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SB-1506 Property taxation: tax collector: notices. (2017-2018)

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Senate Bill No. 1506

CHAPTER 119

An act to amend Sections 3365, 3691, 3691.1, 3701, and 3704.7 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor July 16, 2018. Filed with Secretary of State July 16, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1506, Committee on Governance and Finance. Property taxation: tax collector: notices.

Under existing property tax law, unpaid property taxes are declared delinquent and subject to penalties and costs, and, if the taxes remain unpaid, the property is declared tax-defaulted and subject to sale, as provided, if not redeemed by the owner within a certain amount of time. Existing property tax law requires the tax collector to provide assesses or parties of interest, as applicable, of tax-defaulted property subject to sale with specified notices, including, among others, a notice of default and power to sell the property for nonpayment of taxes, a notice of intended sale, and a notice of proposed sale. Under existing federal law, the filing of certain bankruptcy petitions or an application under the Securities Investor Protection Act of 1970, as provided, operate as a stay of specified enforcement and collection actions, except for the issuance by a governmental unit of a notice of tax deficiency.

This bill would require the notices described above to constitute a "notice of tax deficiency" for the purposes of the exception under federal law described above if the property subject to the notices is the subject of a bankruptcy proceeding.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3365 of the Revenue and Taxation Code is amended to read:

3365. (a) After the first publication of the notice and not less than 21 days nor more than 35 days before July 1, the tax collector shall send by registered mail to the last assessee of the tax-defaulted property at his or her last known address a notice of default and power to sell the property for nonpayment of taxes. The tax collector shall make a reasonable effort to ascertain the address of the last assessee of the tax-defaulted property, including, but not limited to, an examination of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll, an examination of the most recent telephone books in the county in which the tax-defaulted property is located, and an examination of the telephone book covering the area of the last known address of the last assessee.

(b) Any failure of the tax collector to make a reasonable effort to ascertain the address of the last assessee as required by this section shall not affect the validity of any subsequent sale to satisfy the lien of unpaid taxes.

(c) If the property subject to the notice required by this section is the subject of a bankruptcy proceeding, the notice shall constitute a "notice of tax deficiency" pursuant to Section 362(b)(9)(B) of Title 11 of the United States Code.

SEC. 2. Section 3691 of the Revenue and Taxation Code is amended to read:

3691. (a) (1) (A) Five years or more, or three years or more in the case of nonresidential commercial property, after the property has become tax defaulted, the tax collector shall have the power to sell and shall attempt to sell in accordance with Section 3692 all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of the parcels, as provided in this chapter, unless by other provisions of law the property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale. In the case of tax-defaulted property that has been damaged by a disaster in an area declared to be a disaster area by local, state, or federal officials and whose damage has not been substantially repaired, the five-year period set forth in this subdivision shall be tolled until five years have elapsed from the date the damage to the property was incurred.

(B) A county may elect, by an ordinance or resolution adopted by a majority vote of its entire governing body, to adopt conditions and procedures for the delay of sale of properties as described in subparagraph (A) that it finds may be eligible to file a property tax postponement claim with the State Controller prior to January 1, 2017, and may cancel any delinquent penalties, costs, fees, and interest associated with these properties.

(C) A county may elect, by an ordinance or resolution adopted by a majority vote of its entire governing body, to have the five-year time period described in subparagraph (A) apply to tax-defaulted nonresidential commercial property.

(D) For purposes of this subdivision, "nonresidential commercial property" means all property except the following:

(i) A constructed single-family or multifamily unit that is intended to be used primarily as a permanent residence, is used primarily as a permanent residence, or that is zoned as a residence, and the land on which that unit is constructed.

(ii) Real property that is used and zoned for producing commercial agricultural commodities.

(2) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(3) (A) The tax collector shall provide notice of an intended sale under this subdivision in the manner prescribed by Sections 3704 and 3704.5 and any other applicable statute. If the intended sale is of nonresidential commercial property that has been tax-defaulted for fewer than five years, all of the following apply:

(i) On or before the notice date, the tax collector shall also mail, in the manner specified in paragraph (1) of subdivision (c) of Section 2924b of the Civil Code, notice containing any information contained in the publication required under Sections 3704 and 3704.5 to, as applicable, all of the following:

(I) The parties specified in paragraph (2) of subdivision (c) of Section 2924b of the Civil Code.

(II) Each taxing agency specified in paragraph (3) of subdivision (c) of Section 2924b of the Civil Code.

(III) Any beneficiary of a deed of trust or a mortgagee of any mortgage recorded against the nonresidential commercial property, and any assignee or vendee of these beneficiaries or mortgagees.

(ii) For purposes of this paragraph:

(I) "Notice date" means a date not less than 45 days nor more than 120 days before an intended sale or not less than 45 days nor more than 120 days before the date upon which the property may be sold.

(II) "Recording date of the notice of default" as used in subdivision (c) of Section 2924b of the Civil Code means a date that is 30 days before the notice date.

(III) "Deed of trust or mortgage being foreclosed" as used in subdivision (c) of Section 2924b of the Civil Code means the defaulted tax lien.

(B) If the property subject to the notice required by this paragraph is the subject of a bankruptcy proceeding, the notice shall constitute a "notice of tax deficiency" pursuant to Section 362(b)(9)(B) of Title 11 of the United States Code.

(b) (1) (A) Three years or more after the property has become tax defaulted and a request has been made by a city, county, city and county, or nonprofit organization pursuant to Section 3692.4, or a request has been made by a person or entity that has recorded a nuisance abatement lien on that property, to offer that property at the next scheduled tax sale, the tax collector shall have the power to sell and may sell all or any portion of tax-defaulted property that has not been redeemed, without regard to the boundaries of parcels, as provided in this chapter at the next scheduled tax sale, unless by other provisions of law the property is

not subject to sale. Any person, regardless of any prior or existing lien on, claim to, or interest in, the property, may purchase at the sale.

(B) When a part of a tax-defaulted parcel is sold, the balance continues subject to redemption and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2 (commencing with Section 4131) of Part 7.

(2) Before the tax collector sells vacant residential developed property pursuant to this subdivision, actual notice, by certified mail, shall be provided to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.

(3) Before the tax collector sells vacant residential developed property pursuant to this subdivision, notice of the sale shall be given in the manner specified by Section 3704.7.

(c) The amendments made to this section by the act adding this subdivision apply to property that becomes tax defaulted on or after January 1, 2005.

SEC. 3. Section 3691.1 of the Revenue and Taxation Code is amended to read:

3691.1. (a) The tax collector shall execute a notice whenever a parcel becomes subject to the power of sale set forth in Section 3691 on a form prescribed by the Controller. The county clerk shall take acknowledgment of the notice without charge.

(b) If the property subject to the notice required by this section is the subject of a bankruptcy proceeding, the notice shall constitute a "notice of tax deficiency" pursuant to Section 362(b)(9)(B) of Title 11 of the United States Code.

SEC. 4. Section 3701 of the Revenue and Taxation Code is amended to read:

3701. (a) Not less than 45 days nor more than 120 days before the proposed sale, the tax collector shall send notice of the proposed sale by certified mail with return receipt requested to the last known mailing address, if available, of parties of interest, as defined in Section 4675. The notice shall state the date, time, and place of the proposed sale, the amount required to redeem the property, and the fact that the property may be redeemed up to the close of business on the last business day prior to the date of the sale, and information regarding the rights of parties of interest to claim excess proceeds, as defined in Section 4674, if the property is sold and excess proceeds result from that sale.

(b) The tax collector shall make a reasonable effort to obtain the name and last known mailing address of parties of interest.

(c) The validity of any sale under this chapter shall not be affected if the tax collector's reasonable effort fails to disclose the name and last known mailing address of parties of interest or if a party of interest does not receive the mailed notice.

(d) If the property subject to the notice required by this section is the subject of a bankruptcy proceeding, the notice shall constitute a "notice of tax deficiency" pursuant to Section 362(b)(9)(B) of Title 11 of the United States Code.

SEC. 5. Section 3704.7 of the Revenue and Taxation Code is amended to read:

3704.7. (a) In the case of a property that is the primary residence of the last known assessee, as indicated by either a valid homeowner's exemption on file with the county assessor in the name of the last known assessee, or the fact that the mailing address for the last tax bill is the same address as the property, the tax collector or his or her agent shall, in addition to any other notice required by this chapter, make a reasonable effort to contact in person, not more than 120 days or less than 10 days prior to the date of the sale, the owner-occupant of that property. In the course of the personal contact, the tax collector, or his or her agent, shall inform the owner-occupant of the following:

(1) That the property, if not redeemed, shall be offered for sale at a public auction.

(2) His or her redemption rights pursuant to Part 7 (commencing with Section 4101).

(b) If the personal contact described in subdivision (a) is not made after reasonable efforts, the tax collector or his or her agent shall attempt to serve written notice, no less than five days prior to the date of the sale, with respect to the fact of the sale and the requirement that the tax collector be contacted immediately with respect to redemption of the property.

(c) The amount of the actual and reasonable costs incurred by the tax collector, or his or her agent, or both, in complying with the requirements of subdivisions (a) and (b), as established pursuant to the requirements of Chapter 12.5 (commencing with Section 54985) of Part 1 of Division 2 of Title 5 of the Government Code, shall be added to the required amount for redemption of the property.

(d) No transfer of title shall be invalidated by reason of failure to comply with the requirements of this section.

(e) If the property subject to the notice required by this section is the subject of a bankruptcy proceeding, the notice shall constitute a "notice of tax deficiency" pursuant to Section 362(b)(9)(B) of Title 11 of the United States Code.