

ALERT

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CalChamber Warns of Harm If New Internet Tax Passes

Proposal Aims to Skirt 2/3 Vote Requirement



OPPOSE

The California Chamber of Commerce is rallying **opposition** against two proposals creating new Internet taxes on consumers and businesses.

AB 1840/AB 1956
(Calderon; D-Monte-

bello) hurt consumers and the economy and will result in taxes on items never taxed before, such as downloadable consumer and business software and other digital products.

Moreover, the legislation is written in a way designed to avoid the requirement that taxes be subject to a two-thirds vote of the Legislature.

"California lawmakers need to decide if the state will be the global leader of the Internet marketplace or the global leader of the Internet tax," said Kyla Christof-

fersen, CalChamber policy advocate. "The second option may be the unsettling reality unless AB 1840 and AB 1956 are rejected."

The CalChamber and a growing list of more than 200 other organizations, companies and individuals have joined together to oppose the proposed taxes.

Digital Taxes

AB 1956 imposes an expansive, unprecedented new Internet tax on Californians who purchase digital media, including software, e-books, music, videos, cell phone ring tones, cable television and movies on-demand.

AB 1840 opens the door to taxation of small online retailers and Internet service companies that sell products to Californians via the Internet.

Combined, the bills greatly increase the
See CalChamber: Page 4

Bill Seeks to Negate Collective Bargaining Agreements



OPPOSE

A California Chamber of Commerce-**opposed** bill that threatens all industries that contract and enter into collective bargaining agreements will be heard by the Senate Judiciary Committee on April 8.

SB 1765 (Kuehl; D-Santa Monica) undermines contract rights by using legislation to dictate contract terms and impermissibly rewrite a collective bargaining agreement.

The bill uses the legislative process to inappropriately attempt to rewrite an actual, recently reached collective bargaining agreement.

SB 1765 dictates contract terms that were discussed and rejected in negotiations leading to the collective bargaining agreement that brought an end to the recent and highly publicized writers' strike. In these negotiations, each side was represented by sophisticated and knowledgeable lawyers.

Vagueness

Under SB 1765, motion picture and television producers who hold licensing rights pursuant to contract are forced to sell or license the rights according to the price control dictated in SB 1765 — "fair market value" — which is vaguely

See Bill: Page 4

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Inside

**New Business Tax
Burden: Page 6**

Labor Law Corner

Timing of Reimbursing Employee Expenses Depends on Circumstances



Gary Hermann
Labor Law Consultant

Can we refuse to reimburse an employee for expenses until the employee submits documentation verifying the claimed expenses?

Section 2802 of the California Labor Code requires employers to indemnify employees for all necessary expenditures

or losses incurred by the employees in the direct consequence of the discharge of their duties or their obedience to the directions of the employer.

However, unlike the payment of wages, which must occur on paydays designated pursuant to California Labor Code Section 204, Section 2802 contains no such timing requirement.

Written Claims

It is not illegal or unusual for employers to require that employees submit written claims for reimbursement of expenses with documentation substantiating such expenses attached, and to reimburse such expenses monthly.

If an employee does not comply with such a requirement, however, there would be nothing to preclude the employee from pursuing a claim in court or through the Labor Commissioner. For the employee who pursues a claim, the burden of proving that he/she had incurred unreimbursed expenses and in what amount would be on the employee.

Court Ruling

In the 2005 *Church v. Jamison* case, the California Court of Appeal indicated that it is indeed Section 2802 that gives employees the right to pursue unreimbursed expenses and that the right to pursue such expenses begins when the expenses are incurred. The court also said that the statute of limitations to pursue such claims is three years.

It should also be noted, however that if there is a dispute between an employer and former employee regarding the reimbursement of employee-incurred expenses, no waiting time penalties (pursuant to California Labor Code Section 203) would be imposed since expenses are not "wages" within the meaning of the law.

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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Seminars/Trade Shows

For more information on the seminars listed below, visit www.calchamber.com/events.

Business Resources

The Green California Summit. Green Technology. April 7-9, Sacramento. (323) 936-7125.

Career Networking Breakfast — "Speed Networking." Wilcox Miller & Nelson/Career Partners International. April 8, Sacramento. (916) 977-3700.

International Trade

U.S. Trade/Investment Mission to Algeria. U.S. Algeria Business Council. April 5-10. Algiers, Algeria. (703) 418-4150. Asia Pacific Business Outlook Conference. University of Southern California. April 7-8, Los Angeles.

Central Valley International Business Forum. University of the Pacific. April 7, Stockton. (916) 566-7168.

Trade and Investment with Mexico. Los Angeles Area Chamber. April 9, Los Angeles. (213) 580-7538.

Global California — Online with the World. Monterey Bay International Trade Association (MBITA). April 25, Sacramento. (831) 335-4780.

Labor Law

HR 201: Labor Law Update On-Demand Web Seminar. CalChamber. 90 minutes. (800) 331-8877.

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Small Business Advocate of the Year Award

Former Reagan Aide Speaks Out for San Diego Years After 'Retirement'

In the late 1960s, Jim Schmidt regularly found himself sitting right next to then-California Governor Ronald Reagan discussing transportation.

Schmidt, a recipient of the 2007 Small Business Advocate of the Year Award, sat in Cabinet meetings once or twice a week as chief deputy of the Business and Transportation Agency from 1967 to 1969.

At the time, the state was attempting to get its spending on the highway system under control, Schmidt recalls. Schmidt, and his agency, wrote one-page memos outlining budget transportation needs for Governor Reagan to review during these meetings.

Schmidt remembers Reagan's leadership skills. "He was unbelievable. He figured if you write a one-page memo it's a lot different than giving someone 20 pages; you can't hide," Schmidt said. "He was so good."

Dedication to San Diego

Schmidt has continued to work on transportation issues and other infrastructure concerns for the San Diego business community in the decades since serving in the Reagan administration.

"He is a visionary who follows his words with action," said Terry Saverson, who nominated Schmidt for the Small Business Advocate of the Year Award while president of the San Diego East County Chamber. "Jim Schmidt will always commit to making San Diego County a prosperous and successful community for those of us who live here."

Tom C. Stickel, 2002 CalChamber chair and founder/chairman of Coronado First Bank, agrees: "I have known Jim for over 30 years and he has always advocated for the little guy as well as the larger public and private good," Stickel said.

Longtime San Diego Resident

Schmidt moved to San Diego with his wife in 1958. After earning his law degree, he went into the banking industry and joined Great American Bank (formerly known as the San Diego Federal Savings and Loan) as the execu-

tive vice president and managing officer in 1969. He became president in 1979 and vice chairman in 1987, relinquishing the managing officer role at the end of 1988.

He served on the CalChamber Board of Directors from 1986 until "retiring" in 1991.

After being recruited for Reagan's transportation agency in 1967, Schmidt knew he needed to do more than just his day job.

"I just think we need to have people that are supporting things that should happen," he said. "What bothers me today is there are the 'oppose, oppose, oppose' people all over the place. It really hurts the projects."

Voice for Small Business

Still entrenched in speaking out for small business in San Diego so many years after retirement, Schmidt estimates he works, on average, six hours a day. In addition to sitting on the San Diego East County Chamber Board of Directors, he also serves on San Diego Regional Chamber committees dealing with transportation, housing and public policy. Before retiring, he served on the San Diego Chamber's Board of Directors and Executive Committee. But he still hasn't slowed down.

More recently, Schmidt has addressed the San Diego County Board of Supervisors, the La Mesa City Council and the San Diego City Council on issues affecting the area. He tries to garner support from Democrats as well as Republicans on any issue he is advocating.

"We meet with everybody," he said.

In his monthly column for the *San Diego Daily Transcript*, Schmidt has encouraged labor and business to work together to solve the affordable housing problem, and has continued to promote additional freeway lanes to reduce congestion.

Continuing Reagan Agenda

In 2001, as a member of the San Diego Associations of Government (SANDAG), he helped coordinate the effort to end the \$1 toll on the Coronado Bridge. Helping him were his old peers from the Business and Transportation Agency during the Reagan administration.

"The bridge was planned to be free to



Jim Schmidt

the working people who can't afford to live in Coronado. Why should they have to pay?" he asked. "This carried out the Reagan plan to make the bridge free."

City leaders listened, and the toll was removed. The San Diego Highway Development Association subsequently declared June 27, 2002 "Jim Schmidt Day" for his tireless effort to "carry out Reagan's commitment and plan."

Earlier, the city of San Diego proclaimed May 15, 2000 "James Schmidt Day" for his service and dedication to the city and his efforts to ensure equal opportunities among all San Diego residents.

SANDAG also recently used the former banker's skills to design a regional transportation plan. Schmidt met once a month with a sunset committee to debate over how to continually improve transportation in the region and take advantage of available funding.

Staying on Top

While still highly active politically so many years after "retiring," Schmidt continues to be physically active as well. Five days a week he's at 24-Hour Fitness. He does a mile on the treadmill and works out on 10 machines for 35 minutes every morning.

"I go to bed at 9:30 [p.m.] and get up at 4:30 [a.m.]," he said.

His colleagues can vouch for Schmidt's constant energy.

"Jim often seems to me to be like an Energizer bunny," Stickel said.

CalChamber Warns of Harm If New Internet Tax Passes

From Page 1

cost of doing business for a host of highly coveted technology sector, environmentally friendly California companies that sell digital media or provide digital services.

Currently, less than a third of the states impose a tax on digital media. A number of these states have very different tax structures and populations than California. Most of the states considered comparable to California — including New York, Michigan and Florida — *do not* have a digital tax.

Bypassing 2/3 Vote

AB 1956 avoids the Proposition 13 requirement for new taxes to be approved by a two-thirds vote by ordering the state Board of Equalization to draft a new regulation to tax digital media without providing underlying statutory authority.

In other words, the bill is labeled as requiring only a “majority vote” because it ignores the fundamental requirement that regulations interpret existing law — which does not tax digital media.

AB 1956 “declares” there is existing authority to tax digital media by manipulating and stretching terminology in current statutes that provide for sales and use tax of “tangible” products.

The CalChamber and other opponents of the legislation are pointing out that digital media is nothing like tangible products, which is why it has never before been subject to tax. If statutory authority existed for the new tax regulation, no bill would be necessary.

“The claim of existing authority to tax digital media is clear grounds for

legal challenge,” said Christoffersen. “AB 1956 sets a dangerous precedent for illegal enactment of a new tax by majority vote and an impermissible new tax on services, since delivery of digital media is often a service as much as a product.”

Fundamentally Unsound

The CalChamber and other organizations, businesses and individuals also oppose AB 1840 and AB 1956 because the bundle:

- **Shuts out public comment** on the new regulation that will implement the new tax. AB 1956 expressly exempts the new unauthorized tax regulation from the regular rulemaking process.
- **Penalizes companies that operate and provide jobs in California.** Although digital media is sold to California consumers in the online marketplace from around the globe, federal law prohibits California from taxing any companies that do not have a sufficient nexus or connection to California. Therefore, companies that operate or provide jobs within California are the easiest and most certain targets of AB 1840/1956. In-state companies will be required to collect the new Internet tax while out-of-state companies will not.
- **Drives high-quality technology jobs out of state.** California has a large, desirable consumer population, but digital media industries are highly mobile and can access California consumers from outside the state’s borders as easily as from within.
- **Will result in a flood of litigation.** Enactment of AB 1840/1956 would open up many potential areas of litigation due to the complexity and amorphous nature of digital and e-commerce transactions, the broad, vague scope of the legislation

and the lack of statutory authority for the new tax.

● **Will ultimately result in fewer tax revenues.** Fewer California technology sector companies and jobs and reduced sales will mean lower personal income tax revenues due to lost jobs, less corporate income tax revenue due to lost companies and lost sales income, and smaller property and sales tax revenues due to lost California operations.

● **Overlooks challenges and hardships unique to sales of digital media.** AB 1840/AB 1956 place significant burdens on companies already facing challenges unique to the sale of digital media, such as illegal downloads. Increasing the cost of California digital purchases by 8.25 percent will likely encourage more digital piracy. Digital piracy leads to lost jobs, lost sales and lost tax revenues.

● **Stifles California’s pioneering role in digital media and the Internet marketplace.** Enactment of AB 1840/1956 will place California squarely on a path to relinquish its leadership role in digital media technology to states like Nevada that will likely never impose such a tax.

Action Needed

AB 1840 and AB 1956 await action by the Assembly Revenue and Tax Committee; an April 14 hearing has been scheduled for AB 1956.

Contact your Assembly representative and members of the committee to voice your **opposition to AB 1840/AB 1956.**

For more information on the bill or a sample letter of opposition, visit www.calchambervotes.com.

Staff Contact: Kyla Christoffersen

Bill Seeks to Negate Collective Bargaining Agreements

From Page 1

defined. The lengthy definition of “fair market value” is filled with ambiguous words and phrases, making its determination subjective and arbitrary.

SB 1765 makes violation of this new ambiguous mandate a basis for criminal and civil liability under California’s unfair practices law, meaning that businesses can be on the hook for criminal penalties as well as treble damages and attorneys’ fees.

The CalChamber believes that SB 1765

will ultimately harm all the parties to licensing contracts by stifling the healthy, market-driven distribution and flow of licensed products and generating costly litigation.

Changing contract terms through legislation renders meaningless the public policies of stability and predictability that undergird the right and motivation to contract. And when the contract is a collective bargaining agreement, the integrity of the collective bargaining process is destroyed.

The CalChamber believes that if SB 1765 passes, it will establish a dangerous precedent that threatens the contract rights of all industries.

Action Needed

SB 1765 is scheduled to be considered by the Senate Judiciary Committee on April 8. Contact your senator and members of Senate Judiciary and urge them to **oppose SB 1765.**

Staff Contact: Kyla Christoffersen

CalChamber in Court

Appeal Court Ruling May Limit Efforts to Control Workers' Compensation Costs



In a decision with impacts on the workers' compensation arena, the 1st District Court

of Appeal has found that the common law doctrine of "fair procedure" extends to situations where a group seeks admittance to a Preferred Provider Network (PPN).

In the case of *Palm Medical Group, Inc. v. State Compensation Insurance Fund (SCIF)*, Palm Medical Group successfully applied the doctrine of "fair procedure" to challenge SCIF's decision to deny Palm's request to be in its PPN.

The appeals court declined to order injunctive relief compelling SCIF to allow Palm Medical to join its PPN. This refusal was at least in part because the PPN no longer exists and has been replaced by SCIF's medical provider network, which uses medical providers from a number of different networks.

Mixed Impact

Nevertheless, the ruling presents a

mixed bag of good and bad for the California Chamber of Commerce and others interested in keeping workers' compensation costs under control.

The CalChamber filed a "friend of the court" brief in June 2007 to protect medical provider networks and their ability to control costs under the successful workers' compensation reforms of 2004.

In its brief, the CalChamber argued that the Legislature's intent in implementing the workers' compensation reforms was to reduce the skyrocketing cost of workers' compensation premiums for California employers.

The Legislature's reforms clearly state that, "in developing a medical provider network, an employer or insurer shall have the exclusive right to determine the members of their network."

The CalChamber was concerned that the court's ruling would invalidate medical provider networks. Fortunately, the court, in its narrowly tailored ruling, did not discuss or comment on the application of the fair practices doctrine to them.

Nonetheless, the CalChamber remains concerned that this ruling could provide a roadmap to undermining the Legislature's efforts to reduce costs by preventing fraud and ensuring medically appropriate care through the creation of medical provider networks.

Impact

The real potential targets to legal action in this area will end up being the medical networks behind the current medical provider network filings in California.

Department of Workers' Compensation records indicated that there are six basic medical networks that are used as the basis for filing medical provider networks in California. As more and more employers and carriers elect to obtain medical care for their employers through such networks, and as the trend toward paring down the size of networks also grows, conflicts over selection of medical providers within the networks, and in turn the medical provider networks, are certain to develop.

Staff Contact: Erika Frank

CalChamber Board Hears Overview on Prospects for State's Economy



Providing an overview of the U.S. and California economies at the recent meeting of the CalChamber Board of Directors are Richard A. Weiss, executive vice president and chief investment officer for City National Bank, and Nancy Sidhu, chair of the CalChamber Economic Advisory Council and vice president and senior economist for the Los Angeles Economic Development Corporation.

Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, easy-to-edit sample letters on hot topics and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

Proposal Increases Business Tax Administrative Burden



OPPOSE

The California Chamber of Commerce and a number of business organizations are **opposing** a proposal increasing the business tax administrative burden.

The bill, **AB 1848 (Ma; D-San Francisco)**, requires companies to track state tax liability of outside companies and independent contractors.

The CalChamber and other opponents of AB 1848 point out that the bill is expanding the burden on California companies to police state tax compliance of independent contractors, companies, investors and customers who are residents of California.

AB 1848 requires California companies to screen and flag any California vendor and other payees that may not have the proper taxpayer identification number information and, for these payees, forces companies to withhold taxes at a rate of 7 percent from their payments. If the companies do not withhold payment, they can be liable for the withheld taxes.

Although AB 1848 mandates significant new and costly tax administration burdens, the Franchise Tax Board estimates that half of the amounts the bill requires to be withheld would have been paid anyway. Thus, there appears to be a questionable, disproportionately low rate of anticipated revenues generated in comparison to the significant additional burden AB 1848 will mean for some businesses.

AB 1848 attempts to impose at the state level a withholding requirement currently mandated only at the federal level.

Moreover, because only businesses with California operations can be forced to comply with the bill, it further weakens California's competitiveness.

Action Needed: AB 1848 is scheduled to be considered by the Assembly Revenue and Taxation Committee on April 14. Ask committee members and your Assembly representative to **oppose AB 1848**.

Staff Contact: Kyla Christoffersen

CalChamber Opposes State-Level Regulation of Airlines



OPPOSE

The California Chamber of Commerce is **opposing** state legislation that imposes new regulations on the airline industry.

AB 1943 (Leno; D-San Francisco/Lieu; D-Torrance) is pre-empted by federal law and may result in airline delays and compromise airline passenger and employee safety.

AB 1943 creates a new reason to sue under the state's unfair competition law (Business and Professions Code Section 17200) — violation of its standards for passenger safety and service when there are lengthy delays in departures. Although well-intentioned, the bill regulates an area pre-empted by federal law, and thus subject to legal challenge.

In fact, a federal appeals court has rejected a New York state law — the first of its kind in the nation — that sought to place requirements on airline companies when a plane is delayed on the runway. The court said the federal government is the only the authority to enact such a law.

The CalChamber is extremely concerned about the unintended consequences of regulating airline activity at the state level. The industry is heavily regulated and the highly specialized requirements are designed to address the characteristics unique to the complex nature of the federal and international airline traffic system, including passenger/cargo conveyance, handling of airplanes/equipment, and unique airport settings.

Health and safety standards such as AB 1943 proposes should be handled at the federal level and developed by experts in the U.S. Department of Transportation who are in the best position to determine requirements that can be incorporated into current air traffic regulations and applied uniformly across all states. The department is developing rules for passenger treatment during flight delays.

Action Needed: AB 1943 is awaiting hearing in the Assembly Judiciary Committee. Ask your Assembly representative and committee members to **oppose AB 1943**.

Staff Contact: Kyla Christoffersen

- **Starbucks** (Seattle, WA). Ranked 7. The company's stock rose 9 percent following the news in January that founder Howard Schultz is taking over as chief executive officer.

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