

ALERT

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Tax Commission Releases Net Receipts Tax Proposal *CalChamber Reiterates Need for More Analysis*



The final recommendations of a special state tax commission need “additional analysis and review,” California Chamber of Commerce President and CEO Allan Zaremberg said this week.

The Commission on the 21st Century Economy on September 29 issued its final 425-page report, including draft legislative language, recommending a massive reshaping of California’s tax system.

Shortly afterwards, Governor Arnold Schwarzenegger called a special session of the Legislature “at a time to be determined” to consider legislation to “address and improve the state tax system.”

Zaremberg said: “What the commission has recommended would substantially change the way in which the state taxes businesses. In calling the special session, the Governor has recognized that those potentially impacted by these proposals need the opportunity for input. The Legislature needs to fully examine the true impact that these recommendations would have

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CalChamber Goes to Court to Protect Businesses from Frivolous Lawsuits



The California Chamber of Commerce is urging the California Supreme Court to reaffirm an earlier decision upholding Proposition 64 protections against frivolous lawsuits.

The CalChamber has joined the U.S. Chamber of Commerce in filing a friend-of-the-court brief in a case that will help define who may file class action lawsuits, *Pfizer Inc. v. Superior Court of the State of California, County of Los Angeles* (Steve Galfano).

Proposition 64, overwhelmingly approved by California voters in 2004 following a CalChamber-led initiative campaign, requires that plaintiffs in lawsuits filed under the state’s Unfair Competition Law must actually have suffered harm. This reform was intended to provide companies doing business in California with significant relief from numerous frivolous lawsuits clogging the court system.

Case Background

In the *Galfano* case, James Galfano is seeking to sue the manufacturer on
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CalChamber Promotes Trade with Chile



Preparing for the signing of a Memorandum of Understanding to promote trade and investment between California and Chile are (from left) Paul Simons, U.S. ambassador to Chile; Susanne Stirling, CalChamber vice president, international affairs; Richard Garcia, president of the American Chamber of Commerce in Chile; Carlos Valderrama, senior vice president, global initiatives, Los Angeles Area Chamber of Commerce; and Jose Goni, Chilean ambassador to the United States. See story on Page 7.

Inside

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Labor Law Corner

Vacation Time 'Buyouts' Must Be at Current/Ending Rate of Pay



Dale Louton
Senior Helpline
Consultant

Several of our employees have accumulated large vacation balances. Our objective is to reduce this liability by offering our employees a one-time chance to cash in vacation at a reduced rate, specifically at one-half of their current salary or wage. Will this be in compliance with California law?

No. In the leading case on the subject of vacation wages in California, *Suastez*

v. Plastic Dress-Up, the court held that vacation pay is additional wages for services performed; only the time of receiving these wages is postponed.

In addition, Labor Code Section 206.5 prohibits the release of any claim for wages unless the wages have been paid in full.

Labor Code Conflict

The proposal also is in conflict with Labor Code Section 227.3, as such a buyout amounts to a forfeiture.

Labor Code Section 227.3 provides: "Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation

time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness."

No Forfeiture Allowed

The above Labor Code section does not specifically address payment of vacation while employed, but anything less than the current rate of pay will amount to forfeiture.

Vacation pay is paid at the current rate of pay for currently employed employees and at the ending rate of pay for terminating employees. A claim for vacation wages and waiting time penalties can be filed within three years of termination.

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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Home page: www.calchamber.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.

Great California ShakeOut Earthquake Drill. Southern California Earthquake Center. October 15. (213) 740-5843.

Date Correction

The dates cited in the opening of the September 4 "Labor Law Corner" should have been as follows:

"The federal American Recovery and Reinvestment Act of 2009 (ARRA), signed February 17, 2009, provides individuals involuntarily terminated between September 1, 2008 and December 31, 2009 with a 65 percent reduction in their Consolidated Omnibus Budget Reconciliation Act (COBRA) premium."

Global Warming and Business.

CalChamber and California Business Properties Association. November 5-6, Napa. (916) 443-4676.

Government Relations

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. October 20, November 3, November 17, December 1, Los Angeles. (213) 580-7569.

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CalChamber Goes to Court to Protect Businesses from Frivolous Lawsuits

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behalf of all California consumers who bought Listerine mouthwash during a six-month period in which some labels and advertisements suggested the product was “as effective as floss.” Galfano is claiming the labels and advertisements were misleading.

The CalChamber brief points out that Galfano is attempting to lump together into a single group class members who bought products with different labels, saw television commercials he never saw or made purchases for reasons having nothing to do with the labels or

advertising campaign. Moreover, Galfano does not say that he “saw, read or in any way relied on” the advertisement to purchase the product.

Thus, Galfano has failed to establish that either he or the consumers he is attempting to represent relied on the questioned labels and ads to buy the product, the CalChamber brief argues.

The brief cites other courts that have rejected requests to certify a class of plaintiffs when there is a lack of a common reason for purchasing a product that the plaintiff is claiming was the subject of misleading advertising.

Support Decision

In July 2006, the state Supreme Court found that the Los Angeles Superior Court was in error when it certified the class of plaintiffs on behalf of whom Galfano was seeking to file the lawsuit.

The CalChamber brief urges the state high court to reaffirm that decision, noting that the group Galfano seeks to represent does not meet the parameters Proposition 64 outlined for filing a class action lawsuit.

Staff Contact: Erika Frank

Strategic Gathering Conference to Focus on Global Warming and Business



Several major industry groups, including the California Chamber of Commerce, are combining forces to

sponsor a high-level discussion regarding the impacts of global warming policy.

The Strategic Issues Conference:

Global Warming and Business will be held November 5-6 at the Meritage Resort in Napa Valley.

Agenda topics range from AB 32 greenhouse regulations to the legislative focus on “green building” and land use mandates. Attendees will gain insight into the most up-to-date thinking on the politics driving these policies and participate in a strategic discussion on how to positively influence policy.

The event will feature a line-up of

policy and decision makers from many different industries, the Schwarzenegger administration and Legislature, as well as Joel Kotkin, author and lecturer on global, economic, political and social trends. His most recent of six books is *The City: A Global History*.

For early-bird registration information and special room rates, contact Melissa Martinez at the California Business Properties Association, (916) 443-4676, mmartinez@cbpa.com.

Tax Commission Releases Net Receipts Tax Proposal

From Page 1

on our struggling economy and our ailing business climate.

“We must not rush into replacing our 70-year-old tax system with an unproven experiment that may fail to deliver the promised results.”

Split Commission

Nine of the 14 commissioners, including Chairman Gerald Parsky, signed onto the report, which recommends:

- Adopt new “business net receipts tax,” not to exceed 4 percent;
- Reduce and restructure personal income tax;
- Eliminate state portion of sales tax;
- Eliminate corporate tax;
- Create independent tax dispute body;
- Strengthen rainy day reserve fund.

Business representatives from a variety of industries told the commission during workshops that the business net receipts tax could drive jobs out of California.

Coalition

A CalChamber-led coalition, Californians Against Higher Taxes, is continuing to raise awareness about proposed tax increases. Updates are available on the coalition’s website at www.MoreJobsNotTaxes.com and its Twitter at www.twitter.com/MoreJobsNotTaxz.

Staff Contact: Kyla Christoffersen



Governor Signs Bill Ensuring Continued Health Coverage for Children



SUPPORT

Governor Arnold Schwarzenegger has signed a California Chamber of Commerce-supported bill that ensures continued health care coverage for

hundreds of thousands of children.

AB 1422 (Bass; D-Los Angeles) reduces health care costs and ensures continued health care coverage for children by creating a self-imposed industry tax that will trigger significant federal funding.

The urgency bill, passed with bipartisan support, took effect immediately upon the Governor signing it on September 22.

The legislation makes changes to the state's Healthy Families Program and ensures continued health care coverage for children by substituting a premium

tax of 2.35 percent for a 5.5 percent fee paid by health care plans.

Before the Governor signed AB 1422, health care plans paid a quality improvement fee of 5.5 percent of their revenue, which is matched with federal funds. Under federal law, this quality improvement fee would have ended in October.

AB 1422 assesses a temporary 2.35 percent tax on health plans—less than half of what they pay today to match federal quality improvement funds. In addition, this temporary tax will be offset by the enhanced federal match.

The Governor's office estimates the new law will prevent nearly 700,000 children from losing their state-provided health insurance through the Healthy Families Program and allow the Managed Risk Medical Insurance Board (MRMIB), the agency that oversees the state's Healthy Families Program, to

open the program to new enrollment.

In asking the Governor to sign the legislation, the CalChamber commented that employers will suffer no ill effects from the new law, and may even benefit from lower cost pressures on their insurers. Equally important, without AB 1422, much of the costs for care for the children losing coverage would have been shifted to the employer community from hospitals and other providers taking on more uncompensated care.

AB 1422 also includes important program changes that will promote personal responsibility and make the program more similar to private insurance. For example, the bill increases premiums and co-pays for services, such as brand name prescription drugs and emergency room visits. The changes should make the program more viable in the long term.

Staff Contact: Kyla Christoffersen

Local Chambers Set Record in Compliance Product Resale Program

Local chambers of commerce involved in the California Chamber of Commerce Resale Program had record sales this year.

More than 160 chambers participated in the program, which allows chambers to purchase human resource compliance products from the CalChamber at a substantial discount and then resell those products to local businesses.

The partnership enables local chambers in the program to help their business members stay out of court and avoid steep compliance fines and penalties.

The top 10 chambers in the resale program for 2009 were (in order from the top): San Jose Silicon Valley, Vallejo, Thousand Oaks/Westlake Village, Oakdale District, El Centro, Napa, Long Beach Area, Greater Riverside, West Sacramento, Roseville.

For more information about the product resale program, contact Steve Snyder at (916) 930-1241, steve.snyder@calchamber.com, or Marlene Carney at (909) 593-0449, marlene.carney@calchamber.com.



CalChamber-Sponsored Seminars/Trade Shows

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Make Sri Lanka Your Next Business Stop.

Sri Lanka Consulate. October 13–14, Sri Lanka. (213) 387-0214.

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.

EB-5 Investors Continuing Legal Education Conference. American Immigration Lawyers Association.

October 19, San Francisco. (800) 595-0507.

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

The Africa Dialogue 2009. Gather Strategies. October 28–29, South Africa. (213) 291-6199.

International Commercial Arbitration in Latin America. International Chamber of Commerce (ICC). November 1–3,

Miami. events@iccwbo.org.

Labor Law

The Importance of AB 1825 Training. CalBizCentral. October 15, Online (Free). (800) 331-8877.

CalChamber Calendar

Proposition 11 Redistricting Briefing:

October 14, Sacramento

Public Affairs Council Retreat:

October 28–30, Napa

Key Tax Changes from Budget Agreements

The California Chamber of Commerce is urging businesses to review the important tax changes resulting from this year's budget agreements.

Changes include estimated tax payments, income tax withholding, and use tax registration and reporting. The information is technical in nature and may require additional assistance from a tax professional or accountant.

Following is a look at some key tax provisions. For more information about the new jobs credit, see the full version of this article by Gina Rodriguez of tax specialists Spidell Publishing, Inc. on HRCalifornia.com.

Estimated Taxes

Instead of paying 25 percent of the annual required payment each quarter, both corporations and individuals must make accelerated estimated tax payments for the 2009 and 2010 taxable years (see left side of chart).

The budget also creates a new non-conformity provision to the federal exception to the underpayment penalty. The annualized installment method, or full payment spread throughout the year, allows taxpayers to compute estimated taxes based on annualizing actual taxable income earned over the months in the taxable year ending before the due date for the installment over any amount paid in prior installments.

These percentages have changed as well. When using the annualized installment method, taxpayers must use an accelerated payment scheme for both

Applicable Percentage: Regular Method		Applicable Percentage: Annualized Method	
2009		2009	
1st Quarter	30 percent	1st Quarter	27 percent
2nd Quarter	30 percent	2nd Quarter	54 percent
3rd Quarter	20 percent	3rd Quarter	72 percent
4th Quarter	20 percent	4th Quarter	90 percent
2010		2010	
1st Quarter	30 percent	1st Quarter	27 percent
2nd Quarter	40 percent	2nd Quarter	63 percent
3rd Quarter	0 percent	3rd Quarter	63 percent
4th Quarter	30 percent	4th Quarter	90 percent

the 2009 and 2010 taxable years (see right side of chart).

Income Tax Withholding

The budget increases withholding for certain payments made on or after November 1, 2009:

- Withholding on wages increases by 10 percent.
- Withholding on supplemental wages increases from 6 percent to 6.6 percent.
- Withholding on stock options and bonus payments increases from 9.3 percent to 10.23 percent.

The Legislature revised the state's withholding tables once already in April 2009 to reflect the February 2009 budget changes—an 0.25 percent across-the-board increase and a reduction in the dependent exemption credit of about \$210 per dependent.

The 10 percent increase in withholding on wages is "optional," meaning

employees may file a new Form DE 4, Employee's Withholding Allowance Certificate, with their employer to change their withholding. An employee may change his/her withholding at any time, and as often as needed.

Backup Withholding

The budget also conforms, with modifications, to Internal Revenue Code Section 3406 federal backup withholding rules. For payments made on or after January 1, 2010, the budget requires:

- Backup withholding at a rate of 7 percent for California whenever required for federal purposes; and
- The Social Security number or other taxpayer identification number of the recipient of income to be furnished on demand of the person paying the income.

For purposes of backup withholding, the budget requirement includes only

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CalChamber Urges Participation in Earthquake Preparedness Drill

The California Chamber of Commerce is urging members of the business community to participate in The Great California ShakeOut drill, a statewide public earthquake drill scheduled for October 15 at 10:15 a.m.

The ShakeOut, developed by the California Emergency Management Agency (CEMA), will allow businesses to prepare and practice what to do during an earthquake.

A 2008 report by the Southern California Earthquake Center estimates that there is a 50 percent chance of a



magnitude 7.5 or greater earthquake somewhere in California any time in the next 30 years. While some areas are less likely than others to have such

earthquakes, residents in those areas may visit more active areas.

The inaugural ShakeOut drill was held last year with more than 5 million participants throughout Southern California. For this year's statewide drill, CEMA hopes to have 10 million people simultaneously "drop, cover and hold on." This procedure is recommended in an earthquake as well as getting under a heavy table or desk to avoid falling objects.

For more information, visit www.ShakeOut.org.

CalChamber Urges Scientific Research Before Limiting Chemical Use



The California Chamber of Commerce is urging U.S. Senator Dianne Feinstein (D-San Francisco) to delay consideration of federal legislation limiting the use of the chemical

Bisphenol A (BPA) until completion of a scientific study.

The U.S. Food and Drug Administration (FDA) is conducting a review of BPA and is expected to release its findings before the end of the year, the CalChamber said, urging the senator to wait until completion of the FDA research.

BPA is used in a wide variety of consumer products, including food containers, water bottles and other common plastics. Most scientific and

medical studies show that BPA is safe for humans at current levels.

Most recently, independent scientists at the California Office of Environmental Health Hazard Assessment analyzed BPA and decided against adding it to the state's Proposition 65 list, which identifies chemicals known to the state to cause cancer or reproductive toxicity. State law requires consumer warnings of the presence of substances on the Proposition 65 list.

Impact of Restrictions

In its letter to Feinstein, the CalChamber noted that a move to ban BPA, unsupported by the best science available, would hurt many California businesses and their employees without necessarily increasing consumer safety.

Without BPA, it will be significantly more difficult and more costly for California farmers, canneries and manufacturers to sell their products to

consumers across the country and around the world.

State Legislation

The CalChamber also has been opposing state legislation limiting the use of BPA. CalChamber-opposed **SB 797 (Pavley; D-Agoura Hills)** prohibits the manufacture, sale or distribution of certain children's products containing BPA in certain concentrations.

The CalChamber pointed out that SB 797 circumvents the Green Chemistry program at the state Department of Toxic Substances Control where scientific experts have the authority to identify priority chemicals, assess their use in consumer products and initiate a range of regulatory action. The bill was placed on the Assembly inactive file on September 11 before the end of the regular legislative session.

Staff Contact: Robert Callahan

Key Tax Changes from California Budget Agreements

From Page 5

payments of income defined in California's withholding-at-source statute, with respect to rents, prizes, compensation for services and other fixed or determinable annual or periodic income.

The budget specifically excludes from California's backup withholding rules interest and dividends and any release of loan funds made by a financial institution in the normal course of business.

California's backup withholding provisions supersede any other withholding provision required under the administrative provisions of the Revenue and Tax Code. Also, the payer required to withhold must notify the payee of the withholding in the form and manner prescribed by the Franchise Tax Board (FTB).

The FTB made more information available at the beginning of October through its web page, www.ftb.ca.gov, and "Tax News" newsletter. The backup withholding obligation will begin January 1, 2010.

Use Tax Registration/Reporting

The budget requires qualified purchasers to register with the Board of Equalization (BOE) and report and pay any use tax owed for purchases made in

the preceding year. The first use tax returns will be due on April 15, 2010, for untaxed purchases made in 2009.

A qualified purchaser is a business that meets all these tests:

- Is not required to hold a seller's permit with the BOE.
- Is not required to be registered and is not otherwise registered with the BOE.
- Is not a holder of a use tax direct payment permit (see Revenue and Taxation Code, Section 7051.3).
- Receives at least \$100,000 in gross receipts per year from business operations worldwide.

The primary change under this new budget is the requirement to file with the BOE. Before this law, only retailers selling tangible personal property were required to register.

The BOE planned on mailing notification letters to businesses potentially subject to the new registration requirement starting in September 2009 using data from 2007 IRS tax returns to target its audience.

Once a business replies to the letter, the BOE will send the business an account number and log-in code for e-filing purposes (which the BOE expects to be available in March 2010).

If a business fails to respond to the letter, the BOE will register the business automatically and mail it an account number. Once registered, the BOE will ask for 2007 and 2008 tax returns. The BOE is likely to waive any penalties on unpaid use tax, but businesses must pay interest.

Registered businesses must file a sales-and-use-tax return with the BOE, and may not report any use tax liability on their income or franchise tax return filed with the FTB. All businesses required to register with the BOE under this new program must file a return with the BOE, even if there is no use tax liability.

Companies face no penalty for not registering with the BOE or for failing to file when no use tax liability exists. If payment is late, however, a business may owe a penalty equal to 10 percent of the use tax liability.

It is important to note that the use tax has been in effect in California since 1935, and applies to purchases made from out-of-state sellers. A taxpayer may have a use tax liability when making purchases from an out-of-state retailer if the seller does not collect California sales or use tax or if the buyer uses, gives away, stores or consumes the item in California.

Chambers Join Together to Promote California-Chile Trade/Investment

Promoting further trade and investment between California and Chile is the goal of a Memorandum of Understanding (MOU) signed September 28 by the California Chamber of Commerce, Los Angeles Area Chamber of Commerce and the American Chamber of Commerce in Chile (AmCham Chile).

The signing occurred during the California Trade Mission to Chile this week and was witnessed by delegates, who included government and business representatives from North, Central and South America.

In signing the MOU, the chambers agreed to work together, sharing ideas and information about trends and other data affecting the California-Chile trade relationship, to promote and further develop trade and investment between the two economies.

Trade Mission

The schedule for the September 27-29 trade mission, centered in Santiago, the capital of Chile, included an opportunity for delegates to attend the Americas Competitiveness Forum.

Forum speakers included U.S. Secretary of Commerce Gary Locke, President of Chile Michelle Bachelet and Chilean Minister of Economy Hugo Lavados.

The California trade mission follows up the June 2008 signing of an



Chile President Michelle Bachelet

MOU between California and Chile by Governor Arnold Schwarzenegger and President Bachelet. The MOU marked the start of a strategy to promote collaboration in "human capital development," education, environmental protection, energy, agriculture, information and communication technology, trade and business.

Trade Mission Blog

While in Chile, CalChamber Vice President International Affairs Susanne

Stirling provided information on the trade mission via the California-Chile Trade Mission Blog at www.calchamber.com/chile/trademissionblog.

Trade with Chile

Chile is a substantial export partner for California. In 2008, California exported more than \$1.6 billion worth of goods to Chile, including petroleum and coal products, computer and electronic products, machinery and transportation equipment. That number is up from \$880 million in 2007.

California imports from Chile include fresh fruits, forestry products, wines and seafood.

Since the implementation of the U.S.-Chile Free Trade Agreement on January 1, 2004, bilateral trade between Chile and the United States has doubled.

Staff Contact: Susanne Stirling

CalChamber Hosts New Consul General



Stewart Beck (left), appointed consul general of Canada in August, meets with CalChamber President Allan Zarembeg on September 17 to discuss trade, health care, water and energy issues. Beck has accreditation for Northern California, Nevada, Hawaii and Guam. For more information on trade with Canada, California's second largest export market, visit the trading partner portal at www.calchamber.com/canada.

Small Business Contract Opportunities

The California Public Utilities Commission (CPUC) Small Business Program is reminding small businesses of state contracting opportunities.

By executive order of the Governor, all state agencies must award 25 percent of their annual contracting dollars to small businesses, defined as being based in California with fewer than 100 employees and gross receipts of \$12 million or less over the previous three tax years.

Most state agencies are required to have a dedicated small business advocate who coordinates the small business procurement process.

To pursue business opportunities with the state, businesses must be certified as a small business or a Disabled Veteran Business Enterprise (DVBE). Both certifications are free and can afford a business a 5 percent bid preference on state contracts.

To get certified, visit the California Department of General Services website at www.getcertified.dgs.ca.gov or call (916) 375-4940.

To learn more about CPUC's Small Business Program, visit www.cpuc.ca.gov/smbus or contact Stephanie Green at smallbiz@cpuc.ca.gov or (800) 253-0500.

Free AB 1825 Webinar Training Back by Popular Demand



CalBizCentral is offering a free encore presentation of *The Importance of AB 1825 Training with Patricia Perez of the California FEHC Webinar*. This 30-minute recorded webinar, presented by Patricia Perez, vice chair of the Fair Employment and Housing Commission (FEHC), is ideal for any company required to implement an AB1825 harassment prevention training program.

- What the Fair Employment and Housing Commission is and what it does.
- Components of a compliant AB 1825 training program.
- Who must provide harassment prevention training and when.
- What constitutes a qualified AB 1825 compliance trainer.
- Ramifications of not complying with AB 1825 training requirements.

FREE
Thursday
October 15
10 am
30 minutes

Order online at www.calbizcentral.com/training or call 1-800-331-8877.

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