ALERT

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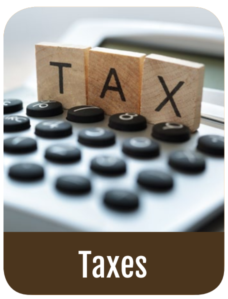
CALIFORNIA CHAMBER OF COMMERCE

CalChamber Seeking Input on Federal Tax Proposal



The California Chamber of Commerce is seeking member feedback on how the President's tax proposal will affect their businesses.

The framework for the proposal was released on September 27, leaving to congressional tax-writing committees the task of working out a number of important details.

Even before those details are resolved, it is evident that the tax proposal will have different effects on different taxpayers. Following is an outline of the proposal and its unknowns as first released.

Individual Tax Brackets

The framework reduces the current seven tax brackets to three: 12%, 25% and 35%, instead of the current 10%, 15%, 25%, 28%, 33%, 35% and 39.6%.

No changes are proposed for the capital gains and dividend tax rates.

The method for indexing tax brackets to inflation will change.

Unknown: How much income applies to each of the tax brackets, as well as whether another top rate will be added above the 35% bracket.

Individual Tax Deductions

The framework nearly doubles the standard deduction to $24,000 for married taxpayers filing jointly and $12,000 for single filers.

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CalChamber Executive Team Change Ahead


Jeanne Cain


Jennifer Barrera

Jeanne Cain, executive vice president of policy for the California Chamber of Commerce, has announced that she will be leaving the organization effective February 1, 2018.

Cain, a 16-year CalChamber veteran, will be devoting more time to her responsibilities as president of Fairview Farms, Inc., a family farming operation in Northern California, and will continue as a board member for California Women Lead.

She plans to add other projects in the public policy arena in the coming months.

Upon Cain's departure, Jennifer Barrera, who has been a senior policy advocate for CalChamber, will assume the role of senior vice president of policy.

"It has been an honor to serve the members of CalChamber over the past 16 years and I am extremely proud of the many accomplishments we have shared," said Cain. "This has been a rewarding and fulfilling chapter in my career, but I am ready to move into new opportunities."

CalChamber President and CEO Allan Zaremberg said, "I have worked with Jeanne for more than 30 years and she

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Inside

Labor Law Corner

When Can Worker Decline Family Medical Leave? Subject Untested

Dana Leisinger
HR Adviser

Our employee went out on workers' compensation leave this week and will probably be gone a few months. Should we place him on family medical leave at the same time?

California employers are required by law to carry workers' compensation insurance for their employees who suffer a workplace injury. Workers' compensation covers medical expenses related to a workplace injury; however, it does not necessarily provide a leave of absence.

Evaluate Eligibility

Employers that are covered under the federal Family Medical Leave Act (FMLA)/California Family Rights Act (CFRA) should evaluate whether an employee with a workplace injury is eligible for protected leave and designate the time off under FMLA/CFRA, if applicable.

What happens when an employee does not want to designate their leave? There is one case that addressed this issue; however, it should be noted that this case was not related to an employee with a workplace injury.

Court Case

A 2014 decision (*Escriba v. Foster Poultry Farms*), stated that an employee can affirmatively decline to use the FMLA, even if the worker's underlying reason for seeking time off would have invoked the law's protection.

In the *Escriba* case, Maria Escriba took time off to see/care for her father who was ill and in the hospital, but all she wanted to take was vacation time—even though she took more than her two weeks of vacation. The court stated:

"An employer's obligation to ascertain 'whether FMLA leave is being sought' strongly suggests that there are circumstances in which an employee might seek time off but intend not to exercise his or her rights under the FMLA. And a compelling practical reason supports this conclusion. Holding that simply referencing an FMLA-qualifying reason triggers FMLA protections would place employers like Foster Farms in an untenable situation if the employee's stated desire is not to take FMLA leave. The employer could find itself open to liability for forcing FMLA leave on the unwilling employee."

The *Escriba* case appears to be the only case upholding the employee's right to request time not be designated as FMLA. It also did not involve workers' compensation, unlike this situation.

Seek Legal Counsel

It is clear that an employer should openly communicate with its employees, making sure they know their rights to take FMLA. The right to decline it is an untested area outside the *Escriba* case, and if an employee indeed wishes to decline FMLA, it is highly recommended that the employer seek legal counsel.

*The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at **www.hrcalifornia.com**.*

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CalChamber-Sponsored Seminars/Trade Shows

More at ***www.calchamber.com/events***.

Labor Law

HR Symposium. CalChamber. October 26, Los Angeles. (800) 331-8877.

International Trade

Import Compliance Training Program. Orange County Center for International Trade Development. October 13, Santa Ana. (714) 564-5415.

Sustainable Building and Construction Trade Mission to Mexico. U.S. Department of Commerce International Trade Administration. October 16–20, Mexico City and Guadalajara, Mexico. (210) 472-4020.

U.S. Trade Mission to Azerbaijan. U.S.-Azerbaijan Chamber. October 16–20, Azerbaijan and Georgia. (202) 333-8702.

Innovation Forum 2017. Mexican Entrepreneur Association and Mexican Association of Private Equity and Venture Capital Funds. October 18–20, San Francisco.

California-Germany Bilateral Energy

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CalChamber Blog on Canada Border Tour Shares Insights on Security, Trade Logistics

California Chamber of Commerce Vice President of International Affairs Susanne T. Stirling recently joined private and public sector leaders from around the United States, and Canadian officials on a tour of the Canadian border for three days.

Stirling was invited by the Canadian Consulate in San Francisco to participate in the tour and visited Vancouver and Prince Rupert, both in British Columbia, from September 19–21.

Canada Border Tour Blog

Stirling chronicled the Canada Border Tour in a three-part blog for the CalChamber. In it, she outlines details regarding border security, supply chain logistics and free trade, and how she gained a deeper understanding of the different ports of entry into Canada (vehicle border checkpoints, seaports, rail stations, airports). This tour was first established after 9/11, and has grown in size and scope.

To read the full blog, visit ***www.calchamber.com/international***. Below is a sampling of Stirling's blog entries:

Day 1

"Our group headed north, leaving Seattle for a beautiful drive to Canada. As we neared the border there were signs posting the border crossing wait times. There was also a sign reminding us of the change to the metric system. Our first stop on the tour was the Douglas (Peace Arch) vehicle port of entry, connecting U.S. I-5 highway to Canada.

"This port of entry is open 24 hours a day, 7 days a week, making it one of the busiest land border crossings for traveler vehicles in Canada."

Day 2

"Our first stop in Prince Rupert was lunch with the Prince Rupert Port Authority, which brands itself as the fastest-growing port for transpacific trade. We learned that it has the deepest harbor in North America, as well as the shortest Pacific route.

The California delegation on the ferry to Prince Rupert (from left) Ezrah Chaaban, Office of California Senator Bill Dodd; Consul General of Canada in Seattle and delegation leader Brandon Lee; Susanne T. Stirling, CalChamber; Annie Nam, Southern California Association of Governments; and Tyler Curley, Office of the Mayor of Long Beach.

"Prince Rupert was home to the most northerly railhead in the Americas and thus served as a port of embarkation for the war in the Pacific. Today, the vision has slightly changed, thanks to the governing body of the Port Authority, to be a 'leading trade corridor 'gateway' between North American and Asian markets.'

"The port is also ice free and the safest port in North America, as well as the third deepest port in the world. It has the flattest rail grade to Chicago of the Western ports. Next to the health care industry, the port is the largest employer in the city. The port is geared to rail transportation and not trucking, and also not for local markets, but to borders beyond."

Day 3

"First on the agenda for our final day was a presentation at the Sutton Place Hotel by Transport Canada. We learned about the government agency's role in developing regulations, policies, and services relating to transportation in Canada. The department has authority over the country's road, rail, marine, and aviation, involving 50 Acts (i.e. the Marine Act, Railway Safety Act). The 2030 Transport Canada Vision involves goals and investment in the areas related to the traveler, safe transportation, green and innovative transportation, waterways, and trade corridors."

The full blog is posted at ***www.calchamber.com/international***.

Staff Contact: Susanne T. Stirling

Governor Signs CalChamber-Supported Bills to Ease Housing Crisis

Governor Edmund G. Brown Jr. recently signed three California Chamber of Commerce-**supported** bills to encourage local governments to approve new housing projects.

The CalChamber-supported bills either hold local governments accountable for meeting the housing elements of their plans or aim to combat the "not in my backyard" (NIMBY) resistance that can stall needed housing projects.

AB 678 (Bocanegra; D-Pacoima) and **SB 167 (Skinner; D-Berkeley)** will provide some teeth to enforce the Housing Accountability Act and will properly require local agencies to substantiate their denial or conditional approval of much-needed projects, while **AB 1515 (Daly; D-Anaheim)** will provide an important tool to respond to unreasonable opposition by NIMBYs.

"These new laws will help cut red tape and encourage more and affordable housing, including shelter for the growing number of homeless in California," Governor Brown said in a statement.

The state is currently facing a significant housing crisis as the supply shortfall affects affordability at all levels. The Department of Housing and Community Development estimates that the state needs upwards of 180,000 new housing units per year in order to maintain a healthy statewide housing sector. Currently, the industry is producing approximately half that amount. In order to address skyrocketing costs, more housing must be brought online.

Staff Contact: Louinda V. Lacey

CalChamber Seeking Input on Federal Tax Proposal

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The additional tax deduction for state and local taxes is eliminated.

Tax incentives for mortgage interest and charitable contributions are retained.

The framework repeals personal exemptions for dependents and increases the child tax credit. The first $1,000 of the child tax credit will be refundable as under current law.

The income level at which the child tax credit begins to phase out will be increased.

Also provided will be a nonrefundable credit of $500 for nonchild dependents.

The existing individual alternative minimum tax is repealed.

The estate tax and generation-skipping transfer taxes are repealed.

Unknown: Details of the child tax credit changes and specific changes to the earned income tax credit. Also uncertain is which households pay more and which pay less tax, as well as how much the tax package will increase the deficit.

Business Taxes

The corporate tax rate is set to 20%, down from the current 35%.

The maximum tax rate is set to 25% for small and family-owned businesses conducted as sole proprietorships, partnerships and S corporations.

Businesses may immediately write off the cost of new investments in depreciable assets other than structures made after September 27, 2017 for at least five years.

Deductions for net interest expense incurred by C corporations will be partially limited.

The deduction for domestic manufacturing (Section 199) will be repealed.

The framework explicitly calls for preserving the tax credits for research and development, and low-income housing.

It also calls for modernizing the tax rules affecting specific industries to ensure the tax code "better reflects economic reality and such rules provide little opportunity for tax avoidance."

Unknown: Rules to prevent business owners from reclassifying wages as business income; details of the interest deduction limits; what happens to investment write-offs after five years; which other tax breaks will be retained, given budgetary limitations; and the details of how the tax code will be updated for the current special tax regimes.

Corporate Foreign Income

The framework calls for replacing the existing "outdated" worldwide tax system with a 100% exemption for dividends from foreign subsidiaries (in which the U.S. parent owns at least a 10% stake).

Foreign offshore profits will be exempted from taxes when they are repatriated to the United States.

Foreign earnings that have accumulated overseas under the old system will be treated as repatriated.

Accumulated foreign earnings held in illiquid assets will be subject to a lower tax rate than foreign earnings held in cash or cash equivalents. Payment of the tax liability will be spread out over several years.

The foreign profits of U.S. multinational corporations will be taxed at a reduced rate and on a global basis.

Unknown: The specific one-time tax rates and the rules to prevent companies from shifting profits abroad by leveling the playing field between U.S. headquartered and foreign-headquartered parent companies.

Business Consequences?

The CalChamber and its Taxation Committee are gathering information on how the President's tax proposal will affect member companies.

Members are invited to share with us their comments on the consequences of elements of the tax proposal. Please email *alert@calchamber.com* by October 13 or write to the Taxation Committee, California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814.

Staff Contacts: Jennifer Barrera, Kevin McKinley

Expanded Tax Credit Program Spawns More In-State Film, TV Projects

A 2014 California Chamber of Commerce job creator bill is being credited with encouraging some film and television productions to remain in or return to the state in a recent report from the California Film Commission.

The film commission report, released September 25, says the expanded Film and Television Tax Credit Program 2.0 led to a sustained 12% increase in hours worked in state, the relocation of a growing number of established TV series to California from out of state, and more filming outside the greater Los Angeles zone.

Program 2.0 resulted from the 2014 job creator **AB 1839 (Gatto; D-Glendale; Chapter 413)**.

California Gains

In the two years of the expanded program, according to the film commission report, California has gained 38 feature film projects and 50 TV projects—eight pilots, two movies of the week, 27 TV series, one mini-series and 12 TV series relocating to California.

Tax credit projects are projected to spend $28 million across 10 counties outside of Los Angeles County, the report says.

All the projects are generating an estimated $3.7 billion in direct spending to the state, including $1.4 billion in below-the-line wages (for production workers and the like).

The 12 TV series relocating to California after previously receiving tax credits in other states are on track to spend more than $891 million in California, according to the film commission report.

Increased Incentives

Taking effect in January 2015, the five-year Program 2.0 more than tripled the size of California film and TV production incentives—from $100 million a year to $330 million a year through the 2019–2020 fiscal year.

Program 2.0 allows productions previously excluded from seeking the credits to become eligible for the funding. The newly eligible projects included big-budget feature films costing $75 million or more, TV pilots and one-hour series for any distribution outlet.

While eligibility is expanded, the program caps the maximum credit any one project can receive.

The report notes that each big-budget feature film employs thousands of workers and typically uses more than a thousand support businesses. Moreover, a big-budget film also may require the use of several large sound stages to build elaborate sets.

To encourage filming throughout the state, the program offers an additional 5% tax credit to productions that shoot outside the 30-mile zone around Los Angeles or have qualified expenditures for music scoring or track recording.

Local Economic Gains

The report notes that when productions film on location outside the Los Angeles area, they typically spend $50,000–$100,000 per day in the local region.

The spending benefits many small businesses, including grocers, hardware stores, gas stations, hotels and other retail businesses, as well as local hires for services such as catering and construction work.

Local governments gain from payments made to local police and fire departments, plus revenue from local permit fees.

Previous Job Creator Bills

Earlier legislation helping contribute to the return of film and television productions to California includes two 2012 CalChamber job creator bills. Both AB 2026 (Fuentes; D-Los Angeles; Chapter 841) and SB 1197 (R. Calderon; D-Montebello; Chapter 840) helped protect jobs in the film industry by extending the film tax credit for two years, until July 1, 2017.

More Information

For more information, see the ***Progress Report*** on film and television tax credit programs on the California Film Commission website, ***www.film.ca.gov***.

State Lawsuit Climate Ties All-Time Low

For the third time since 2012, California's lawsuit climate ranked No. 47 out of 50 in the national survey by the U.S. Chamber Institute for Legal Reform.

California has been in the bottom 10 states since the survey began in 2002. In addition, both Los Angeles and San Francisco made the list of cities or counties with the least fair and reasonable litigation environment.

2017 Lawsuit Climate Survey: Ranking the States surveyed senior business executives on their experiences with state lawsuit environments.

This perception of California's poor litigation climate is critical—an all-time high 85% of survey participants said that a state's lawsuit environment is likely to have an impact on their company's decisions about where to locate or expand.

Class Actions

According to the survey, California is known as a hotbed for class action lawsuits, which likely contributed to its rank. In particular, 36% of the nation's food class action lawsuits are filed in California based on state laws. As a result, the Northern District of California has become known as the country's "food court."

California's lawsuit climate ranked beneath neighboring states Arizona, Nevada and Oregon, which ranked 32nd, 36th and 12th, respectively.

Bottom Rankings

California is in the bottom seven of 10 elements evaluated in the survey. The state ranked dead last for its overall treatment of tort and contract litigation, 49th for the quality of its appeals process and 48th for its treatment of class action lawsuits and the fairness of its juries.

California is also home to one of the worst lawsuit jurisdictions in the nation: Los Angeles, which ranked second among the cities or counties with the worst legal environments.

Additionally, since 2008, California's state court system has been in a perpetual budget crisis resulting in the closure of at least 52 courthouses and more than 200 courtrooms, as well as reducing services statewide. This has clogged the courts, and the state Supreme Court's Chief Justice has estimated it has deprived more than two million Californians of accessible justice.

Harris Poll, a global polling firm, conducted the 2017 Lawsuit Climate Survey through more than 1,300 telephone and online interviews between March 31 and June 26, 2017. Participants were senior business lawyers and executives in companies with annual revenues of at least $100 million. The survey asked participants to rank the fairness of state lawsuit environments across 10 categories, including their laws, courts, judges, and juries.

To see the full survey, visit ***www.instituteforlegalreform.com***.

2017 Legal Climate Rank 41-50

41. New Jersey
42. Kentucky
43. Alabama
44. Mississippi
45. West Virginia
46. Florida
47. **California**
48. Illinois
49. Missouri
50. Louisiana

Source: U.S. Chamber Institute for Legal Reform

CalChamber Executive Team Change Ahead

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has been a tremendous leader for staff, our members and our colleagues in the Capitol. Jeanne has helped drive some of our biggest successes over the years and she leaves an incredible legacy.

"I am confident that CalChamber's impact in the State Capitol will remain strong and effective under Jennifer's leadership. Jennifer has distinguished herself as a successful attorney and policy advocate who has worked diligently on behalf of CalChamber members to protect our business climate."

CalChamber-Sponsored Seminars/Trade Shows

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Conference 2017. California Energy Commission. October 19–20, Sacramento.

International Consulate Summit. East Bay Economic Development Alliance. October 26, Oakland.

U.S.-India-Israel Business Forum. U.S.-India Business Council and U.S.-Israel Business Initiative. November 13, Redwood City.

CalChamber Calendar

Public Affairs Conference:
October 17–18, Santa Monica

CalChamber Goes to D.C. Trade Gathering

The California Chamber of Commerce recently joined nearly 125 trade specialists from across the nation for sessions focused on trade issues at the National District Export Council's Annual Export Symposium in Washington, D.C.

Susanne T. Stirling, CalChamber vice president of international affairs, was among participants at the September 27 Annual Trade Symposium, held and presented by the U.S. Chamber of Commerce together with the National District Export Council (DEC). Stirling serves on the Northern California DEC, the steering committee of the National DEC, and the International Policy Committee of the U.S. Chamber of Commerce.

The symposium was opened by Robert Brown, chair of the National DEC, and Christopher Wenk, executive director, international policy for the U.S. Chamber. Brown had been re-elected as National DEC Chair for 2017–18 the day before the symposium.

Following are highlights from the export symposium. For more details, visit ***www.calchamber.com/international***.

NAFTA Support

Wenk opened by reiterating U.S. Chamber support for the **North American Free Trade Agreement (NAFTA)**, and stating that the first priority during the negotiations is "to do no harm."

The U.S. Chamber and the CalChamber support modernizing NAFTA and doing so in a timely fashion. The presidential election in Mexico and the U.S. mid-term elections loom large over the timing of the negotiations.

Wenk went on to indicate U.S. Chamber support for the U.S.-Korea Free Trade Agreement. In particular it makes sense to focus on the full implementation of the agreement, rather than withdrawing as recently was hinted by the Trump administration.

Export-Import Bank

Lastly, Wenk mentioned the need for a quorum at the **Export-Import Bank**. Wenk went on to explain that the U.S. Chamber had just earlier in the week indicated it **does not support Senate confirmation** of the President-appointed Chair, as he has not shown himself to be a supporter of the Ex-Im Bank functions.

However, the U.S. Chamber is supportive of having a full quorum to be able to move the Ex-Im Bank operations forward. In the interim, deals are limited to $10 million.

Representative Andy Barr (KY, R-6th), who serves on the Financial Services Committee, said his committee is interested in furthering the diversity of the portfolio of the Ex-Im Bank, as it is highly concentrated in certain industries and geographical areas.

The bank supports 2% of exports, so there needs to be more focus on opening foreign markets for U.S. business in general.

Export Controls

Following a session on export controls with representatives of the U.S. Commerce and Treasury departments, company representatives gave a private sector perspective on the impact of the export control programs—and finding a balance between cost and compliance.

Panelists for this session included CalChamber member Roy Paulson, president, Paulson Manufacturing Corporation and former National DEC Chair, and Laura Molinari, executive counsel, international trade compliance, GE.

The companies expressed an interest in making sure that their customers also were in compliance and well-documented in their compliance efforts. The panel was led by former National DEC Chair Dan Ogden.

National DEC Forum

Welcoming about 60 members to the Thursday, September 28 National DEC Forum was Tom McGinty, acting assistant secretary for the U.S. Commerce Department. Attending the forum from California were members of the NorCal DEC, the San Diego DEC, and the Inland Empire DEC. Earlier this year, McGinty joined the May 2017 California DEC meeting held at the CalChamber.

McGinty stated that of every $1 spent by the U.S. Department of Commerce, there is $192 of wealth generated. In the client base the International Trade Administration serves, customers' satisfaction rate is 78%.

In addition, McGinty spoke of the success of the "Discover Global Markets" series of 16 events nationwide. Regarding the ITA budget, McGinty is optimistic about maintaining the current funding, which in these times is positive. The program then went on to recognize exemplary DECs, including the Inland Empire DEC from California.

Speakers at a session on international preparedness pointed to seemingly increasing disruption in the supply chain due to natural disasters and other issues. The speakers encouraged communication and coordination, in order to be better prepared for an emergency.

Also noted was that the Federal Emergency Management Agency (FEMA) has a business center, where information is distributed about any current situation. The Small Business Administration (SBA) also can provide disaster recovery for small businesses.

Staff Contact: Susanne T. Stirling

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