ALERT

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CalChamber
CALIFORNIA CHAMBER OF COMMERCE

Budget, Stimulus Talks Moving Toward Conclusion

As ***Alert*** went to press, state budget discussions and federal negotiations over a stimulus package appeared headed toward a conclusion.

California Senate President Pro Tem Darrell Steinberg (D-Sacramento) said at a Sacramento Press Club luncheon that there is agreement on a framework for a budget plan and he expected legislators to vote within days.

For updates go to calchamber.com

U.S. Senate Majority Leader Harry Reid (D-Nevada) said at a press conference in Washington, D.C. that negotiators had worked out differences between the U.S. Senate and U.S. House economic stimulus packages. President Barack Obama has said he wanted Congress to get the stimulus bill to him by Monday, February 16.

The compromise $790 billion federal stimulus legislation could mean approximately $80 billion for California (assuming that the state which is home to nearly 12 percent of the nation's population receives 10 percent of the stimulus funds). The federal package would provide some fiscal relief for the state by making substantial funds available for public infrastructure (highways, transit and schools), unemployment compensation and tax relief, among other programs.

In addition, early reports were that $44 billion of the federal package is for fiscal relief to states facing deep program cuts and $87 billion to help pay for Medicaid.

Approval of the federal stimulus package will clarify for California what federal funding might become available to help ease the state's budget plight. The more California receives from the federal package, the less the state will need to raise through taxes, cut and borrowing.

State Budget

The California Chamber of Commerce has been advising policymakers for months to avoid targeted tax increases or extending the sales taxes to services, pointing out that both would hurt the

See Budget: Page 4

CalChamber Urges Tax Commission: Make Jobs, Economy First Priority

The importance of nurturing an environment in which businesses can remain competitive is critical to any contemplated change to California's tax structure, the California Chamber of Commerce told the Commission on the 21st Century Economy on February 12.

"Any changes to the tax system should be undertaken primarily with the health of the economy in mind. Care should be given to considering what aspects of the tax system are actually 'broken,' before prescribing remedies," said Kyla Christoffersen, CalChamber policy advocate on taxation and legal issues.

Role of the Commission

Governor Arnold Schwarzenegger's October 2008 Executive Order S-12-08 created the bipartisan Commission on the 21st Century Economy to "re-examine and modernize California's out-of-date revenue laws that contribute to feast-or-famine state budget cycles."

Applying the principles outlined in Governor Schwarzenegger's Executive Order, the commission was directed to "suggest changes to state and local revenues that will result in a revenue stream that is more stable and reflective of the California economy."

The order does not mention whether

See CalChamber: Page 7

Inside

Labor Law Corner

Businesses Must Allow Service Animals on Premises, But Not Pets

Sunny Lee
Senior Labor Law Consultant

We have a patient who wants to bring her dog with her to her appointments. One of our employees is deathly afraid of dogs and another employee is allergic to dogs. Can we refuse to have a dog on our premises?

If the dog is a pet, the answer is yes. If your business is open to the public and the dog is a service animal, however, you must allow the animal on your premises. Fear of an animal or allergies to animals is not generally a valid basis for refusing entry to a service animal.

Guidelines

Businesses should abide by the following guidelines when it pertains to allowing animals on the premises:

- The public accommodation provisions of the Americans with Disabilities Act (ADA) apply to all businesses and organizations that serve the public, including but not limited to restaurants, hotels, taxis and shuttles, grocery and department stores, hospitals and medical offices, theaters, health clubs, parks and zoos. Businesses that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.
- Service animals are animals that are individually trained to perform tasks for people with disabilities—such as guiding people who are blind, alerting people who are deaf, pulling wheelchairs, alerting and protecting a person who is having a seizure, or performing other special tasks.
- You may ask if an animal is a service animal or ask what tasks the animal has been trained to perform, but you cannot require special identification cards for the animal or ask about the person's disability.
- People with disabilities who use service animals cannot be charged extra fees, isolated from other patrons, or treated less favorably than other patrons. If a business such as a hotel normally charges guests for damage that they cause, however, a person with a disability may be charged for damage caused by his or her service animal.
- A person with a disability cannot be asked to remove his/her service animal from the premises unless:

  1) the animal is out of control and the animal's owner does not take effective action to control it (for example, a dog that barks repeatedly during a movie); or

  2) the animal poses a direct threat to the health or safety of others. In that event, the business should give the person with the disability the option to obtain the goods and services without having the animal on the premises.
- A business is not required to provide care or food for a service animal or provide a special location for it to relieve itself.

More Information

Additional information about the ADA is available at HRCalifornia.

For more information about service animals, visit the government website at ***www.ada.gov/qasrvc.htm*** or call the U.S. Department of Justice toll-free ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TDD).

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 Calendar

Fundraising Committee:
March 5, San Diego

Water Committee:
March 5, SanDiego

Board of Directors:
March 5-6, San Diego

Council for International Trade:
March 6, San Diego

AB 32 Climate Change Policy Committee: March 6, San Diego

Proposal for New Federal Ocean Policy Has Broad Implications for California Firms

Congress is considering a new ocean policy that ultimately will have an impact on a wide range of businesses in California. If the legislation becomes law, operations with any sort of discharge — from parking lot drainage to air emissions — would face far stricter requirements than those in current state or federal law.

California Congressman Sam Farr (D-Carmel) is the author of the federal proposal, HR 21, the Ocean Conservation, Education and National Strategy for the 21st Century Act.

Wide-Ranging Impact

The legislation, whose co-sponsors include nine Democratic congressional representatives from California, seeks to implement a sweeping reorganization of the National Oceanographic and Atmospheric Administration (NOAA).

HR 21 may be a backdoor way to regulate air emissions and force revisions to U.S. Environmental Protection Agency rules. Current California law places numeric values on measuring the amount of protection the marine ecosystem receives. HR 21 does away with incremental values and implements a blanket "no harm to the ocean" standard.

The legislation would have a direct effect on companies such as forestry operations in the high country that add to the sediment load in rivers that eventually run into the ocean, as well as chip manufacturers that discharge to sewer or sanitation systems that eventually flow into the ocean.

Many companies could find themselves subject to strict new requirements because any process that results in air emissions could produce material that winds up in the ocean.

For example, oil refineries, pharmaceutical operations and farmers who use tractors (which emit nitrogen oxide) all could be affected. Home builders and contractors for commercial facilities could face new requirements under the disputable theory that construction causes more vehicle miles traveled and as a result, more air emissions.

HR 21 also states "the lack of scientific certainty should not be used as justification for postponing action to prevent negative environmental impacts."

New Government Entity

HR 21 establishes a new Committee on Ocean Policy (COP) charged with imposing the strict new standards on ocean activities. The legislation raises the status of ocean policy to a national priority, bringing the NOAA and COP under the U.S. Department of Commerce and creating a position for a national ocean advisor with direct access to the President, among other provisions.

Similar legislation was proposed in 2007 under the same name but died in the U.S. House Natural Resources Committee.

In addition to strictly governing activities of companies discharging directly to the oceans, or engaged in activities that result in runoff or other discharges to rivers and streams that empty into oceans, HR 21 applies to companies contributing to air emissions that are alleged to affect ocean temperatures or acidity (the interconnectedness language of the bill includes land and atmosphere/climate).

The centerpiece of the legislation is the Coordination Plan, to be developed by the COP. Ultimately, all federal agencies and private businesses would need to act in "accordance" with the National Ocean Policy outlined in the Coordination Plan.

HR 21 requires that the National Ocean Policy "shall" be implemented to "protect, maintain and restore marine ecosystem health." The bill defines "marine ecosystem health" as the ability of an ecosystem to sustain a "complete diversity" of species and the "physical, chemical, geological and microbial" environment necessary to maintain that complete diversity—a very high bar to meet.

HR 21 also replaces the more common standard of mitigation "to the fullest extent practicable" by using the phrase "to the fullest extent possible." This change in effect excludes consideration of adverse impacts to the economy and jobs. The lack of a balancing mechanism allowing such considerations would have a detrimental effect on an already-strapped economy.

Shift in Emphasis

HR 21 explicitly lists six principles strongly emphasizing environmental protection that will have a deep impact on the direction of ocean policy:

- environmental protection,
- generational equity,
- ecosystem management,
- the "precautionary principle,"
- recognition of the interconnectedness of natural processes and
- balancing competing uses of ocean resources without undermining environmental protection.

The precautionary principle shifts to users of ocean resources the burden of proving that environmental impacts do not exist.

California Democrats Support

HR 21 awaits a hearing in the U.S. Science and Technology Committee. The following California representatives are co-sponsors: Bob Filner (D-San Diego); Barbara Lee (D-Oakland); Michael Thompson (D-St. Helena); Brad Sherman (D-Sherman Oaks); Anna Eshoo (D-Palo Alto); Howard Berman (D-Van Nuys); Lois Capps (D-Santa Barbara); Henry Waxman (D-Los Angeles); George Miller (D-Martinez).

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Budget, Stimulus Talks Moving Toward Conclusion

From Page 1
economy, the targeted industries and the ability of businesses to create jobs.

A budget analysis released February 5 by the non-partisan Legislative Analyst's Office agreed with the CalChamber, also recommending against a new oil severance tax targeting oil extracted in California and a sales tax on selected services.

Based on newspaper reports, the budget compromise includes revenues to protect essential and necessary services, but adequate spending reductions to help balance the budget. The tax increases, reported to be temporary, are broadly based and include the state sales tax, gasoline tax, vehicle license fee and personal income tax.

In addition to real cuts in programs, the budget agreement reportedly makes progress toward a constitutional amendment to rein in state spending and require the state to put money into a "rainy day" fund after reaching a limit to be based on state revenues over a 10-year period.

Political columnist Dan Walters and other newspaper stories also reported there is a potential for the budget agreement to move the state toward taxing multinational companies based solely on in-state sales, rather than the current practice of unitary taxation, which also taxes companies on a percentage of their income earned outside the state. Such a change, if adopted, could stimulate the California economy and jobs climate by making the state more attractive to investors.

Federal Funding

Details were sketchy as ***Alert*** went to press, but earlier versions of the U.S. Senate and U.S. House economic stimulus bills reportedly included as much as $2.5 billion in highway funding for California and $1 billion for mass transit.

It also appeared California would receive some funding to reimburse it for Medicaid costs, and help pay for education and other services.

State Tax Commission

While state and federal lawmakers finalized the budget and economic stimulus packages, the bipartisan state Commission on the 21st Century Economy met February 12 in Los Angeles as part of its charge by Governor Arnold Schwarzenegger's executive order to "re-examine and modernize California's out-of-date revenue laws that contribute to feast-or-famine state budget cycles."

Testimony presented by CalChamber Policy Advocate Kyla Christoffersen emphasized the need for the commission to consider the health of the economy in any recommendation, as well as the impact of any proposals on job creation in the state (see story on side of Page 1 and excerpts of prepared testimony on Pages 5–6).

CalChamber-Sponsored Seminars/Trade Shows

For more information, visit *www.calchamber.com/events*.

Business Resources

Lower Colorado River Tour. Water Education Foundation. March 4–6, Las Vegas. (916) 444-6240.

Water 2009: Building on Change. Water Education Foundation. March 12–13, Sacramento. (916) 444-6240.

Central Valley Tour. Water Education Foundation. April 15–17, Bakersfield. (916) 444-6240.

International Trade

Piracy of the 21st Century: Keeping Cargo Safe. East Bay Center for International Trade Development. February 23, Oakland. (510) 251-5942.

18th U.S. Trade Show. American Chamber of Commerce in Bangladesh. February 26–28, Bangladesh. *amcham@amchambd.org*.

Trade and Investment with the AGOA Countries. Monterey Bay International Trade Association (MBITA). February 27, Monterey. (831) 335-4780.

Water China 2009. China Foreign Trade Centre Group. March 3-6, Canton (Guangzhou). *contact@merebo.com*.

CeBIT 2009: Take Your Business to the Next Level. Hannover Fairs. March 3–8, Hannover, Germany.

17th Convergence India. Exhibitions India Pvt. Ltd. March 18–20, Pragati Maidan, New Delhi, India. (650) 740-6064.

World Affairs Council of Northern California Annual Conference. April 2–3, San Francisco. (415) 293-4626.

Global California. Monterey Bay International Trade Association (MBITA). April 3, Santa Clara. (831) 335-4780.

Asia Pacific Business Outlook Conference. University of Southern California. April 6–7, Los Angeles. (213) 740-7130.

63rd World Affairs Council Annual Conference. World Affairs Council of Northern California. April 2–3, San Francisco. (415) 293-4626.

Renewal Energy Conference. Center for International Trade Development. April 27–29, San Francisco. (858) 208-9227.

Labor Law

SB 1608: What California's New Accessibility Law Reforms Mean to Employers. Free Web Seminar. CalBizCentral. February 19. (800) 331-8877.

Employee Handbook Policies 201. Web Seminar. CalBizCentral. March 12. (800) 331-8877.

CalChamber Testimony to Tax Commission

Economy, Jobs Climate Should Be Priority in Examining California Tax Structure

Following is the testimony prepared by Kyla Christoffersen, policy advocate for the California Chamber of Commerce, for presentation to the Commission on the 21st Century Economy.

My remarks today will focus: 1) first upon our belief that the economy should be a principal consideration of this commission in formulating recommendations; and 2) second, on the detrimental impact several tax proposals raised before this commission would have on job creation and the economy.

Strong Economy is Key

Commission Principles

Among the five principles set forth in the Governor's executive order that are to guide this Commission's ultimate recommendations, we believe the most important are those related to ensuring the strength of California's economy over the long term, including:

- "Promote the long-term economic prosperity of the state and its citizens"; and
- "Improve California's ability to successfully compete with other states and nations for jobs and investments."

Nonetheless, much attention has been given to two other guiding principles for the commission: 1) addressing volatility; and 2) ensuring the tax structure adequately reflects the 21st century economy.

Care should be given to considering whether these aspects of the tax system are actually "broken," before prescribing remedies. We believe neither issue need be a focal point of this Commission, for the following reasons:

- **Volatility.** With respect to volatility, there is no doubt about our tax system's volatility, especially in relation to the state's personal income tax. This, in combination with poor fiscal decisions, contributes to budget crises. A proposed solution is already pending, however. Both the Governor and Legislature have approved for public vote at the next statewide election, a "rainy day" fund which is designed to address volatility. The proposal "smoothes" revenues by requiring that "peaks" be saved to be spent during "troughs." It seems logical that this proposal be tried and tested before considering more radical options.
- **21st Century Economy.** Many of the complaints about California's tax system are couched in terms of whether the system is "reflective of the 21st century economy." However, we submit California's tax system is generally reflective of the economy, because data shows that it generally rises and falls with the economy. For the past 30 years, the amount of revenues raised by General Fund taxes in California has generally ranged between 6 and 7 percent of personal income.

...a tax system for the 21st century economy should above all do no further harm to California's economy and competitiveness.

Since volatility can be addressed without changing the tax system, and since the tax system seems to be reflecting the economy, then the major criterion for examining whether and how to change the tax system should be improving the state's economic climate and competitiveness.

California's Current Tax Climate

Thus far, a range of perspectives have been offered as to the burdensomeness of California's taxes and our ability to compete with other states for jobs under the current tax structure.

While a state's tax climate is not the only factor a business considers in determining whether to locate, maintain, or expand jobs in California, it is a significant factor. The Tax Foundation observes that the defining characteristic of today's marketplace is the mobility of capital and labor. California, more than ever, is competing both nationally and globally for workers and companies.

From the perspective of businesses, the state's job-creators, California's tax structure is one of the most burdensome and hostile in the nation:

- The non-partisan Tax Foundation's 2009 national study confirms that California has the sixth highest state and local tax burden, the highest income tax rate, the 10th highest corporate tax rate, and a sales tax rate above the national median. Only the property tax is considered slightly below the national average.
- California's high income tax burden is particularly harmful to small businesses. Many taxpayers in the top income tax brackets are small businesses such as sole proprietorships which pay the individual income tax rate rather than corporate.
- With respect to the sales tax, virtually no other state besides California taxes both business inputs (manufacturing and research assets) and business outputs (the products from the utilization of these assets).
- Moreover, in a cross-section of national tax climate rankings, California consistently ranks near bottom:
  - ✓ In the Tax Foundation's *2009 State Business Tax Climate Index*, California ranked 48th out of a worst of 50.
  - ✓ In the *2008 Small Business Survival Index*, out of the 50 states and D.C., California's tax system ranked 48th out of a worst of 51.
  - ✓ In *CFO* magazine's *2007 State Tax Survey*, California's tax environment ranked as the very worst in the nation.

California's dismal tax climate means there is room to make our tax system

See Economy: Next Page

Economy, Jobs Should Be Priority in Examining State Tax Structure

From Page 5
more attractive for jobs and investments, but a tax system for the 21st century economy should above all do no further harm to California's economy and competitiveness.

Harmful Tax Proposals

This leads me to the second part of my remarks, which is to specifically address a few of the pending tax proposals which we believe will only exacerbate the suffering economy and California's competitiveness problems.

Services Tax Would Be a Tax on Jobs

CalChamber believes a tax on services would impede sustained economic recovery and burden already-struggling California businesses. A tax on services is a tax on labor, which will mean service-based companies will ultimately be unable to provide as many jobs.

A services tax, whether broad or targeted, would mean a sudden, nearly 10 percent price increase on services such as repairs, entertainment events and veterinary care. We have no doubt that such an increase would result in substantially less business and in turn fewer jobs at repair shops, attendance at entertainment events, and care for ailing pets. Small businesses in particular would be disproportionately impacted by this sudden cost increase.

And under a broad-based services tax, further job loss is likely to result from changes in behavior. Businesses may be incentivized to hire out-of-state professionals for services, such as accounting and legal. In addition, more businesses may be inclined to move in house work currently contracted out to other businesses. Thus, a services tax will create more jobs for out-of-state competitors and harm in-state businesses.

Targeted Taxes Discriminatory and Unfair

Another type of revenue proposal that has repeatedly surfaced in the context of this state's fiscal challenges are unfair and inequitable tax increases that propose to single out a specific industry or profession to shoulder billions of dollars of permanent tax burden. These industry-specific taxes kill good jobs and harm industries unique to California.

CalChamber believes the solution to California's revenue problems will only come from robust economic growth and job creation. Accordingly, any changes to the tax structure should take into account not only the need to maintain necessary government programs but the need to foster our state's economic growth.

For example, the often-proposed new tax on oil production in California will ultimately make California oil more expensive than that produced in foreign countries and harm our state's competitiveness. It won't change the amount of oil used in California, but it will result in loss of high quality jobs in the industry, increased imports to the state and increased prices at the pump.

Likewise, another common proposal—singling out the alcoholic beverage industry for a tax increase—will directly affect our important wine industry and beer production facilities, costing high quality jobs in both sectors.

E-Commerce Taxation Harms Competitiveness

Some policymakers in California and a number of other states are concerned about potential lost tax revenues as more and more consumers purchase products such as music and videos through digital downloads rather than in tangible form.

The CalChamber and many in the business community, however, believe this disregards characteristics and challenges unique to e-commerce that would cause taxation to be counterproductive for both the state and industry and could ultimately lead to fewer tax revenues. Digital media industries are highly mobile and can reach California consumers from outside the state's borders as easily as from within.

A related trend in the e-commerce taxation context has to do with nexus, which is the requirement by the U.S. Constitution that a state have a sufficient physical connection, or nexus, to an out-of-state company before it can force a company to collect the state's sales tax.

Because of the expanding number of out-of-state sellers in the online marketplace, there has been a growing interest in adopting new and unconventional ways to establish nexus with them. California currently has a clear nexus standard which helps California web-based companies compete globally for customers. If California were to muddy its standard, California companies would be at an immediate competitive disadvantage with companies in states with clear and certain nexus standards.

E-commerce taxation issues are better left for resolution at the federal level so that any changes would apply uniformly and not create competitiveness issues among the states.

Conclusion

CalChamber believes the solution to California's revenue problems will only come from robust economic growth and job creation. Accordingly, any changes to the tax structure should take into account not only the need to maintain necessary government programs but the need to foster our state's economic growth. Any changes to the tax system should be undertaken primarily with the health of the economy in mind.

Next Alert:
February 27

CalChamber Urges Tax Commission: Make Jobs, Economy First Priority

From Page 1
the recommendations should be revenue-neutral, although the CalChamber believes the commission should err on the side of revenue neutrality, given the requirement that the changes promote economic prosperity and competitiveness.

Protecting Jobs, Competitiveness

The CalChamber believes that sound fiscal policy will result in material improvements to California's economy and encourage a swift and strong rebound from the current slowdown. On the other hand, the wrong policies will only make matters worse. Ultimately, the solution to California's budget crisis will come only from robust economic growth and job creation.

As the commission considers changes to the state's tax structure, the CalChamber believes the top priority must be a long-term plan for restoring and growing the state's economy, Christoffersen told the commission.

"The state's fiscal health cannot be restored without a strong economy. Any change to the tax structure should balance the need to maintain necessary government programs and the need to stimulate economic growth," Christoffersen said.

CalChamber Policy Advocate Kyla Christoffersen prepares testimony for the February 12 meeting of the Commission on the 21st Century Economy. The testimony emphasizes the importance of considering the health of the economy in any recommendations the bipartisan commission makes.

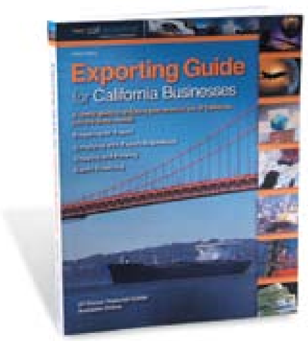
"Fostering economic health for California relies upon a tax structure that does not target specific industries, services, or income and investment with higher taxes. If taxes are raised in these three areas, it will kill jobs and future investment in high-quality jobs for Californians," she said.

"If taxes must be raised, they should be broad-based, temporary and non-discriminatory, and above all, minimize adverse impacts on economic competitiveness and equity," Christoffersen said.

The commission will report its findings to the Governor and Legislature on or before April 15.

Staff Contact: Kyla Christoffersen

New Exporting Guide Provides Essential Trade Tips



A new essential reference tool on exporting goods internationally is now available from CalBizCentral, the source for California business and human resource compliance products, presented by the California Chamber of Commerce.

The ***2009 Exporting Guide for California Businesses*** helps companies and entrepreneurs become aware of the complexities of export regulations and guidelines when preparing to ship goods internationally. The ***Guide*** includes information on the exporting life cycle, features a detailed section on partnerships and offers quick access to forms and usage guidelines.

California-Specific

Unlike combined import/export books on government websites, this guide focuses solely on exporting goods, with an emphasis on California. The ***Guide,*** reviewed by the CalChamber Council for International Trade, explains the regulatory and financial details for exporting from California.

Features

The ***Guide***, written by J.H. Dethero, an international business consultant, writer and instructor with a 50-year background in international banking, trade and state government, features the following information:

- Comprehensive material on exporting and content covering the exporting life cycle;
- Extensive additional resources on exporting;
- Detailed section on partnerships;
- Focused on exporting goods from California;
- Complying with export regulations;
- Extensive export financing treatment; and
- Quick access to forms and guides to form usage.

More Information

For more information or to order the ***2009 Exporting Guide for California Businesses***, visit ***www.calchamber.com/international/exportguide*** or call (800) 331-8877.

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