chart in CPPM 757.020 provides a quick reference for the time periods within which all of these summary procedures may be used.

According to the CDTFA’s Legal Division, the three-year restriction does not apply to the issuance of levies pursuant to RTC 6703 **and equivalent special taxes and fees statutes**, as long as the statutory lien from the operation of law (RTC section 6757 **and equivalent special taxes and fees statutes**) is in place.

LIMITATION PERIODS FOR SUMMARY PROCEDURES

757.020

| REVENUE LAW | Period Within Which Notice to Withhold May Be Used | Period Within Which Warrant May Be Used | Effective Period of Liens and Abstracts |
|---|--|--|--|
| Sales and Use Tax | After a determination is final and remains unpaid but not later than three years after the payment became delinquent, or within ten years after the last lien recording. Reference RTC 6702 | While an amount is delinquent but not later than three years after the delinquency date of the payment, or within ten years after the last lien recording. Reference RTC 6776 | Ten years (Renewable) Reference Gov. Code 6757 and RTC 7172 |
| Cigarette and Tobacco Products | | | |
| Use Fuel Tax | | | |
| Alcoholic Beverage Tax | | | |

| Revenue Law | Period Within Which Notice to Withhold May be Used | Period Within Which Warrant May be Used | Effective Period of Liens and Abstracts |
|--|---|---|---|
| <ul style="list-style-type: none"> • Sales and Use Tax • All Special Taxes and Fees Programs | <p>After a determination is final and remains unpaid but not later than three years after the payment became delinquent, or within ten years after the last lien recording.</p> <p>Reference RTC 6702</p> | <p>While an amount is delinquent but not later than three years after the delinquency date of the payment, or within ten years after the last lien recording.</p> <p>Reference RTC 6776</p> | <p>Ten years (Renewable)</p> <p>Reference RTC 6757 and Gov. Code 7172</p> |

TYPE OF RECORDATION ALLOWED BY STATUTE

757.030

| REVENUE LAW | NOTICE OF STATE TAX LIEN | ABSTRACT OF JUDGMENT |
|--|--------------------------|------------------------|
| Sales and Use Tax | Allowed | Allowed |
| Alcoholic Beverage Tax Cigarette and Tobacco Products Tax | Allowed | Not Allowed |
| Timber Yield Tax | Allowed | Allowed |
| All other Special Taxes and Fees programs Use Fuel Tax | Allowed | Not Allowed |
| Alcoholic Beverage Tax | Allowed | Allowed |

RESPONSIBILITY FOR RECORDING AND FILING LIENS

757.040

Generally, the Special Operations Branch (SOB) is responsible for preparing the *Notice of State Tax Lien* or the abstract of judgment, forwarding these documents to the appropriate county recorder or to the office of the Secretary of State, and mailing a copy to the tax/feepayer. **However, under certain circumstances, accounts managed in the Centralized Opportunity Revenue System (CROS) may have liens automatically filed (see CPPM section 757.062).**

EXTENSIONS OF LIENS

757.050

The original lien may be extended by recording a new notice or abstract of judgment in any county or, if a statewide personal property lien was previously acquired and is to be extended, by filing an extension notice with the office of the Secretary of State. The new recording or filing must be made prior to expiration of the original lien. The responsibility for filing a lien extension, as well as the original filing of a lien, lies with the SOB.

POLICY AND MINIMUM AMOUNTS — NOTICE OF STATE TAX LIEN 757.060

Filing a lien protects the state’s interest in a tax/feepayer’s assets. The use of the *Notice of State Tax Lien* is an effective collection tool that often results in payment of accounts that would have been difficult, if not impossible, to collect.

Tax/feepayers should be advised that a lien may be filed and its effects (decreases credit rating and attaches to property currently owned and later acquired-). With the exception of a jeopardy lien, a tax lien should not be filed unless there have been documented efforts made to contact the tax/feepayer by phone and in writing.

Per statute, a lien can be filed 30 days after the tax/feepayer is advised in writing that a lien may be filed. **Generally, California Department of Tax and Fee Administration (CDTFA) policy is to wait 180 days after the demand date to file a lien. However, a lien may be filed 30 days after the demand date if there is a valid reason for such action. Supervisory approval of all lien requests initiated prior to the expiration of the 180 days is required and must be documented in the system.**

In most cases, a *Notice of State Tax Lien* is filed for accounts with delinquent amounts of \$2,000 or more in the appropriate county or counties. Generally, a

lien is not filed for liabilities that do not include a tax or fee because an adjustment or request for relief may be pending, but it can be done if the total amount due is greater than \$2,000 and verification is made that there are no adjustments or requests for relief pending.

A lien will be filed:

- 1. 180 days after an amount, if sufficient, becomes delinquent on a determination or redetermination,**
- 2. 180 days after issuance of a billing for an amount due on a return filed without payment, with a partial payment, or for penalty and interest because of late payment, or**
- 3. 180 days after a successor's billing is issued.**

A lien should not be filed after 180 days if any of the following conditions exist:

- 1. There are outstanding levies. Exceptions to this can occur. For example, the tax/feepayer has a large balance due and outstanding levies are generating minimal payments. If payment in full is not anticipated and additional collection action is warranted, it is appropriate to file a lien. In addition, if a levy is sent to secure some assets that may not be liquidated until sometime in the future or that may have a secured interest against them, filing a lien is appropriate.**
- 2. Payments are being received per a payment plan and financial documentation indicates a lien is not necessary to secure the state's interest.**
- 3. The payment plan will satisfy the liability within one year and the tax/feepayer has not been a previous collection problem.**
- 4. If the tax/feepayer has been extended additional time to pay.**

If it is determined that a lien is necessary, ~~staff should complete~~ a thorough search for real property **should be completed** to ensure that liens are filed in the appropriate county or counties specific to each tax/feepayer.

Policy and Minimum Amounts — Notice of State Tax Lien (Cont. 1) 757.060

To prevent ~~inappropriate liens, staff should only file a lien~~ **erroneous filings, liens should be filed** in counties where the tax/feepayer resides, where the business or tax/feepayer is/was located, and where property is owned or may have previously been owned. If it is determined that a state tax lien should be filed, ~~staff~~ **the collector** must:

- 1. Investigate sources such as income tax returns, RealQuest, CoreLogic, credit reports, and information documented in case notes to obtain county-specific information.**
- 2. Document in the system ACMS by utilizing the external real property summary, a real property summary to include all actions regarding property searches or other methods used to determine whether the tax/feepayer owns, has owned, or may own real property, specifically noting each county.**
- 3. Complete a "Lien Review Summary" in ACMS. List Document in the system the county or counties to be included in the lien filing and specifically state why each county is included in the request.**

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Generally, a lien is not filed for liabilities that do not include a tax or fee because an adjustment or request for relief may be pending, but it can be done if the total amount due is greater than \$2,000 and verification is made that there are no adjustments or requests for relief pending.

California Department of Tax and Fee Administration (CDTFA) policy is to file a lien 30 days after the demand date, if there is a valid business reason for such action. Otherwise, a lien will not normally be filed until after 180 days have expired. Supervisory approval of all lien requests initiated prior to the expiration of the 180 days is required and must be documented in ACMS.

A lien should be filed after 180 days if either of the following circumstances apply:

1. Requests for payment in full, installment payments and financial documentation have gone unanswered.

The tax/feepayer has not responded to phone calls or notices.

NOTE: Accounts on a payment plan are not subject to the 180-day policy, and liens should not be requested 180 days after the liability is established for accounts in payment plans. Rather, the process to initiate a lien request on an account in a payment plan begins when the liability becomes 30 months old. The 30 months are counted from the date the liability becomes due and payable as long as 30 days have lapsed from the issue date of a demand notice. When this occurs, ~~staff~~ **the collector** will send the tax/feepayer CDTFA-407-L, *Notice of Intent to Lien*. ~~Staff will~~ **and** then **must** wait 45 days after sending the CDTFA-407-L before initiating the lien request. through ACMS.

In most cases, a *Notice of State Tax Lien* is filed for accounts with delinquent amounts of \$2,000 or more in the appropriate county or counties:

1. 180 days after an amount, if sufficient, becomes delinquent on a determination or redetermination, or
2. 180 days after issuance of a billing for an amount due on a return filed without payment, or with a partial payment, or for penalty and interest because of late payment, or
3. 180 days after a successor's billing is issued.

A lien should not be filed after 180 days if any of the following conditions exist:

1. There are outstanding levies. Exceptions to this procedure can occur. For example, the tax/feepayer has a large balance due and outstanding levies are generating minimal payments. If payment in full is not anticipated and additional collection action is warranted, it is appropriate to file a lien. In addition, if a levy is sent to secure some assets that may not be liquidated until sometime in the future or that may have a secured interest against them, filing a lien is appropriate.

Policy and Minimum Amounts — Notice of State Tax Lien

(Cont. 2) 757.060

- ~~2. — Payments are being received per a payment plan and financial documentation indicates a lien is not necessary to secure the state’s interest.~~
- ~~3. — The payment plan will satisfy the liability within one year and the tax/feepayer has not been a previous collection problem.~~
- ~~4. — If the tax/feepayer has been extended additional time to pay.~~

A lien will be filed after the collection item becomes aged 30 months unless payment in full is expected within 30 days.

Liens should not be filed, **and the account should be placed into sundry withhold status or a Stop Lien indicator should be added (see CPPM section 757.062)**, ~~at any time~~ in any of the following situations:

- 1. The action violates the automatic stay afforded by the ~~Bankruptcy Code~~.
- 2. The liability has been discharged in bankruptcy.
- ~~2.3.~~ **A bankruptcy case was recently filed and the system has not yet been updated.**
- ~~3.4.~~ An Offer-in-Compromise is pending and the Offer-in-Compromise Section has not been previously advised.
- 5. The action violates an Indian tribe’s sovereign immunity (see Business Taxes Law Guide Annotation 170.0002.750, (8/22/96)).
- 6. **The tax/feepayer is in escrow and the information indicates the escrow will pay in full the entire outstanding liability.**
- ~~4.7.~~ **The tax/feepayer has paid the liability in the office and the lien is about to be issued.**

For delinquent amounts exceeding \$5,000, a lien will also be filed with the office of the California Secretary of State. Special Operations Branch (SOB) will file the lien:

- 1. Upon receipt of a request for such action by the collector.
- 2. If SOB’s review of the file indicates such action is appropriate.

A lien must be filed with the office of the Secretary of State for all referrals to the Attorney General for Intervenor Actions (see CPPM 757.130, *Lien on Cause of Action*).

RTC section 7097 and similar statutes for the special taxes and fees programs require that the CDTFA give notice to the tax/feepayer that a lien may be filed at least 30 days prior to filing or recording a lien. This notification is routinely included on the demand billing, which is sent to the tax/feepayer approximately 15 days after the liability becomes final.

If it becomes necessary to record or file a lien before the 180-day period expires, or if the lien covering real property should be extended to other counties, a request should be forwarded to SOB by the referring office. ~~using~~ **For accounts managed in ACMS, a CDTFA–200-A, Special Operations Action Request– is used.** The request for issuing an early lien should contain a reason for the action. The reason, as well as the request, must be documented in ~~the system~~ **ACMS notes** and have received supervisory approval. **For accounts managed in CROS, the collector sends a work item to their supervisor for approval. The supervisor must add an approval note to the work**

item and then unassign it so the work item will be routed to the appropriate SOB work queue.

If a tax/feepayer ~~is~~**has** a multiple-~~location~~**outlet** business, ~~SR Y for example,~~ the referring office should request SOB to record liens in any county in which real property is found. If no real property is found, a lien will be recorded only in the county where the “master” business location is located. If an out-of-state tax/feepayer qualifies for a lien but owns no California property, a real property lien should be requested to be filed in Sacramento County.

For tax/feepayers who file bankruptcy, liens cannot be filed until after the automatic stay has been lifted. Post-petition liens on pre-petition liabilities will only be filed where:

1. The debtor filed for bankruptcy relief and the liability was not discharged.
2. The bankruptcy case was dismissed.

In limited circumstances, the CDTFA may be required to file an abstract of judgment rather than filing a lien. Current policy dictates that the filing of an abstract of judgment is limited to renewing a previously recorded abstract prior to its expiration date. This procedure is mainly used for extending the period of the lien acquired by recording of the original abstract. SOB is responsible for the timely renewal of abstracts.

AUTOMATED LIENS

757.062

The Centralized Revenue Opportunity System (CROS) features an auto-lien function. Automated liens are filed 180 days after the *Notice of Demand for Payment* is mailed on the initial finalized debt that exceeds \$2,000. Liens will be filed in the counties associated with the tax/feepayer’s California address or property assets identified in a collection case, or if there is no identifiable address in California, the lien is filed in Sacramento County. A lien will also be filed with the California Secretary of State for delinquent amounts exceeding \$5,000. The automated lien amount will include any additional debts finalized during those 180 days for which 30 days have lapsed from the issue date of a Demand Notice (RTC section 7097).

Liens will not automatically be filed on accounts on a payment plan if the payment plan is less than 30 months old and will satisfy the liability within 36 months of the liability being final.

If the auto-lien function is turned on and it is determined that a lien should not be filed, the collector should initiate a Stop Lien indicator to prevent the lien from being filed. See CPPM section 757.060 for details on when liens should not be filed.

Stop Lien indicators are alerts placed on an account or a period of liability by a user or the system. Indicators, in general, can perform or prevent an action, or can be informational only. The following are the Stop Lien indicators:

- **Stop Lien Automatic Add – stops new automatic liens being added to a collection case.**
- **Stop Lien Extension – prevents filing a lien extension.**

- **Stop Lien Manual Add** – prevents users from staging a new manual lien.
- **Stop Lien Release** – stops the lien from being released.
- **Stop Lien Activities** – stops all lien activity whether it is automatic or manual.

Once an indicator has been added, the collector cannot delete it. The indicator must be “ceased” so that it no longer affects the collection case to which it is applied. It is important to remember to “cease” indicators when appropriate since they can impact system processes. Collectors and supervisors with edit access have the ability to add/cease the indicators listed above. Indicators can be ceased immediately by leaving the current date in the Thru field or can be ceased on a date in the future. However, it is not possible to cease an indicator retroactively.

UNITED STATES COAST GUARDS LIENS

757.065

Liens filed with the United States Coast Guard (USCG) must be timely and meet the provisions contained in U.S. Code Title 46, section 31343. Based upon this section, the Notice of Claim of Lien expires three years after the date the state tax lien was established, which is reflected on the Notice of State Tax Lien in the column identified as the “Assessment” date. USCG Documentation Center will return CDTFA requests unrecorded if the assessment date is over three years old.

~~Staff~~**The collector** must determine the names and mailing addresses of all lien holders and mortgagees of a vessel before requesting a USCG lien. These names and addresses should be entered in **the system.ACMS comments**. Lien holder and mortgagee information is obtained by reviewing the USCG vessel abstract on file for all vessel use tax accounts. For sales tax accounts, ~~collection staff~~**the collector** should contact the Use Tax Administration Section (UTAS) for instructions on how to order the abstracts, or related documents, from the USCG. If mailing address information on the abstract is incomplete or missing, ~~staff should order~~**should be ordered** from the USCG. If no lien holder or mortgagee exists, ~~staff~~**the collector** should make a note in **the system.ACMS comments**.

~~When requesting~~**For accounts managed under ACMS, requests should be sent to the SOB on a USCG lien, staff will use a CDTFA-426-CG, Notice of State Tax Lien for U.S. Coast Guard**, because it contains the declaration required under U.S. Code Title 46. Under this section, the CDTFA is required to include a signed declaration that contains the tax/feepayer’s name and account number, vessel name and documentation number, and the lien holder or mortgagee’s names and addresses. The declaration and lien must be signed by the same person. Section 31343 also requires the CDTFA to mail copies of the signed declaration and the lien document to each lien holder and mortgagee that has been identified. ~~Staff~~**The collector** must enter ACMS comments **in the system** when the copies have been sent. **For accounts managed under CROS, the collector sends a work item to their supervisor for approval. The supervisor must add an approval note to the work item and then unassign it so the work item will be routed to the appropriate SOB work queue.**

REVOCABLE TRUST LIENS

757.066

A settlor (also known as a “donor” or “trustor”) is one who creates a trust by giving real or personal property “in trust” to another (the trustee) for the benefit of a third person

(the beneficiary).

Assets of a revocable trust are subject to the claims of creditors of the settlor(s) of the trust, during the settlor(s) lifetime. Conversely, the settlor of a revocable trust is liable for the debts of his or her revocable trust.

A Notice of State Tax Lien against a revocable trust should contain the name of the living settlor(s). A Notice of State Tax Lien against a settlor should contain the name of the trust. **For accounts managed under ACMS,** Requests should be forwarded to the SOB on a CDTFA-200-A, *Special Operations Action Request*. ~~Staff~~**The collector** will check the box labeled "Other Requests," and must provide the settlor(s) name and current address, and documentation that the trust is revocable. **For accounts managed under CROS, the collector sends a work item to their supervisor for approval. The supervisor must add an approval note to the work item and then unassign it so the work item will be routed to the appropriate SOB work queue.**

PRIORITY OF LIENS

757.080

A lien on real and personal property is created as a result of a delinquent tax liability. A tax lien on real property may be perfected by:

1. Recording a notice of state tax lien with an office of the county recorder.
- ~~2. Recording of a notice of state tax lien.~~
- ~~3.~~ **2.** Filing an abstract in a county recorder's office.

A lien on personal property is perfected by filing a notice of state tax lien with the office of the Secretary of State.

HOMESTEAD EXEMPTIONS

757.100

A person or married couple is limited to claiming a single homestead exemption at a time. Homestead exemptions protect a portion of the homestead from forced sale. The amount of the homestead exemption is one of the following:

One hundred ~~fifty~~**seventy-five** thousand dollars (\$~~175~~**175**,000) if the tax debtor or spouse is 65 years of age or older or; 55 years of age or older with a gross annual income of **not more than** \$~~125~~**125**,000 (single) or \$~~352~~**352**,000 (married); or is unable to be employed due to a physical or mental disability

1. ~~One hundred~~**Seventy-five** thousand dollars (\$~~75~~**100**,000) for the head of a family
2. ~~Seventy-five~~**Fifty** thousand (\$~~75~~**75**,000) for any other person.

(See Code of Civil Procedure (CCP) sections 704.720, 704.730, 704.950, 704.960 and 704.965.)

RELEASES, PARTIAL RELEASES AND SUBORDINATION OF LIENS

761.000

GENERAL

761.010

At any time and under any of the laws it administers, the California Department of Tax and Fee Administration (CDTFA) may release all or part of a tax/feepayer's real property from the effect of a lien or liens it filed on the tax/feepayer's property. The CDTFA may also subordinate its lien or liens to other liens or encumbrances if:

1. It is determined the amount due is sufficiently secured by a lien or other property.
2. Collection of the amount due will not be jeopardized by subordinating the lien.

Full lien releases are furnished to tax/feepayers only after full payment has been made or, if amounts are still due, they may be furnished to escrow agents or title companies along with a statement of payment and conditional release requirements, which must be met prior to the use of the release. All full releases are prepared and mailed by the Special Operations Branch (SOB). Lien releases may also be issued if it is in the best interest of the state or to facilitate payment.

ROUTINE RELEASES OF LIENS

761.020

Government Code section 7174(c)(2) requires the CDTFA, not later than 40 days after the liability has been satisfied, to do one of the following:

1. Record a certificate of release ~~in~~ the office of the county recorder where the notice of state tax lien is recorded, or
2. Deposit in the mail or otherwise deliver to the tax/feepayer a certificate of release.

Therefore, in compliance with section 7174(c)(2), liens automatically enter the "Lien Release" state in ~~the system~~ **ACMS** after 40 days from the date of payment.

~~Staff should regularly be requesting~~ Lien releases **should be requested** when it is determined that the liability secured by a lien has been paid in full. In all cases where it is determined that the liability was paid in full or abated prior to the lien recording, a "free" release of lien will be requested. A free release of lien allows the tax/feepayer to have the lien removed from official records without paying a fee.

REQUESTS FOR RELEASES OF LIENS

761.030

When a tax/feepayer requests a release of lien, proof of payment such as copies of canceled checks (both sides) must be provided for payments made by personal check within the last 30 days. If the lien recording information is not available in ~~the system~~ **ACMS**, the tax/feepayer should be advised that a release cannot be issued until the recording date becomes available. If a release is required sooner, CLEAR can be used to obtain the recording information. If the recording information is not available through CLEAR, the tax/feepayer should be advised that they can obtain a copy of the recorded lien from their respective county recorder (this is more applicable in larger counties where it takes longer for the CDTFA to receive the recorded lien-).

Requests for Releases of Liens

(Cont.) 761.030

Requests for releases to be mailed to escrow agents, title companies, or the tax/feepayer to enable the conveyance of property, will be handled as expeditiously as possible. If the request is received by a field office, it will be forwarded to the SOB within one day. When

requests are received in the SOB, whether from a field office or directly from the tax/feepayer or its agent, the release should be mailed within one day.

If the release mailed to an escrow agent or title company requires payment be made prior to its use, the SOB will maintain a proper follow-up to ensure payment is received ~~or the unused release~~ **and any overpayment** is returned. When the liability is paid, a lien release is sent directly to the county recorder. Title companies and escrow agents who record releases without making payment in violation of the CDTFA's written instructions become liable for the amount they failed to pay.

PAYMENTS BY PERSONAL CHECK — RELEASE OF LIEN 761.040

Upon payment of a liability by personal check, the 40-day period required by Government Code section 7174(c)(2) in which to issue a lien release ~~(through ACMS)~~ will be observed. This period allows time for the personal check to be processed through the banking system and prevents a lien release from being issued if the tax/feepayer's account does not have sufficient funds. In instances where the tax/feepayer is requesting a release prior to the 40-day period expiring, he or she should be advised that a lien release will not be furnished unless the tax/feepayer can present for examination the cancelled check used in making the payment. If the release is to be delivered to the tax/feepayer at the time payment is made, such payment must be in cash, money order, certified check or cashier's check. Company checks of escrow agents or title companies are also acceptable.

PAYMENTS BY CREDIT CARD – RELEASE OF LIEN 761.045

Credit card payments will be treated as cash payments for the purpose of lien releases. Prior to releasing a lien for a liability paid by credit card, the payment must be verified in the ~~system~~ **Integrated Revenue Information System (IRIS)**.

RELEASE OF LIENS ACQUIRED THROUGH ERRONEOUS RECORDINGS 761.050

The CDTFA is responsible for releasing liens acquired through erroneous recording of certificates or abstracts. **A lien is considered to be filed in error when any of the following occur:**

- ~~An example of a certificate or abstract recorded in error is where the recording~~ **The recording** took place after full payment had been made. **payment in full was received for all affected periods, with all payments effective prior to the recording date.**
- **All periods or bill items on the recorded lien were subsequently adjusted to zero due to the determination that there was no filing requirement or there was no tax due during the originally assessed period.**
- **The recording was filed using an incorrect name, entity name, FEIN, SSN, corporation number, or LLC number.**
- **The underlying liability secured by the lien was determined to have been billed in error.**
- **The recording was filed contrary to the restrictions described in CPPM section 757.060.**

If a lien is determined to have been recorded in error, the collector must immediately notify the SOB by adding an SOB – Miscellaneous Lien Request work item or by sending a CDTFA-200-A, *Special Operations Action Request*, for tax/feepayer accounts in ACMS/IRIS. The notes should clearly request a free release of lien, explain that the lien was recorded in error, and include all related details. All relevant documentation should be added as an attachment in CROS or included with the CDTFA-200-A request. If the request is urgent, the collector must immediately inform the SOB of the new work item or CDTFA-200-A by sending an email to the SOB inbox at LegalSOB@cdtfa.ca.gov.

The SOB will send a free release to the customer and the entity recording the lien as soon as possible, but no later than seven days, after the determination and the receipt of erroneous lien recording information. The release must contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the SOB must immediately issue a free release of lien to the customer and the entity recording the lien.

When the CDTFA releases an erroneously filed lien, notice of the release should be mailed to the customer and, upon the customer's request, a copy must be mailed to the major credit reporting companies in the county where the lien was filed.

~~In these cases, the SOB will prepare a release clearly showing that the document was recorded in error and the release will be forwarded to the county recorder to be recorded without payment of the fee.~~

SUBORDINATION OF LIENS

761.060

Subordination of real property liens are usually requested for the purpose of:

1. Acquiring property on which a trust deed is to be executed, which is to become a first lien.
2. For the purpose of placing a new encumbrance on property that already stands in the tax/feepayer's name.

Subordination of a lien should not be issued merely as a convenience to the tax/feepayer or without proper investigation to determine the merits of the request. In most cases, the position of the state will not be worsened by issuing a subordination since property is to be acquired or presently owned property will be retained.

In cases of refinancing currently owned property, the tax/feepayer will have money coming to them at the close of escrow. In these cases, a subordination of lien will not be given unless there are extenuating circumstances or unless the tax/feepayer has agreed to have the surplus funds from the escrow remitted directly to the CDTFA.

In all cases where a subordination of a lien is requested, the ~~responsible office staff~~ **collector** will send a written recommendation, including supporting reasons, to the SOB, accompanied by the tax/feepayer's written request stating the reason the subordination is desired. ~~Also forwarded will be the following~~ **The following will also be forwarded:**

1. The date and amount of the deed of trust to be executed.
2. The names of the parties executing the deed of trust as those names will appear on the instrument.
3. The name of the trustee.

4. The name of the party in whose favor (beneficiary) the deed of trust will be executed.
5. Copy of the preliminary title report.
6. The legal description of the property as it will appear on the deed of trust (required only if this description is different than the description contained in the preliminary title report).
7. Schedule of proposed disbursement of funds by the escrow holder.
8. Printout of a real property search report (~~RealQuest~~ **CoreLogic**, CLEAR, Westlaw, etc.).
9. Lender's appraisal report or statement of property value.

~~Every such~~ **Each** request will require a thorough investigation to assemble all of the required facts in order to make a decision. In every case where the tax/feepayer has the ability to pay, no subordination will be issued.

PARTIAL RELEASES OF LIENS

761.070

A partial release of lien, when recorded, has the effect of removing a lien from ~~only~~ the particular real property described in the partial release, while allowing the lien's effect on other real property in which the tax/feepayer has an interest to remain undisturbed. Partial releases are given at the discretion of the CDTFA and their issuance is not mandatory. Releases of this type are usually requested in those cases where the tax/feepayer does not have available funds to pay the amount due, but does own more than one parcel of real estate, and is selling at least one, but not all parcels of property owned.

Also, a partial release of lien might be requested when the tax/feepayer is selling his/her only parcel of real property and the surplus funds are insufficient to pay the entire tax liability. In this case, the tax/feepayer must agree to have the surplus money from the sale remitted directly to the CDTFA in exchange for issuing a partial release of lien.

Partial releases are given only when such action will not jeopardize collection of the remainder of the account or where the lien on other property provides adequate security. When a partial release of lien is issued, all amounts that would normally be paid to the tax/feepayer in excess of the amounts due prior lien holders plus the costs of the sale will be paid directly to the CDTFA.

All requests for partial releases shall be transmitted to the SOB. In order for the SOB ~~in conjunction with the legal staff,~~ to consider the request properly, the following is required:

1. Cover memo including recommendation and reasons in support of recommendation.
2. Tax/feepayer's or escrow's written request stating the reason the partial release is desired.
3. Lender's appraisal report or statement of market value.
4. Copy of preliminary title report.
5. Schedule of proposed disbursement of funds by the escrow agent.
6. Printout of a real property search report (~~RealQuest~~ **CoreLogic**, CLEAR, Westlaw, etc.).

Every request for a partial release of lien requires thorough investigation. In every case where the tax/feepayer has the ability to pay in full, no partial release of lien will be issued.

RELEASE OF LIENS WHEN CDTFA RECORDS ARE DESTROYED 761.080

It is not unusual for the CDTFA to receive requests for a release of lien in cases where records have been destroyed. When a request is received, the Taxpayer Records Unit should be contacted to determine if they have the necessary records. If the Taxpayer Records Unit's records have been destroyed, responsible offices should secure, either from the escrow agent, title company, or from the office of the county recorder, all of the data necessary for the preparation of the release. This information should then be promptly forwarded to the SOB along with the request for the release. The required information is as follows:

1. Certificate number.
2. Name of person or persons against whom recorded, including dba, if any.
3. Amount of certificate.
4. County in which recorded.
5. Date, book, and page of recording.

In every case where a request for a release is received and records are destroyed, it must definitely be ascertained that the certificate for which a release is requested was recorded by the CDTFA. Failure to do so will result in unnecessary work, as well as delay for the tax/ feepayer, if it is later discovered the certificate was recorded by another agency.

LIENS AFFECTING PERSONS OTHER THAN TAX/FEEPAYERS 761.090

On occasion, a person with the same or very similar name as a CDTFA tax/feepayer may be affected by a CDTFA lien. The person generally becomes aware of the lien when it appears on a credit report or title report. Such persons will likely contact the CDTFA to request assistance in resolving the problem.

When this situation arises, ~~staff should~~ **the first step is to** verify the person is not, ~~in fact,~~ the tax/feepayer being sought. To verify that the person contacting the CDTFA is not the tax/feepayer in question, require the person to appear in one of the CDTFA's field offices. The following information is required for proper identification:

1. His or her driver license or verifiable picture ID, such as from a place of employment.
2. Social security card.
3. Copies of other documents that show the social security number (e.g., payroll documents, income tax returns).

If the above documents do not conclusively demonstrate that the person is not the tax/feepayer in question, other evidence must be submitted. ~~Staff~~ **The collector** responsible for the account has the latitude and responsibility to work with the person to determine the acceptable documentation verifying that he or she is not the tax/feepayer in question.

Once the above documentation is obtained, ~~staff~~ **the collector** should photocopy the documents and prepare a cover memo and recommendation that includes:

1. The person's name.
2. The person's mailing address.
3. The person's telephone number.
4. A brief description of how the person discovered the error (e.g., credit report, title report).

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5. Any other supporting documents.

The memo and the photocopies of the documents should then be sent to the SOB where ~~staff will prepare~~ a notarized letter (“wrong person” letter) **will be prepared** stating that the indicated person is not the correct tax/feepayer. A cover letter is sent to the person with this notarized letter suggesting that the person provide the notarized letter to credit reporting companies and others who may question the lien. The letter should mitigate any future concerns or issues regarding the lien.