

# Cal-Tax Digest

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May 1997

## Courts



### Cal-Tax Urges Court to Uphold Sinclair Verdict

A Sacramento Superior Court judge's summary judgment, affirmed by the 3rd District Court of Appeal, holds that taxes disguised as fees were illegally imposed as a result of passage of a 1991 law to raise money for a state lead-poisoning program.

The state Supreme Court, on May 6 in San Francisco, is scheduled to hear oral arguments in the case (*Sinclair Paint Company v. State Board of Equalization*).

At issue is whether the fee is a tax that required - but did not receive - two-thirds approval of the state Senate and Assembly. The bill was approved by majority votes of each legislative house and was signed into law by Governor Pete Wilson.

So far, the courts have held that the fees are taxes because they were not going to be used to pay for a feepayer benefit, service or regulatory requirement. Taxes, under the state Constitution (Article XIII A), cannot be passed by simple majorities of the Legislature.

Cal-Tax and others, in an *amicus curiae* brief state:

- Defendant BOE and the Department of Health Services, an intervenor, failed to address meaningfully the compulsory nature of the "fee" imposed by the Childhood Lead Poisoning Prevention Act of 1991; the absence of regulatory requirements other than fee payments; the absence of any government service which is being provided to the feepayers, and the apparent revenue-raising function of the "fee."

**Cal-Tax's  
*amicus curiae*  
brief was  
prepared by  
Jeffrey M.  
Vesley and  
Richard E.  
Nielsen of  
Pillsbury  
Madison &  
Sutro in San  
Francisco.**

The state contends that "the mere imposition of a fee is regulatory if it is imposed to remedy a burden purportedly created by the feepayer. However, such argument is unsatisfactory and misses the point," the brief said.

- In this case, it is unnecessary to determine under what circumstances certain societal burdens can be mitigated or remedied by the government. The instance case squarely presents the single issue of whether to be valid a fee must directly fund regulation of the feepayer or fund delivery of a governmental benefit or service to the feepayer. The lead fee does neither and, therefore, it constitutes a tax impermissibly adopted by the Legislature with less than a two-thirds majority vote.

The brief concludes: "It is important that the Legislature follow the strict requirements of Proposition 13. Any attempts by the Legislature to circumvent those requirements should be carefully scrutinized. A resolution of the issue in the present case is critically important for California businesses and the people of the State of California. An **amici curiae** brief by the above-named Amici will be helpful to the court in reaching such a result."

How big is this case? Besides Cal-Tax, friend-of-the-court briefs in support of Sinclair Paint were filed by Western States Petroleum Association, Western Independent Refiners Association, California Manufacturers Association, California Chamber of Commerce, California Cable Television Association, Howard Jarvis Taxpayers Association and Pacific Legal Foundation.

Friend-of-the-court briefs in support of the defendant were filed on behalf of 31 organizations, including the California Medical Association, California Academy of Family Physicians, Alliance to End Childhood Lead Poisoning, American Academy of Pediatrics (California District IX), California Public Health Association (North), California Public Interest Research Group, Consumers Union, Environmental Defense Fund, Environmental Law Foundation, Natural Resources Defense Council, Planning and Conservation League, Sierra Club, Western Center on Law and Poverty, California State Association of Counties, City and County of San Francisco, and the cities of Alameda, Burlingame, Chico, Glendale, Indian Wells, Modesto, Redlands, Sacramento and Walnut Creek.