

# Cal-Tax Files Suit to Repeal Unlawful “Penalty” on Law-Abiding Taxpayers

By Teresa Casazza  
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Yesterday, the California Taxpayers’ Association filed suit to invalidate the 20 percent "understatement penalty" provisions included in SB X1 28 of last year.

Our lawsuit alleges that in addition to federal Due Process, Equal Protection and Commerce Clause defects, the "penalty" operates as a tax, and thus violates Proposition 13, because it didn't receive at least a two-thirds vote.

This broad-based constitutional challenge, filed in Sacramento Superior Court as California Taxpayers’ Association v. Franchise Tax Board, also notes that the process by which the legislation was enacted was defective and unconstitutional.

Capitol observers will recall that the legislation was rushed through both houses of the Legislature on September 19, before the bill was even in print. The proposal was described by proponents as a doubling of an existing penalty on tax scofflaws, but when the language later was revealed, it was discovered that it actually proposes a new penalty – one that affects law-abiding taxpayers as well as tax cheats, with no distinction between the two.

The legislation is retroactive, and it applies strictly without exception (such as for good faith or reasonable cause). Even worse, it allows for no appeals!

Cal-Tax has put together a [fact sheet](#) [1] that provides examples of how, unlike a true penalty, the legislation may impact law-abiding taxpayers. The fact sheet also provides details on the legislation’s unfair application, its administrative burden on taxpayers, and its substantial negative impact on the state’s business climate and economy – at the worst possible time.

We are continuing to seek a legislative remedy, but with the unlawful penalty about to go into effect, we decided to move forward with a legal challenge to ensure that taxpayers’ rights are protected.

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**Links:**

[1] <http://www.caltax.org/issues/20%UnderstatementPenaltyFactSheet.pdf>