

# TAXPAYERS SPECIAL EDITION

*A newsletter dedicated to informing California Aircraft and Vessel owners about taxes*

## **California Budget Deal Kills Tax Exemption**

*Prepared and distributed by Aero & Marine Tax Professionals*

### **So, now you are rich. How does it feel?**

The dust is settling on the California legislature's recent foray into "bypassing" the California Constitution. Using an administrative procedure to create a loophole that circumvents the Constitutional protection that requires a 2/3 majority in both the California Assembly and the Senate in order to pass a tax increase, SB1100 was put into play as part of the budget process.

SB1100 attacked one small group of taxpayers that has been labeled "rich" by the majority party in California. The Public Relations (P/R) campaign proclaimed that the 90 day and six month test for aircraft, vessels and vehicles was a loophole for the rich and was hemorrhaging tax revenue from the state. It was clearly a P/R campaign to be unleashed on the minority party during a campaign year. Unfortunately, a handful of Republican Senators and the Governors office fell for the trick.

Democrat Assemblyman Levine of Van Nuys pushed this change in the law because he felt it was a loophole for the rich. During my conversations with his staff they accused everyone who used the exemption process to support a legal claim for an exemption as being "tax evaders." It was clear to me that they had never read the Supreme Court decision rendered in 1934 that stated:

***"The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted."***

***Supreme Court of the United States  
Gregory v. Helvering  
293 U.S. 465; (1934)***

An additional opinion was written on the same subject:

***"Anyone may arrange his affairs so that his taxes shall be as low as possible; he is not bound to choose that pattern which best pays the treasury. There is not even a patriotic duty to increase one's taxes. Over and over again the courts have said that there is nothing sinister in so arranging affairs as to keep taxes as low as possible. Everyone does it, rich and poor alike and all do right, for nobody owes any public duty to pay more than the law demands."***

***Federal Appellate Judge Learned Hand***

When I pointed this out to Levine's staff it clearly fell on deaf ears. The final comment made to me was that they would go after anyone using "loopholes" to evade taxes. They felt it was their obligation to change the law to make it impossible for anyone to use loopholes. When I asked if this meant they were going to close the "loopholes for the poor?" there was stunned silence, but no answer. I merely said that if they want to level the playing field to where everyone was treated equally then all we had to do was go back to the Constitution for our reference.

In fact if the state really believes it needs more sales or use tax revenue all they had to do was raise the overall rates for everyone. The staff member said they could never get that tax increase passed.

So it is clear what the majority party believes is that it must divide and conquer in order to collect more cash. Assemblyman Levine targeted aircraft, vessel and motor home owners. Here was a group that is relatively small when it comes to an amount of eligible voters and he positioned them as "rich evaders of tax," versus the other 90% of California's voting population.

The minority party did not fall for this in 2003 and was emboldened by a recall of Governor Davis. The minority party abandoned Davis and pushed forward with their insatiable demand for cash. In 2004 they used an administrative procedure to bypass the California Constitution's 2/3 requirement and forced their scheme into the budgetary process. By doing this they were able to bypass the Constitution by using a process they had created for their own convenience in previous years. This is clearly a "loophole" created for the whim of the majority party. In other words the Democrats had to create a loophole to circumvent the law in order to attack people who use the law to circumvent taxes.

This is not a partisan statement. Any party, whether Democrat or Republican, when they have held a majority too long has created a similar scheme to bypass the legal rights of the minority party to block legislation. It is never the right thing to do. It diminishes a significant portion of the liberty granted by the Constitution. It plays the same whether you are talking about a State Constitution or the most sacred of all documents, the Federal Constitution.

What you have is one group isolating another group and positioning them as a minority versus the majority of taxpayers. This will always result in an increase of taxes on that one "targeted group." Of course the new tax excludes all who vote in favor of the law change. This is merely a symptom that something has gone very rotten in our government.

So, now that **YOU** have been lumped into a category called "the rich" by the majority party, how does it feel? Your purchasing patterns have allowed them to classify you as "rich." Not your actual wealth.

They made no distinction between a \$40,000,000.00 Gulfstream and a \$50,000.00 Cessna. They made no distinction between a 200 foot motor yacht and a small sailboat. They made no distinction between a \$40,000 camper and a million dollar Marathon coach.

Assemblyman Levine equated you with the "lifestyles of the rich and famous," without ever looking at the facts of each transaction. His partners in the majority party eagerly went along. They agreed "you are all rich," and therefore you deserve to be treated as though you are part of a conspiracy to evade tax.

You were singled out as a group who could not defend your position because you apparently have more money than the guy who spends extra cash on his artwork, or his horses. Of course this is all folly. The reason you were singled out for their greed is that they have a way to identify you. All aircraft, vessels and vehicles require a registration of some type and that is how they find you.

Besides, they knew numerically you did not represent many voters. So how do you like being rich? It obviously has nothing to do with your income it has to do with your choice of how you spend your money!

I'll carry the insanity of our state out just a little farther to expose their overall plan to get your money. There exists on the November ballot a proposition that is being driven by a Sacramento Assemblyman that is designed to give you guys in the bottom half of the "rich because you own an aircraft, vessel or vehicle," classification a chance to get even with the guys who own bigger toys than you do. It is labeled Proposition 63.

It creates a 1% tax on all incomes in California over \$1,000,000.00. This is clearly a plan to get most people to vote for a tax that only applies to around 32,000 Californians. It is designed to make you think that you will never fall into that category so why not vote for it and pass the tax on to a small group of very rich people. This is class warfare at its ugliest.

What the bill really does is bypass the 2/3 vote by your elected representatives to enact a tax increase. What is not being told is that this Proposition locks this funding in place and prevents the legislature or the governor from ever reducing the funding. It requires a fixed amount of dollars that is impossible to change. What do you think will happen if the taxable income of those 32,000 people falls?

You guessed it! The state will lower the threshold as low as they need to insure the funding. What you are voting for is a permanent program that locks a 1% surcharge on top of the tax rate that can eventually be levied against every Californian in an attempt to keep the funding levels at the required amount. Worse, this Proposition has built in increases in funding!

In other words the spending can increase, never decrease and must be funded even if 100% of the Assembly, 100% of the Senators and the Governor want to get rid of it. What group will benefit from a permanent source of funding that our elected representatives can never change? They are the ones who are pushing this from behind the scenes. Just follow the money and you'll find the beneficiary of this Proposition.

While it is being touted as an assist to the mental health of California families, what it really should be called is "November's scam to bypass the Constitution" with a program that creates permanent funding in a manner where future legislators and governors can never change the law. In the past we may have been able to rely on our Supreme Court to throw out such insanity, but we have learned that the courts have routinely gone against the wishes of the California voters.

I point out this relationship about the way tax increases are being created by special interest groups in order to insure we still have a state to fly, sail and drive in. The special interest we are fighting here is an out of control Legislature that continues to increase spending on failed programs in the middle of a budget crisis that has been resolved by smoke and mirrors. Borrowing is not a solution to **SPENDING MONEY YOU DON'T HAVE**.

If you believe the two year suspension of the principal use test contained in SB1100 is really temporary or that Proposition 63's 1% tax will only apply to the 32,000 millionaires let me remind you of something when it comes to politicians and taxes.

The current income tax system was first levied by the federal government in 1913. When it was passed it was "temporary" and the rate was 1 percent on taxable net income above \$3,000 (\$4,000 for married couples), less deductions and exemptions. It rose gently to a top rate of 7 percent on incomes above \$500,000. The law was class legislation and deliberately so.

The Federal top tax rate in my lifetime has been as high as 98%. What created the demand for the government to have the money? Spending money they did not have. For the rest of us this is called theft, or counterfeiting. I call it an insane practice. My personal wish is that every one of you votes **NO** on 63, and any other form of tax increase.

Our spoiled brat politicians throw our money at every group that whines about a problem. It is time to cut off their allowance.

A former President of the United States once said:

***"Excessive taxation...will carry reason and reflection to every man's door, and particularly in the hour of election."*** —Thomas Jefferson

## IF PROP 63 PASSES...

**MORE California business owners will leave the state.** Taxes all personal income over \$1 million an additional **10.75%!!** Sacramento Bee (03/20/04). "The number of millionaires is already on the decline in the State." We can't afford to keep running business owners out of the state!!! Guess where they'll go for funding **NEXT!!**

**Prop 63 funds kept OUTSIDE normal control of the Governor and Legislature.** The Governor and our elected Representatives have no direct authority over these funds. This is **NOT** the norm and **CANNOT** be tolerated!

**Prop 63 WORSENS California's state budget and cash problem.** Money is taken from the general fund beginning January 1, 2005 -- before ANY taxes are collected!! Guess who pays for THAT!?? (Hint: It's **NOT JUST** the wealthy, after all !!)

Even newspapers that traditionally support the agendas of the majority party are against Proposition 63.

**The Sacramento Bee published the following on September 22, 2004.**

"If California were looking for a place to spend more state funds, mental health is a category of spending that most in the public could support. One just has to look at the number of mentally ill people who crowd our prisons and jails and the growing ranks of the homeless population to make the case. Hardly a family is untouched by the debilitating effects of depression, schizophrenia, bipolar disease or, as the population ages, increasingly dementia. Mental illness cuts across geography, class, culture, race and income, and as a state we don't spend enough to treat those suffering from it.

The need is unquestioned. But Proposition 63, which is on the November ballot, is the wrong way to meet that need.

Proposition 63 mandates a funding scheme for mental health services in California that is inflexible and unwise. Specifically, the measure imposes a 1 percent tax on incomes above \$1 million. It works like this: Someone earning a taxable income of \$1.5 million would pay 1 percent of \$500,000 or \$5,000 extra in income tax. Those earning \$2 million would pay 1 percent of \$1 million or an extra \$10,000.

The money collected, an estimated \$750 million in the coming fiscal year, would be placed in a special fund to be used for expanding mental health services, mostly at the local level. To prevent supplanting, the measure bars the government from reducing allocations for mental health services below current levels—not for the next few years but forever.

Proposition 63 commits a new funding stream, a surcharge on the incomes of the state's richest people, to a single purpose in perpetuity no matter what. Even if circumstances change, calamity strikes and other more critical needs surface, Proposition 63 does not allow the state to reduce funding for mental health. It will make it harder, if

not impossible, to raise taxes on the rich to pay off the state's enormous debt or to fund other important services.

That's bad budgeting and a bad precedent. Proposition 63 increases the risk that other special interests with equally compelling funding proposals will grab off yet more slices of state revenues. After all, there are any number of good causes - the arts, open space, cancer research—that poll well and that a majority of the public would like to fund.

California is a representative democracy. Voters are supposed to elect a governor and legislators who make decisions about how state revenues will be spent and then, hold those representatives accountable for their decisions. As voters use the ballot to circumvent their representatives, as more and more funds are earmarked for schools or transportation or after-school programs or other commendable uses, the governor and legislators are rendered powerless to make the rational budget choices they were elected to make. Carried far enough, this trend would render the state ungovernable.

California isn't there yet, but it's too close for comfort. Vote No on Proposition 63 ...."

### **The Sacramento Metropolitan Chamber of Commerce Opposes Proposition 63**

Campaign Against Short-Sighted Statewide Measure Wins Backing of Region's Largest Business Advocacy Organization

SACRAMENTO, CA< Proponents of Proposition 63—led by Sacramento Assemblyman Darrell Steinberg—were dealt a direct blow Thursday when the Sacramento Metropolitan Chamber of Commerce declared its opposition to the fiscally reckless measure.

Sandy Smoley, chair of the chamber's Health Committee, explained, "Our communities need pro-active solutions, and we're eager to support those policies. Frankly, we're disappointed that Proposition 63 fails to meet the demand for a long-term, accountable plan for community mental health."

The Sacramento Metropolitan Chamber is the second largest chamber of commerce in California, with 2,500 members throughout a region that encompasses Sacramento, El Dorado, Placer, Sutter, Yolo and Yuba Counties. Founded in 1895, the Metro Chamber Founded in 1895, the Metro Chamber has fostered economic prosperity in the region for more than 100 years,

*"Proposition 63 is a flawed solution for a serious problem, and fails to consider the ramifications of driving valuable taxpayers out of our state," asserted No on 63 spokesman David Yow. He continued, "This plan is more ballot box budgeting\_ that pins important social programs to an unreliable source of income, so we understand the Metro Chamber\_s concern about the consequences of this initiative if it passes."*

Tim Leslie, Assemblyman, in the CA State Legislature was quoted:

***"The problems the mentally ill face require a real plan for the future; not promises of funding tied to dangerously volatile income sources, which can vanish in a heartbeat."***