ALERT

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CalChamber®
CALIFORNIA CHAMBER OF COMMERCE

Bill with Multiple Tax Hikes Passes Senate Policy Panel

Job Killers

A California Chamber of Commerce-**opposed** job killer proposing multiple tax hikes on state employers, making California even less competitive, passed the Senate Governance and Finance Committee this week.

SB 567 (Lara; D-Bell Gardens) was identified as a job killer because it will significantly increase taxes on California businesses, who already have one of the highest tax burdens in the country.

Family-Owned Businesses Hurt

Specifically, SB 567 targets family-owned businesses that transfer the business upon death to other family members. Under SB 567, the family members who inherit the business/property, would be forced to pay capital gains on the property that has appreciated in value, if the family member(s) have an adjusted gross income of $1 million or more.

This change would take California out of conformity with federal law, and place another layer of taxes on a small group of Californians paying the highest personal income tax, at 13.3%.

Recent data from the Legislative Analyst's Office indicates that the top 1% of income earners in California paid half of all income taxes received. These top income earners upon which the General Fund is so reliant, are also the same individuals who would be exposed to this

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Get Easy Access to *Alert* Updates with Mobile App

Readers looking for an easy way to stay up-to-date on proposed state and federal laws or regulations of interest to employers can download the *CalChamber Alert* app at ***www.calchamberalert.com/app***.

In addition to coverage of the CalChamber's pro-jobs advocacy, the *CalChamber Alert* offers explanations of major court decisions affecting employers and the economy; special reports on job killer bills, the economy, ballot measures and legislative vote records; plus information on CalChamber compliance products and services.

A regular feature is a popular column answering common California employment law questions.

The latest version has been optimized for greater speed on iOS or Android platforms.

Assembly Committee Reviewing Fiscal Implications of Immigration Bill

A California Chamber of Commerce-**opposed** bill that puts employers in a no-win situation between federal immigration enforcement and state enforcement was put on hold in the Assembly Appropriations Committee this week pending a review of the proposal's fiscal impact.

AB 450 (Chiu; D-San Francisco) punishes employers—rather than providing tools and resources for employees—when federal immigration enforcement officials appear at the workplace regardless of whether the employer has violated the law.

The bill prohibits an employer from providing a federal immigration enforcement agent access to the business without a properly executed warrant and also prohibits the employer from providing the agent voluntary access to the employer's employee records without a subpoena.

Fiscal Concerns

CalChamber and the large coalition opposing AB 450 are concerned that the cost of implementing the provisions of this bill will be significant.

The Division of Labor Standards Enforcement and other state agencies will be subject to a number of costs for tasks such as legal analysis and determining the

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Inside

Labor Law Corner

Local Ordinances Add Variety to Minimum Wage Requirements

Barbara Wilber
HR Adviser

We have employees working a few hours a week in multiple cities and counties. The hours vary so much that we decided to just pay the standard California minimum wage. Are we required to pay different minimum wages based on each local minimum wage law?

It depends. Local minimum wage requirements may apply depending on the ordinance issued by each city or county where the employee works. Each ordinance defines the coverage and eligibility, and the rules vary.

Review those ordinances to determine your obligation for payment. *HRCalifornia's* new Local Ordinances section, ***www.calchamber.com/hrcalifornia/local-ordinances***, contains information about local minimum wage ordinances to help you comply with the various requirements.

Employer Options

Some employers decide to pay one rate that meets the highest minimum wage requirement for any of the locations the employees work. Other employers choose to pay different rates based on the number of hours worked in each jurisdiction pursuant to each ordinance's regulations.

If you decide to pay different minimum rates, overtime payment is based on the weighted average of the rates. It is important to keep accurate time records that reflect the hours worked in each location.

In addition, the itemized wage statement—the check stub—must list the hours worked at each rate, as well as the weighted average overtime rate.

At times it is difficult to determine if a workplace or job site falls within the city/county limits. Look to each ordinance website for guidance regarding boundaries.

Last, keep in mind that some cities/counties also provide paid sick leave that differs from the California standard.

More Information

Posting notices and recordkeeping requirements vary, so review the ***HRCalifornia* website** for more information and links to websites.

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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Labor Law

HR Boot Camp. CalChamber. May 25, San Diego; June 6, Santa Clara; August 24, Thousand Oaks; September 6, Beverly Hills. (800) 331-8877.

Nothing Ordinary About Local Ordinances in California. CalChamber. June 15, Live Webinar. (800) 331-8877.

Leaves of Absence: Making Sense of It All. CalChamber. August 18, Sacramento; June 22, Huntington Beach. (800) 331-8877.

Meal and Rest Break Rules. CalChamber. September 21, Webinar. (800) 331-8877.

International Trade

26th La Jolla Energy Conference. Institute of the Americas. May 24–25, La Jolla. (858) 964-1715.

USTDA China Microgrid and Energy Storage. U.S. Trade and Development Agency. May 25, San Francisco. (757) 342-2149.

NAFSA Annual Conference and Exhibition. NAFSA: Association of International Educators. May 28–June 2, Los Angeles. (202) 737-3699.

20th Annual International Business Luncheon. Northern California World Trade Center. June 1, Sacramento. (510) 367-7389.

SelectUSA Investment Summit 2017. SelectUSA. June 18–20, Washington, D.C. (202) 482-6800.

5th Annual Pacific Cities Sustainability Initiative. Asia Society. June 29–30, Los Angeles. (213) 788-4700.

10th World Chambers Congress. Sydney Business Chamber, The International Chamber of Commerce, and The International Chamber of Commerce World Chambers Federation. September 19–21, Sydney, Australia.

IRS Announces 2018 Health Savings Account Limits

The Internal Revenue Service has announced the annual limits for Health Savings Account (HSA) contributions for 2018. These limits are indexed for inflation and released annually by June 1 for the following year. HSA limits were increased for 2018.

HSAs are pre-tax accounts available to individuals covered under a high-deductible health plan. Eligible individuals can accumulate money, tax-free, in HSAs to pay for qualified medical expenses in the face of rising health insurance costs.

Maximum Contributions

The annual maximum HSA contribution for 2018 is:

• $3,450 for individuals with self-only coverage (an increase of $50 from 2017); and

• $6,900 for family coverage (an increase of $150 from 2017).

To participate in an HSA, the policyholder must, among other requirements, be enrolled in an HSA-qualified high-deductible health plan with a minimum annual deductible (not applicable to preventative services).

Health Plans, Expenses

For calendar year 2018, a high-deductible health plan is defined as a health plan with an annual minimum deductible of:

• $1,350 for self-only coverage (an increase of $50 from 2017); or

• $2,700 for family coverage (an increase of $100 from 2017).

The maximum annual out-of-pocket expenses (deductibles, co-payments and other amounts — but not premiums) also have increased for 2018.

For 2018, the maximum out-of-pocket amounts can't exceed:

• $6,650 for self-only coverage (an increase of $100 from 2017); or

• $13,300 for family coverage (an increase of $200 from 2017).

For more information on health savings account limits, visit the IRS website, ***www.irs.gov***.

Staff Contact: Gail Cecchettini Whaley

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tax increase under SB 567, and who have the most resources to change their residences to another state to avoid even higher taxes.

California should not continue to target these high earners with additional taxes, when they already contribute such a significant amount of revenue into the General Fund.

Harms Corporations

SB 567 also seeks to eliminate the current deduction allowed for compensation paid to executive officers for achieving performance-based goals. This proposal would harm all corporations, but more specifically, those companies incorporated in California.

While CEO compensation is an ever-popular debate topic, this legislation fails to recognize the enormous responsibility placed on these individuals to maintain or improve the success of a company that creates jobs for hundreds or thousands of workers, and value for thousands of shareholders, including pension funds.

This current deduction was created to allow companies to incentivize CEOs to achieve important performance goals for the benefit of the company, employees and shareholders.

The Internal Revenue Service already has strict guidelines on this deduction to prevent any abuses, including:

• written, pre-established, objective performance goals that are substantially uncertain at the time the goal is established;

• the goals are approved by a compensation committee comprised of two or more outside/independent directors; and

• the goals are also separately approved by shareholders.

Eliminating this deduction for California publicly traded companies, would unfairly penalize companies incorporated in California. Moreover, this proposed change is retroactive, meaning companies who will be harmed by the elimination of this deduction will not even have an opportunity to mitigate any tax exposure it creates.

Punitive Taxes

Finally, California already has the highest personal income tax and sales tax rates in the country, and one of the highest corporate tax rates as well. Californians just approved various tax increases and extensions on the November 2016 ballot. Additionally, state appropriations may exceed the Proposition 4 (Gann) limit, which over the next two years may trigger significant tax reductions.

Substantially increasing California's revenue again by targeting high earners and businesses, as proposed by SB 567, is punitive and will ultimately harm California's economy and General Fund.

Key Vote

SB 567 passed Senate Governance and Finance, 5-2, on May 17:

Ayes: Beall (D-San Jose), Hernandez (D-West Covina), Hertzberg (D-Van Nuys), Lara (D-Bell Gardens), McGuire (D-Healdsburg).

Noes: Moorlach (R-Costa Mesa), Nguyen (R-Garden Grove).

Action Needed

SB 567 will be considered next by the Senate Appropriations Committee.

The CalChamber is asking members to contact their senator and members of Senate Appropriations to urge them to **oppose SB 567** as a job killer.

An **easy-to-edit sample letter** is available at ***www.calchambervotes.com***.

Staff Contact: Jennifer Barrera

Assembly Committee Reviewing Fiscal Implications of Immigration Bill

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applicability of federal provisions; sending response teams to worksites where an immigration enforcement action is occurring; record keeping; and enforcement by the Labor Commissioner against public and private employers for noncompliance with the bill.

Comprehensive Reform

The coalition recognizes and values the important role immigrants play in California's economy and in the workforce and, therefore, strongly supports comprehensive federal immigration reform that includes temporary foreign worker programs, border security and a path to legal status. The author and these organizations share the objective of protecting our employees upon whom we depend.

Harm to Employers

AB 450 has several provisions that could adversely affect an employer when an immigration enforcement action occurs at its place of employment. Significantly, it penalizes an employer for choosing to cooperate with federal immigration enforcement authorities, thereby denying the employer the right to determine the best course of action for its business under these difficult circumstances.

Believing its employment eligibility verification and recordkeeping practices are in full compliance with federal law, an employer may determine that cooperation with federal enforcement officials is its best course of action. Unfortunately, AB 450 forbids an employer from cooperating with federal authorities and instead requires the employer to demand "a properly executed judicial warrant." Unknowing employees could inadvertently violate the provisions and put the employer at risk of significant penalties without the employer having violated any laws that harm employees.

An employer that cooperates with the enforcement authorities and provides consent for them to enter the workplace, instead of demanding a warrant, would be subject to significant penalties under AB 450 (no less than $10,000 and up to $25,000 for each violation), as well as an inspection by the Labor Commissioner.

No Meaningful Protection

While the intent of the bill is to protect the rights of workers, AB 450 offers no meaningful protection from deportation or helpful information to employees. Instead, the bill places employers who are not violating worker rights in serious legal jeopardy.

The bill does not differentiate between good and bad employers; instead, it assumes the employer has committed violations by requiring the employer to report to the Labor Commissioner any federal immigration enforcement action at its workplace so that the Division of Labor Standards Enforcement may investigate the employer for wage-and-hour violations.

There is not and should not be a nexus between immigration enforcement, and an inspection by the Labor Commissioner where no just cause is present.

Employers who follow federal law by properly verifying documentation of newly hired employees' eligibility to work (by properly completing and executing a Form I-9) should not be punished by state law for employing them.

The provisions of AB 450 are overly punitive to the employer and assume noncompliance. An employer would be prohibited from exercising its discretion in how to best handle an enforcement action by federal immigration officials.

Instead of this overly punitive approach that leaves the employer nowhere to turn, an approach of outreach to and education of employers and employees would be more helpful.

Action Needed

The CalChamber is asking members to contact their Assembly representative and members of the Assembly Appropriations Committee to urge them to **oppose AB 450**.

An **easy-to-edit sample letter** is available at ***www.calchambervotes.com***.

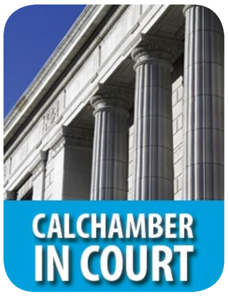
Staff Contact: Marti Fisher

CalChamber Member Feedback

"CalChamber does the heavy lifting for businesses in California by explaining to policy leaders how current and proposed state laws create hurdles for employers trying to create jobs and by working to achieve consensus on how to solve the problems."

Grace Evans Cherashore
Executive Chairwoman
Evans Hotels
San Diego

CalChamber Appeals Court Decision Upholding Cap-and-Trade Revenues



The California Chamber of Commerce this week petitioned the California Supreme Court to review the split decision by the 3rd District Court of Appeal upholding the state's practice of auctioning greenhouse gas (GHG) emission allowances to raise revenues.

The case is *California Chamber of Commerce v. California Air Resources Board.*

"While CalChamber remains a strong supporter of a cap-and-trade program to reduce greenhouse gases, it is clear that revenues generated by the California Air Resources Board's AB 32 implementation program are legally proceeds of a tax that required legislative authorization with a two-thirds majority vote," said CalChamber spokesperson Denise Davis in a May 15 news release.

"As indicated throughout the petition for review, this case involves serious issues of widespread statewide impact and importance. The appeal is being filed today to validate that position," Davis said.

Read the appeal at ***www.calchamber.com***.

The CalChamber sued the state Air Resources Board (ARB) in 2012, asserting that AB 32, the GHG emission reduction law adopted in 2006, does not authorize the ARB to impose fees other than those needed to cover ordinary administrative costs of implementing a state emissions regulatory program.

Court Ruling

The appellate court majority found in the April 6 decision that "The system [of auctions] is the voluntary purchase of a valuable commodity and not a tax under any test." The majority opinion was authored by Associate Justice Elena J. Duarte, concurred in by Associate Justice M. Kathleen Butz.

In his dissent, Associate Justice Harry E. Hull Jr. pointed out: "Given that the auction program is, for Morning Star and businesses that are similarly situated, compulsory if they are to remain in business in California and that the auction program creates, in actual effect, general revenue, I can only conclude that the program is a tax in 'something else' clothing and that the auction program, not having been passed by a 2/3 vote in the Legislature, violates Proposition 13."

The lawsuit does not challenge any of the provisions of AB 32, including cap-and-trade authority, nor the merits of climate change science. The only issue addressed in the litigation is the portion of the regulation that seeks to permit the ARB to allocate to itself GHG emission allowances and to profit by selling them to GHG emitters.

The CalChamber, other members of the business community, members of the Legislature, the Legislative Analyst's Office and ARB have all highlighted the fact that the auction is not needed to achieve the goals of AB 32 or to have an effective cap-and-trade program.

Robust Cap-and-Trade System

In a May 10 letter to legislators, the CalChamber said an economy-wide cap-and-trade system will be the least costly and least disruptive approach to meeting the state's emissions reduction goal.

A well-designed program, the CalChamber said, would include robust cost containment measures.

Last year, the Legislature set a 2030 goal of reducing GHG emissions in California by 40% below 1990 levels. This amounts to about a 50% per capita reduction in carbon emissions from today's levels.

See **article in May 12 *Alert***.

CalChamber Joins Trade-Focused Summit in Washington, D.C.

The California Chamber of Commerce recently joined 40 trade specialists from across the nation for sessions focused on trade policy at the annual Spring Legislative Summit of the National District Export Council (DEC).

Derek Gianino, director of international policy at the U.S. Chamber of Commerce, opened the April 25 summit with a welcome and legislative outlook.

Robert Brown, National DEC chair, added his welcome before the group heard perspectives from the Trump administration given by Judy Reinke, acting assistant secretary for global markets and deputy director general of the U.S. and Foreign Commercial Service, U.S. Department of Commerce. Reinke spoke to the CalChamber in Sacramento in May 2016.

New Principles, Priorities

The Assistant Secretary outlined the top five principles for the Commerce Department under the new administration and confirmed Secretary Wilbur Ross: expanding trade; promoting reciprocity to strengthen manufacturing and expand the export of agricultural products/services; working within bilateral rather than multilateral agreements; challenging unfair trade practices; and updating current trade practices.

Six internal task forces at the U.S. Department of Commerce indicate priorities for the new administration: trade with Japan; redefining the North American Free Trade Agreement (NAFTA); addressing Brexit, Britain's referendum on European Union membership; providing manufacturers with goals to compete; China; and nontariff barriers.

Susanne T. Stirling, vice president of international affairs for the CalChamber, serves on the Northern California DEC and on the steering committee of the National DEC.

Governor's May Budget Revise Continues to Hold Line on Spending

Last week, Governor Edmund G. Brown Jr. released a revised budget plan for 2017–18 that continues to restrain new spending. The Governor warned that the economic recovery won't last and that uncertainty in Washington adds to the unpredictability of California's budget outlook.

The Governor's May budget revision forecasts a smaller revenue increase than in January ($3.3 billion now compared to $5.8 billion in January), based mainly on higher capital gains.

According to the Governor's news release, the state's Rainy Day Fund will end the 2017–18 fiscal year with a balance of $8.5 billion, 66% of the constitutional target of 10% of tax revenues.

By the time the budget is enacted in June, the release points out, the California economy will have completed its eighth year of expansion, two years less than the longest recovery since World War II.

Budget Highlights

Other changed budget items highlighted in the Governor's news release include:

• **More Funding for Schools:** Due to the slightly improved fiscal outlook, the May budget increases funding for K–12 schools by about $4,058 per student over 2011–12 levels.

• **Reducing Pension Liabilities:** The Governor proposes a $6 billion supplemental payment to the California Public Employees Retirement System (CalPERS) with funds borrowed from the Surplus Money Investment Fund, part of the state's short-term savings account. The payment is estimated to save the state $11 billion over the next two decades while continuing to reduce unfunded liabilities and stabilizing state contribution rates.

• **Transportation System Funding:** The May revise reflects the first $2.8 billion in new funding from the $54 billion transportation package adopted earlier this spring, plus enhanced oversight of the California Department of Transportation.

• **Restored Child Care Funding:** Instead of the one-year delay in providing rate increases to child care providers as proposed in January, the May revise proposes restoring the funding and maintaining the $500 million child care package from the 2016 budget.

Legislative Analyst's Office

The nonpartisan Legislative Analyst's Office (LAO) reported its estimates of state General Fund revenues and transfers are just slightly above the administration's—close to $900 million over three fiscal years. The difference, the LAO said, is due to its higher estimates of personal income tax and sales-and-use tax revenues, offset by lower estimates of corporation tax revenue.

The LAO said the Governor's proposal for the additional CalPERS payment is a "very new idea" that "has promise," but suggested the Legislature wait to finalize the plan until later in the legislative session to allow time to make sure the plan works and fully maximizes its potential benefit for the state.

The LAO also pointed to the state budget impacts from continued uncertainty at the federal level. For example, changes to federal tax policy could have some near-term benefit or costs to state tax revenues and taxpayers, perhaps even requiring new state tax legislation to conform.

Other repercussions cited by the LAO include federal policy changes that could affect the economy, reduce federal funding or substantially increase state costs in the future. "Changes to the federal health care programs, in particular, could have significant implications for the state budget," the LAO commented.

The LAO recommended that the Legislature set reserve levels at or above the Governor's proposal, noting that the $10.1 billion in total reserves estimated for the end of 2017–18 will be a "key tool" for the Legislature in preparing for the next economic downturn and federal actions that could significantly affect the bottom line of the state budget in future.

More Information

The Legislature has until June 15 to adopt a budget plan for 2017–18.

Details on the Governor's May budget proposal are available at ***www.ebudget.ca.gov***.

The LAO's budget analysis can be viewed at ***www.lao.ca.gov***.

CalChamber Calendar

Capitol Summit:
May 31, Sacramento
International Forum:
May 31, Sacramento
Education Committee:
May 31, Sacramento
Water Committee:
May 31, Sacramento
Environmental Policy Committee:
May 31, Sacramento
Fundraising Committee:
May 31, Sacramento
Host Breakfast:
June 1, Sacramento
Board of Directors:
June 1, Sacramento

Tourism Spending Grows for 7th Year in Row

California's travel industry grew for the seventh consecutive year since the 2007–2009 recession, according to a May report prepared for Visit California and the Governor's Office of Business and Economic Development (GO-Biz).

The report notes that while most travel spending and related economic impacts occur within the state's metropolitan areas, the travel industry is still important throughout California. The report's preliminary results indicate that total direct travel spending was $126.3 billion in 2016, representing a 3.2% increase over 2015 in inflation-adjusted dollars.

The industry also saw a 3.4% surge in jobs. Counties with less total employment have a bigger share of travel-generated employment.

Tax Revenue Impacts

Last year, California benefited from a 3.8% increase in tax revenue thanks to the travel sector. More than 70% of the tax revenue was paid by visitors, and the remainder was paid by travel industry employees and businesses.

The report's authors write that the industry contributes more tax revenue to state and local governments than would be expected based on the size of the industry.

Gross domestic product (GDP) and employee earnings represent about 2.5% of the state economy, yet the travel industry generated 4.3% of tax revenue in the 2016 fiscal year, according to the report.

"Not only are most travel industry goods and services taxed at the point of sale, but a large share of these commodities (lodging and motor fuel) are taxed at rates that are greater than the general sales tax. Furthermore, a large share of these taxes is not borne by California residents," the report states.

International Visitors

The share of international travel in California has flattened over the last two years, after substantial increases in previous years. In 2016, $6 out of $10 spent at California visitor destinations was attributable to residents of other states and countries.

According to the report, this is consistent with national trends as the foreign share of U.S. internal travel declined by more than a full percentage point from 2015 (18.2%) to 2016 (17.1%). This stagnation is due to decreased visitation and the strength of the U.S. dollar. The value of foreign currencies has fallen relative to the U.S. dollar, not only discouraging travel to the U.S., but also affecting how much money foreign travelers can spend in the U.S.

Other Highlights

Other report highlights include the following:

• **Domestic Travelers.** More domestic visitors came to California in 2016 than in previous years. During the last three years, visitor arrivals on domestic flights increased at 5.7% per year. Yet in 2016, visitor air travel on domestic flights (36.9 million) increased by 7.2% over the previous year. Room demand increased by 1.8% for the year.

• **Secondary Impacts.** Re-spending of travel industry income by businesses and employees produces secondary effects. In 2016, these secondary impacts were 749,200 jobs with earnings of $46.1 billion. Total (direct and secondary) employment was 1.8 million jobs with earnings of $91.5 billion.

• **Gross Domestic Product.** The California travel industry's GDP was $68.6 billion in 2016. This represents about 2.5% of total state GDP.

• **Ports of Entry.** Overseas arrivals at California ports of entry increased by 11.7% for the year ending in June 2016.

Travel Sector

Travel in California is a multibillion-dollar industry, represented by retail and service firms, including lodging establishments, restaurants, retail stores, gasoline service stations, and other types of businesses that sell products and services to travelers. The money that visitors spend on various goods and services while in California produces business receipts at these firms, which in turn employ California residents and pay their wages and salaries.

State and local government entities benefit from travel as well. The state government collects taxes on the gross receipts of businesses operating in the state, as well as sales-and-use taxes levied on the sale of goods and services to travelers. Local governments also collect sales-and-use taxes generated from traveler purchases.

Full Report

The travel report, prepared by Dean Runyan Associates, Inc., is available for download at ***www.industry.visitcalifornia.com/media/uploads/files/editor/CAImp16pFinal.pdf***.

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