CHAPTER 1B

BASIC FACTS ABOUT TAX LEGISLATION

HIGHLIGHTS

- Tax Levy Bills
- Legislative Vote Requirements
- Change in the Constitution or Statutory Initiative
- Bills with State Mandates on Local Agencies
- Hearings by Fiscal Committees
- Effective Dates and Operative Dates

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1. INTRODUCTION

The United States (U.S.) and California Constitutions, federal and state statutes, and state legislative rules treat tax legislation differently than other types of legislation. The U.S. and the California Constitutions and statutes contain criteria regarding state and local taxing power. The California Legislature has adopted several joint rules regarding consideration and passage of tax-related bills.

This chapter summarizes the most important constitutional, statutory, and legislative provisions that apply to tax legislation.

2. "TAX LEVY" BILLS

What Tax Levy Bills Are. A tax levy is a bill that imposes a state tax, repeals a state tax, or otherwise changes in any material way the rate, base, or burden of a state tax. Many, but not all, bills that deal with taxes are tax levy bills.

The Legislative Counsel, who is responsible for drafting the text of all bills that are introduced and amended in the Legislature, determines whether a bill is a tax levy.

The Legislative Counsel will classify a bill as a tax levy if its subject matter exclusively or principally imposes, repeals, or otherwise modifies the incidence or burden of a state tax. After determining that a bill is a tax levy, Legislative Counsel will include in the title of the bill a phrase indicating that the bill is a tax levy. The body of the bill will also contain a statement that the measure is a tax levy.

Bills that impose, repeal, or modify a state tax and that also contain provisions unrelated to the tax levy provisions are not designated as tax levies, unless Legislative Counsel determines the tax levy provisions are the principal or primary purpose or object of the bill.

Bills that exclusively or primarily affect the rate, base, or burden of the property tax are also designated as tax levies. However, a bill that only authorizes a local government to propose a tax to the voters is not a tax levy, because that bill does not affect the rate, base, or burden of an existing local tax.

Bills that deal exclusively or principally with the administration of a state tax, including penalties and interest related to tax payments, are not tax levies.

How Tax Levy Bills Are Treated. The Legislature treats tax levy bills differently from other bills in the following ways:

- Tax levy bills take effect immediately [California Constitution, Article IV, Section 8(c)(3).] However, their operative dates may be different (see Section 7, below).

- Tax levy bills are not subject to referendum by the people [California Constitution, Article II, Section 9(a).]

- Tax levy bills are not subject to many of the normal legislative deadlines for the consideration of bills. Instead, they are treated like urgency bills and Constitutional Amendments. Accordingly, policy and fiscal committees may meet for the purpose of hearing a tax levy bill at any time other than those periods when no committee may meet for any purpose. Similarly, either house may meet for the purpose of considering and passing a tax levy bill at any time during the legislative session.

3. LEGISLATIVE VOTE REQUIREMENTS FOR TAX BILLS

Legislative vote requirements for all tax bills, including tax levies, are established by the Constitution.

Tax bills requiring a two-thirds vote are bills that:

- Change state taxes for the purpose of increasing state revenues (California Constitution, Article XIIIA, Section 3). A bill that contains some revenue-raising state tax changes but whose overall fiscal impact as to state tax changes is either revenue neutral or results in a revenue loss requires only a majority vote;

- Contain an urgency clause [California Constitution, Article IV, Section 8(d)];

- Classify personal property for differential taxation or that exempt personal property from taxation (California Constitution, Article XIII, Section 2);

- Contain a General Fund appropriation for any purpose other than public education [California Constitution, Article IV, Section 12(d)];

- Override a Governor's veto [California Constitution, Article IV, Section 10(a).]; and

- Amend the provisions of the California Children and Families First Act of 1998, an initiative constitutional amendment and statute passed as Proposition 10 by the voters in November 1998 (Proposition 10, 1998, Section 8).

Tax bills that change any portion of the Cigarette and Tobacco Products Tax Law enacted in November 1988 by the voters when they passed Proposition 99 require a four-fifths vote.

With certain limited exceptions, all other tax bills require a majority vote.

4. CHANGES IN THE CONSTITUTION OR STATUTORY INITIATIVES

Some aspects of state tax law cannot be changed by the Legislature. These instances and the procedures relating to them include the following:

Tax Law Set Forth in the Constitution. Constitutional amendments are required to change any tax law contained in the California Constitution. Proposed constitutional amendments may be placed on the statewide ballot either by the Legislature or by the people through an initiative. Proposed legislative constitutional amendments must be adopted by the Legislature by a two-thirds vote of each house and do not require the Governor's signature. An initiative requires a majority vote of the people voting in the election that includes the initiative to take effect.

Initiative constitutional amendments must receive valid signatures equal to at least 8% of the number of voters who voted in the last gubernatorial election in order to be placed on the ballot.

Statutory Tax Law Enacted by the Voters Through a Statutory Initiative. In general, an initiative tax statute can only be changed by a vote of the people on another statewide ballot. The proposed change in the law may be placed on the ballot by another initiative or by a bill enacted by the Legislature.

Some initiative statutes, however, contain language that allows the Legislature to make changes without voter approval. These statutes typically identify the types of changes allowed and specify the legislative vote requirement to amend the statute.

Initiative statutes must receive valid signatures equal to at least 5% of the number of voters who voted in the last gubernatorial election in order to be placed on the ballot.

5. BILLS WITH STATE MANDATES ON LOCAL AGENCIES

The California Constitution (California Constitution, Article XIIIB, Section 6) requires the state to reimburse local government for any costs when the state mandates local government to provide certain new programs or higher levels of service. The Constitution provides that reimbursement is permissible but not required for mandates requested by the local agency affected, legislation defining a new crime or changing an existing definition of a crime or for mandates enacted prior to January 1, 1975. Reimbursement is not provided if the mandates are self-financing, have offsetting savings, require no new duties, or if the new duties result from a ballot measure approved by the voters. Government Code Sections 17500-17630 provide procedures for the constitutionally required state reimbursement of mandated local costs.

In addition, statutes require reimbursement to local agencies in the following two cases:

- Enactment of property tax exemptions or new classifications of exempt property (Revenue and Taxation Code Section 2229); or

- Enactment of sales and use tax exemptions that cause a new loss of revenue (Revenue and Taxation Code Section 2230).

Constitutional requirements for reimbursement cannot be waived. Statutory requirements for reimbursement may be waived by statute, including the statute creating a new exemption.

6. HEARINGS BY LEGISLATIVE COMMITTEES

Bills with a principal provision that proposes a change to the Revenue and Taxation Code (whether via amendment, addition or deletion) generally are referred to the Revenue and Taxation Committees of each legislative house for policy review.

Under current legislative rules, tax bills, like other bills, must be referred to the Appropriations Committee of each house if they do any of the following:

- Appropriate money;

- Result in a substantial expenditure of state money by imposing new responsibilities on the state, imposing new or additional duties on state agencies, or liberalizing any state program, function, or responsibility;

- Result in a substantial gain or loss of revenue to the state; or

- Result in a substantial reduction of expenditures of state money by reducing, transferring, or eliminating any existing responsibilities of any state agency, program, or function.

7. EFFECTIVE DATES AND OPERATIVE DATES

In order to become law, tax bills, like all bills, must be passed by both houses of the Legislature and signed by the Governor, allowed to become law without the Governor's signature, or passed over the Governor's veto [California Constitution, Article IV, Sections 8(b) and 10(a).]

The effective date of a bill is the date it becomes law. Tax levy bills, urgency bills, bills calling for an election, and bills making appropriations for the usual current expenses of California go into effect immediately upon enactment [California Constitution, Article IV, Section 8(c)(3).] Bills that <u>do not</u> take immediate effect (i.e., bills that are not tax levies or urgency measures or that do not call for an election or make an appropriation) take effect on January 1 following enactment [California Constitution, Article IV, Section 8(c)(1).]

For most tax bills, the <u>effective date</u> of a bill that takes immediate effect is the day the statute is chaptered by the Secretary of State. However, unless specified otherwise, personal income tax and corporation tax bills apply to taxable years beginning on or after the January 1 <u>preceding</u> enactment (Revenue and Taxation Code Sections 17034, 18415, and 23058). For example, a bill enacting an income tax credit that is chaptered by the Secretary of State during 2004 will apply to taxable years beginning on and after January 1, 2004, unless specified otherwise.

Furthermore, bills may specify an <u>operative date</u> that is different from the <u>effective date</u> of a bill. For example:

- Bills changing the sales and use tax will often specify an operative date as the first day of the first calendar quarter beginning more than 90 days after a bill's effective date;

- Personal income and corporation tax bills sometimes specify an operative date beginning in a different taxable year than the one in which the bill is enacted; or

- Any type of bill (whether or not it is tax-related) may specify another operative date. A bill's operative date is sometimes pushed back in time in order to delay its revenue impact or to allow both taxpayers and the agency charged to administer the bill more time to prepare.

Bills enacted in special sessions of the Legislature have different rules governing passage and effective dates.