

May 12 , 2005

Ms. Tricia Knight
Initiative Coordinator
Office of Attorney General
1300 I Street
Sacramento, CA 95814

RECEIVED
MAY 13 2005

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Taxpayer Protection Act of 2006

Dear Ms. Knight:

I am one of two co-proponents for the Taxpayer Protection Act of 2006 initiative filed on May 12, 2005 with your office. I am a registered voter residing in Placer County. We request that the Attorney General prepare a title and summary for this initiative measure.

Please forward any questions you may have concerning this measure to Kathy Donovan at Pillsbury Winthrop Shaw Pittman LLP, 400 Capitol Mall, Suite 1700, Sacramento, CA 95814, (916) 329-4700, kdonovan@pillsburylaw.com.

Cordially,

Allan S. Zarembek

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Cordially,

Jack M. Stewart

SECTION 1. Title

This shall be known and cited as the "The Taxpayer Protection Act of 2006."

SECTION 2. Findings and Declarations of Purpose

The People of the State of California find and declare:

(a) The California Constitution prohibits the California Legislature from imposing a state tax or local tax without a two-thirds vote of the California Legislature.

(b) The California Constitution also prohibits local governments from imposing a local tax without a majority vote of the voters if it is a tax for general purposes or a two-thirds vote of the voters if it is a tax for special purposes.

(c) These two-thirds vote requirements do not apply to legitimate fees that may be adopted by a majority vote of the Legislature or local legislative bodies.

(d) There have been increasing efforts by state and local governments to disguise new taxes as fees in order to avoid the two-thirds vote requirement for the Legislature and a vote of the people at the local level.

(e) In order to prevent these efforts, it is necessary to establish the distinction between fees and taxes.

SECTION 3. Article XIII A, section 3 of the California Constitution is amended to read:

Sec. 3. (a) From and after *January 1, 2006*, any change in state statute which results in any taxpayer paying a higher tax, ~~the effective date of this article, any changes in state taxes enacted for the purpose of increasing revenues collected pursuant thereto~~ whether by increased rates or changes in methods of computation, must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.

(b) *From and after January 1, 2006, as used in this section "tax" includes:*

(1) *any regulatory fee or charge imposed by the state, except for a fee or charge limited to the reasonable administrative costs to the state, including overhead expenses, of issuing licenses, permitting, inspection, audit, and adjudication.*

(2) *any other kind of fee or charge imposed by the state, except:*

(A) *a fee or charge imposed for a specific service provided directly to the payer by the state or a private contractor on behalf of the state, but only if the amount of the charge does not exceed the reasonable costs of the service provided.*

(B) *a fee or charge imposed for entrance to state property or admission to an event, show, game, or activity on state property or private property being used by the state for such events, shows, games, or activities.*

(C) *a fee or charge for the purchase, rental or lease of state property.*

(D) *a fine, penalty, or other monetary charge imposed by the judicial branch of government, or state or local administrative agency, as a result of any violation of a statute or regulation.*

(E) *a surcharge imposed in a competitively neutral and broad-based manner by the California Public Utilities Commission in the course of ratemaking, for the provision of universal telephone service.*

(3) *notwithstanding anything in this section to the contrary, any fee or charge imposed by the state on real property or a person as incident of real property ownership.*

(c) *Any tax, fee or charge of any kind adopted after January 1, 2006, but prior to the effective date of this Act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this Act unless the tax, fee or charge is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this section.*

SECTION 4. Article XIII C, section 2 of the California Constitution is amended to read:

Sec. 2. Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

(e) *From and after January 1, 2006, as used in this section:*

(1) *"tax" does not include any fee or charge imposed by local government as a condition of property development.*

(2) *Except as stated in subdivision (e)(1), "tax" includes:*

(A) *any regulatory fee or charge imposed by local government, except for a fee or charge limited to the reasonable administrative costs to the local government, including overhead expenses, of issuing licenses, permitting, inspection, audit, and adjudication.*

(B) *any other kind of fee or charge imposed by local government, except:*

- (i) *a fee or charge imposed for a specific service provided directly to the payer by the local government or a private contractor on behalf of the local government, but only if the amount of the charge does not exceed the reasonable costs of the service provided.*
- (ii) *a fee or charge imposed for entrance to local government property or admission to an event, show, game, or activity on local government property or private property being used by local government for such events, shows, games, or activities.*
- (iii) *a fee or charge for the purchase, rental or lease of local government property.*
- (iv) *a fine, penalty, or other monetary charge imposed by the judicial branch of government, or state or local administrative agency, as a result of any violation of a statute or regulation.*
- (v) *assessments and property related fees imposed in accordance with the provisions of Article XIIID.*

(f) *Any tax, fee or charge of any kind adopted after January 1, 2006, but prior to the effective date of this Act, that was not adopted in compliance with the requirements of subsection (e) is void 12 months after the effective date of this Act unless the tax, fee or charge is reenacted in compliance with the requirements of this section.*

SECTION 5. Conflicting Ballot Measures

In the event that this measure and another conflicting measure or measures are approved by a majority of votes at the same election, and this measure receives a greater number of affirmative votes than any other such measure or measures, this measure shall control in its entirety and said

other measures shall be rendered void and without legal effect. If this measure is approved but does not receive a greater number of affirmative votes than said other measure or measures, this measure shall take effect to the extent permitted by law.