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Tax or Fee? Voter-Approved Tax Test Provides the Answer

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Stop hidden taxes! That was the clear and compelling message that California voters sent to lawmakers with passage of Proposition 26 in November. This measure was designed to halt the practice of governments imposing new taxes without the constitutionally required vote, by falsely labeling them as "fees," "surcharges," and with other deceptive names.

Under Proposition 26, all proposed new charges by state and local governments must undergo a tax test to determine if they are legitimate fees that require only a majority vote of the Legislature or approval of a local government body for implementation, or are actually taxes that require a two-thirds vote of the Legislature or a vote of the people at the local level.

Proposition 26 establishes five criteria for this tax test. For example, if a charge benefits those who don't pay for it, it is a tax.

The California Taxpayers Association recently completed an analysis of Proposition 26 as part of our effort to make sure the initiative is implemented as voters intended ([Understanding Proposition 26: A Sponsor's Guide to California's New Tax Structure](#) [1]). The report provides lawmakers and taxpayers with a step-by-step guide on how to determine if a new assessment is a tax or a fee.

Unfortunately, as we've begun to apply the Proposition 26 tax test, we've found that the practice of imposing hidden taxes is still alive and well. One example is SB 791, a bill by Senate President Pro Tem Darrell Steinberg that would give regional transportation agencies the power to impose unlimited new gasoline taxes without the required two-thirds vote. SB 791 would force California drivers to pay billions of dollars in new gas taxes, leading to significant hardship, especially for small businesses and low-income families.

Because this legislation would result in taxpayers paying higher taxes at the pump, it clearly requires a two-thirds legislative vote under Proposition 26. However, the Legislature is proceeding as if this requirement of the state constitution does not exist.

If lawmakers pass such tax bills masquerading as fees, this could lead to a stampede of hidden tax bills in future legislative sessions. In addition, the hidden tax contagion is spreading to local governments, with some cities and counties proposing ways to circumvent the will of the voters.

This is exactly what voters did not want to happen. They passed Proposition 26 because they want to close loopholes and improve government's accountability to taxpayers - the people who foot the

bill. Hidden taxes ultimately mean higher costs to California families and employers - and with families still struggling in this recession, a bigger tax bill is the last thing they need.

Hidden taxes also mean lost jobs as companies are forced to pay the government instead of their workers. Forcing more job cuts doesn't make any sense, especially with the unemployment rate higher than 12 percent in California, representing more than 2.1 million people out of work.

We understand that lawmakers face a lot of pressure to increase revenues. But there is a right way and a wrong way to do this, and violating the state constitution is most certainly the wrong way.

We urge lawmakers to use our Proposition 26 Tax Test to make sure they are following the process that voters approved to increase accountability, and spare Californians the burden of higher taxes at the worst possible time.

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Links:

[1] <http://www.caltax.org/UnderstandingProposition26.pdf>

[2] <http://www.caltax.org/>