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PERSONAL INCOME TAX:

Union-Backed 'Millionaire's Tax' Introduced in Final Month of Session

With just one month left in the two-year legislative session, a group of lawmakers this week introduced a union-backed proposal that would impose a large, retroactive personal income tax increase on income over \$1 million ([AB 1253](#), Santiago).

Senator Mike McGuire, chair of the Senate Governance and Finance Committee, announced that the committee will hold an August 3 testimony-only hearing on the bill.

CalTax opposes AB 1253, noting that California already has the highest-in-the-nation top tax rate of 13.3 percent, and this has been a factor in businesses and high-earning residents moving to other states.

Under AB 1253, the rate would increase to 14.3 percent on income between \$1 million and \$2 million, 16.3 percent on income between \$2 million and \$5 million, and 16.8 percent income greater than \$5 million.

"As Californians struggle through a pandemic and recession, the last thing they need is a retroactive tax increase," CalTax President Robert Gutierrez said. "California's status as a high-tax state already has resulted in business flight and many lost jobs, and this bill would only make things worse."

Under the bill, the combined state and federal tax rate for California's highest earners would be 53.8 percent. With the federal deduction for state and local taxes capped at \$10,000, they would not be able to deduct the new taxes from their federal returns.

"With many tech companies now allowing executives to work remotely for the next year, top earners could more easily leave the state and work in places with no income tax, like Nevada and Texas," *CNBC* reported.

California's personal income tax (PIT) is steeply progressive, ensuring that high-income residents bear most of the tax burden (in the 2016 tax year, for example, the top 1 percent of income earners paid 46 percent of the total PIT revenue, and the top 5 percent accounted for 66.6 percent of the total). The PIT is the state's largest source of tax dollars, accounting for more than 43 percent of general fund revenue in the new state budget (in prior non-pandemic years, the PIT accounted for roughly half of general fund revenue).

Current rates range from 1 percent for the lowest income bracket to 13.3 percent for a single taxpayer with income over \$1 million. California is one of 43 states that impose personal income tax. The states with the next-highest top rates are Hawaii (11 percent), New Jersey (10.75 percent) and Oregon (9.9 percent).

SENATE GOVERNANCE AND FINANCE COMMITTEE:**Three CalTax-Supported Bills Pass Committee**

The Senate Governance and Finance Committee approved three CalTax-supported bills July 29 and announced that a newly introduced personal income tax increase on high earners will be discussed August 3 in a no-vote informational hearing.

The committee unanimously supported [AB 1577](#) (Burke), which conforms California to changes made under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act relating to the Paycheck Protection Program – excluding the forgiveness of these loans from counting toward gross income.

Additionally, the committee unanimously supported [AB 276](#) (Friedman), which conforms California to CARES Act changes relating to COVID-19 retirement loans, and [AB 3373](#) (Assembly Revenue and Taxation Committee), which removes the statutory cap of five property tax assessment appeals boards per county.

AB 276 and AB 1577 now head to the Senate Appropriations Committee, while AB 3373 moves to the Senate floor for consideration.

ASSEMBLY REVENUE AND TAXATION COMMITTEE:**CalTax-Opposed Bill to Violate Taxpayer Confidentiality Clears Committee**

The Assembly Revenue and Taxation Committee voted July 27 to approve [SB 972](#) (Skinner), a CalTax-opposed bill that would require the Franchise Tax Board to violate taxpayers' right to confidentiality by producing annual reports on corporate taxpayers with gross receipts of \$5 billion or more.

The mandated reports would include the name and tax liability of each taxpayer, the taxable year for which the return was filed, and the amount and types of credits claimed for the taxable year. The legislation originally proposed that the FTB post this information on its public website, but a July 28 amendment suggested by the committee provides that the report would be provided to the Legislature's two tax policy committees instead. The bill does not include any limits on what the committees' members could do with the report, or how they could share its contents.

CalTax Vice President of Policy Peter Blocker testified against the bill, stating: "It's not clear why this drastic step would have to be taken, since lawmakers currently have the information ... necessary to evaluate tax credits under current law. The Department of Finance has been providing the Legislature with reports on tax expenditures since 1971, and this aggregate data is far more useful for making policy decisions relating to tax credits than any information disclosed by this bill."

Blocker also noted that the information required by the bill could be misleading. For example, he noted that the \$5 billion threshold is based on total gross receipts worldwide, but the tax liability listed would be based on California source income.

The bill now moves to the Assembly Appropriations Committee.

In other committee action:

Committee Approves Bill Intended to Address Proposition 15 Flaw. The committee voted 6-1 to approve [SB 364](#) (Mitchell), changing the classification of nonresidential active solar energy systems from real property to personal property and creating a property tax exemption for systems constructed prior to 2025 if voters approve Proposition 15, the split-roll measure on the November ballot.

Assembly Member Phil Ting, a former San Francisco assessor, said the bill is need to correct “an unintentional drafting error” in Proposition 15 that would require market-value reassessment of nonresidential solar energy systems that are excluded from property tax under current law. Supporters include Los Angeles Mayor Eric Garcetti, the California Tax Reform Association and Tesla.

Yolo County Assessor Jesse Salinas testified in opposition, saying the legislation will encourage other special interests to seek property tax exemptions via legislation. Salinas, who noted that the California Assessors’ Association opposes the bill, said the Legislature should wait to see if Proposition 15 passes before approving any changes to it, and should properly vet any such proposals.

Rob Lapsley, president of the California Business Roundtable, said his group supports maintaining the current protections for solar energy systems, but opposes SB 364 because it is “clearly unconstitutional and flies in the face of decades of established case law.”

The California Constitution authorizes the Legislature, with a two-thirds vote, to classify personal property for differential taxation or for exemption. SB 364 seeks to use this provision to classify nonresidential active solar energy systems as personal property and create a property tax exemption on this basis. The committee’s analysis notes that the bill seeks to “transition a pre-existing property tax incentive from an ‘exclusion’ to an ‘exemption’ to maintain the status quo for nonresidential active solar energy systems and continue to encourage and to provide incentives for the development of solar energy.” The analysis expresses concern that this would establish a precedent for commercial and industrial property owners to seek similar reclassifications and exemptions if Proposition 15 is approved.

“Prop. 15 is poorly drafted, has a series of major flaws – including removing existing constitutional protections for the installation of new active systems, which are currently excluded from property taxation until there’s a change of ownership,” Lapsley said. He said SB 364 attempts to do something that was struck down by the courts as unconstitutional decades ago in a case involving the Legislature’s attempt to reclassify boat slips so they would no longer be property, and thus would be exempt from taxation.

LOCAL TAXES:

Oakland Withdraws Proposed Tax on Transportation Network Companies

The Oakland City Council voted July 28 against moving forward with a proposed tax on transportation network companies.

The tax would have been a “general tax on users of transportation network companies at a rate of 50 cents for private trips and 25 cents for pool trips.”

[CalTax wrote](#) to Oakland Mayor Libby Schaaf earlier this month raising concerns with the proposal and the limited timeline that was provided for stakeholders to provide input.

The tax was first discussed at Oakland's Special Rules and Legislative Committee on July 7, and at the time the letter was submitted, was scheduled to be considered by the City Council a week later on July 14. The vote ultimately was postponed to allow the council to see what happened to other similar proposals in nearby Berkeley and Emeryville.

The vote to not go forward with the tax was split, with four council members voting to continue pushing the measure toward the November ballot, three voting to halt action, and one abstaining.

NEW WINE IN OLD BOTTLES: **Recently Amended Bills of Interest**

Surcharge for Broadband. [AB 570](#) (Aguiar-Curry), authorizing the Public Utilities Commission to collect a surcharge totaling \$66 million to \$125 million each year to pay for an expansion of broadband projects, was amended July 27 to make various changes to California Advanced Services Fund program to promote remote learning and telehealth in addition to economic growth, job creation and the social benefits of those technologies. Additionally, the bill states the intent of the Legislature to authorize the state treasurer to issue revenue bonds against the surcharge. Vote: Two-Thirds (Urgency).

State Agency Meeting Materials. [AB 2028](#) (Aguiar-Curry), requiring that the notice provided 10 days prior to a meeting of a state body (including tax agencies) must include all meeting materials provided to a member of the body that are in connection with a matter subject to discussion or consideration at the meeting, unless the meeting is a closed session, was amended July 28 to exempt specified state financial materials that may put the state treasurer at a competitive disadvantage in financial transactions. Vote: Majority.

Tax on Dimethyl Ether. [AB 2663](#) (Eduardo Garcia), previously setting the excise tax rates on a propane fuel blend and dimethyl ether at \$0.06 and \$0.048 per gallon, respectively, was amended July 30 to instead set both rates at \$0.06 per gallon. Vote: Majority.

Proxy Voting in the Assembly. [HR 100](#) (Calderon) adopts legislative rules authorizing the Assembly speaker to permit proxy voting for members for floor sessions held during the COVID-19 state of emergency. The house rule additionally sets forth various procedures for members to submit proxy votes. The authorization will terminate when either the Legislature adjourns, the speaker withdraws the authorization or the state terminates its state of emergency, whichever is earliest. Vote: Majority.

WASTE, FRAUD & MISMANAGEMENT: **Your Tax Dollars at Work**

State Receives Little Information on Billions Spent for Mental Health. The state spends heavily on mental health care programs under the Lanterman-Petris-Short Act, but state officials lack sufficient information about how the money is spent, the state auditor reported July 28.

"The treatment that individuals receive through the LPS Act is only one part of a much larger, county-based mental health system in which California invests billions of dollars each year," the auditor wrote. "Despite the magnitude of that investment, policymakers and other stakeholders do not have the information they need to understand the extent to which these funds affect people's lives. The State's current public reporting related to mental health programs and services relies on disjointed and incomplete tools – a result of multiple funding sources with different requirements and levels of transparency."

The auditor added:

"For instance, we did not identify consistent public reporting of funds that the State distributed when it transferred its responsibilities for providing mental health services to counties – which totaled nearly \$3 billion in fiscal year 2018-19 – or to the outcomes counties produce for individuals with serious mental illnesses through those services. The Mental Health Services Act (MHSA) contains the most comprehensive public reporting requirements of the major mental health funding sources, but this reporting is still insufficient for understanding the full range of counties' mental health spending."

Additionally, the MHSA reporting requirements make it difficult for policymakers to assess the balances of counties' unspent funds, the auditor found.

The auditor recommended "an overhaul of mental health reporting requirements ... that includes capturing comprehensive spending information as well as outcomes for counties' specific programs and for the State's overarching mental health system."

POTPOURRI:

Symposia, Sightings, Salutes & Snafus

Government Watchdog Agency Has New Director. The Fair Political Practices Commission (FPPC), California's governmental ethics and campaign disclosure agency, announced July 24 that longtime staff member and former Franchise Tax Board law clerk Galena West has been appointed as the commission's executive director.

West succeeds Thomas Jones, who served as executive director from March 2019 until being terminated from the position in April of this year.

West has served as chief of the commission's Enforcement Division since 2015, and previously spent 10 years as senior commission counsel in the Enforcement Division.

"She has prosecuted some of the most serious violations of the Political Reform Act, ranging from campaign money laundering to conflicts of interest to shadow lobbying," the commission said in its announcement.

Prior to joining the FPPC, West worked as a law clerk for the Legal Division of the FTB, in the California Attorney General's Office and the U.S. Attorney's Office.

West will continue leading the Enforcement Division through the November election. The commission has developed a plan for delegating authority until that time, and plans to name a new chief of enforcement this year.

Joe Rogan Announces Plan to Leave California. Podcaster Joe Rogan, who earlier this year signed a licensing agreement with Spotify reportedly worth \$100 million, said this week that he plans to leave Los Angeles – where he has lived since the early 1990s – and move somewhere in Texas.

“I just want to go somewhere in the center of the country, somewhere where it’s easy to travel to both places and somewhere where you have a little bit more freedom,” Rogan said during a podcast released this week.

The announcement comes as California lawmakers are considering proposals to dramatically increase the state’s top personal income tax rate, which already is the highest in the nation at 13.3 percent. Texas does not have a state income tax.

“The Joe Rogan Experience” is downloaded almost 200 million times per month and brought in \$30 million last year, making Rogan – a stand-up comedian, actor and martial arts commentator – the highest-paid podcaster of 2019 according to *Forbes*.

TAX TRIVIA:

What Country Music Legend Sang About a Hospitalized Tax Cheat?

What country music guitar virtuoso, singer and actor – known for appearing in all three “Smokey and the Bandit” films and performing the theme song, “East Bound and Down” – released the 1969 song “There’s Better Things in Life,” which included these lyrics:

*Now like last spring when income tax came due, he just sat around for days and worried
Losing good sleep tryin' to figure how to cheat the government, yes he did
He worked so hard that his nerves collapsed and he woke up inside Central State Hospital
And on his taxes he got back fourteen dollars and some few cents. (Answer on the last page.)*

BLAST FROM THE PAST:**You Can't Lose Revenue That Isn't There, Lawmaker Reminds Finance Officials**

"Reacting to pleas to save the Long Beach Coin and Collectibles Expo, the Senate Revenue and Taxation Committee unanimously approved AB 330 (Floyd), extending the sales tax nexus exemption for trade show participants from seven days to 12 days. The committee also lifted the cap on the amount of sales that a trade show participant can make and remain nexus-free from \$10,000 to \$100,000 net. Carlyle Brakensiek, representing the Industry Council for Intangible Assets, said California cannot attract large numbers of out-of-state exhibitors to California trade shows with the seven-day nexus provision. The Department of Finance objected to the bill on the grounds of revenue loss, to which Assembly Member Dick Floyd responded, 'You can't lose the revenue if it is not there.'"

— *CalTaxletter*, June 12, 2000. The bill was [signed into law](#). Now named the Long Beach Coin, Currency, Stamp & Sports Collectible Show, the event is held three times a year (but has been canceled during the pandemic). The event's website advises vendors how to apply for a temporary California seller's permit, and adds: "Under the current parameters, Nexus only occurs if you do business for more than 15 days in California. Please familiarize yourself with the current definition of Nexus as it applies to you at <https://www.cdtfa.ca.gov/industry/temporary-sellers.htm>."

Tax Trivia Answer: Jerry Reed (bonus point if you identified him by his real name, Jerry Hubbard).