



STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
949-246-9088 • FAX 916-323-3387
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

BARBARA ALBY
Acting Member
Second District, Sacramento

KRISTINE CAZADD
Interim Executive Director

November 2, 2010

Honorable Roy Buckner
Imperial County Assessor
P.O. Box 456
Bridgeport, CA 93517

**Re: *Responsibility for Delinquent Property Taxes
Assignment No. 10-102***

Dear Mr. Buckner:

This opinion is in response to a letter from _____ of your office, regarding the responsibility of the California Housing Finance Agency (CalHFA) to pay the delinquent property taxes on properties it obtains through foreclosure.

As explained below, the unpaid taxes, penalties and costs (referred to collectively as delinquent taxes), for tax years prior to the foreclosure, that have become a lien on the property must be transferred to the unsecured roll at the time CalHFA acquires a property. Thereafter, such delinquent taxes are only collectible from the prior property owner, unless the property has already become subject to a power of sale, in which case the delinquent taxes remain as a lien on the property.

Law & Analysis

CalHFA is a component unit of the State of California, created under the Zenovich-Montrose-Chicon Housing and Home Finance Act, codified as Health and Safety Code sections 50000 et seq. (See Health & Saf. Code, § 50003.) To accomplish its mission to provide affordable housing, CalHFA acts as direct lender, loan purchaser, and mortgage insurer of both its own loans and those of other lenders. (See Health & Saf. Code, §§ 50000, 50003, 51611.) CalHFA's mortgage insurance programs are conducted with funds held in the California Housing Loan Insurance Fund under Health and Safety Code section 51611. As a direct lender and holder of first deeds of trust, CalHFA forecloses on properties of defaulting borrowers and takes ownership of those properties. Often, the defaulting borrowers have not paid the property taxes on their homes for the current and prior tax years.

All real property in California is taxable unless specifically exempt under California law or made immune by federal law. (Cal. Const., Art. XIII, § 1, subd. (a); Rev. & Tax. Code,¹ § 201.) Property owned by the state and property owned by a local government that is not outside its boundary is exempt from property taxation. (Cal. Const., Art. XIII, §§ 3 and 11, subd. (a).)

¹ All "section" references are to the Revenue and Taxation Code unless otherwise indicated.

In Letter to Assessor (LTA) 2008/017, we clarified that the CalHFA is a public instrumentality and a political subdivision of the state, and as such is exempt from property taxes under California Constitution, article XIII, section 3, subdivision (a). This exemption is also statutorily granted. Health & Safety Code section 50954 states, in relevant part that CalHFA "shall not be required to pay any tax or assessment on any property owned by the agency."

In that LTA, we stated that once CalHFA obtains a property through foreclosure, the property becomes exempt from future property taxation. However, we did not address the present issue – whether CalHFA is responsible for delinquent taxes that had become a lien against a property prior to CalHFA's acquisition.

In California, real property taxes are *in rem* taxes against the property. Real property taxes become a lien against the property. (Rev. & Tax. Code, § 2187.) If the taxes are not paid, the normal method of collection is to enforce a sale of the property. (Rev. & Tax. Code, § 3436 et seq.) The general principle on personal responsibility for California property taxes is that the taxes are imposed on the property itself and no personal liability arises from their nonpayment. The sole security for delinquent real property taxes is to sell the property itself. (Rev. & Tax. Code, §§ 3351 et seq; *City of Huntington Beach v. Superior Court* (1978) 78 Cal.App.3d 333, 340; *Garcia v. County of Santa Clara* (1978) 87 Cal.App.3d 319, 323.)

In general, real property taxes have priority over all other liens on the property, regardless of the time those liens are created. (Rev. & Tax. Code, § 2192.1.) Therefore, in general, when a foreclosing lienholder acquires a property subject to a lien for unpaid property taxes, the taxes remain secured by the property and the foreclosing lienholder takes the property subject to the lien. However, the rules are different when the foreclosing lienholder is a government entity.

When the federal government, the State of California, or any county, city, school district or other public entity acquires real property, if the acquisition required any taxes that were secured by the property on the lien date to be transferred to the unsecured roll pursuant to Article 5 of Chapter 4 of Part 9 "Cancellation of Taxes on Exempt Property" (commencing with section 5081), the property is "unsecured property." (Rev. & Tax. Code, § 134, subdivision (b).) Taxes due on unsecured property may be collected by seizure and sale of any of the assessee's personal property, improvements or possessory interests. (Rev. & Tax. Code § 2951.)

Section 5084, subdivision (a) provides that delinquent taxes for prior tax years that constitute a lien on exempt property² at the time a public agency acquires the property are not to be canceled. Subdivision (b) states that, in cases other than government purchases or eminent domain, delinquent taxes are to be transferred to the unsecured roll pursuant to section 5090 and collected from either the person from whom the property was acquired or the public entity that acquired the property. Section 5090 provides that if such taxes, penalties and costs are unpaid at the time set for the declaration of default of property on the secured roll, they must be transferred to the unsecured roll pursuant to section 2921.5. The time set for the declaration of default of property on the secured roll is July 1 following the end of the tax year. (Rev. & Tax. Code, § 3436.)

² Under section 5081, "exempt property" is defined to include property that is acquired the state or by a county, city, school district or other public entity that becomes exempt from property taxation under California law.

Under section 2921.5, the county auditor must transfer the delinquent taxes on unsecured property to the unsecured roll of the corresponding year at the same time the taxes are canceled on the property, and are then to be collected in the same manner as other delinquent taxes on the unsecured roll. These amounts continue to be subject to penalties until paid and are collectible from either the person from whom the property was acquired or from the public entity that acquired the property.

The statutory framework is clear. Under section 5084, when a public agency, through foreclosure, acquires a property with delinquent taxes levied for prior tax years that constitute a lien on the property at the time of acquisition, the auditor must transfer the delinquent taxes to the unsecured roll pursuant to section 5090 and 2921.5, and collect them from the prior property owner or the public agency. However, as provided in section 50954 set forth above, CalHFA is statutorily exempt from being required to pay any property taxes or assessments on property that it owns. As a consequence, after CalHFA acquires a property through foreclosure, the county must transfer the delinquent taxes to the unsecured roll, and may only force collection from the prior property owner.

There is one exception. Section 5088 provides that delinquent taxes with respect to property that has become subject to a power of sale under section 3691 are not to be transferred to the unsecured roll. Section 3691 provides that property becomes subject to a power of sale five years after the property has become tax defaulted (three years for nonresidential commercial property). Thus, if property has become subject to a power of sale under section 3691, the assessor need not transfer the delinquent taxes to the unsecured roll. If CalHFA acquired such a property, the taxes would remain a lien on the property. CalHFA would not be required to pay those taxes under Health and Safety Code section 50954, but if the delinquent taxes remained unpaid, they would continue to be a lien on the property.

With respect to the taxes due on the current year, under section 5082.1, when a public entity acquires property, it must notify the assessor and request that the auditor cancel the taxes for the remaining portion of the fiscal tax year after it acquired the property. Under section 5086.1, the auditor must cancel the taxes on the acquisition date provided in the notice the public entity gave pursuant to section 5082.1.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Matthew F. Burke

Matthew F. Burke
Tax Counsel III (Specialist)

MB/yg

J:/Prop/Prec/Tax Collection/2010/10-102.doc

cc: Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70