

STATE BOARD OF EQUALIZATION



Appeal Name: William Conell

Case ID: ITEM #.

Date: 12/18/14 Exhibit No: 12.1

TP FTB DEPT PUBLIC COMMENT

①

Oct. 1 1994

SALES AND USE TAXES

PRESENTED TO THE BOARD FOR FINAL ACTION

Oct. 1991

Appeals Attorney: John S. Butterfield

Board Hearing: Scheduled for

Business: Pizza restaurant with sales of beer and wine, and
mobile hot dog cart

Tax determined for the period 10-1-91 through 9-30-94

Concurred in

Protested

Proposed tax redetermination

Estimated interest to 10-31-95

Total tax and estimated interest

Payments

Balance

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mobile hot dog cart

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Concurred in

Protested

Proposed tax redetermination

Estimated interest to 10-31-95

Total tax and estimated interest

Payments

Balance \$
0.00

No additional interest will accrue as the determined tax liability has been paid in full.

The petition with respect to a determination in the amount of _____ in tax and interest for the period October 1, 1991 through September 30, 1994 was scheduled to be heard by the Board on _____. Petitioner returned the Notice of Hearing indicating that it was

waiving appearance at the hearing, and requested the Board to consider the information and contentions previously submitted.

Petitioner contends that petitioner's sales of hot dogs from a mobile vending cart are exempt from tax, due to the provisions in Business and Professions Code section 16012, which provide as follows:

"Every soldier, sailor or marine of the United States who has received an honorable discharge or release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever whether Municipal, County or State, and the board of supervisors shall issue such soldier, sailor or marine, without cost, a license therefor."

Petitioner is a veteran of the United States Navy, from which he was honorably discharged. Petitioner therefore asserts that because he vends or peddles hot dogs from his mobile cart, his sales from the cart are exempt from sales tax. The Sales and Use Tax Department (Department) asserts that Business and Professions Code section 16012 only applies to license and permit fees imposed by counties.

The Appeals Section concluded that the exemption contained in Business and Professions Code section 16102 does not provide an exemption from the sales tax to retailers who are honorably discharged veterans. The statute which is now codified in Business and Professions Code section 16102 was originally adopted in 1901 as Political Code section 3366. In 1929, another section of the Political Code, section 4041.14, and limited specifically to counties, was added. It contained the same language as section 3366, however, the comma between "license" and "tax", which was not present in section 3366 was added when section 4041.14 was adopted. Section 4041.14 was eventually recodified in Business and Professions Code section 16102.

If read in its original version, it is clear that the exemption is limited to a "license tax" normally imposed by counties and cities. It is the presence of the comma between the two words in the present version of the statute which allows the petitioner to argue that the statute

applies to all taxes, including sales taxes, rather than just license fees. However, the California Court of Appeal has ruled that the insertion of the comma in question between "license" and "tax" when section 16102 was enacted was inadvertent. (Brooks v. County of Santa Clara (1987) 191 Cal.App.3d. 750 at 756.) The California Attorney General has published an opinion which holds that Business and Professions Code section 16102 applies only to counties. (14 Ops. Atty. Gen. 226.)

In further support of this conclusion is the fact that when the sections of the Political Code which were eventually recodified into the Business and Professions Code were adopted, the Sales Tax was not in existence, having not been adopted until 1932. The Legislature did not necessarily intend, by the adoption of this section, to have exempted persons from a tax which had not even been adopted at the time the exemption was given. Accordingly, The Appeals Section recommended that the tax be redetermined without adjustment.

If the Appeals Section recommendation is approved, notice to the taxpayer will be as follows:

Notice of Board Action

The Board concluded that the exemption contained in Business and Professions Code section 16102 does not provide an exemption from the sales tax to retailers who are honorably discharged veterans.

Accordingly, the Board ordered the tax be redetermined without adjustment.

TITLE: SALES AND USE TAXES
SUBJECT:
KEYWORDS:
COMMENTS:
AUTHOR: Gary Lomazzi
Last saved by: Gary Lomazzi
Create Date:

Oct 12, 2000 

STATE BOARD OF EQUALIZATION

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JOHAN KLEHS
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DEAN ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
State Controller, Sacramento

JAMES E. SPEED
Executive Director

October 13, 2000

Re: ---
Seller's Permit No. ---

Dear Ms. ---:

This letter responds to your request for a written opinion regarding your need to maintain a seller's permit.

I understand that you currently hold a seller's permit that authorizes you to engage in the business of selling tangible personal property under the name of --- at a specific location (the address listed above). During a recent telephone conversation with a representative of this Board, you stated your desire to cancel your seller's permit related to the sales activities at ---. After the representative explained that you were not exempt from the payment of sales tax and that you were required to maintain a seller's permit for the activities at ---, you requested a written response.

You claim that you are exempt from payment of sales and use tax and base your decision to cancel your seller's permit on an exemption for veterans set out in section 16102 of the Business and Professions Code ("B&PC"). B&PC section 16102¹ states:

"Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county

¹ A similar exemption from imposition of city license, tax or fee is found at B&PC section 16001.5.

or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefor.”

The issues presented in your proposed actions involve the impact of the veterans’ exemption on both (1) the requirement to have a seller’s permit for the retail business you conduct at ---; and (2) the requirement to pay sales tax on your gross receipts from retail sales of tangible personal property made at ---.

This letter states the position of the Board that (1) you must maintain a seller’s permit for the sales activities at ---; and (2) your status as an honorably discharged veteran does not exempt you from payment of sales tax for the retail sales of tangible personal property transacted at ---. A detailed discussion of each issue follows.

1. Requirement for a Seller’s Permit

The basic rule is that every person desiring to engage in or conduct business as a seller of tangible personal property within California must obtain a seller’s permit for each place of business. (Revenue and Taxation Code (“R&TC”) § 6066.) The requirement to obtain a seller’s permit is imposed on a retailer by statutes in the California R&TC and is administered by the Board of Equalization. (R&TC §§ 6066-6077.) These statutes are further implemented and explained in Sales and Use Tax Regulations (“Reg.”). Specific exemptions to the seller’s permit requirement are set forth in the R&TC; please note that generally the exemptions are based upon the products sold by the seller, not the status of the seller. (See, for example, R&TC §§ 6075, 6076.)

Every person engaged in the business of selling tangible personal property where the gross receipts from retail sales of such property are required to be included in the measure of the sales tax must hold a permit. (Reg. 1699(a).) A retail sale or a sale at retail means any sale of tangible personal property for any purpose other than resale in the regular course of business. (R&TC § 6007.) Once a person becomes a “retailer” of tangible personal property, such person must comply with all requirements imposed upon retailers, including obtaining a seller’s permit for each place of business within California. (Reg. 1500(c).)

In 1987, a California court of appeal determined B&PC section 16102 applied only to exempt veterans from the **fee charged** for maintaining a license and permit required by the county. (*Brooks v. County of Santa Clara, et al.* (1987) 191 Cal.App.3d 750.) In *Brooks, supra*, the Court of Appeal reviewed the application of B&PC section 16102 to the county’s attempt to require a veteran engaged in the sale of merchandise to maintain a license and permit, for which the county charged certain fees. While affirming the trial court’s decision that veterans were exempt from **paying** for the permit and license required by the county, the Court of Appeal noted that the veterans were not exempt from **regulation** by the county. (*Brooks, supra*, at 756.)

The exemption from paying for a county license or permit granted to veterans engaged in the sale of goods under B&PC section 16102 does not exempt you from the requirement to

maintain a state seller's permit issued by the State Board of Equalization. As long as you engage in or conduct business as a seller of tangible personal property within the State of California, you are required to maintain a seller's permit issued by the Board of Equalization.

2. Requirement to Pay Sales Tax

In California, sales tax generally is imposed on all retailers for the privilege of selling tangible personal property at retail. The tax imposed on retailers is measured by the gross receipts from the sale of such property at retail within California. (R&TC § 6051.) Even though retailers typically structure their sales procedures to provide for reimbursement of sales tax by (in essence, to pass on the tax to) the consumer, the tax is a direct tax of the retailer. (Civ. Code § 1656.1, *National Ice & Cold Storage Co. of California v. Pacific Fruit Express Co.* (1938) 11 Cal.2d 283.)

You claim that the exemption allowed to veterans under B&PC section 16102 relieves you from paying sales tax on the sales transacted at ---. This argument has been reviewed many times at the Board of Equalization and in several different forums and consistently has resulted in the conclusion that B&PC section 16102 does not relieve a veteran from sales tax liability.

There are several reasons for this legal conclusion. As will be more fully developed below, the legal principles of statutory construction preclude the exemption granted under B&PC section 16102 from application to the payment of state sales tax.

First, a special statute dealing exclusively with a particular subject creates an exception that controls and takes precedence over a conflicting general statute on the same subject. (*Agricultural Labor Relations Board v. Superior Court* (1976) 16 Cal.3d 392, 429.) "It is well settled, also, that a general provision is controlled by one that is special, the latter being treated as an exception to the former." (*Rose v. State* (1952) 19 Cal.2d 713, 723-724.)

B&PC section 16102 provides a general exemption from payment of "license, tax or fee" for certain veterans conducting specific types of businesses. By contrast, the Sales and Use Tax Law specifically imposes sales tax on the sale of tangible personal property at retail within California. Additionally, although several exemptions to the imposition of sales or use tax are set out in R&TC sections 6351-6411, not one exemption addresses sellers that are veterans.

Second, a well-settled rule of statutory construction with respect to exemptions is that any doubt is resolved **against** the right to the exemption. (*Sutter Hospital of Sacramento v. City of Sacramento* (1952) 39 Cal.2d 33, 39; *Helping Hand Home for Children v. County of San Diego* (1938) 26 Cal.App.2d 452.) Therefore, any doubt as to application of the veterans exemption from county-based charges to avoid payment of state-imposed sales tax must be resolved against extension of (the right to) the exemption.

A California court of appeal has identified B&PC section 16102 as one of a series of Business and Professions Code provisions for business licensing at the **local level**. (*Brooks*,

supra, at 755.) In light thereof, the Court of Appeal limited its review of the statute to question whether B&PC section 16102 operates to exempt a veteran vendor from the imposition of the fee imposed for the health license and permit required by the county. (*Brooks, supra*, at 756.)

Moreover, a published opinion of the California Attorney General explained that B&PC section 16102 applied only to counties. (14 Ops.Cal.Atty.Gen. 226 (1949).) The opinion also analyzed a companion statute (B&PC section 16100) as it applies to all cities throughout the state. Further, the Legislative Counsel of California provided legal advice to a legislator that stated that “[s]ection 16102 of the [B&PC] does not exempt an honorably discharged veteran who is vending merchandise within a local jurisdiction and who meets the specific requirements of the applicable section from paying state sales taxes.” (Ops. Cal. Legis. Counsel, No. 14321 (10/28/98).)

In conclusion, the exemption granted under B&PC section 16102 applies with respect to fees or taxes imposed on a veteran’s right to engage in specific businesses. The statute granting the exemption to veterans does not vitiate the state’s requirement to maintain a seller’s permit or the imposition of sales tax on the retail sale of tangible personal property by veterans. As long as you operate as a seller of tangible personal property at retail, you must maintain a seller’s permit and pay sales tax measured by the gross receipts from those sales.

If you have any further questions, please do not hesitate to write for further assistance.

Sincerely,

Kimberly Mitchell Bott
Senior Tax Counsel

KMB/cmm

cc: ---

July 25, 2000

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TUESDAY, JULY 25, 2000

Board ordered that the negligence penalty be deleted.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish, Mr. Klehs, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined with adjustments and supported the appellant's filing of a Board of Control claim. Ms. Mandel did not participate in the Board of Control claim.

Clayton Howard Au (Deceased), SR BHA 19-713597-010; 89000272030
1-1-95 through 3-31-98, \$47,120.75

For Petitioner: Terry Au, Petitioner's Wife
For Sales and Use Tax Department: Kevin Hanks, Hearing Representative
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether the evidence shows that some of the taxable sales included in the measure of tax were in fact reported as taxable on petitioner's sales and use tax returns.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish, Mr. Klehs, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the disputed measure be reduced by 50 percent based on staff's recommendation.

Veteran *

Richard Brian Powers, SR CH 21-763169-020; 89000327470
1-1-97 through 12-31-97, \$1,592.00

For Petitioner: Richard B. Powers, Owner
Charles D. Crawford, Witness
Sandra Sandell, Witness
For Sales and Use Tax Department: Jeffrey Graybill, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether Business and Professions Code section 16102 (Section 16102) exempts the otherwise taxable retail sales of petitioner, an honorably discharged United States Marine Corps veteran, from sales tax.

Whether the applicable statutes of the Sales and Use Tax Law, as applied to petitioner, are unconstitutional under the First and Fourteenth Amendments to the United States Constitution.

Action: Mr. Parrish moved to grant the petition, seconded by Mr. Andal but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang and Ms. Mandel voting no, Mr. Klehs not voting.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously

TUESDAY, JULY 25, 2000

carried. Mr. Andal, Mr. Parrish, Mr. Klehs, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 12:05 p.m. and reconvened at 2:10 p.m. with Mr. Andal, Mr. Parrish, Mr. Chiang, and Ms. Mandel present.

BUSINESS TAXES HEARINGS

John H. Kimo, Inc., SN BH 52-006159-010; 89000965800
7-1-94 through 10-31-95, \$10,615.97
Kimo J. Cochran, SR BH 97-196208-010; 89002074000
11-1-95 through 6-30-97, \$7,736.28

For Petitioner: Kimo J. Cochran, Owner/President
Joseph B. Zaarour, Accountant
For Sales and Use Tax Department: Kevin Hanks, Hearing Representative
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether the evidence supports reductions in the audited costs of goods sold.

Whether the evidence supports reductions of the markups to reflect discounted selling prices during "Happy Hour".

Mr. Klehs entered the Boardroom during discussion of this petition.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered that the disputed measure of tax be reduced by 35 percent.

Ray's Is The Place, SR KH 97-121701-010; 89002060790
4-1-95 through 12-31-96, \$12,929.29

For Petitioner: Zouhair Younam, President
For Sales and Use Tax Department: Kevin Hanks, Hearing Representative
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether petitioner's contention that all sales were properly reported from petitioner's electronic scanner system warrants relief from the tax.

Whether the evidence shows that the taxable markup of 31.37 percent is excessive.

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STATE OF CALIFORNIA
BOARD OF EQUALIZATION
APPEALS SECTION
DECISION AND RECOMMENDATION

Nov 7, 2000

In the Matter of the Petition for Redetermination Under the
Sales and Use Tax Law of:

Case ID: ---

Conference Date: November 7, 2000

Appearing for Appeals Section: Amy Kelly
Tax Counsel

Appearing for Petitioner: ---

Appearing for the
Sales and Use Tax Department: Joel E. Toste
Senior Tax Auditor

Type of Business: ---

The following issues have been raised for the period ---, through ---:

Issue No. 1: Sales of --- ---

Whether petitioner's gross receipts from his retail sales of --- --- are exempt from tax.
(Rev. & Tax. Code, § 6012, subs. (a)(2) and (b)(1).)

Conclusion

Petitioner's sales of --- --- are taxable sales of tangible personal property.

Determination and Appeal

Petitioner --- --- --- --- and sells them for \$--- a piece --- --- --- --- --- --- --- --- --- ---.

Petitioner asserts: 1) that the Sales and Use Tax Department (hereafter "Department") has incorrectly applied Title 18, California Code of Regulations, section ("Regulation") 1540 to his sales of --- --- because he is not a commercial artist, and 2) *Wild Side West v. State Board of Equalization* (Ct. of Appeal, 2nd District B140706) supports his position that sales tax does not apply to royalties. (See petitioner's brief, Exhibit A.)

The Department contends tax applies to petitioner's entire charge for the sale of --- without any deduction for petitioner's labor or services, under Revenue and Taxation Code section 6012, subdivisions (a)(2) and (b)(1). In response to petitioner's contention that Regulation 1540 does not apply to him, the Department responds that tax applies to petitioner's entire charge under Regulation 1540, subdivision (c)(2) because that subdivision provides that tax applies to the entire charge for finished art.

Analysis

Petitioner's gross receipts from his sales of --- --- are taxable without any deduction for petitioner's labor or services in making the ---. (Rev. & Tax. Code, § 6012, subs. (a)(2) and (b)(1).)

Regulation 1540 (c) is not applicable to petitioner's case because petitioner sells --- ---, and not finished art as defined by the regulation. Finished art is something that is used for actual reproduction by photomechanical or other processes, or used for display. Further, because petitioner does not transfer the right to reproduce art for which he receives royalties, cases such as *Wild Side West v. State Board of Equalization* (Ct. of Appeal, 2nd District B140706) and *Heather Preston v. State Board of Equalization* (April 2, 2001, No. S083632) __Cal.4th__, [105 Cal. Rptr. 407] do not apply to petitioner.

Issue No: 2: Constitutional Argument

Whether the applicable statutes of the Sales and Use Tax Law, as applied to petitioner, are unconstitutional under the United States Constitution.

Conclusion

The Sales and Use Tax Law, as applied to petitioner, does not violate the United States Constitution.

Determination and Appeal

Petitioner, at the Appeals conference, contended that *Bery v. City of New York* (1996) 97 F.2d 689, supports the proposition that the California Sales and Use Tax laws, as applied to him, are unconstitutional.

Analysis

Article III, section 3.5, of the California Constitution prohibits the Board from refusing to enforce a California statute on the ground of alleged unconstitutionality, absent a controlling appellate court decision that holds that the statute is unconstitutional. First, *Bery* is not an appellate court decision. Second, in *Bery*, a New York City tax law requiring street vendors to obtain licenses prior to selling goods on its city streets was struck down because it was overly broad. The facts and issues in *Bery* are thus distinguishable from petitioner's case. Further, no such appellate decision has ever held that the Sales and Use Tax Law, as applied to vendors, like petitioner, who sell --- ---, is unconstitutional. Accordingly, no further consideration of petitioner's constitutional arguments is warranted.

Issue No. 3: Veteran's Exemption

Whether Business and Professions Code section 16102 (hereafter Section 16102) exempts the otherwise taxable retail sales of petitioner, an honorably discharged United States --- veteran, from sales tax.

Conclusion

Petitioner raised this contention in his prior appeal relating to a previous audit. The Appeals section's position is unchanged in concluding that Section 16102 does not create a sales tax exemption.

Determination and Appeal

Petitioner contends that the plain language of 16102 provides that honorably discharged veteran's sales of goods are not subject to any tax. Petitioner relies on *Brooks v. Santa Clara* (1987) 191 Cal.App.3d 750, where the court held the plaintiff was exempt from the fee in question, a *county-imposed* fee for a health permit and license to conduct a food vendor business.

Analysis

The present version of Section 16102 provides that:

“Every soldier, sailor or marine of the United States who has received an honorable discharge or release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal,

county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefor.”

The precursor of Section 16102, Political Code section 3366, was enacted in 1901 and did not contain a comma between the words “license” and “tax.” (See Stats. 1901, ch. 209, § 1, pp. 635-636.) In 1929, a provision limited to counties that also embodies the substance of what is now Section 16102, was added to the Political Code as section 4041.14. (See Stats. 1929, ch. 755, § 15, p. 1457; see also *Brooks, supra*, at p. 755.) Political Code section 4041.14 contained language substantially similar to Political Code section 3366, however, the comma between “license” and “tax,” which was not present in Political Code section 3366, was added when Political Code section 4041.14 was enacted. (Compare Stats. 1901, ch. 209, § 1, pp. 635-636 with Stats. 1929, ch. 755, § 15, p. 1457; see *Brooks, supra*, at p. 756.) In 1941, the pertinent language of Political Code section 4041.14 was recodified as Section 16102. (See *Brooks, supra*, at p. 755.)

When read in its original 1901 version, the claimed exemption at issue is clearly limited to “license taxes,” which are typically imposed by counties and cities. But the presence of the comma between the words “license” and “tax” in Section 16102 permits petitioner to argue that the claimed exemption at issue was expanded to apply to all taxes, including the sales tax. We do not agree with petitioner’s argument for the following reasons.

First, as the California Court of Appeal has observed, the 1929 insertion of the comma between “license” and “tax” appears to be inadvertent, not intentional. (See *Brooks v. County of Santa Clara, supra*, 191 Cal.App.3d. 750, 756.) Moreover, the California Attorney General has published an opinion explaining that Section 16102 applies *only* to counties. (14 Ops. Cal. Atty. Gen. 226 (1949).) Finally, the presumably inadvertent insertion of the comma in question in 1929 occurred prior to the advent of California’s sales tax in 1933. Thus, even if the insertion of this comma were intentional, which, in all likelihood, it was not, this would not necessarily establish that the Legislature intended the veterans’ exemption at issue to apply to a tax that did not exist at the time the exemption was created. A recently published opinion from the Legislative Counsel, a copy of which is attached hereto as exhibit B, concludes that the Legislature did not intend to exempt honorably discharged veterans’ otherwise taxable sales from the sales tax. In sum, based on Section 16102’s statutory history, the apparent inadvertence of the comma insertion in question and the persuasive weight of the opinions expressed by the Attorney General and the Legislative Counsel, we conclude that Section 16102 does not create a sales tax exemption.

As previously explained in our prior Decision & Recommendation, even if petitioner were to prevail with respect to his exemption contention, petitioner nevertheless would owe use tax. Revenue and Taxation Code sections 6201 and 6202 impose a use tax liability on the purchaser of tangible personal property for storage, use or other consumption in this state. A retailer engaged in business in this state and making sales of tangible personal property for storage, use or other consumption in this state is required to collect the use tax, which is imposed at the same rate as the sales tax, from the purchaser upon whom the tax is imposed and to remit the collected tax to the state. (See Rev. & Tax. Code, § 6203.) This requirement is imposed as a

personal liability on retailers whether they actually collect the use tax from their customers or not. (*Id.* § 6204.) A sale is exempt from the use tax only if the gross receipts from the sale were included in the measure of the sales tax. (*Id.* § 6401.)

Recommendation

Deny the petition.

Amy Kelly, Tax Counsel

May 16, 2001
Date

Exhibits A and B

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Oct 6, 1999

STATE OF CALIFORNIA
BOARD OF EQUALIZATION
APPEALS SECTION
DECISION AND RECOMMENDATION

In the Matter of the Petition for Redetermination Under the
Sales and Use Tax Law of:

Account: ---
Case ID: ---

Conference Date: October 6, 1999

Appearing for Appeals Section: Randy M. Ferris, Tax Counsel

Appearing for Petitioner: ---

Appearing for the
Sales and Use Tax Department: Jeanine M. Schulte, Senior Tax Auditor
Jennifer C. Tsui, Supervising Tax Auditor

Type of Business: ---

The following issues have been raised for the period ---, through ---:

Issue 1: Veterans' Exemption

Whether Business and Professions Code section 16102 (hereafter Section 16102) exempts the otherwise taxable retail sales of petitioner, an honorably discharged United States Marine Corps veteran, from sales tax.

Conclusion

As explained below, Section 16102 does not create a sales tax exemption. By way of background, during the audit period, petitioner made retail sales of -- in California. On his yearly sales and use tax return for ---, petitioner reported total sales in the amount of \$---. Petitioner further reported that his total sales could be broken down, as follows, into two nontaxable categories: (1) claimed sales for resale in the amount of \$---; and (2) claimed exempt sales under Section 16102 in the amount of \$---. The Sales and Use Tax Department's Return Analysis

Section disallowed petitioner's claimed deduction under Section 16102, and this timely petition ensued. Petitioner's claimed sales for resale are currently not at issue.

The present version of Section 16102, which was operative at all times relevant to this petition, provides that:

“Every soldier, sailor or marine of the United States who has received an honorable discharge or release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefor.”

The precursor of Section 16102, Political Code section 3366, was enacted in 1901 and did not contain the above-reflected comma between the words “license” and “tax.” (See Stats. 1901, ch. 209, § 1, pp. 635-636; see also Brooks v. County of Santa Clara (1987) 191 Cal.App.3d 750, 755.) In 1929, a provision limited to counties that also embodies the substance of what is now Section 16102, was added to the Political Code as section 4041.14. (See Stats. 1929, ch. 755, § 15, p. 1457; see also Brooks, supra, at p. 755.) Political Code section 4041.14 contained language substantially similar to Political Code section 3366, however, the above-reflected comma between “license” and “tax,” which was not present in Political Code section 3366, was added when Political Code section 4041.14 was enacted. (Compare Stats. 1901, ch. 209, § 1, pp. 635-636 with Stats. 1929, ch. 755, § 15, p. 1457; see Brooks, supra, at p. 756.) In 1941, the pertinent language of Political Code section 4041.14 was recodified as Section 16102. (See Brooks, supra, at p. 755.)

When read in its original 1901 version, the claimed exemption at issue is clearly limited to “license taxes,” which are typically imposed by counties and cities. But the presence of the comma between the words “license” and “tax” in Section 16102 permits petitioner to argue that the claimed exemption at issue was expanded to apply to all taxes, including the sales tax. Petitioner's argument is unpersuasive, however, for the following reasons.

First, as the California Court of Appeal has observed, the 1929 insertion of the comma between “license” and “tax” appears to be inadvertent, not intentional. (See Brooks v. County of Santa Clara, supra, 191 Cal.App.3d. 750, 756.) Moreover, the California Attorney General has

published an opinion explaining that Section 16102 applies only to counties. (14 Ops. Cal. Atty. Gen. 226 (1949).) Finally, the presumably inadvertent insertion of the comma in question in 1929 occurred prior to the advent of California's sales tax in 1933. Thus, even if the insertion of this comma were intentional, which, in all likelihood, it was not, this would not necessarily establish that the Legislature intended the veterans' exemption at issue to apply to a tax that did not exist at the time the exemption was created. Indeed, a recently published opinion from the Legislative Counsel, a copy of which is attached hereto as exhibit A, posits that the Legislature did not intend to exempt honorably discharged veterans' otherwise taxable sales from the sales tax. In sum, based on Section 16102's statutory history, the apparent inadvertence of the comma insertion in question and the persuasive weight of the opinions expressed by the Attorney General and the Legislative Counsel, I conclude that Section 16102 does not create a sales tax exemption.

Additionally, as explained below, even if petitioner were to prevail with respect to his exemption contention, petitioner's victory would be an empty one. Revenue and Taxation Code sections 6201 and 6202 impose a use tax liability on the purchaser of tangible personal property for storage, use or other consumption in this state. A retailer engaged in business in this state and making sales of tangible personal property for storage, use or other consumption in this state is required to collect the use tax, which is imposed at the same rate as the sales tax, from the purchaser upon whom the tax is imposed and to remit the collected tax to the state. (See Rev. & Tax. Code, § 6203.) This requirement is imposed as a personal liability on retailers whether they actually collect the use tax from their customers or not. (*Id.* § 6204.) A sale is exempt from the use tax only if the gross receipts from the sale were included in the measure of the sales tax. (*Id.* § 6401.)

These use tax provisions apply to petitioner's sales as follows. Petitioners' customers buy --- from him, presumably for consumption in this state. If petitioners' retail sales were, as petitioner contends, not subject to sales tax, then use tax would be imposed on petitioner's customers, who are clearly not exempt from tax under Section 16102. Petitioner, as the retailer, would then be indebted to the state for the applicable use tax, whether he collects the use tax from his customers or not. In other words, even if petitioner's retail sales were exempt from sales tax, which they are not, petitioner's net liability to the Board would be the same.

Issue 2: Constitutional Arguments

Whether the applicable statutes of the Sales and Use Tax Law, as applied to petitioner, are unconstitutional under the First and Fourteenth Amendments to the United States Constitution.

Account: ---
Case ID: ---

Conclusion

As explained below, petitioner's constitutional arguments are unavailing. Petitioner's constitutional arguments are summarized in a brief he submitted at the Appeals conference. A copy of this brief is attached hereto as exhibit B. Article III, section 3.5, of the California Constitution prohibits the Board from refusing to enforce a California statute on the ground of alleged unconstitutionality, absent a controlling appellate court decision that holds that the statute is unconstitutional. No such appellate decision has ever held that the Sales and Use Tax Law, as applied to --- ---, like petitioner, who sell --- --- -- ---, is unconstitutional. Accordingly, no further consideration of petitioner's constitutional arguments is warranted.

Issue 3: Negligence Penalty

Whether petitioner should be relieved of the negligence penalty at issue. (Rev. & Tax. Code, § 6484.)

Conclusion

Petitioner should be relieved of the negligence penalty at issue. No evidence exists that petitioner's misunderstanding regarding the applicability of Section 16102 to his retailing activities was in bad faith. In short, given the above-discussed inadvertent insertion of the comma in question, petitioner's Section 16102 argument, while unpersuasive, is sufficiently colorable to warrant the deletion of the negligence penalty.

Recommendation

Delete the negligence penalty. Otherwise redetermine based on a taxable measure in the amount of \$---.

Randy M. Ferris, Tax Counsel

February 28, 2000
Date

w/ exhibits A & B

1.1. 1998

THURSDAY, OCTOBER 25, 2001

For Sales and Use Tax Department: Jeffrey H. Graybill, Counsel
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether certain disallowed claimed sales for resale should be accepted as valid.

Action: Mr. Andal moved to delete the \$602.00 invoice otherwise redetermine as recommended by the Appeals Section. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Upon motion of Mr. Chiang, seconded by Mr. Klehs and duly carried, Mr. Chiang, Mr. Klehs, and Ms. Mandel voting yes, Mr. Parrish and Mr. Andal voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Adela Vitalis, SR AB 97-595532; 49468
5-1-91 to 3-31-93, \$11,344.92 Tax, \$00.00 Penalty
Adela Vitalis, SR AB 97-519044; 49473
4-1-93 to 12-31-93, \$13,706.22 Tax, \$00.00 Penalty,

For Petitioner: Appearance Waived
For Sales and Use Tax Department: Kevin Hanks, Hearing Representative
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether any further adjustments to the audited measure of tax are warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Richard Brian Powers, SR CH 21-763169; 16476
1-1-98 to 12-31-98, \$1,664.00 Tax

For Petitioner: * Richard B. Powers, Artist
For Sales and Use Tax Department: Jeffrey H. Graybill, Counsel
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether petitioner's gross receipts from his retail sales of airbrushed tee shirts are exempt from tax.

Whether the applicable statutes of the Sales and Use Tax Law, as applied to petitioner, are unconstitutional under the First and Fourteenth Amendments of the

*2/20/01
mca
Mary Lou
Winters
Jan
825-8720
Vets-Exemption*

*R.L Roofing Repair
WA 6870
SAC. 95829
ph. 1914 967
616*

THURSDAY, OCTOBER 25, 2001

United States Constitution.

Whether Business and Professions Code Section 16102 exempts the otherwise taxable retail sales of petitioner, an honorably discharged United States Marine Corps veteran, from sales tax.

Action: Ms. Mandel moved to take the matter under submission.

Mr. Andal offered a substitute motion to grant the petition. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang and Ms. Mandel voting no, Mr. Klehs absent.

Upon motion of Ms. Mandel, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be submitted for decision.

The Board recessed at 12:10 p.m. and reconvened at 1:35 p.m. with Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel present.

BUSINESS TAXES APPEALS HEARINGS

Pinedale Auto Sales, Inc., SR ARF 22-827027; 89000388860

10-1-94 to 9-30-97, \$31,607.29 Tax, \$3,466.57 Penalty, Negligence

For Petitioner: Jerry H. Satterberg, E.A.

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether audited taxable sales were computed in accordance with the facts.

Whether relief from the negligence penalty is warranted.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the Department 30 days to review the new documentation and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation.

Mac's Club, Inc., SR GH 26-691336; 89000650210, 89000650220

1-1-95 to 12-31-95, \$4,742.98 Tax, \$00.00 Penalty

89000650210

1-1-96 to 12-31-97, \$2,144.03 Late Protest, \$00.00 Penalty

For Petitioner: Gail Chandler

John Croll

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Call-ler



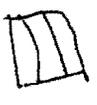
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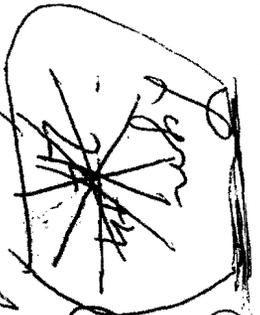
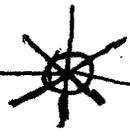
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NOT FILLED

May 28th



(Move)

31st

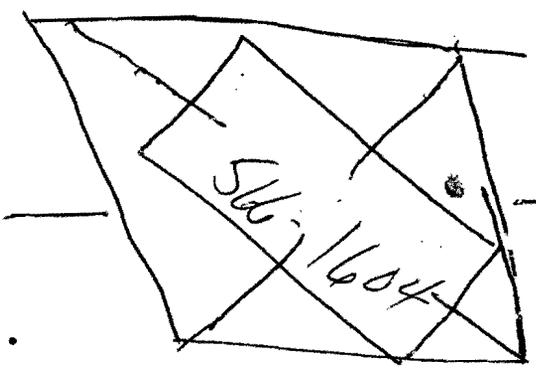
Reserved 30th

\$14,000

29th

FRIDAY

818 601



**SENATE GOVERNANCE & FINANCE COMMITTEE
SENATOR LOIS WOLK, CHAIR**

CONSENT CALENDAR RULE

"The following rules govern the placement of bills on the Committee's Consent Calendar:

- (1) The proposed Consent Calendar shall be sent to the Committee members, authors, and the public with the Committee's regular packet of bill analyses.
- (2) Any Committee member may withdraw any bill from the Consent Calendar at any time. Members may notify the Committee Assistants before the hearing or withdraw a bill at the hearing. The Committee Assistants shall notify the bill's author.
- (3) A bill is eligible for the Committee's Consent Calendar if it:
 - (a) Has no recorded opposition.
 - (b) Does not pose a major policy question.
 - (c) Will not be amended at the hearing.
- (4) At the Chair's direction, the Committee shall vote on the Consent Calendar during the hearing."

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: SR 41
AUTHOR: Morrell
VERSION: 5/7/14
CONSULTANT: Grinnell

HEARING: 6/11/14
FISCAL: No
TAX LEVY: No

THE 36th ANNIVERSARY OF PROPOSITION 13

Commemorates and reaffirms the Senate's support of the Senate for Proposition 13

Background and Existing Law

Before Proposition 13 (1978), the Legislature could generally enact new taxes or increase existing taxes by majority vote. Proposition 13 instead required that any changes in state taxes for the purpose of increasing revenues must receive approval by 2/3 vote of both houses of the Legislature prior to enactment. Proposition 26 (2010) subsequently modified the definition to apply the 2/3 requirement to bills that "results in any taxpayer paying a higher tax."

Local agency governing boards could enact taxes by ordinance prior to the initiative's enactment. Proposition 13 amended the Constitution to require a two-thirds vote of the electorate to enact a local special tax

Cities, counties, and special districts set property tax rates on property within its jurisdiction without an aggregate cap before Proposition 13. State law required assessors to revalue property annually; however, in practice, assessors usually reassessed all the homes in one neighborhood every three to five years. Local agencies received property tax revenue resulting from the appropriate property tax rate fixed by the local agency.

Proposition 13 reformed property tax assessment in the following ways:

- Limited the maximum amount of any ad valorem tax on real property at 1% of full cash value as shown on the 1975-76 tax bill.
- Precluded assessors from reassessing property unless it was newly constructed, or changed ownership.
- Capped the growth in assessed value to 2% per year.
- Provided that the Legislature allocates property tax revenue "according to law

Proposed Law

Senate Resolution 41 commemorates the 36th anniversary of Proposition 13. The measure contains several statements regarding property tax rates, taxpayer benefits, effects of the initiative on the state's economy, as well as taxpayer support for Proposition 13 and potential changes and alternatives. The resolution states the Legislature's reaffirmation of its support for Proposition 13 and the benefit it provides to individual homeowners and the state's overall economy.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "During the 1970s, inflation was on the rise and property tax bills were soaring. These circumstances put seniors at risk of losing their homes and affected first-time homebuyers thinking about entering the market. It was against this backdrop that voters overwhelmingly passed Proposition 13. The initiative reined in out-of-control property taxes and made them more predictable and stable for homeowners. In fact, the average homeowner has saved tens of thousands of dollars in taxes since that time. Additionally, unlike California's sales and income tax rates, revenue from property taxes has remained a reliable source of income for the state. Even in the depths of the last recession, property tax revenue increased while other revenue sources declined. Senate Resolution 41 simply acknowledges the positive impact Proposition 13 has had on California. Its taxpayer protections are still as popular today as when voters passed it over three decades ago - and that support cuts across party lines and ideologies. Every anniversary of its passage is an opportunity to reflect on one of California's most important examples of democracy in action."

2. Yes, but. Proposition 13 may be the most significant initiative ever enacted by California's voters: its changes irreversibly reshaped fundamental aspects of California governance and public finance. However, SR 41 celebrates the initiative from a specific point-of-view, and includes adjectives, phrases, and causal connections that may not reflect the views of the entire Legislature, including a statement of the Senate's support for the initiative. Should the Committee wish to amend SR 41 to celebrate the initiative's more complicated history as described below, it can amend it by deleting some of its terms and passages, among others:

- While inflation and property tax bills increased prior to Proposition 13's enactment, are the adjectives "raging" and "soaring," accurate?

- What examples exist of property taxes forcing layoffs, and closing businesses? What specific evidence demonstrates a statistically significant causal connection between the two?
- While the average homeowner and small business have likely saved tens of thousands of dollars annually in property taxes, how can it be shown that the same money was used to create jobs and foster economic development? Foregone taxes could have been used on consumption items, saved or invested in financial assets, or spent outside California.
- The measure states that proposed alternatives to Proposition 13 have “unwelcome effects,” including “substantial tax increases for low-income and elderly homeowners,” What alternatives were these, and did they target low-income persons and the elderly specifically?
- SR 41 also cites the defeat of Proposition 167 (1992) as an indication of a lack of favor of today’s voters for a split-roll. Can the results from an initiative election more than 20 years ago be correctly extrapolated to today’s electorate, given the state’s demographic and political change during that time? 2012 and 2014 Public Policy Institute of California polls showed that while more than 60% of respondents expressed support for Proposition 13, an almost equal amount favors a “split roll” property tax prohibited by the initiative.
- The resolution reaffirms the Legislature’s support for the measure, and its benefit to homeowners and the state’s economy. While homeowners have certainly benefitted from Proposition 13, no empirical data shows that it produced a net benefit for the state’s economy. Given the initiative’s more nuanced and complicated effects described below, should the Legislature instead recognize the anniversary of the initiative’s enactment, and its significance and effect on California’s system of governance and public finance without declaring its support or characterizing it as a benefit to the economy?

3. The rest of the story. Enacted over 30 years ago, Proposition 13 remains controversial today. California property owners pay less property tax, and enjoy the additional benefits of increased certainty due to the initiative’s limitations on assessed value growth and reassessments. Additionally, the initiative placed voting thresholds on the Legislature and local agencies seeking to raise taxes where none existed before, likely contributing to a lower tax burden for Californians. However, enacting Proposition 13 did not occur without tradeoffs. Economists and academics have researched the measure’s legacy copiously, and their findings include: that the initiative shifted the burden of financing public services from property taxes onto other revenue streams, with undesirable consequences; transferred property tax allocation powers to the state; and created considerable distortions and inequities in the housing market.

Proposition 13 reduced public revenues, however, the state ameliorated much of the revenue loss, and local agencies found other ways to finance public services. Proposition 13 resulted in a property tax revenue loss of 51% percent in the first

year after enactment, but the state assumed health and human services programs from the counties, shifted property taxes from schools to local agencies, and provided a \$2.7 billion bailout to local agencies in 1978. Local agencies took other steps, such as relying more on sales taxes, and increasing fees and charges, which did not for the most part require voter approval until Proposition 218 (1996), thereby shifting the burden of financing public services away from property taxes. Sometimes, costs were aligned with services; for example, housing developers now pay significant fees for infrastructure, permitting, and environmental review, which they attempt to pass on to homebuyers. Other fees did not bear such a relationship, such as the 48% increase in revenues from library fines, garbage collection fees, and sewer charges between 1979 and 1983. Local agencies often became more entrepreneurial, using redevelopment until recently to capture property tax increments, making land-use decisions based on sales tax revenue consequences instead of sound land use practices, and offering economic incentives to businesses that generate significant sales tax revenue to locate in its jurisdiction, such as big-box stores and auto dealerships.¹

The initiative also fundamentally changed California's state-local fiscal relationship. Proposition 13 required that property tax revenues be allocated "according to law," meaning that the Legislature would determine how property tax revenues would be allocated among local agencies in a county levying a property tax. Previously, each local jurisdiction set the property tax rate within its jurisdiction. The Legislature decided to freeze current allocations within a county, locking in each agency's share of the property tax regardless of future changes in demographics or service demand (AB 8, Greene, 1979); these allocation shares have been locked in for the last thirty-five years. Proposition 13 also laid the foundation for the Legislature to shift property tax revenues from local agencies to schools in 1992-93, 1993-94, 2004-05, and 2005-06 to meet the state's public education spending obligations under Proposition 98 (1998).

While it reduced total taxes, Proposition 13 caused distortive and inequitable tax consequences for California taxpayers. Under Proposition 13, the date a taxpayer purchased a property sets a taxpayer's property tax more so than its actual market value by locking in a property's assessed valuation from the 1975-76 fiscal year until ownership changes or the property is newly constructed. Property owners have a significant incentive not to move residences, because a new home's purchase price determines its property taxes, which could exceed the taxes determined by the original property's factored base year value. While Propositions 60 (1988) and 90 (1990) allow disabled taxpayers or those over the age of 55 to transfer base year values to properties of equal or lesser value than the original property, locking in the base year leads taxpayers to make different decisions on housing to due to tax implications, distorting the function of a normal market. Additionally, locking in assessed valuations and limiting growth

¹ Chapman, Jeffrey; "Proposition 13: Some Unintended Consequences," Public Policy Institute of California, September, 1998

caused taxpayers owning identical homes on the same street to pay vastly different property tax amounts; newer homebuyers bear a proportionally larger share of the burden for financing public services than longer term residents.

4. On subsidiarity. Proposition 13 is often regarded as a critical change in tax policy. However, by shifting control of property tax allocation from local agencies to the state, and limiting local revenue raising ability, the initiative and changes that followed fundamentally altered the relationship between citizens and their government, empowering the state to the detriment local agencies. Before Proposition 13, local agencies exercised “home rule” powers over local revenue sources: local taxes paid for local services, with some state intrusions. Voters chose their priorities when selecting officials to lead these local agencies, who set local tax rates, and then voters held officials accountable at the next election. Today, local agencies have little flexibility to raise revenues due to the initiative’s limitation on property tax rates and the 2/3 vote threshold for enacting new or higher special taxes. Researchers state that Proposition 13 and subsequent legislative action severely undercut local home rule powers by establishing a fiduciary relationship on the part of the state toward local agencies.² Counties particularly are reliant on state funding and must implement state programs as legal subdivisions of the state. Researchers add that any policy discussions between state and local agencies have deteriorated as a result, describing the fiscal relationship that evolved between state and local agencies as “a zero-sum political atmosphere in which fiscal considerations dominate intergovernmental policy-making.”³

5. Not so fast?. The Committee approved six measures at its May 15th, 2013 hearing that change the vote threshold for special taxes enacted by Proposition 13:

- SCA 3 (Leno) – allows school districts, community college districts, and county office of education to levy parcel taxes at 55% vote.
- SCA 4 (Liu) – allows local agencies to levy, extend, or increase special taxes at 55% vote for local transportation projects.
- SCA 7 (Wolk) – lowers the vote threshold for bonded indebtedness incurred to construct, reconstruct, rehabilitate, or replace public libraries; allows local agencies to levy, extend, or increase special taxes at 55% vote to fund public libraries.
- SCA 8 (Corbett) - allows local agencies to levy, extend, or increase special taxes at 55% vote for local transportation projects.
- SCA 9 (Corbett) - allows local agencies to levy, extend, or increase special taxes at 55% vote for community and economic development projects.
- SCA 11 (Hancock) – allows local agencies to levy, extend, or increase special taxes at 55% vote for any purpose.

² Barbour, Elisa, “State-Local Fiscal Conflicts in California: From Proposition 13 to Proposition 1A,” Public Policy Institute of California, December, 2007

³ Ibid.

With the exception of SCA 3, which was amended for other purposes and recently enacted as Proposition 42, all the measures are currently in the Senate Committee on Appropriations awaiting hearings.

6. Six squared. The Committee defeated an almost identical resolution celebrating the 35th Anniversary of Proposition 13 (SCR 25, Wyland), and the former Committee on Revenue and Taxation, a predecessor to this Committee, also defeated the almost identical SCR 116 (Harman, 2008).

Support and Opposition (6/5/14)

Support: California Taxpayers Association, Howard Jarvis Taxpayers Association.

Opposition: None received.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 769
AUTHOR: Skinner
VERSION: 5/14/14
CONSULTANT: Grinnell

HEARING: 6/11/14
FISCAL: Yes
TAX LEVY: Yes

SALES TAX EXEMPTION FOR EFFICIENT CLOTHES WASHERS

Enacts a one-year sales tax exemption for efficient clothes washers.

Background and Existing Law

The state sales and use tax rate is 7.50% as detailed below and is generally imposed on all tangible personal property unless specifically exempt. Cities and Counties may increase the sales and use tax rate up to 2% for either specific or general purposes with a vote of the people.

Rate	Jurisdiction	Purpose/Authority
3.9375%	State (General Fund)	State general purposes
1.0625%	Local Revenue Fund 2011	Realignment of local public safety services
0.25%	State (Fiscal Recovery Fund)	Repayment of the Economic Recovery Bonds
0.25%	State (Education Protection Account)	Schools and community college funding
0.50%	State (Local Revenue Fund)	Local governments to fund health and welfare programs
0.50%	State (Local Public Safety Fund)	Local governments to fund public safety services
1.00%	Local (City/County) 0.75% City and County 0.25% County	City and county general operations. Dedicated to county transportation purposes
7.50%	Total Statewide Rate	

Many items are fully exempted from the sales and use tax in this state (prescription drugs, food, poultry litter) but only a handful are partially exempted from the sales tax at the rate of 5.5%, such as farm equipment and machinery, diesel

fuel used for farming and food processing, teleproduction and postproduction equipment, timber harvesting equipment and machinery, and racehorse breeding stock. The exemptions apply whenever the taxpayer purchases the exempt property. Additionally, last year, the Legislature enacted a sales and use tax exemption on purchases of manufacturing equipment made by taxpayers within specific North American Industrial Classification System codes, capped at \$200 million annually per taxpayer, effective July 1, 2014, and ending July 1, 2022 (AB 93, Committee on Budget). BOE's Publication 61 details all sales and use tax exemptions.

Proposed Law

Assembly Bill 769 enacts a sales and use tax exemption on the first \$750 of a qualified efficient clothes washer, but only exempts the state share of the sales and use tax. AB 769's exemption only lasts from July 1, 2014 to July 1, 2015, unless the Governor lifts the state of emergency called on January 17, 2014 due to drought conditions is terminated before that date, in which case the exemption will last until midnight of the first day of the first calendar quarter beginning more than 60 days from the date the Governor lifts the state of emergency.

The measure defines "qualified efficient clothes washer," and includes legislative findings and declarations supporting its purposes.

State Revenue Impact

According to the Board of Equalization, AB 769 results in a revenue loss of \$18.1 million in the 2014-15 fiscal year.

Comments

1. Purpose of the bill. According to the author, "In January 2014, Governor Brown called for all Californians to reduce water use by 20%. A family that replaces an old washer can make considerable progress toward that goal. Clothes washers use significant amounts of water - up to 20% of a household's indoor use. Today's ENERGY STAR washers use 60-65% less water than units made just 10 years ago. Annual savings for customers purchasing ENERGY STAR washers are estimated at almost \$300 per household, when taking into account water, sewer, and energy costs."

2. Sure, but will it work? Tax benefits directed at specific industries and products do two things: First, they reward behavior that would have occurred without the subsidy, so-called "deadweight loss." Some taxpayers will buy water-efficient clothes washers during the exemption period without any incentive, so

Support and Opposition (06/04/14)

Support: Association of Home Appliance Manufacturers; California Retailers Association; Coin Laundry Association; Natural Resources Defense Council; Sierra Club California; Pacific Gas and Electric Company.

Opposition: California Tax Reform Association.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 877
AUTHOR: Bocanegra
VERSION: 5/6/14
CONSULTANT: Bouaziz

HEARING: 6/11/14
FISCAL: Yes
TAX LEVY: Yes

**INCOME AND CORPORATIONS TAXES: DENIAL OF DEDUCTION: FINES
AND PENALTIES**

Prohibits professional sports franchise owners from deducting fines and penalties imposed by the professional sports league that includes that franchise.

Background and Existing Law

Current federal and state laws generally allow taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business, unless specifically excluded by statute.

Under federal and state laws, a deduction is allowed for a fine or similar penalty paid to an entity, other than the government, as an ordinary and necessary business expense. Individuals are allowed to deduct ordinary and necessary expenses paid or incurred for the production of income and for the management, conservation, or maintenance of property held for the production of income. The expenses must not be a nondeductible personal living expense or exceed specific statutory limits.

Proposed Law

Assembly Bill 877 prohibits professional sports franchise owners from deducting fines and penalties imposed by the professional sports league that includes that franchise under the Personal Income Tax Law and Corporation Tax Law.

As a tax levy, this bill would take effect immediately and applies to taxable years beginning on or after January 1, 2014.

State Revenue Impact

Unknown.

Comments

1. Purpose of the bill. According to the author, "From Eddie DeBartolo, who was fined \$1 million by the NFL, to Donald Sterling, who was fined \$2.5 million by the NBA, disciplinary fines and penalties for sports team owners should not be tax deductible. However, sports team owners can currently benefit from a loophole, which gives those sports team owners the ability to write off disciplinary fines as business expenses on their state income tax returns. Tax deductions for business expenses must be both 'ordinary and necessary,' and a disciplinary fine or penalty imposed by a professional sports league on a team owner of that league is neither ordinary nor necessary. AB 877 addresses this problem by closing this loophole, and it does so in a way that brings greater equity to the tax code."

2. Compliance Complexity. If AB 877 becomes law, taxpayers could deduct some fines and penalties under federal law, but not under state law. While California does not always conform to federal tax law, conformity does ease compliance and makes filing less burdensome on taxpayers.

3. Rewarding poor behavior. In the case of sports teams owners, fines and penalties are generally given for violations of rules, guidelines, or policies previously agreed to. Why should fines and penalties imposed by a private entity be any different? Under current law, government imposed fines and penalties are not tax deductible.

4. Change for all to affect only one. AB 877 is a response to the recent fining of Donald Sterling, owner of the Los Angeles Clippers, for making comments widely condemned as racist. While his comments were inexcusable, is it necessary to change the entire law in this area for every sports team owner in California? Currently there are over 25 professional teams in California, all of which would be subject to this change in law meant to punish only one individual.

Assembly Actions

Not relevant to the May 6, 2014 version of the bill.

Support and Opposition (06/05/14)

Support: California State Conference of the National Association for the Advancement of Colored People (California NAACP).

Opposition: None received.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 919
AUTHOR: Williams
VERSION: 5/23/14
CONSULTANT: Bouaziz

HEARING: 6/11/14
FISCAL: Yes
TAX LEVY: No

SALES AND USE TAX: ITINERANT VENDORS: REPAYMENT

Enables a "qualified veteran" to receive from the state a "qualified repayment" of state and local sales taxes paid between April 1, 2002, and April 1, 2010.

Background and Existing Law

State law imposes a sales tax on retailers for the privilege of selling tangible personal property (TPP), absent a specific exemption. The tax is based upon the retailer's gross receipts from TPP sales in this state.

State law imposes a complementary use tax on the storage, use, or other consumption in this state of TPP purchased from any retailer. The use tax is imposed on the purchaser, and unless the purchaser pays the use tax to a retailer registered to collect, the purchaser is liable for the tax. The use tax is set at the same rate as the state's sales tax and must be remitted to the Board of Equalization (BOE).

Generally, retailers must obtain a seller's permit and report the sales and use tax on a BOE prescribed return, unless designated as "consumers." In which case, they neither obtain a seller's permit nor report the tax on sales. Instead, consumers pay tax when they purchase taxable products intended for sale. Various classes of retailers are classified as consumers, including qualified itinerant vendors. A qualified itinerant vendor (QIV) is a person that:

- Was a member of the Armed Forces of the United States (U.S.), who received an honorable discharge or release from active duty under honorable conditions;
- Is unable to obtain a livelihood by manual labor due to a service-connected disability;
- Is a sole proprietor with no employees; and,
- Has no permanent place of business in this state.

Proposed Law

Assembly Bill 919 enables a "qualified veteran" to receive from the state a "qualified repayment" of state and local sales taxes paid to the BOE during the eight-year period beginning on and after April 1, 2002, and before April 1, 2010.

The bill defines a "qualified veteran" as a person who met the requirements of a QIV during the period in which the sales were made, and paid to the BOE state and local sales taxes during the period beginning April 1, 2002, and before April 1, 2010. To qualify, the QIV must also not have collected sales tax from customers.

AB 919 defines a "qualified repayment" as an amount equal to the state and local sales taxes paid during the period beginning April 1, 2002, and before April 1, 2010, less any amounts previously refunded, credited or paid through any means.

The bill limits the allowable repayment amount to \$50,000, upon appropriation by the Legislature.

State Revenue Impact

Upon appropriation by the Legislature, the maximum allowable repayment amount is \$50,000.

Comments

1. Purpose of the bill. According to the author, "Disabled veterans transitioning from military to civilian life can struggle to re-integrate. Frequently, they are unable to find a job and many veterans become vendors selling art, food, books, among other items. As a result of previous misinterpretations of the law governing the collection of sales tax on the part of certain disabled veteran vendors, the Legislature passed and the Governor signed Senate Bill 809 in 2009. That bill granted certain qualified vendors an exemption from collecting sales tax from consumers through Jan 1, 2012. Senate Bill 805 (2011) extended these provisions to 2022. While SB 809 and SB 805 benefit those qualified disabled veterans returning to the civilian workforce from 2010 and moving forward, disabled veteran vendors who operated before the adoption of AB 809 still paid several years' worth of sales tax, interest and penalties to the BOE. This bill targets a small group of itinerant disabled veteran vendors. These veterans live on the fringe of our economy often as a direct result of their military service. To the extent that the Legislature can offer a little financial relief in recognizing the sacrifices our veterans made, it should take the opportunity to do so. AB 919 provides modest assistance to those veterans who have been required to remit sales tax, interest, and penalties to the BOE, and who lack significant assets."

2. One man's personal cause. This bill, and the four related bills preceding it, stem from the efforts of veteran William M. Connell. Since at least June 25, 1993, Mr. Connell has operated a mobile food business known as "All American Surf Dog." Mr. Connell asserts that, under a law originally enacted in the 19th Century, he has no obligation to collect or remit sales and tax on his retail sales. Specifically, Mr. Connell has relied on Business & Professions Code Section 16102, which provides in its entirety:

"Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefor."

This provision was added in 1893 and was described in the chaptering bill as "An act to establish a uniform system of county and township government." Moreover, this statute is contained in Chapter 2 of Part 1 of Division 7 of the Business & Professions Code, entitled *Licensing by Counties*.

In 1999, the BOE held that, while this statute exempts honorably discharged veterans from *locally imposed* license taxes and fees, it does not provide an exemption from sales and use tax.

However, Mr. Connell was not satisfied with this interpretation. Thus, on May 12, 1999, June 2, 2004, and on June 4, 2008, Mr. Connell filed three separate lawsuits against the BOE seeking a sales and use tax refund for the period "1993 to present." He failed each time.

Abandonment of Agreement

On April 29, 2010, Mr. Connell signed a "Settlement Agreement and Mutual Release of all Claims" (Settlement Contract) covering the entire period from June 25, 1993 through March 31, 2009. The BOE agreed to refund Mr. Connell an undisclosed amount of money. In addition to requiring the dismissal of Mr. Connell's appeal, the Settlement Contract required Mr. Connell to refrain from further litigation or administrative claims against the BOE, and furthermore, Mr. Connell agreed to waive "any known or unknown claims".

At the same time that Mr. Connell was litigating his dispute in the courts, he was also advocating for legislation to amend the Sales and Use tax Law. In 2008, AB 3009 (Brownley) was introduced. The bill classified certain veterans as consumers and not retailers, of the food products and nonalcoholic beverages they sell. AB 3009 was held in the Assembly Committee on Revenue and Taxation. In 2009, however, Mr. Connell was successful in his efforts to pass SB 809 (Committee on Veterans Affairs), Chapter 621, Statutes of 2009, which granted consumer

reporting status to QIVs until January 1, 2012. In 2011, SB 805 (Committee on Veterans Affairs), Chapter 246, Statutes of 2011, was introduced to delete this sunset date outright, making the preferential provisions permanent. SB 805 was amended in the Assembly Committee on Revenue and Taxation to provide a sunset extension to January 1, 2022. Thus, until that date, Mr. Connell can continue to operate his business without collecting or remitting sales tax.

Although there may be other similarly situated individuals, ~~Committee staff has not been made aware of anyone other than Mr. Connell who failed to collect sales tax based on their understanding of the 1893 statute.~~

3. Related Legislation.

- AB 855 (Ma) of the 2011-12 Regular Session: AB 855 would have retroactively applied preferential consumer status to QIVs as of January 1, 1986. AB 855 was never heard in this Committee.
- SB 805 (Committee on Veterans Affairs), Chapter 246, Statutes of 2011: As originally introduced, SB 805 would have deleted outright the sunset date for the provisions of the SUT Law that currently classify a QIV as a consumer, and not a retailer, of specified TPP the QIV sells. SB 805 was instead amended in this Committee to extend the sunset date for the preferential consumer status provisions from January 1, 2012, until January 1, 2022.
- SB 809 (Committee on Veterans Affairs), Chapter 621, Statutes of 2009: SB 809 provided that a QIV is a consumer, and not a retailer, of TPP the QIV owns and sells, except alcoholic beverages or TPP sold for more than \$100.
- AB 3009 (Brownley), of the 2007-08 Regular Session: AB 3009 would have provided that, for purposes of the SUT Law, certain U.S. veterans shall be considered consumers of, and not retailers of, food products and nonalcoholic beverages they sell. AB 3009 was held in the Assembly Committee on Revenue and Taxation.

X AB 1869 in 2006 by Walker
 X AB 3009 by Montgomery Assembly Actions

Reg suggestion by BOE
 in 1999 Jan Suggarhu
 1-2

Assembly Committee on Revenue and Taxation:	9-0
Assembly Appropriations Committee:	16-0
Assembly Floor:	78-0

Support: American Legion Auxiliary, Unit 49; California Association of County Veterans Services Officer; California Board of Equalization; California Council of Chapter Military Officers Association of America; California State Commanders Veterans Council; California State Council Vietnam Veterans of America; California Taxpayers Association; Carpinteria Valley Chamber of Commerce; City of Carpinteria; County of Santa Barbara; Department of California American Legion; Department of California AMVETS; Department of California Veterans of Foreign Wars; Military Order of the Purple Heart, Chapter 750; Veterans Caucus of the California Democratic Party; Veterans Coordinating Council of Santa Barbara; 1 individual letter.

Opposition: None Received

SB62 Leg Suggest of Jan 1999 #2
Montjoy Bell - 2003 #893 left out
Walters Bell - 2003
My good name

Who feed the inaccurate and openly false info to our State Senate Committee:

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 1331
AUTHOR: Rendon
VERSION: 5/8/14
CONSULTANT: Grinnell

HEARING: 6/11/14
FISCAL: Yes
TAX LEVY: No

CLEAN, SAFE, RELIABLE DRINKING WATER ACT OF 2014

Enacts the Clean, Safe, Reliable, Drinking Water Act of 2014.

Background and Existing Law

I. **Bond Acts.** When public agencies issue bonds, they essentially borrow money from investors, who provide cash in exchange for the agencies' commitment to repay the principal amount of the bond plus interest. Bonds are usually either revenue bonds, which repay investors out of revenue generated from the project the agency buys with bond proceeds, or general obligation bonds, which the public agency pays out of general revenues and are guaranteed by its full faith and credit.

Section 1 of Article XVI of the California Constitution and the state's General Obligation Bond Law guide the issuance of the state's general obligation debt. The Constitution allows the Legislature to place general obligation bonds on the ballot for specific purposes with a two-thirds vote of the Assembly and Senate. Voters also can place bonds on the ballot by initiative, as they have for parks, water projects, high-speed rail, and stem cell research, among others. Either way, general obligation bonds must be ratified by majority vote of the state's electorate. Unlike local general obligation bonds, the state's electorate doesn't automatically trigger an increased tax to repay the bonds when they approve a state general obligation bond. Article XVI of the California Constitution commits the state to repay investors from general revenues above all other claims, except payments to public education. California voters approved \$38.4 billion of general obligation bonds between 1974 and 1999, but approximately \$95 billion since 2000.

Bond acts have standard provisions that authorize the Treasurer to sell a specified amount of bonds, and generally include several uniform provisions that:

- Establish the state's obligation to repay them, and pledge its full faith and credit to repayment,
- Set forth issuance procedures, and link the bond act to the state's General Obligation Bond Law,

- Create a finance committee with specified membership, chaired by the State Treasurer,
- Charge the committee to determine whether it is “necessary or desirable” to issue the bonds,
- Add other mechanisms necessary for the Treasurer and the Department of Finance to implement the bond act, including allowing the board to request a loan from the Pooled Money Investment Board to advance funds for bond-funded programs prior to the bond sale, among others.

In bond acts, the Legislature generally:

- Sets forth categories of projects eligible for bond funds, such as library construction or school facility modernization,
- Chooses an administrative agency to award the funds, such as the State Librarian or the State Allocation Board,
- Details the criteria to guide the administrative agency’s funding in each category,
- Enacts enforcement and audit provisions, and
- Provide for an election to approve the bond act.

Should the voters approve the bond act, the Legislature then appropriates funds to the chosen state agencies to fund projects consistent with the criteria, generally as part of the Budget Act. The Department of Finance then surveys departments to determine need for bond funds based on a project’s readiness, and then asks the Treasurer to sell bonds in a specified amount. After the bond sale, the Department of Finance determines which bond acts and departments receive bond proceeds.

The Legislature has enacted several bond acts through the years to fund water projects in the following total amounts:

- California Safe Drinking Water Bond Law of 1976 (\$172 million),
- Clean Water and Water Conservation Bond Law of 1978 (\$375 million),
- California Safe Drinking Water Bond Law of 1984 (\$75 million),
- Water Conservation and Water Quality Bond Law of 1986 (\$150 million),
- California Safe Drinking Water Bond Law of 1986 (\$100 million),
- California Safe Drinking Water Bond Law of 1988 (\$75 million),
- Water Conservation Bond Law of 1988 (\$60 million),
- Clean Water and Water Reclamation Bond Law of 1988 (\$65 million),
- Safe, Clean, Reliable Water Supply Act of 1996 (\$995 million),
- Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act (2000) (\$1.9 billion),
- Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (\$2.1 billion),
- California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 (\$2.6 billion), and

- Disaster Preparedness and Flood Prevention Bond Act of 2006 (\$4.1 billion).

Additionally, voters have also approved the following bond acts that funded water projects by initiative in the following total amounts.

- Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (\$3.4 billion), and
- Safe Drinking Water, Water Quality and Supply, Flood Control, and River and Coastal Protection Bond Act of 2006 (\$5.4 billion).

The Legislature enacted the Safe, Clean, and Reliable Drinking Water Supply Act (SBx7 2, Cogdill, 2010), which directed the Treasurer to sell \$11.14 billion in bonds to fund drought relief, water supply reliability, Delta sustainability, statewide water system operational improvement, conservation and watershed protection, groundwater protection and water quality, and water recycling. The SBx7 2 bond provides \$455 million for drought relief, \$1.05 billion for water supply reliability, \$2.25 billion for delta sustainability, \$3 billion for statewide water system operational improvement, \$1.785 billion for conservation and watershed protections, \$1 billion for groundwater protection and water quality, and \$1 billion for water recycling programs.

On February 26, 2013, this Committee and the Committee on Natural Resources held a joint informational hearing entitled "Overview of California's Debt Condition: Priming the Pump for a Water Bond," where representatives from the Treasurer's Office and Legislative Analyst's Office (LAO) provided testimony relating to the state's general obligation debt condition and the potential effects of altering the SBx7 2 bond. A recording of the hearing and related documents are available online: <http://sntr.senate.ca.gov/informationaloversighthearings>

While the joint hearing provided significant data regarding the state's debt condition, updated information as of May 1, 2014 shows a total of \$127 billion of authorized debt, \$75 billion of which is outstanding, meaning the state issued the bonds and is currently repaying them, and \$25.2 billion authorized, but not yet issued, according to the State Treasurer. California paid approximately \$4.7 billion from general revenues to service that debt in 2012-13, \$5.9 billion in 2013-14, and will pay \$6.3 billion in 2014-15, according to the Department of Finance. However, these amounts are offset by payments of around \$1 billion from other sources, such as truck weight fees.

The Legislature initially placed the SBx7 2 bond on the November, 2010 ballot, but later moved it to November, 2012 (AB 1265, Caballero). In 2012, the Legislature again moved the measure to the November, 2014 ballot (AB 1422, Perea, 2012). Concerned that the voters may not approve the \$11.1 billion bond, the author wants to replace the measure with a \$8 billion bond to submit for voter approval in November, 2014.

Proposed Law

I. Bond Act. Assembly Bill 1331 repeals the SBx7 2 bond, and instead enacts the Clean, Safe, Reliable Drinking Water Act of 2014, which authorizes the issuance of \$8 billion in bonds upon approval of the voters in the November, 2014 election. The measure creates the Clean, Safe, and Reliable Drinking Water Fund, into which the state deposits bond proceeds for the Legislature to appropriate.

The measure directs funds for several purposes, each with specified goals, conditions, and categories or specific allocations, in the following amounts:

- \$1 billion for water quality improvement, administered by the State Water Resources Control Board,
- \$1.5 billion for multibenefit ecosystem and watershed protection and restoration projects, administered by specified conservancies in specified amounts, or by Secretary of the Natural Resources Agency,
- \$2 billion to respond to climate change and contribute to regional water reliability, administered by the Department of Water Resources (DWR) or the Board depending on the category,
- \$1 billion for Sacramento-San Joaquin Delta Sustainability, administered by DWR and the Delta Conservancy, and
- \$2.5 billion for water storage for climate change projects as selected by the California Water Commission.

For more details on fund direction, please see the analyses from the Senate Committee on Natural Resources and Wildlife (available here: http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1301-1350/ab_1331_cfa_20140324_092805_sen_comm.html) and the Committee on Environmental Quality (available here: http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1301-1350/ab_1331_cfa_20140505_134238_sen_comm.html):

AB 1331 includes standard provisions from bond acts, and incorporates other provisions from the General Obligation Bond Law by reference, except for its provisions that limit the use of the proceeds from the sale of bonds. The bill creates a finance committee to determine whether it is necessary or desirable to issue the bonds. The committee consists of the following members (or their designated representatives):

- The State Treasurer, as chair,
- The Director of Finance,
- The Controller,
- The Director of Water Resources, and
- The Secretary of the Natural Resources Agency.

The measure allows the Department of Water Resources to request a loan from the Pooled Money Investment Board.

II. Administration. AB 1331 enacts the following administrative provisions:

- Programs may retain 5% of allocated funds for administrative costs, and up to 10% for planning and monitoring necessary for the successful design, selection, and implementation of projects.
- Watershed monitoring data must be sent to the Department of Conservation consistent with its watershed program data system.
- The Administrative Procedures Act doesn't apply to the bill's program development or implementation.
- State agencies must develop and adopt project solicitation guidelines before disbursing grants and loans, which must contain specified contents, although the agency may use past guidelines.
- State agencies must hold three public meetings to consider comments prior to disbursing grants and loans, which must be published on the agencies' websites 30 days before any public meeting, then transmitted to the appropriate legislative fiscal and policy committees.
- State agencies must require adequate reporting of expenditures.
- The California State Auditor must annually conduct a programmatic review and an audit of expenditures, reported annually on or before March 1.
- Bond funds can't be used to support project or permit environmental mitigation, unless specified in the bill, or to acquire water rights, pay the costs of Delta conveyance systems, or pay for penalties or correcting violations.
- Declares that it doesn't affect specified statutes and legal protections.
- Limits applicants for bond funds to public agencies, public utilities, federally recognized Indian tribes, specified state Indian tribes, and nonprofit organizations, although a public agency may use funds to benefit recipients of mutual water companies under certain conditions.
- Bars funding specific projects.
- Directs agencies to use the California Conservation Corps' services whenever feasible.
- Allows the Legislature to approve multiyear Budget Change Proposals for bond funds.
- Clarifies that bond proceeds are not subject to the "Gann Limits" on government spending (California Constitution, Article XIII B).

The measure defines many of its terms, makes technical and conforming changes, enacts several legislative findings and declarations supporting its purposes, and also declares specified findings made by the people of the State of California.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "Passing a water bond that voters will approve in November is critical to California's water future. The legal deadline is June 26. AB 1331 offers a balanced package of funding for the top priorities in water funding needs, while ensuring accountability to voters for that spending. I have developed this bill through a comprehensive and transparent process that included public hearings on the water bond across the state. While the Senate may wish to consider increasing funding for some needs, such as groundwater cleanup and recycling, gaining voter approval necessitates that we keep the water bond measure under \$10 billion."

2. Sixteen tons. Debt is an essential part of almost every government, business, and personal balance sheet, as borrowers seek funds from lenders in exchange for a future commitment to repay them. However, evaluating the State's general obligation debt is difficult; both the State Treasurer and the Legislative Analyst's Office suggest there's no correct amount. Instead, experts suggest that states should look at three criteria: *affordability, comparability, and optimality*¹:

California's debt is *affordable*. The State Treasurer estimates that the state will spend 7.7% of General Fund revenues on debt service in 2012-13. However, these costs reduce the funding that is available for other priorities. Debt service is one of the fastest growing state costs, expected to reach \$8.6 billion in 2017-18 assuming no new authorizations, according to the Governor's Five-Year Infrastructure Plan. The Plan proposes no new general obligation bonds, instead relying on more limited lease-revenue bonds because of this increased debt burden.

California's *comparability* to other states is less favorable. The State Treasurer's Debt Affordability Report contains the following chart:

STATE	MOODY'S/ S&P/ FITCH(a)	DEBT TO PERSONAL INCOME(b)	DEBT PER CAPITA(b)	DEBT AS A % OF STATE GDP(b)(c)
Texas	Aaa/AA+/AAA	1.5%	\$580	1.16%
Michigan	Aa2/AA-/AA	2.2%	\$800	2.05%
North Carolina	Aaa/AAA/AAA	2.4%	\$853	1.89%
Pennsylvania	Aa2/AA/AA+	2.8%	\$1,208	2.66%
Ohio	Aa1/AA+/AA+	2.8%	\$1,047	2.50%
Florida	Aa1/AAA/AAA	2.8%	\$1,087	2.78%
Georgia	Aaa/AAA/AAA	3.0%	\$1,061	2.51%
Illinois	A3/A-/A-	5.7%	\$2,526	4.85%
California	A1/A/A	5.8%	\$2,565	4.98%

¹ Robert Wassmer and Ronald Fisher "Debt Burdens of California State and Local Governments: Past, Present and Future." As requested and supported by the California Debt and Investment Advisory Commission. July 2011.

New York	Aa2/AA/AA	6.3%	\$3,174	5.36%
MOODY'S MEDIAN ALL STATES		2.8%	\$1,074	2.47%
MEDIAN FOR THE 10 MOST POPULOUS STATES		2.8%	\$1,074	2.59%

(a) Moody's, Standard & Poor's, and Fitch Ratings as of September 2012.
 (b) Figures as reported by Moody's in its 2012 State Debt Medians Report released May 2012. As of calendar year end 2011.
 (c) State GDP numbers have a one-year lag.

Determining *optimality* or whether government is investing in the quantity and quality of public capital desired by residents, and financing the appropriate share with debt, is very difficult. LAO recommends that the Legislature consider the recently released Five-Year Infrastructure Plan as a starting point to developing a coordinated approach to infrastructure funding, and establish a committee to focus on statewide infrastructure. In the water area, LAO recommends:

- Reduce infrastructure demand,
- Ensure that beneficiaries and polluters pay,
- Decide on a mix of state funding mechanisms and sources, and match them with each activity,
- Use bond funds for large capital projects that meet a need over several decades, and
- Determine relative priority for water infrastructure as part of the state's total need.

3. Power to the people. AB 1331 repeals the larger SBx7 2 bond, and replaces it with one more than \$3 billion cheaper. However, any debt analysis is contingent on whether voters are more likely to approve this bond, the previous one, or none at all: Should AB 1331 be enacted, the voters will decide whether to add \$8 billion to the total of authorized general obligation bonds, thereby limiting the amount voters could add on top of California's current \$127 billion total. However, the state won't incur any debt should the Legislature choose not to replace the SBx7 2 bond, or voters reject it.

4. The good news. Investors ultimately determine a state's creditworthiness and the interest rate paid on a bond when they bid to purchase one. However, ratings issued from the three major ratings agencies often inform investors and the public regarding the investment risk of purchasing a California general obligation bond. These ratings change over time in response to a state's fiscal situation and economy, among other factors. In January, ratings agency Standard and Poor's raised the outlook on the state's general obligation debt from stable to positive, which often portends an upgrade, following on the agency's boost for California from A- to A last year, as well as Fitch's upgrade last August. However, the state still has the second lowest rating in the nation.

5. The bad news. California has a distinct problem: of the \$127 billion that voters have authorized, almost \$25 billion hasn't been issued yet. The state hasn't issued almost \$7 billion in transportation bonds, and \$9.2 billion in high speed rail

bonds, because the projects haven't yet received the needed approvals. Should the voters approve new general obligation debt for water, the state would either have to sell sufficient debt to fund everything, and increase debt service costs accordingly, or choose which of these projects should be funded first. Additionally, the Committee approved SB 1086 (DeLeon) that calls for bonds in unspecified amounts for parks, and the Assembly recently approved AB 2235 (Buchanan), which the Committee will likely hear later this month, would place a measure before voters to approve \$9 billion in bonds for school construction.

6. Options. AB 1331 is one of two bonds under active consideration in the Legislature this year. In February, the Committee approved SB 848 (Wolk), a \$6.825 billion bond, which is currently in the Senate Committee on Rules. Neither measure has yet received the 2/3 vote necessary to advance from either Floor.

Senate Actions

Senate Environmental Quality	5 - 2
Senate Natural Resources and Water	7 - 2

Assembly Actions

Assembly Floor	60 - 0
Assembly Appropriations	12 - 0
Assembly Water, Parks and Wildlife	10 - 0
Assembly Rules	11 - 0

Support and Opposition (06/04/14)

Support: California Association of Professional Scientists; California Association of Sanitation Agencies; California Urban Partnership; California Water Association; California Watershed Network; City of Beaumont; City of Long Beach; Eastern Municipal Water District; Long Beach Board of Water Commissioners; Long Beach Water Department (if amended); Metropolitan Water District of Southern California (if amended); Professional Engineers in California Government; Orange County Business Council; San Francisco Chamber of Commerce; State Building and Construction Trades Council; Trust for Public Land; United Farm Workers of California; Upper District; Urban Forest Coalition; Water Bond Coalition; Water Reuse.

Opposition (unless amended): Association of California Water Agencies; Northern California Water Association.

No Position: Sierra Club of California; Rural County Representatives of California

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 1561
AUTHOR: Rodriguez
VERSION: 4/2/14
CONSULTANT: Ewing

HEARING: 6/11/14
FISCAL: Yes
TAX LEVY: No

**VOLUNTARY CONTRIBUTIONS: CALIFORNIA FIREFIGHTERS' MEMORIAL
FUND AND PEACE OFFICER MEMORIAL FUND**

Extends from 2016 to 2021 the statutory repeal dates for the California Firefighters' Memorial Fund and the California Peace Officer Memorial Fund.

Background and Existing Law

Existing law allows taxpayers to contribute to one or more of 20 voluntary contribution funds, known as VCFs or check-offs, by checking a box on their state income tax return. California law requires check-off contributions to be made from taxpayers' own resources and not from their tax liability, as is possible on federal tax returns. Check-off amounts may be claimed as charitable contributions on taxpayers' tax returns in the subsequent year.

The Franchise Tax Board (FTB) designs tax forms to provide for the designation of contributions to specified funds either on the return itself or on a separate schedule that must be attached to the return. With a few exceptions, VCFs remain on the tax form until they either are repealed by a sunset date or fail to meet a minimum contribution amount. Minimum contribution amounts are adjusted annually for inflation, with specific exceptions. For most VCFs, the minimum contribution amount is \$250,000, beginning in the fund's second year.

By September 1st of each year, the FTB must determine the minimum contribution amount required for each fund to remain on the form for the following calendar year and estimate whether contributions to each fund meet that amount. If the FTB estimates that a fund will fail to meet its minimum contribution amount, that fund is repealed for the following calendar year.

The following check-offs do not have a minimum contribution requirement:

- California Firefighters' Memorial Foundation Fund,
- California Peace Officer Memorial Foundation Fund, and
- California Seniors Special Fund.

Proceeds from tax check-offs are dedicated to a range of programs. The following list provides information on current tax check-offs and how contributions are administered. This list does not reflect tax contributions that have been repealed under the terms of their statutes.

Voluntary Contribution Fund	2013 Contributions	Contribution Allotment
Alzheimer's Disease/Related Disorders Fund	\$405,080	As many as contract or receive grants provided by the monies contributed.
American Red Cross, California Chapter	Initial Tax Return 2013	To the Office of Emergency Services for distribution to the American Red Cross.
CA Breast Cancer Research Fund	\$369,425	As many as apply and receive grants provided from the monies contributed.
CA Cancer Research Fund	\$389,759	As many as apply and receive grants provided from the monies contributed.
CA Firefighters' Memorial Fund	\$126,158	California Fire Foundation.
CA Fund for Senior Citizens	\$234,247	California Senior Legislature.
CA Peace Officer Memorial Foundation Fund	\$128,581	California Peace Officer Memorial Commission.
CA Sea Otter Fund	\$307,544	Department of Fish and Wildlife, and as many as apply for grants and contracts provided for by 50% of contributions.
CA Seniors Special Fund	\$60,961	The first \$80K to the Area Agency on Aging Advisory Council of California and the rest to area agencies as allocated by the California Department of Aging.
CA YMCA Youth and Government Fund	\$72,435	The first \$300K to the CA YMCA Youth and Government Program. The rest is allocated in \$10K annual grants to the: African American Leaders for Tomorrow Program, Asian Pacific Youth Leadership Project, Chicano Latino Youth Leadership Project. Remaining funds allocated to the CA YMCA Youth and Government Program, whose board may award additional \$10K annual grants to additional nonprofit civic youth organizations.
CA Youth Leadership Fund	\$55,505	To the Department of Education to provide for the CA Youth Leadership Project.
Child Victims of Human Trafficking Fund	\$220,119	As many counseling and prevention centers that apply and receive grants provided from monies contributed.
Emergency Food for Families Fund	\$459,291	To the Department of Social Services for the Emergency Food Assistance Program.
Keep Arts in Schools Fund	Initial Tax Return 2013	To the Arts Council for grants to organizations providing arts programs in schools.
Municipal Shelter Spay-Neuter Fund	\$217,883	As many as apply and receive grants provided from the monies contributed.

Protect Our Coast and Oceans Fund	Initial Tax Return 2013	To the California Coastal Commission to provide grants to organizations in support of coastal resource programs and related educational activities.
Rare & Endangered Species Preservation Program	\$476,933	Department of Fish and Wildlife endangered conservation programs.
School Supplies for Homeless Children Fund	\$367,868	As many as apply and receive grants provided for by the monies contributed.
State Children's Trust for the Prevention of Child Abuse	\$305,438	To the Department of Social Services for prevention and intervention programs.
State Parks Protection Fund/Parks Pass Purchase	\$396,921	As many as purchase a parks pass that can be provided from the monies contributed.

Proposed Law

Assembly Bill 1561 extends, from 2016 to 2021, the repeal dates for the California Firefighters' Memorial Fund and the California Peace Officer Memorial Fund tax check-offs on the tax form.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. Assembly Bill 1561 would extend the repeal dates for both the California Firefighters' Memorial Fund and the California Peace Officer Memorial Fund tax check-offs on the tax form. Initially established in 1994, the California Firefighters' Memorial Fund has provided for the establishment and maintenance of the California Firefighters Memorial on the grounds of the State Capitol, as well as providing emotional and financial assistance to families of fallen firefighters and the broader firefighter community. Since 2010, the California Firefighters' Memorial Fund tax check-off has raised more than \$730,000 for these important services. Similarly, established in 1999, the California Peace Officer Memorial Fund tax check-off was created to help establish and maintain the California Peace Officer Memorial and provide support to the families of slain peace officers. Since 2010 the Fund has raised more than \$620,000 to support those efforts. AB 1561 will continue these successful programs which provide support and services in recognition of fallen firefighters and peace officers.

2. Is there a better way? Each year, the Committee considers several bills relating to tax check-offs. Previous committee analyses expressed concern over establishing new tax check-offs or adopting special legislation for a specific charity or program. The Legislature has chosen to encourage charitable giving by allowing

organizations to receive funding through check-offs and taxpayers to receive a deduction for charitable giving on their tax return. However, the current design and administration of the existing tax check-off program raises a number of concerns that suggest the need for a different approach to tax check-offs.

- The current program generates a relatively small share of statewide contributions.

The Franchise Tax Board reports that since 1982, tax check-offs have raised more than \$109 million for charitable causes. Donations have averaged \$4.3 million per year since 2000 and brought in \$4.7 million in 2013. Yet only a small percentage California's 15 million tax filers, less than 400,000, are utilizing the tax check-off program to donate to charitable causes. Federal tax return data from 2010, as reported by the Urban Institute's, National Center for Charitable Statistics, indicates that Californians donated more than \$21 billion to charities, as reflected on their tax returns. In light of the low participation rate among tax filers, and relatively small level of funds contributed through tax check-offs, it is not clear that the tax check-off program is an efficient and effective strategy to connect donors with charitable organizations.

- Charities struggle to comply with the requirements of the tax check-off program.

Since 1982 the Legislature has authorized 45 individual tax check-offs on the tax form. Among those, more than one-third failed to remain on the tax form beyond its initial year. Just 10 of the 45 have met their statutory standards to remain on the tax form for 10 years or more. The Legislature has authorized 20 tax check-offs since 2005. Half of those recently enacted tax check-offs failed to meet statutory minimum contribution levels to remain on the tax form.

- Increasing demand from charitable organizations that want to participate in the program may soon generate significant costs.

Prior to a redesign of tax forms, and movement toward greater use of electronic filings, there were more tax check-off programs than could be accommodated on the tax forms. While changes to the tax forms have accommodated more tax check-offs, the FTB reports that it can accommodate 12-15 additional tax check-offs before its information technology system will need to be redesigned. Depending on the number of additional tax check-offs approved by the Legislature each year, it could be between two and five years before the FTB's systems must be upgraded.

- The current tax check-off program lacks monitoring to ensure that charities comply with state requirements.

In authorizing tax check-offs, with some exceptions, the Legislature has required that check-offs must generate contributions that exceed a specified minimum to remain on the tax form. This policy was largely driven by competition for limited space on the tax form. Other than the requirements to meet the minimum contribution threshold, there are no specific requirements in the tax code that govern participation in a tax check-off program. For instance, SB 1262 (Sher, 2004) established requirements for charitable organizations to register with the Office of the Attorney General, if they contract for fundraising services. There is no requirement under the tax check-off statutes that the FTB or other agencies administering tax check-off funds confirm that recipient charities comply with these and other state rules and regulations.

3. Related legislation. AB 1765 is not the only bill dealing with tax check-offs this legislative session:

- Assembly Bill 247 (Wagner, Chapter 670, 2013) extends the repeal date from 2015 to 2020 for the California Fund for Senior Citizens tax check-off on the tax form.
- Assembly Bill 394 (Yamada, Chapter 671, 2013) extends the repeal date of the California Alzheimer's Disease and Related Disorders Research Fund tax check-off on the tax form from 2015 to 2020.
- Assembly Bill 511 (Pan, Chapter 451, 2013) creates the American Red Cross, California Chapters Fund check-off on the tax form.
- Assembly Bill 1286 (Skinner, Chapter 664, 2013) temporarily suspends the annual inflation adjustment for minimum contribution levels for the California Breast Cancer Research Fund check-off on the tax form.
- AB 1765 (Jones-Sawyer) establishes the Habitat for Humanity Fund check-off on the tax form.
- Assembly Bill 1833 (Garcia, 2014) eliminates the minimum contribution requirement for the California Fund for Senior Citizens.
- Assembly Bill 2012 (Morrell, 2014) eliminates the minimum contribution requirement for the California Fund for Senior Citizens.
- Senate Bill 116 (Liu, Chapter 222, 2013) extends the repeal date from 2014 to 2019 for the Emergency Food Assistance Program check off on the tax form.
- Senate Bill 571 (Liu, Chapter 430, 2013) creates the Art for Kids Fund check-off on the tax form.
- Senate Bill 761 (DeSaulnier, 2014) would modify state administration of funds received through the School Supplies for Homeless Children Fund.
- Senate Bill 761 (DeSaulnier, 2014) modifies state administration of funds received through the School Supplies for Homeless Children Fund.
- Senate Bill 782 (DeSaulnier, 2014) creates the California Sexual Violence Victim Services Fund tax check-off.

- Senate Bill 987 (Monning, 2014) requires that the cost incurred by the Department of Fish and Wildlife in taking measures to encourage taxpayers to make contributions on their tax return be paid for with money allocated to the California Sea Otter Fund.
- Senate Bill 1207 (Wolk, 2014) establishes an administrative procedure for qualified charities to apply and receive donations through a tax check-off.

Assembly Actions

Assembly Revenue and Taxation Committee:	8-0
Assembly Appropriations Committee:	17-0
Assembly Floor:	75-0

Support and Opposition (6/5/14)

Support: American Federation of State, County and Municipal Employees, AFL-CIO; Association for Los Angeles Deputy Sheriffs; California Association of Highway Patrolmen; California Fire Chiefs Association; California Narcotic Officers Association; California Police Chiefs Association; California Professional Firefighters, State Council of the International Association of Fire Fighters; California State Sheriffs' Association; Fraternal Order of Police, California State Lodge; Long Beach Policy Officers Association; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Los Angeles Probation Officers' Union, AFSCME, Local 685; Peace Officers Research Association of California; Riverside Sheriffs' Association; Sacramento County Deputy Sheriff's Association; Santa Ana Police Officers Association; United EMS Workers Local 4911, AFSCME, AFL-CIO.

Opposition: Unknown.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 1582
AUTHOR: Mullin
VERSION: 6/2/14
CONSULTANT: Weinberger

HEARING: 6/11/14
FISCAL: No
TAX LEVY: No

RECOGNIZED OBLIGATION PAYMENT SCHEDULES

Allows redevelopment successor agencies' recognized obligation payment schedules (ROPS) to cover a 12-month period and allows oversight boards to amend ROPS.

Background and Existing Law

Until 2011, the Community Redevelopment Law allowed local officials to set up redevelopment agencies (RDAs), prepare and adopt redevelopment plans, and finance redevelopment activities. Citing a significant State General Fund deficit, Governor Brown's 2011-12 budget proposed eliminating RDAs and returning billions of dollars of property tax revenues to schools, cities, and counties to fund core services. Among the statutory changes that the Legislature adopted to implement the 2011-12 budget, AB X1 26 (Blumenfield, 2011) dissolved all RDAs. The California Supreme Court's 2011 ruling in *California Redevelopment Association v. Matosantos* upheld AB X1 26, but invalidated AB X1 27 (Blumenfield, 2011), which would have allowed most RDAs to avoid dissolution.

AB X1 26 established successor agencies to manage the process of unwinding former RDAs' affairs. With limited exceptions, the city or county that created each former RDA now serves as that RDA's successor agency. Each successor agency has an oversight board that is responsible for supervising it and approving its actions. The Department of Finance (DOF) can review and request reconsideration of an oversight board's decisions.

One of the successor agencies' primary responsibilities is to make payments for enforceable obligations entered into by former RDAs. The statutory definition of an enforceable obligation includes bonds, specified bond-related payments, some loans, payments required by the federal government, obligations to the state, obligations imposed by state law, legally required payments related to RDA employees, judgments or settlements, and other legally binding and enforceable agreements or contracts that are not otherwise void.

Each successor agency must, every six months, draft a list of enforceable obligations that are payable during a subsequent six month period. This recognized obligation payment schedule (ROPS) must be adopted by the oversight board

and is subject to review by the DOF. Obligations listed on a ROPS are payable from a Redevelopment Property Tax Trust Fund (RPTTF), which contains revenues that would have been allocated as property tax increment to a former RDA.

Some local officials say that the biannual ROPS preparation and approval process imposes significant administrative burdens on local and state entities and creates fiscal uncertainty that complicates agencies' efforts to fulfill enforceable obligations for certain development projects. They want the Legislature to require successor agencies to prepare their ROPS annually.

Proposed Law

Assembly Bill 1582 lengthens, from six months to 12 months, the fiscal period covered by a redevelopment successor agency's recognized obligation payment schedule (ROPS). AB 1582 directs that, for fiscal years beginning on or after January 1, 2015, a ROPS must cover a 12-month period that corresponds to the fiscal year of the city, county, or city and county that created the former RDA. The bill allows an oversight board to amend a ROPS as long as the amendment is approved at least 90 days before the date of the next property tax distribution.

AB 1582 declares that its provisions must not be construed to alter the semiannual distribution of Redevelopment Property Tax Trust Fund payments made in accordance with the projected payment schedule of the approved ROPS.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. The biannual ROPS process is complex and time-consuming. The preparation and administration of each ROPS involves significant time by local agency staff and attorneys, as well as additional workload for oversight boards and DOF. Biannual ROPS reviews also create uncertainty that make it difficult for some successor agencies to ensure that they can make contractually obligated payments for long-term development projects. By shifting the ROPS process to an annual cycle, AB 1582 will save staff time by avoiding repetitive processing on non-controversial items and improve predictability for local agencies.
2. Timing is everything, part one. Although AB 1582 is intended to simplify the administrative burden of winding down former RDAs' affairs, in some cases it may complicate the ROPS process. Not all local governments use the same fiscal

year. The State and all 58 counties use a fiscal year that starts in July. However, state law does not prescribe a specific fiscal year for cities. Several cities use the federal fiscal year, which starts in October. By allowing successor agencies in those cities to submit a ROPS that doesn't correspond to the state's fiscal year, AB 1582 may complicate the administrative responsibilities of the DOF, county auditors, and oversight boards. Read narrowly, AB 1582 might not allow some cities to submit a ROPS for payments due in the months of July, August and September of 2015, which come after the final ROPS period for the State's 2014-15 fiscal year, but before the beginning of the federal 2015-16 fiscal year. To avoid confusion and administrative complications, *the Committee may wish to consider amending AB 1582 to require that the 12-month fiscal year covered by each ROPS must correspond to the State's July 1 to June 30 fiscal year, unless a successor agency gets approval from its oversight board and the Department of Finance to use a different fiscal year.*

3. Timing is everything, part two. After a chaotic and contentious first few cycles, the ROPS process recently has become more routine for all of the involved stakeholders. However, state law requires that, beginning on July 1, 2016, a single countywide oversight board will be responsible for the oversight of successor agencies in each county. In some counties with a large number of successor agencies, the county-wide oversight board will face a substantial workload. Rather than disrupting the biannual ROPS process during the last fiscal year in which each successor agency has its own oversight board, it might make more sense to transition to an annual ROPS process at the same time that current law requires counties to transition to a single oversight board. *The Committee may wish to consider amending AB 1582 to make its provisions effective for the fiscal year that begins on July 1, 2016.*

Assembly Actions

Assembly Local Government Committee:	9-0
Assembly Appropriations Committee:	16-1
Assembly Floor:	74-2

Support and Opposition (6/5/14)

Support: Association of California Cities - Orange County; California Infill Builders Association; Cities of Brea, Camarillo, Foster City, Glendale, Huntington Beach, Moorpark, Pasadena, Redwood City, Sacramento, San Clemente, Salinas, Vista, and West Hollywood; League of California Cities.

Opposition: Unknown.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 1668
AUTHOR: Wieckowski
VERSION: 2/12/14
CONSULTANT: Grinnell

HEARING: 6/11/14
FISCAL: Yes
TAX LEVY: No

CALIFORNIA EDUCATIONAL FACILITIES AUTHORITY (URGENCY)

Allows the California Educational Facilities Authority to facilitate private placement loans.

Background and Existing Law

Several authorities within the State Treasurer's Office can issue conduit bonds, whereby a public agency sells a bond, then loans the proceeds to a nongovernmental borrower, such as a hospital or factory. Only the nongovernmental borrower's loan repayments secure the bond; the state doesn't guarantee the bond in any way.

One such authority, the California Educational Financing Authority (CEFA), issues conduit bonds on behalf of private, non-profit, post-secondary degree-granting institutions located in California, or institutions that have educational facilities in California that are regionally accredited and do not factor race or ethnicity into their admissions process. CEFA's governing board includes the Treasurer as Chair, the Controller, the Director of Finance, and two appointees from the Governor. Institutions must apply to CEFA, and can use proceeds to purchase land, construct or remodel buildings, purchase or lease equipment, and/or refinance existing debt. Religious schools are not precluded from applying. Successful applicants include Pepperdine University, University of Southern California, Claremont University Consortium, and Chapman.

Education institutions choose between CEFA and private banks when seeking project finance. However, while CEFA can issue bonds, notes, or other securities on behalf of issuers, it can't accept loan proceeds or issue other evidences of indebtedness necessary to allow for private placement loans, whereby an intermediary identifies an investor who directly funds the loan to the institution. Private placement loans are generally less costly because the issuer doesn't have to pay the costs to issue a bond, but can have higher interest rates because they can be modified more easily than bonds. Generally, pension funds and insurance companies invest in private placement loans. Seeking parity with other authorities, the state, and joint powers agencies, CEFA wants authority to issue private placement loans.

Proposed Law

Assembly Bill 1668 allows CEFA to accept loan proceeds or issue other evidences of indebtedness necessary to allow for private placement loans. The measure also makes several technical and conforming changes to CEFA's conduit bond statutes recommended by the Office of the Attorney General during a recent review, which include:

- Replacing "any" with "a,"
- Allowing CEFA to include in the bond with the same effect any provision currently in a trust agreement, indenture, or resolution, and
- Making other grammatical changes.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "AB 1668 would give the California Educational Facilities Authority the statutory authority to provide private or direct placement loans to nonprofit higher educational institutions. This will enable CEFA to respond to market demand and maintain its longstanding relationship with private non-profit colleges and universities by continuing to offer them cost effective financing options. In the past year, CEFA has turned away 12 borrowers, with a resulting loss in fees of roughly \$2 million, because it currently lacks this authority. AB 1668 requires no additional financial costs or staffing needs and is supported by the Association of Independent California Colleges and Universities."

2. Appropriate? Several authorities within the Treasurer's Office, including CEFA, issue tax-exempt bonds and financial instruments on behalf of private businesses. While these programs can provide access to funds at lower costs and interest rates than private lenders without risk to the state's General Fund, they overlap with activities that are typically the province of the financial services industry, although only public entities can issue tax-exempt financial instruments. Additionally, CEFA identifies foregone fees from private loans as one of the reasons to enact AB 1668, suggesting that the state could take some business from other lenders. *The Committee may wish to consider whether it's appropriate to change the law to enhance fee revenue and CEFA's position relative to its competitors.*

3. Urgency. Regular statutes take effect on January 1 following their enactment; bills passed in 2014 take effect on January 1, 2015. The California Constitution allows bills with urgency clauses to take effect immediately if they're needed for the public peace, health, and safety. AB 1668 contains an urgency clause declar-

ing that it is necessary for its provisions to go into effect immediately to prevent the loss of additional revenue.

Assembly Actions

Assembly Floor	75-0
Assembly Appropriations	17-0
Assembly Higher Education	12-0

Support and Opposition (06/05/14)

Support: State Treasurer Bill Lockyer, Association of Independent California Colleges and Universities.

Opposition: Unknown.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 1765
AUTHOR: Jones-Sawyer
VERSION: 6/4/14
CONSULTANT: Ewing

HEARING: 6/11/14
FISCAL: Yes
TAX LEVY: No

VOLUNTARY CONTRIBUTIONS: HABITAT FOR HUMANITY FUND

Creates the Habitat for Humanity Fund tax check-off on the Income Tax Form

Background and Existing Law

Existing law allows taxpayers to contribute to one or more of 20 voluntary contribution funds, known as VCFs or check-offs, by checking a box on their state income tax return. California law requires check-off contributions to be made from taxpayers' own resources and not from their tax liability, as is possible on federal tax returns. Check-off amounts may be claimed as charitable contributions on taxpayers' tax returns in the subsequent year.

The Franchise Tax Board (FTB) designs tax forms to provide for the designation of contributions to specified funds either on the return itself or on a separate schedule that must be attached to the return. With a few exceptions, VCFs remain on the tax form until they either are repealed by a sunset date or fail to meet a minimum contribution amount. Minimum contribution amounts are adjusted annually for inflation, with specific exceptions. For most VCFs, the minimum contribution amount is \$250,000, beginning in the fund's second year.

By September 1st of each year, the FTB must determine the minimum contribution amount required for each fund to remain on the form for the following calendar year and estimate whether contributions to each fund meet that amount. If the FTB estimates that a fund will fail to meet its minimum contribution amount, that fund is repealed for the following calendar year.

The following check-offs do not have a minimum contribution requirement:

- California Firefighters' Memorial Foundation Fund,
- California Peace Officer Memorial Foundation Fund, and
- California Seniors Special Fund.

Proceeds from tax check-offs are dedicated to a range of programs. The following list provides information on current tax check-offs and how contributions are

administered. This list does not reflect tax contributions that have been repealed under the terms of their statutes.

Voluntary Contribution Fund	2013 Contributions	Contribution Allotment
Alzheimer's Disease/Related Disorders Fund	\$405,080	As many as contract or receive grants provided by the monies contributed.
American Red Cross, California Chapter	Initial Tax Return 2013	To the Office of Emergency Services for distribution to the American Red Cross.
CA Breast Cancer Research Fund	\$369,425	As many as apply and receive grants provided from the monies contributed.
CA Cancer Research Fund	\$389,759	As many as apply and receive grants provided from the monies contributed.
CA Firefighters' Memorial Fund	\$126,158	California Fire Foundation.
CA Fund for Senior Citizens	\$234,247	California Senior Legislature.
CA Peace Officer Memorial Foundation Fund	\$128,581	California Peace Officer Memorial Commission.
CA Sea Otter Fund	\$307,544	Department of Fish and Wildlife, and as many as apply for grants and contracts provided for by 50% of contributions.
CA Seniors Special Fund	\$60,961	The first \$80K to the Area Agency on Aging Advisory Council of California and the rest to area agencies as allocated by the California Department of Aging.
CA YMCA Youth and Government Fund	\$72,435	The first \$300K to the CA YMCA Youth and Government Program. The rest is allocated in \$10K annual grants to the: African American Leaders for Tomorrow Program, Asian Pacific Youth Leadership Project, Chicano Latino Youth Leadership Project. Remaining funds allocated to the CA YMCA Youth and Government Program, whose board may award additional \$10K annual grants to additional nonprofit civic youth organizations.
CA Youth Leadership Fund	\$55,505	To the Department of Education to provide for the CA Youth Leadership Project.
Child Victims of Human Trafficking Fund	\$220,119	As many counseling and prevention centers that apply and receive grants provided from monies contributed.
Emergency Food for Families Fund	\$459,291	To the Department of Social Services for the Emergency Food Assistance Program.
Keep Arts in Schools Fund	Initial Tax Return 2013	To the Arts Council for grants to organizations providing arts programs in schools.
Municipal Shelter Spay-Neuter Fund	\$217,883	As many as apply and receive grants provided from the monies contributed.

Protect Our Coast and Oceans Fund	Initial Tax Return 2013	To the California Coastal Commission to provide grants to organizations in support of coastal resource programs and related educational activities.
Rare & Endangered Species Preservation Program	\$476,933	Department of Fish and Wildlife endangered conservation programs.
School Supplies for Homeless Children Fund	\$367,868	As many as apply and receive grants provided for by the monies contributed.
State Children's Trust for the Prevention of Child Abuse	\$305,438	To the Department of Social Services for prevention and intervention programs.
State Parks Protection Fund/Parks Pass Purchase	\$396,921	As many as purchase a parks pass that can be provided from the monies contributed.

Proposed Law

Assembly Bill 1765 adds the "Habitat for Humanity Fund" on the tax form for voluntary contributions, when space is available. Contributions received through the fund would be allocated to the Department of Housing and Community Development for distribution to the Habitat for Humanity through a competitive grant process. AB 1765 maintains existing requirements for tax check-offs, including the annual reporting by September 1st of each year by the Franchise Tax Board to determine eligibility for the following year, and the \$250,000 minimum contribution requirement, beginning in the second year, with annual adjustments for inflation. AB 1765 includes an automatic repeal after five years or 2021, whichever comes first.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. Assembly Bill 1765 would establish a tax check-off program, consistent with existing tax check-off programs, to support home construction and related programs offered by Habitat for Humanity. Including this fund on state tax forms will increase awareness of the need for affordable housing and enhance charitable giving for housing programs operated by this charity.

2. Is there a better way? Each year, the Committee considers several bills relating to tax check-offs. Previous committee analyses expressed concern over establishing new tax check-offs or adopting special legislation for a specific charity or program. The Legislature has chosen to encourage charitable giving by allowing organizations to receive funding through check-offs and taxpayers to receive a deduction for charitable giving on their tax return. However, the current design

and administration of the existing tax check-off program raises a number of concerns that suggest the need for a different approach to tax check-offs.

- The current program generates a relatively small share of statewide contributions.

The Franchise Tax Board reports that since 1982, tax check-offs have raised more than \$109 million for charitable causes. Donations have averaged \$4.3 million per year since 2000 and brought in \$4.7 million in 2013. Yet only a small percentage California's 15 million tax filers, less than 400,000, are utilizing the tax check-off program to donate to charitable causes. Federal tax return data from 2010, as reported by the Urban Institute, National Center for Charitable Statistics, indicates that Californians donated more than \$21 billion to charities, as reflected on their tax returns. In light of the low participation rate among tax filers, and relatively small level of funds contributed through tax check-offs, it is not clear that the tax check-off program is an efficient and effective strategy to connect donors with charitable organizations.

- Charities struggle to comply with the requirements of the tax check-off program.

Since 1982 the Legislature has authorized 45 individual tax check-offs on the tax form. Among those, more than one-third failed to remain on the tax form beyond its initial year. Just 10 of the 45 have met their statutory standards to remain on the tax form for 10 years or more. The Legislature has authorized 20 tax check-offs since 2005. Half of those recently enacted tax check-offs failed to meet statutory minimum contribution levels to remain on the tax form.

- Increasing demand from charitable organizations that want to participate in the program may soon generate significant costs.

Prior to a redesign of tax forms, and movement toward greater use of electronic filings, there were more tax check-off programs than could be accommodated on the tax forms. While changes to the tax forms have accommodated more tax check-offs, the FTB reports that it can accommodate 12-15 additional tax check-offs before its information technology system will need to be redesigned. Depending on the number of additional tax check-offs approved by the Legislature each year, it could be between two and five years before the FTB's systems must be upgraded.

- The current tax check-off program lacks monitoring to ensure that charities comply with state requirements.

In authorizing tax check-offs, with some exceptions, the Legislature has

required that check-offs must generate contributions that exceed a specified minimum to remain on the tax form. This policy was largely driven by competition for limited space on the tax form. Other than the requirements to meet the minimum contribution threshold, there are no specific requirements in the tax code that govern participation in a tax check-off program. For instance, SB 1262 (Sher, Chapter 1262, 2004) established requirements for charitable organizations to register with the Office of the Attorney General, if they contract for fundraising services. There is no requirement under the tax check-off statutes that the FTB or other agencies administering tax check-off funds confirm that recipient charities comply with these and other state rules and regulations.

3. Related legislation. AB 1765 is not the only bill dealing with tax check-offs this legislative session:

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- Assembly Bill 394 (Yamada, Chapter 671, 2013) extends the repeal date of the California Alzheimer's Disease and Related Disorders Research Fund tax check-off on the tax form from 2015 to 2020.
- Assembly Bill 511 (Pan, Chapter 451, 2013) creates the American Red Cross, California Chapters Fund check-off on the tax form.
- Assembly Bill 1286 (Skinner, Chapter 664, 2013) temporarily suspends the annual inflation adjustment for minimum contribution levels for the California Breast Cancer Research Fund check-off on the tax form.
- Assembly Bill 1561 (Rodriguez, 2014) extends the repeal date from 2016 to 2026 for the California firefighters' and peace officer memorial funds.
- Assembly Bill 1833 (Garcia, 2014) eliminates the minimum contribution requirement for the California Fund for Senior Citizens.
- Assembly Bill 2012 (Morrell, 2014) eliminates the minimum contribution requirement for the California Fund for Senior Citizens.
- Senate Bill 116 (Liu, Chapter 222, 2013) extends the repeal date from 2014 to 2019 for the Emergency Food Assistance Program check off on the tax form.
- Senate Bill 571 (Liu, Chapter 430, 2013) creates the Art for Kids Fund check-off on the tax form.
- Senate Bill 761 (DeSaulnier, 2014) modifies state administration of funds received through the School Supplies for Homeless Children Fund.
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- Senate Bill 782 (DeSaulnier, 2014) creates the California Sexual Violence Victim Services Fund tax check-off.
- Senate Bill 987 (Monning, 2014) requires that the cost incurred by the Department of Fish and Wildlife in taking measures to encourage taxpayers

to make contributions on their tax return be paid for with money allocated to the California Sea Otter Fund.

- Senate Bill 1207 (Wolk, 2014) establishes an administrative procedure for qualified charities to apply and receive donations through a tax check-off.

Assembly Actions

Assembly Revenue and Taxation Committee:	8-0
Assembly Appropriations Committee:	17-0
Assembly Floor:	74-0

Support and Opposition (6/5/14)

Support: Habitat for Humanity California; Habitat for Humanity East Bay/Silicon Valley; Habitat for Humanity Fresno County; Habitat for Humanity Hemet / San Jacinto; Habitat for Humanity Santa Cruz County; Habitat for Humanity of Coachella Valley; Habitat for Humanity of Orange County; Habitat for Humanity of Southern Santa Barbara County; Habitat for Humanity of Tulare County; Habitat for Humanity of Ventura County; Habitat for Humanity San Gorgonio Pass Area; Habitat for Humanity Riverside; Habitat for Humanity Santa Cruz County; Jerome E. Horton, Chair, Board of Equalization; Nevada County Habitat for Humanity; Pomona Valley Habitat for Humanity; San Gabriel Valley Habitat for Humanity.

Opposition: Unknown.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 1933
AUTHOR: Levine
VERSION: 4/24/14
CONSULTANT: Weinberger

HEARING: 6/11/14
FISCAL: No
TAX LEVY: No

LOCAL AGENCY INVESTMENTS

Allows local agencies to invest surplus funds in specified obligations issued by the World Bank, the International Finance Corporation, or the Inter-American Development Bank.

Background and Existing Law

Since 1913, state law has authorized local officials to invest a portion of their temporarily idle funds in a variety of financial instruments. State law originally limited these local investments to government bonds, but over time legislators expanded the list to include numerous additional financial instruments.

Multilateral lending institutions - also known as "supranationals" - provide development financing, advisory services and other financial services to their member countries to promote improved living standards through sustainable economic growth. Three of these supranationals are headquartered in the United States and issue highly-rated bonds that are denominated in U.S. currency:

- Founded in 1959, the Inter-American Development Bank (IADB) has 48 country members: 26 borrowing member countries in Latin America and the Caribbean and 22 nonborrowing members, including the U.S., Canada, and 20 nonregional countries. The bank lends mostly to central governments in Latin America and the Caribbean to promote economic development and to expand opportunities for the poor.
- With 188 member countries, the International Bank for Reconstruction and Development (IBRD) is the largest component of the World Bank Group. Operating since 1946, the IBRD seeks to reduce poverty by promoting sustainable economic development via loans, guarantees, and related assistance for projects and programs in its developing member countries.
- Established in 1956 to complement the activities of the IBRD, the International Finance Corporation (IFC) is the second-largest component of the World Bank Group, with 184 member countries. The IFC provides loans, makes investments, and provides other financial services to encourage the growth and development of the private sector in developing member countries.

State law allows the State Treasurer to invest surplus funds in bonds issued by specified supranational organizations, including the IADB, IBRD, and the IFC (SB 1776, Greene, 1978 and SB 1015, Calderon, 1991). State law also allows state or local public retirement systems to invest in bonds issued by supranational organizations, including the IADB, IBRD, and the IFC (SB 1459, Watson, 1994).

Local finance officials want the Legislature to grant them the same authority to invest surplus funds in supranationals' bonds that state law already grants for state surplus funds and state and local pension funds.

Proposed Law

Assembly Bill 1963 expands the list of financial instrument in which local agencies may invest surplus funds to include United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation, or Inter-American Development Bank. AB 1963 specifies that those investments must:

- Have a maximum remaining maturity of five years or less,
- Be eligible for purchase and sale within the United States,
- Be rated "AA" or better by a nationally recognized statistical rating organization (NRSRO),
- Not exceed 30% of the agency's surplus funds that may be invested pursuant to state law.

State Revenue Impact

No estimate.

Comment

Purpose of the bill. In response to a recent decrease in the supply of debt issued by government sponsored enterprises, like mortgage-related securities issued by Fannie Mae and Freddie Mac, local investment officers are seeking other highly-rated, medium-term financial instruments in which to invest public funds. State law already allows state surplus funds and state and local pension funds to be invested in supranational organizations' bonds. The State Treasurer's Pooled Money Investment Account, which includes funds from some local agencies, invests a portion of its portfolio in debt instruments issued by supranationals. Allowing local agencies' surplus funds to be invested directly in debt issued by three supranational finance organizations will give local finance officers access to a wider pool of secure investment options that provide better returns than U.S. Treasury securities and will help to diversify local investment portfolios.

Assembly Actions

Assembly Local Government Committee:	9-0
Assembly Banking & Financial Institutions Committee:	10-0
Assembly Floor:	75-0

Support and Opposition (6/5/14)

Support: California Association of County Treasurers and Tax Collectors.

Opposition: Unknown.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 1948

AUTHOR: Mullin

VERSION: 4/7/14

CONSULTANT: Urquiza

HEARING: 6/11/14

FISCAL: Yes

TAX LEVY: No

COUNTIES: OFFICERS: QUALIFICATION FOR OFFICE

Establishes mandatory qualifications for the office of county treasurer, tax collector, treasurer-tax collector, consolidated director of finance, and director of finance.

Background and Existing Law

State law establishes numerous county offices, including county treasurer, tax collector, and director of finance. Many counties have combined the offices of treasurer and tax collector. Counties also can combine the offices of auditor, controller, treasurer, and tax collector into one elected or appointed office of the director of finance.

In response to Orange County's bankruptcy in 1994, Senate Bill 866 (Craven, 1995) increased oversight of county investment practices. SB 866 required a person, in order to be eligible for election or appointment to the office of county treasurer, county tax collector, or county treasurer-tax collector, to meet at least one of the following five criteria:

- Serve in a senior financial management position in a public agency for three years, including, but not limited to treasurer, collector, auditor auditor-collector, or the chief deputy or an assistant in those offices;
- Possess a baccalaureate, masters, or doctoral degree from an accredited college or university in a finance-related field;
- Possess a certificate issued by the California Board of Accounting;
- Possess a charter issued by the Institute of Chartered Financial Analysts;
- or
- Possess a certificate from the Treasury Management Association.

However, these qualifications become effective only if a county's board of supervisors enacts an ordinance to adopt the requirements. Forty-seven of California's 57 counties (excluding San Francisco) have voluntarily adopted the qualifications. Two additional counties, Sacramento and Santa Clara, have established director of finance offices under their charter authority.

For general law counties, the office of director of finance must meet the minimum qualifications of either auditor or treasurer, if the qualifications are adopted by the board of supervisors. Some county officials want the Legislature to make the county treasurer-tax collector qualifications mandatory for all counties and want to extend the qualifications to the office of director of finance.

Proposed Law

Senate Bill 1948 deletes the provision in current law that states that requirements for qualification for the office of county treasurer, county tax collector, or county-treasurer-tax collector shall become effective only in those counties in which the board of supervisors enacts an ordinance adopting such requirements.

AB 1948 prohibits any person from being eligible for election or appointment to any office of county treasurer, tax collector, treasurer-tax collector, director of finance, consolidated director of finance, or any office consolidated with the office of treasurer or tax collector, unless they meet one of the following criteria:

- Has served in a senior financial management position in a public agency for three years, including, but not limited to treasurer, collector, auditor auditor-collector, or the chief deputy or an assistant in those offices;
- Possess a baccalaureate, masters, or doctoral degree from an accredited college or university in a finance-related field;
- Possess a certificate issued by the California Board of Accounting;
- Possess a charter issued by the Institute of Chartered Financial Analysts;
- or
- Possess a certificate from the Association for Financial Analysts.

The bill applies the qualifications to any person elected or appointed to the aforementioned offices on or after January 1, 2015.

The bill makes technical and updating changes.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. County treasurer-tax collectors and directors of finance are responsible for a range of complex financial duties, including the collection of tax revenue, the safekeeping of taxpayer dollars in the treasury, and the oversight of investment funds for counties, school districts, and special districts. They manage investment portfolios that can range from several million to billions of dollars. Qualifications for county treasurer-tax collectors currently are optional, at the discretion of the board of county supervisors. In contrast, county assessors, district attorneys, sheriffs, and superintendents of schools all must meet certain qualifications to be eligible for those offices. SB 1948 requires all counties to adopt minimum qualifications for officers who perform the function of treasurers and tax collectors to ensure that those charged with handling county financial resources are well trained and fully qualified.

2. Home rule. Each of California's 58 counties have unique financial circumstances. Alpine County's investment pool in 2011 was approximately \$30.5 million, whereas Los Angeles' was \$25.5 billion. Each county is authorized under law to establish mechanisms to ensure appropriate use of its investment pool. Many counties have established county treasurer oversight committees to provide formal oversight of the treasurers' investment policies. Counties with larger investment pools often hire a professional chief investment officer to manage the county's investment portfolio, making the treasurer's job more focused on administration than finance. Some county representatives are concerned that establishing mandatory qualification for their treasurer-tax collector would limit a county's ability to recruit and retain qualified candidates, particularly in rural or low-population counties. Given the unique circumstances of each county and the board of supervisors' various tools to ensure that the county's investment policies are sound, *the committee may wish to consider whether it is necessary to mandate all counties to adopt the minimum qualification for the offices that perform the function of treasurers and tax collectors.*

3. Qualifications and responsibilities. AB 1948 requires a candidate to meet just one of five qualifications for education or experience. For example, an individual who has a bachelor's degree in a finance-related field or has simply served as an assistant in an office such as the office of county auditor, would qualify for the election or appointment to the office of county treasurer-tax collector. It is not clear whether these minimum qualifications reflect a candidate's fitness to manage millions or billions of dollars in county investments. *The committee may wish to consider whether mandating the minimum qualifications established in AB 1948 would result in better trained and qualified candidates.*

4. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because AB 1948 imposes mandatory qualifications for specific county offices, Legislative Counsel says that it imposes a new state mandate. AB 1948 requires

the state to reimburse local agencies if the Commission on State Mandates determines that the bill imposes a reimbursable mandate.

Assembly Actions

Assembly Local Government:	9-0
Assembly Appropriations:	17-0
Assembly Floor:	73-0

Support and Opposition (6/5/14)

Support: California Association of County Treasurers and Tax Collectors; Howard Jarvis Taxpayers Association.

Opposition: Unknown.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 1963
AUTHOR: Atkins
VERSION: 6/4/14
CONSULTANT: Weinberger

HEARING: 6/11/14
FISCAL: Yes
TAX LEVY: No

LONG RANGE PROPERTY MANAGEMENT PLANS (URGENCY)

Extends, until January 1, 2016, the date by which the Department of Finance must approve a redevelopment successor agency's long-range property management plan.

Background and Existing Law

Until 2011, the Community Redevelopment Law allowed local officials to set up redevelopment agencies (RDAs), prepare and adopt redevelopment plans, and finance redevelopment activities. Citing a significant State General Fund deficit, Governor Brown's 2011-12 budget proposed eliminating RDAs and returning billions of dollars of property tax revenues to schools, cities, and counties to fund core services. Among the statutory changes that the Legislature adopted to implement the 2011-12 budget, AB X1 26 (Blumenfield, 2011) dissolved all RDAs. The California Supreme Court's 2011 ruling in *California Redevelopment Association v. Matosantos* upheld AB X1 26, but invalidated AB X1 27 (Blumenfield, 2011), which would have allowed most RDAs to avoid dissolution.

AB X1 26 established successor agencies to manage the process of unwinding former RDAs' affairs. With limited exceptions, the city or county that created each former RDA now serves as that RDA's successor agency. Each successor agency has an oversight board that is responsible for supervising it and approving its actions. The Department of Finance (DOF) can review and request reconsideration of an oversight board's decisions.

If a successor agency complies with state laws that require it to remit specified RDA property tax allocations and cash assets identified through a "due diligence review" process, it receives a "finding of completion" from the DOF (AB 1484, Assembly Budget Committee, 2012).

State law generally requires successor agencies to dispose of former RDAs' assets and properties expeditiously and in a manner aimed at maximizing value, as directed by the oversight board. Asset sale proceeds that are no longer needed for winding down an RDA's affairs must be transferred to the county auditor-controller for distribution to taxing entities within the county. However, a successor agency that receives a finding of completion can retain a former RDA's

real property assets in a trust and use those assets subject to provisions of a long-range property management plan approved by the agency's oversight board and the DOF. If the DOF has not approved a successor agency's long-range property management plan by January 1, 2015, the agency must comply with the statutes that, with specified exceptions, require the expeditious disposal of former RDAs' assets. DOF has issued more than 300 findings of completion. According to DOF staff, successor agencies have submitted 268 long-range property management plans to DOF, which has approved 124 of those plans. State and local officials want the Legislature to provide more time for DOF to review and approve the remaining plans.

State law requires the State Controller to review whether specified asset transfers by successor agencies that occurred after January 31, 2012 were made pursuant to an enforceable obligation on an approved and valid Recognized Obligation Payment Schedule. The Controller must order available assets that were improperly transferred to be returned to the successor agency. Upon receiving that order, an affected local agency must, as soon as practicable, reverse the transfer and return the applicable assets to the successor agency. Because it has focused its efforts on reviewing assets transfers by former redevelopment agencies, the State Controller's Office has not yet begun to review successor agencies' post-January 2012 asset transfers. State and local officials want the Legislature to repeal the requirement that the Controller must review successor agency asset transfers that occurred after January 31, 2102.

Proposed Law

Assembly Bill 1963 extends, from January 1, 2015 until January 1, 2016, the date by which a redevelopment successor agency must obtain DOF approval of a long-range property management plan.

AB 1963 repeals the statute that requires the State Controller to review successor agencies' transfers of specified assets to cities or counties and provides for the return of improperly transferred assets.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. After the State Supreme Court's *Matosantos* decision, redevelopment stakeholders feared that AB X1 26, by requiring successor agencies to expeditiously dispose of RDA property, would result in a "fire sale" that

wouldn't recover the full value of those public assets. In response, AB 1484 allowed a successor agency that receives a finding of completion to provide for an orderly property disposition process through an approved long-range property management plan. With only six months remaining before the statutory deadline for getting plans approved by DOF, more than 140 plans that have been submitted to DOF are still awaiting approval. By extending the deadline and ensuring that all successor agencies have ample time to get DOF approval for long-range property management plans, AB 1963 protects the public's interest in avoiding a fire-sale of former RDA property. AB 1963 also repeals a statute that requires the State Controller's office to conduct a review of successor agencies asset transfers. The thorough scrutiny that successor agencies activities' have received through the oversight board approval and Department of Finance review process, makes it unlikely that the Controller's reviews, which have not yet begun, will be necessary.

2. Urgency. Regular statutes take effect on January 1 following their enactment; bills passed in 2014 take effect on January 1, 2015. The California Constitution allows bills with urgency clauses to take effect immediately if they're needed for the public peace, health, and safety. AB 1963 contains an urgency clause declaring that it is necessary for its provisions to go into effect immediately to prevent the "fire sale" of property by allowing each successor agency that receives a finding of completion to receive an approval for that successor agency's long-range property management plan as quickly as possible.

Assembly Actions

Assembly Local Government Committee:	9-0
Assembly Appropriations Committee:	17-0
Assembly Floor:	78-0

Support and Opposition (4/5/14)

Support: BRIDGE Housing; California Infill Builders Federation; California Rural Legal Assistance Foundation; City of West Hollywood; League of California Cities; Western Center on Law & Poverty.

Opposition: Unknown.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 2009
AUTHOR: Weber
VERSION: 4/10/14
CONSULTANT: Bouaziz

HEARING: 6/11/14
FISCAL: Yes
TAX LEVY: No

STATE BOARD OF EQUALIZATION: MANAGED AUDIT PROGRAM

Authorizes a managed audit program for various tax and fee programs administered by the Board of Equalization.

Background and Existing Law

State law provides for a managed audit program under the Sales and Use Tax (SUT) Law. If the State Board of Equalization (BOE) determines that a taxpayer's account is eligible for the program and the taxpayer agrees to participate, the taxpayer examines its own books, records, and equipment to determine if it has any unreported tax liability for the audit period, in compliance with the managed audit instructions provided by the BOE. Upon completion of the managed audit and verification by the BOE, interest on any unpaid liability is computed at one-half the rate that would otherwise be imposed for liabilities covered by the audit period.

Proposed Law

Assembly Bill 2009 authorizes a voluntary managed audit program for the Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Act, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

AB 2009 provides that a taxpayer's account is eligible for the managed audit program only if the taxpayer meets all of the following criteria:

- The taxpayer's business involves few or no statutory exemptions;
- The taxpayer's business involves a single or small number of clearly defined taxability issues;
- The taxpayer agrees to participate in the managed audit program; and,

- The taxpayer has the resources to comply with the managed audit instructions provided by the BOE.

The BOE must identify all of the following if it selects a taxpayer's account:

- The audit period covered by the managed audit;
- The types of transactions covered by the managed audit;
- The specific procedures that the taxpayer is to follow in determining any liability;
- The records to be reviewed by the taxpayer;
- The manner in which the types of transactions are to be scheduled for review;
- The time period for completion of the managed audit;
- The time period for the payment of the liability and interest;

The bill requires a participating taxpayer to examine its books and records to determine if it has any unreported tax liability for the audit period, and to make available to BOE for verification all computations and books and records examined. Upon completion verification, the BOE can only charge interest on any unpaid liability at one-half the rate that would otherwise be imposed for liabilities covered by the audit period.

State Revenue Impact

The BOE estimates that this bill would result in a net annual revenue gain of approximately \$249,207.

Comments

1. **Purpose of the bill.** According to the author, "Managed audits are essentially supervised self-audits. Under the existing MAP, the BOE is authorized to determine which taxpayer accounts are eligible to participate in a MAP and to enter into MAP Participation Agreements with eligible taxpayers. The auditor provides written and oral instructions to enable eligible taxpayers to perform audit verification and prepare working paper schedules necessary to complete certain portions of the audit. These audits are advantageous for both tax payers and the BOE by limiting disruption to a taxpayer's business activities while also allowing the BOE to reallocate audit resources to conduct more audits. BOE staff has also found that taxpayers who participate in the MAP develop a better understanding of the laws that affect them and are able to report tax liability more accurately. By extending the authority of MAP to special tax and fee programs, this bill will allow greater access to an already successful program."

2. What is the managed audit program? The SUT Law's managed audit program allows eligible taxpayers to conduct a self-audit under the BOE's supervision. The taxpayer must have sufficient resources to comply with the BOE's managed audit instructions. From the BOE's perspective, the benefits of the managed audit program include the ability to redirect staff resources to more complex, revenue-generating activities. At the same time, the BOE notes that the program leads to earlier resolution of taxability issues and fewer protested audits. Eligible taxpayers, in turn, can reduce some of the business disruption associated with traditional audits, and gain valuable knowledge regarding how to comply properly with the SUT Law. Taxpayers who successfully complete a managed audit verified by the BOE receive a break on any interest due.

Assembly Actions

Assembly Committee on Revenue and Taxation:	9-0
Assembly Appropriations Committee:	17-0
Assembly Floor:	78-0

Support and Opposition (06/05/14)

Support: California Board of Equalization; California Chamber of Commerce; California Taxpayers Association.

Opposition: None received.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 2119
AUTHOR: Stone
VERSION: 5/14/14
CONSULTANT: Weinberger

HEARING: 6/11/14
FISCAL: No
TAX LEVY: No

TRANSACTIONS AND USE TAXES IN UNINCORPORATED AREAS

Allows a county board of supervisors to impose a transactions and use tax within the county's unincorporated area with the approval of voters within that area.

Background and Existing Law

Proposition 62 (1986) and Proposition 218 (1996) require voter approval for new and increased local taxes. Proposition 62 added statutes to the California Government Code that prohibit a local government from imposing:

- A special tax unless the special tax is submitted to the electorate of the local government and approved by a two-thirds vote.
- A general tax unless the general tax is submitted to the electorate of the local government and approved by a majority vote.

Proposition 218 amended the California Constitution to define the difference between general taxes and special taxes and impose voter approval requirements that are similar to Proposition 62's statutory provisions.

Counties can only impose taxes that state law specifically authorizes them to impose. With some exceptions, state law generally grants counties the power to impose taxes only in their unincorporated areas. For example, the statutes authorizing counties' transient occupancy taxes, business license taxes, and utility user taxes all specify that those taxes may only be imposed within unincorporated areas. In recent elections, different counties have taken different approaches to seeking voter approval of taxes levied in unincorporated areas. Some counties submit ballot measures to all county voters, including those residing in cities, while other counties only ask voters residing in unincorporated areas to vote on the tax proposals.

The Transactions and Use Tax Law authorizes a county to levy a transactions and use tax throughout the county's entire territory, at a rate of 0.125%, or multiples of 0.125%. A transactions and use tax is imposed on the total retail price of any tangible personal property and the use or storage of such property when sales tax is not paid. The tax is added on to, and administered in tandem with, the

combined state and local sales and use tax rate. An ordinance imposing a county-wide transactions and use tax must be approved either by a majority of county voters, if the tax is for general purposes, or by two-thirds of county voters, if the tax is for special purposes.

Some county officials want to be able to impose county transactions and use taxes only within a county's unincorporated area, subject to the approval of either a majority or two-thirds of only the voters who reside in the unincorporated area.

Proposed Law

Assembly Bill 2119 allows a county's board of supervisors to levy, increase, or extend a general-purpose transactions and use tax either:

- Throughout the entire county, if the tax is approved by a majority vote of qualified voters of the entire county, or
- Within the unincorporated area of the county if the tax is approved by a majority vote of qualified voters of the unincorporated area.

AB 2119 directs that a county must use revenues from a general-purpose transactions and use tax only for general purposes within the area for which the tax was approved by the qualified voters.

AB 2119 allows a county's board of supervisors to levy, increase, or extend a special-purpose transactions and use tax either:

- Throughout the entire county, if the tax is approved by a two-thirds vote of qualified voters of the entire county, or
- Within the unincorporated area of the county if the tax is approved by a two-thirds vote of qualified voters of the unincorporated area.

AB 2119 directs that a county must use revenues from a special-purpose transactions and use tax only for specific purposes within the area for which the tax was approved by the qualified voters.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. In many counties throughout the state, more than half of their territory is in unincorporated areas, making those counties responsible for financing a large amount of infrastructure. Unlike some other statutes that authorize counties to impose taxes only within their unincorporated areas, current

law only authorizes a county to impose an add-on transactions and use tax rate throughout the entire county. AB 2119 would allow counties to introduce a sales tax measure that would be applied to unincorporated areas, spent on the infrastructure of those unincorporated areas, and voted on by the qualified voters of those areas. By allowing county supervisors to limit the geographic area in which a county transactions and use tax applies, this approach mirrors current law for other county taxes. Additionally, when cities impose a transactions and use tax, only voters who reside in the area where the tax is going to be imposed get to vote on that tax. AB 2119 makes the approval process for county transactions and use taxes comparable to the current process for approving city transactions and use taxes.

2. Complications. Making it easier for counties to impose add-on sales taxes in only a portion of their jurisdictions will further complicate an already complex patchwork of sales tax rates across the state. The Board of Equalization's analysis of AB 2119 notes that allowing for a separate transactions and use tax rate in unincorporated areas could make it more complicated for taxpayers to determine the proper rate to apply to a sale and more difficult to properly identify and report the applicable tax rates on their tax returns. Uniform county-wide rates, by contrast, makes it easier for taxpayers to file accurate returns, which improves compliance. AB 2119 may also complicate counties' efforts to administer their transactions and use tax revenues by requiring counties to ensure that revenues generated from a tax imposed only within the unincorporated area are used only within that area.

3. What does "electorate" mean? It is debatable whether, simply by amending the Transactions and Use Tax Law, AB 2119 can allow a county tax to be approved only by voters residing in an unincorporated area. In recent years, several counties have sought voter approval for taxes that are imposed only in unincorporated areas. Many of those counties cite provisions of Proposition 62 (Government Code §53722 and §53723) and Proposition 218 (California Constitution, Article XIII C, §2) as requiring all county voters to vote on a measure to approve a county tax. Officials in other counties hold a different view of state law and ask only residents of unincorporated areas to vote on taxes that are to be levied only in the unincorporated areas. The question hinges on how to interpret statutory and constitutional language requiring a local government to submit any tax to "the electorate" of the local government for voter approval. Statutory language can't override voter-approved provisions of Propositions 62 and 218. As a result, regardless of what AB 2119 says, it will be left to individual counties, and perhaps the courts, to ultimately decide whether a county tax can be approved by only a portion of the county-wide electorate.

Assembly Actions

Assembly Revenue and Taxation Committee: 6-3
Assembly Floor: 50-22

Support and Opposition (6/5/14)

Support: American Federation of State, County, and Municipal Employees; California State Association of Counties; California Tax Reform Association; Counties of Humboldt, Monterey, San Luis Obispo, and Santa Cruz.

Opposition: California Taxpayers Association; Howard Jarvis Taxpayers Association.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 2170
AUTHOR: Mullin
VERSION: 2/20/14
CONSULTANT: Weinberger

HEARING: 6/11/14
FISCAL: No
TAX LEVY: No

JOINT EXERCISE OF POWERS

Specifies that the common powers that public agencies may jointly exercise pursuant to a joint powers agreement include the authority to levy a fee or a tax.

Background and Existing Law

The Joint Exercise of Powers Act allows two or more public agencies to enter an agreement to jointly exercise any power held in common by the parties to the agreement. Each public agency must independently possess the authority to perform the activity that is to be performed jointly pursuant to a joint powers agreement. The courts have found that the Act grants no new powers to public agencies, but merely sets up a new procedure for the exercise of existing powers.

Sometimes an agreement creates a new, separate government called a joint powers authority (JPA). Public officials have created more than 700 JPAs, which are confederations of governments working together for common purposes. A joint powers agreement must state the purpose of the JPA or the power to be exercised, and must provide for the method by which the purpose will be accomplished or the manner in which the power will be exercised. A JPA may exercise only the powers expressly provided for in the agreement.

Some joint powers agreements creating JPAs that consist entirely of local governments that share common powers to levy taxes, assessments, or fees allow the JPA to exercise those common revenue powers. However, some public agency officials remain concerned that the Joint Exercise of Powers Act's provisions may not extend to local governments' common tax, assessment, and fee authority. They want the Legislature to clarify the types of revenue powers that a JPA can exercise pursuant to a joint powers agreement.

Proposed Law

Assembly Bill 2170 specifies that the common powers that public agencies may jointly exercise pursuant to a joint powers agreement include, but are not limited to, the authority to levy a fee or a tax.

AB 2170 enacts a legislative finding and declaration stating that, because a joint powers authority has all powers common to the contracting parties, so long as those powers are specified in the joint powers agreement, the bill's provision do not constitute a change in, but are declaratory of, existing law.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. Several JPAs in California already impose taxes, fees, or assessments using powers that are held in common by all of the public agencies participating in those JPAs. However, some local officials are reluctant to use a JPA to levy taxes, assessments, or fees because the Joint Exercise of Powers Act does not explicitly extend that authority to JPAs. In response to this statutory ambiguity, and the conflicting legal interpretations that it invites, AB 2170 clarifies that JPAs may, consistent with their existing authority under the Joint Exercise of Powers Act, raise revenues through fees or taxes to fund important community projects. Because a JPA only allows public agencies to exercise their existing powers, AB 2170 does not grant any new revenue powers to local governments. AB 2170 also does not change any of the voter-approval thresholds or other procedural requirements that state law imposes on local, taxes, assessments, and fees.
2. Unnecessary. If a city or county identifies urgent needs for which it lacks sufficient funding, state law already provides ample options for imposing taxes, assessments, or fees, with voter or landowner approval. Simply allowing local governments to raise revenues through a different government structure - a JPA - won't ensure any improvements in the projects funded or services provided with the new revenues. Because local governments already possess a wide array of revenue powers that they can use to finance needed infrastructure and services, it is unclear why the authorization enacted by AB 2170 is necessary.
3. Unanswered questions. While AB 2170 may eliminate ambiguity about whether public agencies *can* jointly exercise revenue powers through a JPA, it leaves some significant unanswered questions about *how* public agencies should jointly exercise those powers. In particular, AB 2170 doesn't specify how a JPA should comply with many of the Constitutional requirements that apply to local government revenues. It is unclear how a JPA should comply with the constitutional requirement that a local agency must adopt an appropriations limit if it receives proceeds of taxes or how a JPA's appropriations limit would relate to the appropriations limits adopted by its member public agencies. AB 2170 is si-

lent about the manner in which local agencies must jointly seek approval for taxes, fees, or assessments. Can a JPA seek voter approval from among all qualified voters within the JPA's entire territory? Or must each public agency member independently obtain the approval of its respective residents before it is entitled to exercise revenue power jointly with other agencies? By providing no statutory guidance to local officials, and in the absence of any relevant case law on these questions, AB 2170 may still leave public agencies vulnerable to legal challenges if they exercise their common revenue powers in a manner that is inconsistent with state law. *The Committee may wish to consider amending AB 2170 to specify the procedures that JPAs must follow when exercising their revenue powers.*

4. Let's get technical. To clarify AB 2170's provisions, the Committee may wish to consider amending the bill to make the following changes:

- Strike out "therefor" on page 1, line 4, and replace it with "therefore"
- After the word "fee" on page 2, line 4, add the word "assessment"

5. Related legislation. Assembly Bill 418 (Mullin) allows the City/County Association of Governments of San Mateo County - a JPA - to impose a special tax or property-related fee to fund storm water management programs. The Senate Governance and Finance Committee passed AB 418 at its January 15, 2014 hearing. The bill is currently on the Assembly Inactive File.

Assembly Actions

Assembly Local Government Committee:	7-2
Assembly Floor:	44-26

Support and Opposition (6/5/14)

Support: California State Association of Counties; California Special Districts Association; City/County Association of Governments of San Mateo County; John Stewart Company; League of California Cities; Non-Profit Housing Association of Northern California; San Francisco Planning and Urban Research (SPUR).

Opposition: California Chamber of Commerce; California Taxpayers Association; Howard Jarvis Taxpayers Association.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 2194
AUTHOR: Mullin
VERSION: 2/20/14
CONSULTANT: Urquiza

HEARING: 6/11/14
FISCAL: No
TAX LEVY: No

MELLO-ROOS FINANCING FOR STORMWATER MANAGMENT

Expands the services that may be financed with Mello-Roos special taxes to include storm water management.

Background and Existing Law

The Mello-Roos Community Facilities Act allows counties, cities, special districts, and school districts to levy special taxes (parcel taxes) to finance a wide variety of public works, including parks, recreation centers, schools, libraries, child care facilities, and utility infrastructure. A Mello-Roos Community Facilities District (CFD) issues bonds against these special taxes to finance the public works projects. Like all special taxes, Mello-Roos Act special taxes require 2/3-voter approval. If there are fewer than 12 registered voters, the affected landowners vote.

In addition to financing public or governmental capital facilities, Mello-Roos act special taxes can fund a limited list of public services: police services, fire protection, recreation programs, library services, museum operations, park maintenance, flood and storm protection, hazardous waste cleanup, street and road maintenance, lighting of parks, parkways, streets, roads, and open space, plowing and removal of snow, and graffiti management and removal.

The Mello-Roos Act is an important feature of the local fiscal landscape, providing local officials with a key tool for accumulating the public capital needed to pay for the public works projects that make new residential development possible. Mello-Roos is an attractive financial tool because it provides more flexibility that can be used to finance facilities that are not located in the district. Additionally, there is no requirement that the special tax is apportioned on the basis of benefit to the property.

The federal Clean Water Act requires states to reduce pollution from urban storm water runoff. In California, the State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCBs) are pushing counties, cities, and special districts to reduce urban runoff and storm water discharges. RWQCBs issue National Pollutant Discharge Elimination System General Permits (NPDES) for medium and large municipalities that require public education

and outreach, illicit discharge detection and elimination, construction and post-construction, and good housekeeping for municipal operations. Compliance with permits sometimes requires comprehensive solutions to urban runoff including low impact development, catchments, water treatment, and other costly activities. In 2013, SWRCB also adopted permits for smaller municipalities, including military bases, public campuses, prisons and hospital complexes. Local governments continue to struggle to comply with permit requirements and want to be able to use Mello-Roos taxes to help finance storm water management.

Proposed Law

Assembly Bill 2194 adds to the list of services that a Mello-Roos Community Facilities Districts can finance, storm water management services, including, but not limited to, compliance with state and federal storm water permit requirements.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. Numerous local governments throughout California are facing increasingly high costs associated with compliance with federal and state storm water permit requirements. To comply with storm water permits, cities need to fund projects that may cost millions and even billions of dollars over the next ten years. AB 2194 establishes an additional funding mechanism to help local governments comply with storm water permit requirements.

2. Growing disparities. Current law authorizes counties and cities to impose special taxes, benefit assessments, and property-related fees in order to fund water pollution prevention and storm water services. By adding storm water management to the list of services that may be financed through Mello-Roos special taxes, AB 2194 allows communities to finance those services through a single mechanism. *The Committee may wish to consider whether expanding the list of services financed by Mello-Roos special taxes may widen disparities between services supported by tax revenues from property owners within CFDs and those not in CFDs.*

3. Services but not Facilities? AB 2194 authorizes Mello-Roos financing for storm water management services, but does not explicitly add facilities for the purposes of storm water management to the list of facilities and services that CFDs can finance. As a result, cities would be able to finance services related to storm water permit requirements, such as public education and outreach, but not tangible

infrastructure related to storm water management, such as permeable concrete. *The committee may wish to consider amending the bill to ensure facilities for the purposes of storm water management may be financed by Mello-Roos.*

4. Public and private facilities. The Mello Roos Act authorizes a CFD to finance a wide range of public facilities, as well as the construction, expansion, improvement, or rehabilitation of a limited type of privately owned facilities. If the bill is amended to add facilities for stormwater management, and given that the goal of AB 2194 is to help cities comply with municipal storm water permits, *the committee may wish consider restricting the acquisition, improvement, rehabilitation, or maintenance of any real or other tangible property to only publicly-owned property.*

5. Let's be clear. State and federal law requires many storm water permits in addition to municipal ones, including those for stormwater discharge associated with industrial activity and permits and construction projects. To reflect the author's intent, *the committee may wish to consider amending the bill to specify that Mello-Roos special taxes may be used only for local agency's compliance with state and federal stormwater permits.*

6. Related Legislation. Several bills address the issue of financing storm water management this legislative session:

- AB 2403 (Rendon, 2014) expands the definition of "water" in the Proposition 218 Implementation Act to add storm water.
- AB 418 (Mullin, 2014) authorizes the City/County Association of Government of San Mateo County to impose a special tax or property-related fee to fund stormwater management programs.

Assembly Actions

Assembly Local Government: 9-0
Assembly Floor: 75-1

Support and Opposition (6/5/14)

Support: California Building Industry Association; California Special Districts Association; City/County Association of Governments of San Mateo County.

Opposition: Unknown.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 2403
AUTHOR: Rendon
VERSION: 6/2/14
CONSULTANT: Weinberger

HEARING: 6/11/14
FISCAL: No
TAX LEVY: No

PROPERTY RELATED FEES

Clarifies the Proposition 218 Omnibus Implementation Act's definition of "water."

Background and Existing Law

Proposition 218 (1996) imposed constitutional limits on local officials' ability to impose, increase, and extend fees, including property-related fees. Proposition 218 defined a property-related fee as any levy other than an ad valorem tax, a special tax, or an assessment imposed by an agency on a parcel or on a person as an incident of property ownership, including a user fee for a property-related service. The Legislature enacted the Proposition 218 Omnibus Implementation Act to translate many of Proposition 218's requirements into statutory definitions and procedures (SB 919, Rainey, 1997).

Before a local government can charge a new property-related fee, or increase an existing one, Proposition 218 requires local officials to:

- Identify the parcels to be charged.
- Calculate the fee for each parcel.
- Notify the parcels' owners in writing about the fees and the hearing.
- Hold a public hearing to consider and count protests.
- Abandon the fees if a majority of the parcels' owners protest.

New or increased property-related fees generally require:

- A majority-vote of the affected property owners; or,
- Two-thirds registered voter approval; or,
- Weighted ballot approval by the affected property owners.

However, these vote requirements don't apply to property-related fees for sewer, water, or refuse collection services. Determining what services fall within the definition of "water" services, which can be funded with fees that are not subject to a vote, has been the subject of litigation. An appellate court decision in *Howard Jarvis Taxpayers Association v. City of Salinas (2002)* found that a city's charges on developed parcels to fund stormwater management were property-related fees, and were not covered by the exemption for sewer or water services. A sub-

sequent appellate court decision in *Griffith v. Pajaro Valley Water Management Agency* (2013) found that a groundwater augmentation charge is a fee for water service, as defined by Proposition 218.

In light of these court rulings and local governments' continued struggles to finance storm water management, groundwater augmentation, water conservation, and similar activities, some local officials want the Legislature to clarify the Proposition 218 Omnibus Implementation Act's definition of "water."

Proposed Law

Assembly Bill 2403 clarifies that the Proposition 218 Omnibus Implementation Act's current definition of "water" includes improvements for producing, storing, supplying, treating, or distributing of water from any source.

AB 2403 enacts legislative findings and declarations stating that:

- The provisions of the Proposition 218 Omnibus Implementation Act must be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.
- The bill's provisions advance specified policies established by the California Constitution.
- The bill's provisions are declaratory of existing law.

The bill makes additional technical, non-substantive amendments to state law.

State Revenue Impact

No estimate.

Comment

Purpose of the bill. AB 2403 amends the Proposition 218 Implementation Act to define "water" in a manner that is consistent with recent appellate court decisions. In doing so, AB 2403 clarifies local agencies' ability to impose some storm water management fees, where the management programs capture storm water for domestic and irrigation supply, without having to subject those fees to a vote. The bill bolsters important elements of local storm water management programs, including the growing development of storm water recapture programs for recharging groundwater aquifers.

Assembly Actions

Assembly Local Government Committee: 9-0
Assembly Floor: 74-1

Support and Opposition (6/5/14)

Support: California Coastkeeper Alliance; Clean Water Action/Clean Water Fund; Climate Resolve; Coalition for Our Water Future; Signal Hill City Councilmember Larry Forester; David Nahai Consulting Service, LLC; Desert Water Agency; East Valley Water District; El Dorado Irrigation District; Heal the Bay; HOK Product Design; Horny Toad Outdoor Apparel; LA Conservation Corps; Los Angeles Waterkeeper; Natural Resources Defense Council; Richard Watson & Associates; Santa Monica Bay Restoration Commission; Seventh Generation Advisors; Southern California Watershed Alliance; Surfrider Foundation; The Energy Coalition; The River Project; TreePeople; Urban Semillas; 3 individual letters

Opposition: Unknown.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 2455
AUTHOR: Williams
VERSION: 6/2/14
CONSULTANT: Urquiza

HEARING: 6/11/14
FISCAL: No
TAX LEVY: No

THE SANTA RITA HILLS COMMUNITY SERVICES DISTRICT

Allows, until January 1, 2035, the Santa Rita Hills Community Services District's board of directors to consist of three members instead of five.

Background and Existing Law

State law allows residents of an unincorporated area to initiate the formation of a community services district (CSD), which can provide a wide variety of services such as water, garbage collection, wastewater collection, fire protection, street lighting, and mosquito abatement services. The residents of the CSD elect a board of local residents to oversee the management and operations of the district. A candidate for the board of directors must be a voter of the district. Before 2005, state law allowed CSDs to have boards of directors with either three or five members. In a rewrite of CSD law, SB 135 (Kehoe, 2005) required all CSDs to have five-member boards of directors.

The Legislature has authorized some special districts to increase or decrease the size of boards of directors. For example, SB 235 (Negrete McLeod, 2011), authorized water conservation districts with boards consisting of seven directors to reduce the number of directors to five by a resolution adopted by two-thirds of the board. SB 210 (Local Government Committee, 2001) authorized the Sawyers Bar County Water District to decrease the size of its board from five to three members if a majority of the district's voters signed a petition requesting that reduction. The Sawyers Bar County Water District served a remote rural community in the County of Siskiyou with approximately 14 registered voters, which made it difficult to find individuals willing and able to serve as members of the district's board of directors.

The Santa Rita Hills Community Services District (SRHCSD), formed in 2009, serves the small community of Santa Rita Hills in Santa Barbara County. SRHCSD's powers and responsibilities include the acquisition, construction, improvement and maintenance of streets, roads, bridges, and sidewalks. There are only 10 registered voters residing within the district's boundaries. Due to challenges in filling a board vacancy, achieving a quorum during board meetings,

and in anticipation of future vacancies, SRHCSD wants to reduce its board membership from five members to three members.

Proposed Law

Assembly Bill 2455 allows the Santa Rita Hills Community Services District to reduce the size of its board of directors from five members to three members.

AB 2455 requires that before reducing the board membership, the board of directors must:

- Adopt, by majority vote of the board of directors, a resolution proposing to reduce the number of directors to three members;
- Hold a public hearing regarding the proposal to reduce the number of directors;
- Give notice of the public hearing by placing a display advertisement in a newspaper of general circulation for three weeks and mailing notice to each voter in the district;
- Hold a public hearing at least 45 days after mailing the notice;
- At the hearing, receive and consider any written or oral comments regarding the proposed reduction in the number of directors. After receiving and considering the comments, the board shall disapprove the proposal or adopt a resolution ordering the reduction.

The bill prohibits a reduction in the number of directors from affecting the term of office of any director and requires a director holding office as of the effective date of the reduction to continue to be director until the office becomes vacant by means of term expiration or otherwise.

The bill allows the district board of directors to consist of three members until January 1, 2035.

The bill allows the board of directors to increase the board to five members before 2035 following the same procedures used to reduce the number of board directors. If the board adopts a resolution to increase the number of directors, it cannot subsequently reduce the number of directors.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. The Santa Rita Hills Community Services District is comprised of 35 parcels of land with only 10 registered voters residing within the district's boundaries. Due to a vacancy, and the inability to find a replacement for a vacancy, the current board only has four members. Santa Barbara County prohibits new residences from being built in the district until the district upgrades its roads. The county's restriction is limiting the potential for new registered voters to move into the district. Additional vacancies are expected in the near future, leaving the board in a situation where they may lose a quorum to conduct business. By reducing board membership to three members instead of five, AB 2455 gives the Santa Rita Hills Community Services District the opportunity to regularly conduct the business required to help it fulfill its role of providing road infrastructure.

2. Effective Solution? The Santa Rita Hills Community Services District was created to design and construct a system of roads within the CSD to provide acceptable access to existing parcels. The District has faced many challenges in building road infrastructure, including building a dependable road to the nearest public street. The district's challenges involve a lack eminent domain power, a dissenting property owner, and other challenges with permit requirements to build a road. Reducing board membership does not address the fundamental obstacles to the district's efforts to build road infrastructure.

3. Voter Involvement. The Legislature has required various levels of voter involvement when changing the size of the board of directors of some special districts. In response to a situation similar to Santa Rita Hills Community Services District, SB 210 (Local Government Committee, 2001) authorized the Sawyers Bar County Water District to decrease the size of its board if a majority of the district's voters signed a petition requesting that reduction. AB 2455 does not explicitly provide for voter involvement. *The committee may wish to consider amending the bill to require the majority of voters in the district to sign a petition before the CSD can initiate the process to reduce the number of board members to three.*

4. Sunset Review. AB 2455 allows the Santa Rita Community Services District's board of directors to increase the number of board members back to five prior to the bill's sunset of January 1, 2035. However, increasing the number back to five is optional and no built-in trigger exists in the case that the voter base grows during a twenty year period. Instead, a shorter sunset would allow the Legislature to review the district's progress. *The committee may wish to consider amending the bill to require a sunset date of 2025 instead.*

5. Special legislation. The California Constitution prohibits special legislation when a general law can apply (Article IV, §16). AB 2455 contains findings and declarations explaining the need for legislation that applies only to the Santa Rita Hills Community Services District.

Assembly Actions

Assembly Local Government:	8-1
Assembly Floor:	70-3

Support and Opposition (6/5/14)

Support: Santa Rita Hills Community Services District; County of Santa Barbara; Santa Barbara Local Agency Formation Commission.

Opposition: Unknown.

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 2551
AUTHOR: Wilk
VERSION: 5/23/14
CONSULTANT: Ewing

HEARING: 6/11/14
FISCAL: No
TAX LEVY: No

LOCAL GOVERNMENT BOND ISSUES

Requires statement on total cost of debt service to be included with sample ballot information on local agencies' bond elections.

Background and Existing Law

State law requires local agencies to provide voters with information on the cost of proposed bond measures when submitting those measures to the voters for approval (SB 858 Petris, Chapter 813, 1968). Local agencies are required to provide information on three specific, estimated fiscal impacts of a proposed bond measure:

- The estimated tax rate that would need to be levied to fund the bond during the first fiscal year after the *first* sale of the bond.
- The estimated tax rate that would need to be levied to fund the bond during the first fiscal year after the *last* sale of the bond, if sold in a series, and an estimate of the year that rate would apply.
- The estimated *highest* tax rate that would need to be levied to fund that bond issue, and an estimate of the year that rate would apply.

The ballot information also may include information on revenue sources that could be used to fund the bond issue, other than ad valorem taxes, and how those sources of revenues may offset the need for a new tax rate to fund the proposed bond issue.

Some taxpayer advocates suggest that additional information is necessary to help voters fully understand the total cost of a proposed bond measure.

Proposed Law

AB 2551 requires local agencies, when submitting bond measures for voter approval, to include in sample ballot materials information on the estimated total

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 2762

AUTHOR: Committee on Local Government

VERSION: 5/6/14

CONSULTANT: Ewing

HEARING: 6/11/14

FISCAL: Yes

TAX LEVY: No

LOCAL AGENCY FORMATION COMMISSIONS

Proposes several changes to laws affecting local government organization and reorganization.

Background

The Cortese-Knox-Hertzberg Local Government Reorganization Act delegates the Legislature's power to control the boundaries of cities and special districts to local agency formation commissions (LAFCOs). The courts call LAFCOs the Legislature's watchdog over local boundary changes.

As practitioners find problems with the Cortese-Knox-Hertzberg Act, they ask for statutory improvements. These minor problems do not warrant separate (and expensive) bills.

Legislators respond by combining several of these minor topics into an annual "omnibus bill." Although this practice may violate a strict interpretation of the single-subject and germaneness rules as presented in *Californians for an Open Primary v. McPherson* (2006), it is an expeditious and relatively inexpensive way to respond to multiple requests. Last year's LAFCO clean-up bill was AB 1427 (Assembly Local Government Committee, Chapter 87, 2013).

Proposed Law

Assembly Bill 2762 makes several changes to state laws affecting local agency formation commissions (LAFCOs).

1. In 2001 the Cortese-Knox-Hertzberg Local Government Act of 2000 took effect, modifying its predecessor, the Cortese-Knox Local Government Reorganization Act of 1985. The 2000 reorganization allowed for applications pending before LAFCOs to be processed, if those applications had been submitted prior to January 1, 2001. There are no longer applications pending from before that date, making the code section obsolete. AB 2762 repeals the obsolete code section and its reference in a corresponding code section.

2. Independent special district members who serve on LAFCO are selected using an independent special district selection committee. AB 2762 modifies the authority of that committee in the following manner:
 - AB 2762 would allow a majority of the committee members to determine to conduct the committee's business by mail, including holding all elections by mail.
 - AB 2762 specifies that for an election to be valid, at least a quorum of special districts must submit valid ballots. If a quorum of valid ballots is not submitted according to the terms of an election, the executive officer is authorized to extend the date to submit ballots by 60 days. All ballot materials must be retained for at least six months following the announcement of results.
3. AB 2762 reauthorizes LAFCOs to review and comment on extensions of services into previously unserved territory or the creation of new service providers to extend urban type development, consistent with the LAFCOs statutory functions. This authority was enacted by AB 2259 (Salinas, Chapter 460, 2006) and it sunset on January 1, 2013. The reauthorization under AB 2762 would sunset on January 1, 2019.
4. AB 2762 clarifies that a proposal for a change of organization or reorganization can be submitted by a local agency, or by others, such as a petition of residents, which is common practice.
5. AB 2762 clarifies that the specific terms and conditions imposed by a LAFCO, consistent with its specific authority, prevail in the event of a conflict with any general provisions under Government Code 57300.
6. Corrects other non-substantive, technical and cross-reference errors.

State Revenue Impact

No estimate.

Comment

1. Purpose of the bill. Even the best written statutes contain minor flaws. When statutory problems appear in the state law affecting LAFCOs, the Assembly Local Government Committee avoids legislative costs by combining several changes to the state laws into a single, consensus bill. By carefully reviewing each item with the affected parties, the Committee also avoids controversy. The changes

made by AB 2762 do not raise statewide policy questions. AB 2762 makes a complex statute easier for property owners, residents, and local officials to use.

Assembly Actions

Assembly Local Government Committee:	9-0
Assembly Appropriations	17-0
Assembly Floor:	73-0

Support and Opposition (6/5/14)

Support: Amador Local Agency Formation Commission; Butte Local Agency Formation Commission; California Association of Local Agency Formation Commissions; California Special Districts Association; Contra Costa Local Agency Formation Commission; Local Agency Formation Commission for the County of Los Angeles; Local Agency Formation Commission for San Bernardino; Local Agency Formation Commission of Napa County; Local Agency Formation Commission of Yolo County; Marin Local Agency Formation Commission; Orange County Local Agency Formation Commission; Placer County Local Agency Formation Commission; Riverside Local Agency Formation Commission; San Benito Local Agency Formation Commission; San Luis Obispo Local Agency Formation Commission; Santa Clara County Local Agency Formation Commission; Sonoma Local Agency Formation Commission; Stanislaus Local Agency Formation Commission.

Opposition: Unknown.