

ALERT

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Jobs, Economic Impact Key in Review of Tax Proposals

CalChamber Asks Commission for Details, Full Analysis



The impact of proposed tax structure changes on the California economy, jobs and competitiveness should be the key factor in considering whether to adopt those proposals,

the California Chamber of Commerce told a special state tax commission this week at the first of two workshops focused around a proposal for a new “business net receipts tax.”

Governor Arnold Schwarzenegger created the Commission on the 21st Century Economy last fall, asking it to examine the state’s tax structure with a goal of stabilizing state revenues and reducing volatility.

In July, the Governor extended to September 20 the deadline for the commission to present its findings and said he intends to call a special session of the Legislature afterwards to consider the commission’s recommendations.

Among the goals the Governor set for the commission were promoting the long-term economic prosperity of the state and citizens and improving California’s ability to compete successfully with other states and nations for jobs and investments, CalChamber policy advocate Kyla Christoffersen reminded commissioners at the August 26 workshop.

She asked that they give those criteria at least as much weight as other issues.

Specifics, Analysis Needed

Christoffersen urged commissioners to take sufficient time to analyze the proposed new business net receipts tax and related changes to California’s tax structure, rather than be driven by an arbitrary deadline.

Moreover, specifics on the proposed tax rate, deductions and transition rules under a revised tax system are needed in order for individual companies to analyze the consequences of such changes on their own operations and provide feedback to the commission on the impact, Christoffersen said.

The commission’s own analysis should include modeling looking forward and back over several business cycles to determine what revenues a business net receipts tax would have produced in both good and bad economic times, Christoffersen said.

The proposed business net receipts tax is intended to be a type of value-added tax in which companies are taxed on total receipts minus all purchases from other firms. The intent behind this new tax is to bring a large category of services businesses into the tax base.

On August 21, the commission circulated to a limited audience an updated “Preliminary Overview” (later posted on the commission’s website) that provided some elaboration on the net receipts tax proposal, but the tax rate was not specified, nor were macroeconomic or business analyses provided.

According to the commission document, under a business net receipts
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‘Job Killer’ Bill May Mean New Lawsuits Against Small Businesses



A California Chamber of Commerce-opposed bill that could result in unreasonable and significant new liability exposure and

unwarranted shakedown lawsuits against companies, particularly small businesses, is awaiting action on the Senate floor.

SB 242 (Yee; D-San Francisco/San Mateo), a “job killer” bill, could result in new shakedown lawsuits against business establishments by making it a strict liability violation of the Unruh Civil Rights Act, subject to minimum damages of \$4,000, if a business limits the use of a customer’s language, even if unintentionally.

Although the bill was recently amended on the Assembly floor, SB 242 remains a “job killer.” The CalChamber is requesting that the Senate reject the bill even as amended.

CalChamber has strong concerns about the unintended consequences arising from the creation of a new private right of action around such a vague and broad new standard.

New Reasons to Sue

SB 242 establishes a new private right of action with vague terminology that
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Labor Law Corner

Different Wording Outlines Employers' Meal, Rest Break Obligations



Barbara Wilber
Labor Law Consultant

Are employers' meal and rest break obligations the same?

No. The requirements for meal and rest breaks are spelled out in Sections 11 and 12 of the Industrial Welfare Commission (IWC) orders. The language is different in the two sections.

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Language Variation

The rest period language found in Section 12 of the orders states that every employer shall authorize and permit all employees to take rest periods. The section does not require rest periods for employees whose total daily work time is less than 3.5 hours.

There is no authority to waive the rest break. The rest period time is considered hours worked and must be paid for, although there are no recording requirements. The rest period requirements are not spelled out in the Labor Code.

The meal period language appears in Section 11 of the IWC orders and Labor Code Section 512 and states that no employer shall employ any person for a work period of more than five hours without a meal period, but waivers are available in certain specified circumstances.

For meal periods, employees must be relieved of duty and be free to leave the premises (except in limited circumstances in Wage Orders 4 and 5). Meal period time is unpaid, but must be reflected in the employee's time records.

Penalty Language

The penalty language in Sections 11(D) and 12 (B) of the IWC orders

and Section 226.7 of the Labor Code is identical in requiring an additional hour's pay if an employer fails to provide the required meal or rest break.

There is a dispute as to whether this language requires an employer to ensure that employees receive the required breaks, and that issue is now before the California Supreme Court.

Watch for updates on the California Chamber of Commerce website regarding this decision.

The Labor Commissioner has taken the enforcement position in the interim that, like rest breaks, employers are not obligated to ensure that meal breaks are taken. Employers, however, should not coerce or in any way encourage employees to miss their meal or rest breaks.

If employees are consistently and regularly failing to take meal or rest breaks, it defeats the purpose of these periods as a chance for employees to refresh and recuperate and certainly runs counter to the intent 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.

CalChamber-Sponsored Seminars/Trade Shows

More information at
www.calchamber.com/events.

Business Resources

Northern California Water Tour. Water Education Foundation. October 7-9, Sacramento. (916) 444-6240.

Government Relations

An Evening with the Mayor. Beverly Hills Chamber. September 2, Beverly Hills. (310) 248-1000.

Western Conservative Political Action Conference. Western Conservative Political Action Conference (CPAC), Inc. October 16-17, Newport Beach. (916) 448-4234.

GovLink Conference 2009. The Federal Technology Center. October 20-21, Sacramento. (916) 334-9388.

International Trade

2009 L.A. Export Series. Center for International Trade Development. September 8, September 22, October 6, October 20, November 3, November 17, December 1, Los Angeles. (213) 580-7569.

China International Enterprises Fair. American Carson International Inc. September 22-25, China.

Harry@americancarson.com.
Sustainable Cities of the 21st Century. Monterey Bay International Trade Association. September 25, Santa Cruz. (831) 335-4780.

California Trade Mission to Chile. California Business, Transportation

See CalChamber-Sponsored: Page 4



‘Job Creator’ Passes Senate Committee



California Chamber of Commerce-supported legislation that will prevent the

loss of thousands of jobs won unanimous approval from a Senate policy committee on August 26.

SB 696 (Wright; D-Inglewood) supports the construction of vital projects and keeps businesses in California by permitting certain businesses in the South Coast Air Quality Management District (SCAQMD) to be granted emission credits.

In supporting the bill, the CalChamber said SB 696 is absolutely necessary for businesses to receive the certainty they

need to continue investing in the South Coast region.

A 2007 ruling by the Los Angeles County Superior Court prevents the SCAQMD from allowing certain businesses to use emission reduction credits from previous air quality improvements to meet emission limits required by federal law. As amended during the committee hearing, SB 696 allows the court case to proceed while enabling the use of emission credits by certain businesses.

California is suffering from a high unemployment rate and weak economy. If businesses and industry in the South Coast region are prevented from using emission credits, they will not be able to obtain much-needed permits to operate on a daily basis. These businesses and facilities

represent much of the essential services needed in the South Coast.

Failing to fix the ongoing crisis due to a lawsuit will further jeopardize the economy while halting many environmentally friendly upgrades and projects that are being planned at facilities in the region.

SB 696 permits businesses uninvolved in the lawsuit to continue to operate and provide daily essential services.

Key Vote

Ayes: Simitian (D-Palo Alto), Runner (R-Antelope Valley), Ashburn (R-Bakersfield), Corbett (D-San Leandro), Hancock (D-Berkeley), Lowenthal (D-Long Beach), Pavley (D-Agoura Hills).

Staff Contact: Marc Burgat

Small Firms Can Seek Reimbursement for Workers’ Comp Returnees

The Division of Workers’ Compensation (DWC) has launched a campaign to help small employers bring their employees back to work or keep them working following workplace injuries.

The “Bring ‘em Back” campaign offers a user-friendly website to provide specific information small employers need to apply for reimbursement for purchases they make to help employees stay working while they recover.

Employer Criteria

Although there are some restrictions in the program, getting reimbursement is as easy as filling out a few short forms and providing receipts, according to the division.

Any employer with fewer than 50 full-time employees, whose employee was injured on the job after July 1, 2004, may qualify for reimbursement of up to \$1,250 for workplace modifications that bring a temporarily disabled employee back to work; or \$2,500 for modifications that bring a permanently disabled employee back to work.

Qualifying Expenses

Reimbursement can be for any of the following expenses, provided they are prescribed by a physician or are reasonably required by work restrictions laid out in a medical report:

- modification to the work site;
- equipment;

- furniture;
- tools; and
- any other necessary costs reasonably required to accommodate the employee’s restrictions.

Some examples of purchases the state has provided reimbursement for include:

- a platform and extended eyepiece for a biological analyst;
- custom knee pads for a tile setter;
- a computer keyboard tray and document holder for an office administrator.

For more information, visit www.dwc.ca.gov, call (510) 286-6990 or e-mail DWCReturnToWork@dir.ca.gov.

Streamlining of Non-Profit Tax Compliance Moving in Senate



A California Chamber of Commerce-supported bill that simplifies compliance with and administration of sales tax for non-profits is moving in the Senate.

The bill, **AB 1486 (Furutani; D-Long Beach)**, streamlines sales tax compliance for non-profits by simplifying the rules for payment of sales taxes on purchases of member-logo products (such as baseball caps bearing the non-profit’s logo) they sell to their own members.

Under AB 1486, there is no revenue

loss to the state since non-profits satisfy the sales tax obligation on such products at the time of the purchase of the products.

AB 1486 awaits action by the full Senate.

Staff Contact: Kyla Christoffersen

Jobs, Economic Impact Key in Review of Tax Proposals

From Page 1

tax, employers would not be able to deduct from revenues the cost of employees, an expense that is allowed under the current tax system.

In addition, the proposal fundamentally shifts business taxation from one based on net income (that is, ability to pay) to one based simply on doing business, which has nothing to do with profitability.

Questions on Net Receipts Tax

Questions for commissioners to consider in examining a business net receipts tax should include:

- Whether it is good policy to achieve a broadening of the tax base by creating industry winners and losers. For example, businesses with low profit margins and high employee expenses would be

especially hard-hit by a business net receipts tax as would companies that aren't making a profit because it appears the new tax would be collected regardless of ability to pay. Additionally, a net receipts tax has the potential of shifting a greater tax burden onto small businesses.

- The impact on California jobs, such as whether what amounts to a tax on employees (because it appears employers won't be able to deduct the cost of employees as they do now) will push companies to outsource jobs to other states and nations, or the potential negative impact on California's ability to compete for future investments if business loses important incentives such as the research and development credit or enterprise zone credits.

- Competitiveness concerns due to increased costs of exported California

goods that must compete with lower-priced goods offered by other states and countries.

Operational and transitional concerns raised by Christoffersen at the workshop included what will happen to the proposed business net receipts tax rate if revenues generated do not reach expected levels.

In response to the question of who would be responsible for setting the tax rate if it is subject to change, commission Chairman Gerald Parsky said that task would fall to the Legislature.

At Parsky's request, the CalChamber will be providing more detail to the commission about ongoing concerns with the proposed tax changes.

Staff Contact: Kyla Christoffersen

'Job Killer' Bill May Mean New Lawsuits Against Small Businesses

From Page 1

could open the door to new lawsuits. For example, has language use been limited if a business has a policy of posting customer signage in a language the customer does not understand?—Or hires staff who are unable to respond to a customer's question in a language understood by the customer?

In addition, SB 242 may conflict with existing laws that regulate language use between businesses and customers.

Although the bill provides businesses

with some affirmative defenses, such as "business necessity"—defined as an "overriding legitimate business purpose"—as a practical matter, businesses will be forced to litigate in order to prove these defenses.

For small businesses in particular, defending a single such lawsuit could pose an extreme hardship and result in closed doors, especially when many businesses are suffering in the economic downturn.

Unwarranted Lawsuits

Even worse, the uncertain new

obligations could be a magnet for unwarranted settlement demands and shakedown-type lawsuits by a small group of atypical lawyers and plaintiffs from inside and outside the state already using the Unruh Act to gain monetary profit by securing large numbers of settlements from multiple businesses.

The Unruh Act's treble damages, minimum damages of \$4,000, and attorneys' fees provisions make new opportunities to sue especially attractive. And even meritless lawsuits can be profitable because most small businesses cannot afford to defend even a single lawsuit and will feel forced to settle.

CalChamber-Sponsored Seminars/Trade Shows

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and Housing Agency. September 26–30, Santiago, Chile. (916) 323-5408.

China Import/Export Fair. China Foreign Trade Centre. Phase 1: October 15–19. Phase 2: October 23–27. Phase 3: October 31–November 4. Guangzhou, China.

Localization World Conference Silicon Valley. Localization World Ltd. October 20–22, Santa Clara. (208) 263-8178.

The 24th Trade Expo Indonesia.

Indonesian Trade Promotion Center. October 28–November 1, Jakarta, Indonesia. (213) 387-7041.

CalChamber Calendar

Board of Directors:

September 10-11, Santa Monica

Council for International Trade:

September 11, Santa Monica

Public Affairs Council Retreat:

October 28–30, Napa

Liability Even Without Intent

Businesses found to have limited use of a language without business necessity could be on the hook for treble damages, and in no case less than \$4,000 in damages, plus attorneys' fees on a strict liability basis.

In other words, the business is liable even if the limitation of the language use was inadvertent or unintentional, and even if the plaintiff did not suffer any personal harm or damage as a result of the limitation.

Staff Contact: Kyla Christoffersen

California Identifies New Enterprise Zones

The California Department of Housing and Community Development (HCD) recently announced conditionally designating five enterprise zones (EZ) statewide in an effort to help grow jobs and improve California's business climate.

The application process is always a competitive one and HCD receives many more applications than EZs that are available.

The zones are Hesperia, Tulare, Pittsburg, Sacramento and Taft. The new designations will take the place of zones that have expired or will expire in 2009. Each zone designation is in effect for 15 years. The EZ program is one of California's largest and most successful economic development tools.

There were 15 applications for four available zones. HCD was able to award five EZs, instead of four, because the city of Sacramento has a current conditionally designated EZ that will be combined into its successful new application.

The EZ program targets economically distressed areas using special state and local incentives to promote business investment and job creation. By encouraging entrepreneurship and employer growth, the program strives to create and sustain economic expansion in California communities.

Credits/Benefits

- Businesses within EZs are eligible for substantial tax credits and benefits. For example:

- Firms can earn state tax credits for each qualified employee hired.

- Corporations can earn sales tax credits on purchases of \$20 million per year of qualified machinery and machinery parts.

- Up-front expensing of certain depreciable property.

- Lenders to EZ businesses may

receive a net interest deduction.

- Unused tax credits can be applied to future tax years, stretching out the benefit of the initial investment.

- EZ companies can earn preference points on state contracts.

Effective Program

Several studies have established the EZ program's effectiveness. Most recently, a March 2009 revision of a national study by University of Southern California researchers concluded that state and federal EZ programs "have

positive, statistically significant, impacts on local labor markets in terms of the unemployment rate, the poverty rate, the fraction with wage and salary income and employment."

The California Chamber of Commerce and a growing coalition of business groups believe it is important to promote the strength and effectiveness of the state's enterprise zone program as a tool for economic development and investment, particularly now when economic recovery is a top priority. The business community has consistently stated that the solution to California's revenue problems will come only from robust economic growth and job creation.

More information on the EZ program and the CalChamber-led coalition working to strengthen the program and oppose attempts to weaken it is available at www.calchamber.com/EZ.

Next Steps

The next step in the designation process will be the HCD issuance of a conditional designation letter to each of the new zones. The letters will outline conditions for final designation. Examples of conditions include a signed memorandum of understanding with HCD, which includes performance measures and benchmarks.

CalChamber-supported legislation passed in 2006 (AB 1550; Arambula; D-Fresno) authorized improvements to the EZ program by emphasizing economic development, outreach, marketing and accountability.

Provisions of the law also included biennial additional reporting by both the local EZ and HCD and an expansion of HCD's audit authority to cover all economic development areas.

The next designation round will be in 2010 and HCD will be exploring changes to the application process that will ensure the greatest economic benefit for eligible California communities and businesses.

Staff Contact: Kyla Christoffersen



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Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, sample letters 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.

Governor Prepares California to Compete for Recovery Education Funds

To improve the state's education accountability system and turn around struggling schools, Governor Arnold Schwarzenegger called a special session of the Legislature on August 20 and proposed legislation necessary for California to compete for the largest pool of discretionary funding for education from the federal economic stimulus package.

On July 24, President Barack Obama and U.S. Secretary of Education Arne Duncan outlined federal requirements for states to compete for \$4.35 billion in "Race to the Top" dollars available through the American Recovery and Reinvestment Act of 2009 (ARRA).

Under current law, however, California is ineligible to apply. Billions in future federal education dollars also are expected to rest on a state's ability to meet Obama administration education reform requirements.

At a news conference, the Governor

said that the Obama administration's reforms are policies that he has stood behind since taking office—and will help provide a better education for California's school children. He insisted the reforms be passed by October to ensure California is competitive for the newly available money.

Reforms to ensure California is eligible to apply and be highly competitive for "Race to the Top" funding include:

- linking student achievement and teacher performance data;
- measures to turn around struggling schools;
- measures to help California recruit and retain high-quality teachers and principals;
- improving accountability for schools.

To track ARRA funding coming to entities in California, visit www.recovery.ca.gov.

State Water Board Considering Costly New Storm Drain Permit

The State Water Resources Control Board is considering adoption of a proposal that would require a permit for construction of storm drains for general construction projects. The permitting process would affect nearly all construction jobs in the state, potentially delaying thousands of projects.

As currently drafted, the new permit makes serious changes to existing state requirements for managing storm water runoff and creates a new cost for employers in addition to a new twist in the approval process.

Storm water runoff mitigation measures are typical for nearly all construction projects, including residential and commercial buildings and other types of facilities. California businesses believe the new permit will inflict unnecessary damage to the state's economy, stall and drive up the cost of important projects and ultimately cost consumers and taxpayers millions of dollars without a commensurate reduction of discharges.

An additional concern is that the per-

mit would go into effect immediately, meaning existing partially completed projects would be out of compliance. Delays in existing projects could cause them to lose their "shovel ready" status, thus jeopardizing millions in federal stimulus dollars needed for projects that will create jobs and inject money into the state's economy.

The water board's own blue ribbon panel of experts conceded that the desired ends of the permit are "basically not possible." It is believed that the proposed permit rule will be adopted and many businesses already are pinning their hopes on an intervention by Governor Arnold Schwarzenegger.

The California Chamber of Commerce, as part of a coalition, recently submitted comments to the state water board drawing attention to the problems with the proposal. It is hoped that the Governor will intervene before the board's final hearing on the proposal, scheduled for September 2.

Staff Contact: Valerie Nera

CalChamber Seeks Details on Expenses for Air Board Implementation of AB 32

Legislative Committee Rejects Latest Effort to Seek Documentation



A legislative committee last week rejected a California Chamber of Commerce-supported request to audit the California Air

Resources Board (ARB) and the cost to implement AB 32, the climate change emissions reduction law enacted in 2006.

The cost is of interest to businesses because AB 32 permits the ARB to charge the regulated community administrative fees based on what it spends to implement the bill.

Senator Bob Dutton (R-Rancho Cucamonga) took to the Joint Legislative Audit Committee, of which he is a member, the request to have the Bureau of State Audits examine the methods the ARB is using to identify and allocate AB 32 implementation costs. The committee rejected the request, however.

How Was the Money Spent?

The California Legislature appropriated approximately \$57 million to the ARB in the 2007–08 and 2008–09 fiscal years to implement AB 32.

Since January 2009, in connection with developing the AB 32 administrative fee, ARB has reported that it has spent the entire allocation.

ARB staff members expressed surprise when several potential fee payers requested informally that ARB publicly explain how the funding had been spent.

Subsequently, the ARB refused to comply with a CalChamber-initiated request under the California Public Records Act to release records explaining how the \$57 million in special funds to implement AB 32 was spent.

After being sued under the Public Records Act, the ARB finally released some documents, but has continued to withhold nearly 50,000 pages of records.

Support Lacking

The records ARB has released to date fail to provide any substantiation for

more than \$24.5 million (43 percent) of the \$57 million in claimed expenditures to implement AB 32 for the two years in question. Some examples outlined in a letter to the Joint Legislative Audit Committee from the CalChamber and other business groups in support of the AB 32 audit include:

- ARB claims a cumulative 306.67 person years (PYs) for work on AB 32 programs for the 2007–08 and 2008–09 fiscal years. But the records released by ARB account for only 122.76 PYs (40 percent) for the two years. Supporting data on 60 percent of the claimed PYs is missing.

- More than \$11.6 million of operating costs claimed by ARB over the 2007–08 and 2008–09 fiscal years are not substantiated by records released thus far.

- ARB reports equipment expenses of more than \$1.8 million for the 2008–09 fiscal year. Accounting records, however, substantiate only \$63,955 in expenses that are attributed to equipment. Although ARB e-mails assert that staff has “back-up” for the \$1.8 million, the ARB has not released any such records.

- ARB reports that its contract expenses for the 2008–09 fiscal year were \$5.9 million, but released accounting records indicating a little more than \$1.8 million was spent on contracts in the first seven months of that fiscal year, leaving \$4.1 million unaccounted for in just the last year.

Deficient Accounting

The letter also points out that although the ARB has claimed since January that it has spent the entire \$57 million of special funds on AB 32 implementation, the ARB staff apparently did not begin to collect information to support that claim until April.

Moreover, the ARB appears to have employed informal or even haphazard methods to account for ongoing AB 32 implementation costs.

For example, an April 30 internal e-mail to ARB division chiefs shows that of \$700,000 budgeted for AB 32 equipment purchases for the 2007–08

fiscal year, ARB had accounted for only \$43,415. This is less than 10 percent of the budgeted amount, 10 months after the end of the fiscal year in which it was spent.

Need for Audit

The CalChamber will continue to seek a public accounting of how the ARB has spent the AB 32 implementation funds.

The facts outlined in the letter demonstrate that an audit is necessary if the Legislature and the public are to have a reasonable accounting of how the ARB has spent the \$57 million in special funds the Legislature appropriated to it. An audit is necessary to identify the actual use of the funds in question, and provide credibility for any fee intended to repay those funds.

Most important, an audit is critical to establishing accountability, transparency and credibility as ARB continues its effort to design and implement a complex, multibillion-dollar, greenhouse gas derivatives trading market that will involve credit exchanges for offsets and emissions allowances issued by other states, the federal government and foreign governments.

An audit of the administrative fee will help the ARB develop sound practices to justify and manage the much larger revenues and costs that will be covered by such a cap-and-trade program.

Key Vote

The ARB audit request failed on a 6-6 vote August 19 of the Joint Legislative Audit Committee:

Ayes: Assemblymembers DeVore (R-Irvine), Garrick (R-Carlsbad), Hagman (R-Chino Hills); Senators Ashburn (R-Bakersfield), Dutton (R-Rancho Cucamonga), Padilla (D-Pacoima).

Noes: Assemblymembers Huber (D-El Dorado Hills), Chesbro (D-Arcata), Coto (D-San Jose), Monning (D-Monterey); Senators Wiggins (D-Santa Rosa), Wolk (D-Davis).

**Not voting: Senators Cogdill (R-Modesto) and Ducheny (D-San Diego).
Staff Contact: Robert Callahan**



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