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Assembly California Legislature

TIM DONNELLY
ASSEMBLYMAN, FIFTY-NINTH DISTRICT



August 23, 2011

Members, State Board of Equalization
450 N Street
Sacramento, California 95814

Dear Members of the Board:

We are writing to draw your attention to a very serious issue within the 2011-2012 State Budget—an issue that that is within your power to address. As duly elected Representatives of the people, you swore an oath to uphold both the United States and the California Constitutions. Unless this Board intervenes, California citizens will be illegally taxed up to \$90.00 per habitable structure on their property. This tax, erroneously titled a “fee”, was unlawfully passed in Assembly Bill x1 29 as a part of the California AB x1 29 violates both the California Constitution and Proposition 26. No matter how you look at it, this measure is illegal and collecting the tax will support a costly and illegal budget maneuver.

First, AB x1 29 violates the California Constitution, Article XIII D, § (b), which states, “No fee or charge may be imposed for general government services including, but not limited to, police, fire, ambulance or library services” Fire services are identified as a general service, for which a fee cannot be imposed on a select group of individuals. The fire fee, then, illegally imposes a charge on residents of state responsibility areas to pay for a service that benefits the general public. But any service that benefits the public broadly, and is paid for by a select group, is a tax, not a fee. This means that titling AB x1 29 as a “fee” is inaccurate. Further, many residents already pay additional taxes and benefit assessment fees to their local fire districts; for these people, the fire tax will not only be illegally imposed, but will amount to double-taxation.

Furthermore, the fire-tax is not only unconstitutional, but was passed in blatant violation of Proposition 26. Voters broadened Proposition 13’s two-thirds Legislative vote requirement for taxes to include any “levy, charge, or exaction of any kind imposed by the State,” permitting an exception in cases when a charge covers a benefit that is enjoyed by the payer alone. CAL FIRE’s mutual aid agreement, however, guarantees that fire services covered by the new fee can benefit those who are not required to pay. Assembly Bill x1 29, therefore, does not qualify as an excepted measure, and thus clearly required a two-thirds majority vote. Instead, the Legislature unlawfully approved the bill by a simple majority. If our Legislature and governor respected the will of the people, this measure would not be before you today.

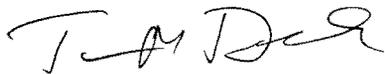
Finally, AB x1 29 is a disastrous fiscal policy. The tax is expected to bring in \$25.5 million, but nearly 50% of that will go to cover the cost of administration. Implementing the tax has already

begun costing the State as CAL FIRE, the Board of Forestry and the Board of Equalization prepare. If you take a principled stand, you can save the taxpayers of California a tremendous amount of time and resources, and stop costly lawsuits.

This is nothing more than a costly budget gimmick, the sort of which your Membership has spoken out against. You have the opportunity to remedy this violation, honor the Constitution, and uphold the will of the voters. We urge you to exercise your authority as an important line of defense—and a constitutional check on legislative overreach—against these underhanded tactics.

Thank you for your time and careful consideration of this petition.

Godspeed,

A handwritten signature in black ink, appearing to read "Tim Donnelly". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Tim Donnelly
Assemblyman; District 59

Brian Jones
Assemblyman; District 77

Shannon Grove
Assemblywoman; District 32

Beth Gaines
Assemblywoman; District 4

Jim Silva
Assemblyman; District 67

Don Wagner
Assemblyman; District 70

STATE BOARD OF EQUALIZATION



Appeal Name: HONORABLE TIM DONNELLY

Case ID: _____ ITEM #: _____

Date: AUGUST 23, 2011 Exhibit No: _____

TP FTB DEPT PUBLIC COMMENT