California's Attempt to Tax Wealth

First-of-its-Kind Tax on Ultra-Wealthy Will Hurt Job Growth

During the first year of California's two-year legislative session, progressive Democratic Assemblymember Alex Lee (San Jose) introduced companion bills AB 310 and ACA 8, which sought to tax the wealth, rather than the income, of California's richest residents. Although the "wealth tax" failed, progressives continue to promote this novel tax.

Perhaps not coincidentally, a wealth tax was considered briefly as part of the U.S. House Democrats' proposal to pay for the Biden administration's Build Back Better legislation. Facing many of the same constitutional, political, implementation and fairness issues as California, congressional negotiators rejected the tax.

CALIFORNIA'S ATTEMPT TO TAX WEALTH

A tax on wealth, as opposed to income, has never been instituted in the United States. During the 2021 legislative session, Assemblymember Lee attempted to enact such a tax when he introduced AB 310. This bill proposed an annual tax of 1% upon the worldwide net worth of every California resident in excess of $25 million (for married taxpayers filing separately) or $50 million for all other taxpayers. Notably, AB 310 would have applied to individuals who spent 60 or more days in California during the taxable year and spent either at least 120 days in the state over the prior two taxable years or at least 150 days in the state over the prior four taxable years. Also, the bill would have applied to individuals who were subject to the tax in one of the preceding four years, but who now are nonresidents with no expectation of returning to the state to reside.

Worldwide net worth would not have included any real property directly held by the taxpayer, but would have included indirectly held real property. The bill also proposed an additional 0.5% surtax upon worldwide net worth in excess of $500 million for married taxpayers filing separately and $1 billion for all other taxpayers. Worldwide net worth would have been calculated in the same manner that the Internal Revenue Code calculates the federal estate tax and would have been the value of all worldwide property owned by the taxpayer on December 31 of each year.

Under the bill, the Franchise Tax Board (FTB) would have adopted regulations outlining valuation methods for publicly traded assets, interests in business entities, interests in trusts, and debts and liabilities. The FTB would have been required to contract with third-party appraisers to conduct authorized independent appraisals for certain assets.

AB 310 also outlined an expansion of California's False Claims Act so that it applied to the wealth tax and allowed for lawsuits against fraudulent filers.

Because the California Constitution limits the rate at which certain personal and real property can be taxed, AB 310 required a companion bill, ACA 8, to address these issues. ACA 8 proposed to amend the California Constitution and authorize "the taxation of all forms of personal property or wealth, whether tangible or intangible" while eliminating the taxation cap rate on that property or wealth. The Proposition 13 cap was not affected by the bill because the wealth tax excluded from taxation real property directly held.

TAXING WEALTH WOULD BE BAD FOR CALIFORNIA

AB 310 implicitly acknowledged that rates for existing California taxes have reached their practical or political maximums, leaving proponents to devise an entirely new tax never before considered for the state.

California already has the highest income tax rate in the country at 13.3%, while Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming do not impose any income tax. In 2018, the top 5% of income earners paid 67.2% of the state's personal income tax (PIT) revenue. In 2020, PIT revenue accounted for 66.19% of all state General Fund revenues.

CalChamber

Agenda for California Recovery

2022 Business Issues and Legislative Guide

See the entire CalChamber 2022 Business Issues and Legislative Guide at
www.calchamber.com/businessissues
Free PDF or epub available to download.

Special Thanks to the Sponsors
Of the 2022 Business Issues and Legislative Guide

Major

Silver

CSAA Insurance Group,
a AAA Insurer

In addition to having the country's highest personal income tax rate, California also has the highest sales tax rate and gas tax rate in the United States. Layering a wealth tax on top of the existing and challenging tax structure would target individuals who may have only a fleeting connection with the state. This tax also would reach across time and space to seize revenues from successful entrepreneurs and business owners who have been the very engine of California's budget growth and who provided the shock-absorbing revenue surpluses in the teeth of the pandemic recession.

The wealth tax would not only degrade California's tax climate, but also would prove to be a tremendous administrative burden. The FTB and Attorney General's office would have to track, follow, and itemize the wealth of each high-net-worth resident to determine whether they are subject to the tax and what their obligation would be. This, in turn, lends itself to a slew of issues, such as how to calculate the fair market value of certain holdings in addition to the state incidentally creating an entirely new practice in the tax avoidance industry for those looking to escape the obligation.

CALCHAMBER POSITION

The California Chamber of Commerce will continue to oppose any attempt that degrades California's business climate and disincentivizes job creators from growing here. There simply is no need for new taxes in California, considering the state saw a once-in-a-generation surplus in 2021 and is anticipating a $31 billion surplus in 2022. California ranks 49th on the Tax Foundation's 2021 State Business Tax Climate Index and this status would likely fall further if it became the only state in the country to administer a wealth tax.

Staff Contact
Preston Young
Policy Advocate

preston.young@calchamber.com
January 2022