TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	
	:	No. 80-1210
of	:	
	:	JUNE 24, 1981
GEORGE DEUKMEJIAN Attorney General	:	
Edmund E. White Deputy Attorney General	:	

THE HONORABLE CAROL HALLETT, MEMBER OF THE ASSEMBLY, TWENTY-NINTH DISTRICT, requests an opinion on the following questions:

1. Do employer contributions to the Unemployment Fund constitute the "proceeds of taxes" within the meaning of article XIIIB of the California Constitution?

2. Do employee contributions to the Unemployment Compensation Disability Fund constitute the "proceeds of taxes" within the meaning of article XIIIB of the California Constitution?

3. Do the "interest" paid by employers pursuant to sections 1112 and 1129 and the "penalties" paid by employers pursuant to section 1113 and 1142 of the Unemployment Insurance Code constitute the "proceeds of taxes" within the meaning of

article XIIIB of the California Constitution?

CONCLUSIONS

1. Employer "contributions" to the Unemployment Fund do not constitute the "proceeds of taxes" within the meaning of article XIIIB of the California Constitution.

2. Employee "contributions" to the Unemployment Compensation Disability Fund do not constitute the "proceeds of taxes" within the meaning of article XIIIB of the California Constitution.

3. Neither "interest" paid by employers pursuant to sections 1112 and 1129 nor "penalties" paid by employers pursuant to sections 1113 and 1142 of the Unemployment Insurance Code constitute the "proceeds of taxes" within the meaning of article XIIIB of the California Constitution.

ANALYSIS

The three questions require the interpretation of certain of the provisions of article XIIIB of the California State Constitution in the context of certain revenues ("contributions," "interest" and "penalties") received by the state from employers and employees, which state revenues, in conjunction with federal funds, fund the operation of programs providing unemployment insurance benefits and employment disability benefits to workers.

In essence, article XIIIB establishes an adjustable limitation upon appropriations by the Legislature of the "proceeds of taxes," beginning with the 1980–81 fiscal year.

Article XIIIB, section 1, provides that:

> "The total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of such entity of government for the prior year adjusted for changes in the cost of living and population except as otherwise provided in this Article,"

Article XIIIB, section 2, provides that:

> "Revenues received by an entity of government *in excess of that amount* which is appropriated by such entity in compliance with this Article

during the fiscal year *shall be returned by a revision of tax rates or fee schedules* within the next two subsequent fiscal years." (Emphases added.)

Article XIIIB, section 8, provides in part that:

"As used in this Article and except as otherwise expressly provided herein:

"(a) 'Appropriations subject to limitation' of the state shall mean *any authorization to expend during a fiscal year the proceeds of taxes* levied by or for the state, exclusive of state subventions for the use and operation of local government (other than subventions made pursuant to Section 6 of this Article) and further *exclusive of* refunds of taxes, *benefit payments from* retirement, *employment insurance and disability insurance funds*;

". . . . . .

"(c) 'proceeds of taxes' shall include, but not be restricted to, *all tax revenues* and the proceeds to an entity of government, from (i) regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product, or service, and (ii) the investment of tax revenues. With respect to any local government, 'proceeds of taxes' shall include subventions received from the state, other than pursuant to Section 6 of this Article, and, with respect to the state, proceeds of taxes shall exclude such subventions[.]" (Emphases added.)

Article XIIIB, section 8(a), *supra*, expressly excludes from the concept of "appropriations subject to limitation" any authorization by the Legislature to expend ". . . benefit payments from . . . unemployment insurance and disability insurance funds."

Article XIIIB, section 8(c), *supra*, defining the phrase "proceeds of taxes," fails to exclude expressly from the concept of "proceeds of taxes" the revenues received from employers and employees that the state uses to make the "benefit payments" that are referred to in article XIIIB, section 8(a).

It might be implied from the language of article XIIIB, section 8(a), *supra*, that the revenues received by the state for the purpose of providing such benefit payments constitute the "proceeds of taxes," since the definition of "*appropriations* subject to limitation" *of the proceeds of taxes* is stated to be "exclusive" of such benefit payments. If

such revenues are the "proceeds of taxes" and if there is no exclusion—expressly or by necessary implication—of such revenues from the total amount of "proceeds of taxes" received by the state, then such revenues may have to be considered when determining whether there exists in any fiscal year an excess of revenues received over the amount of appropriations that are authorized to be appropriated in compliance with article XIIIB. (See § 2, art. XIIIB.)

The concept of "proceeds of taxes" as it appears in article XIIIB, subdivision (c), *supra*, was discussed in *County of Placer* v. *Corin* (1980) 113 Cal. App. 3d 443, in the context of its application to counties in connection with "special assessments" and "federal grant proceeds." The court stated that:

> "Under article XIIIB, with the exception of state subventions, the items that make up the scope of 'proceeds of taxes' concern charges levied to raise *general revenues* for the local entity. ' "Proceeds of taxes," ' in addition to 'all tax revenues' includes 'proceeds . . . from . . . regulatory licenses, user charges, and user fees [*only*] *to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product or service*. . . .' (§ 8, subd. (c).) (Italics added.) Such 'excess' regulatory or user fees are but taxes for the raising of general revenue for the entity. (*City of Madera* v. *Black* (1919) 181 Cal. 306, 313–314 [184 P. 397]; see *Mills* v. *County of Trinity* (1980) 108 Cal. App. 3d 656, 661–663 [166 Cal. Rptr. 674]; *United Business Com.* v. *City of San Diego* (1979) 91 Cal. App. 3d 156, 165 [154 Cal. Rptr. 263].) Moreover, to the extent that an assessment results in revenue above the cost of the improvement or is of general public benefit, it is no longer a special assessment but a tax. (*City of Los Angeles* v. *Offner*, *supra*, 55 Cal. 2d at pp. 108–109.) We conclude 'proceeds of taxes' generally contemplates only those impositions which raise general tax revenues for the entity.
>
> "We find support for this position in the ballot arguments in favor of the initiative, which assert that: Proposition 4 will provide 'permanent constitutional protection for *taxpayers* from excessive *taxation*'; 'will refund or credit excess taxes received by the state to the taxpayer,' 'will curb *excessive* user fees [which are akin to taxes] imposed by local government'; 'will eliminate waste by forcing politicians to rethink priorities while spending our tax money.' (Italics added.) Finally, the argument states 'Your "yes" vote will guarantee that excess state *tax* surpluses will be returned to the taxpayer . . . .' and '[T]his amendment is a reasonable and flexible way to provide discipline in tax spending at the state and local levels. . . .' (Italics

added.) In both its supportive and interpretative language, the thrust of article XIIIB is directed at limiting *tax* revenues and appropriations." (All italics added by the court.) (*County of Placer* v. *Corin*, *supra*, 111 Cal. App. 3d at pp. 451–452; fn. omitted.)

With these generalized statements in mind, we turn to the provisions of the Unemployment Insurance Code (all unidentified section references are to that code).

The original State Unemployment Reserve Act (Stats. 1935, ch. 352, P. 1226 *et seq*.) was enacted because "experience has shown that private charity and local relief cannot alone prevent the effects of unemployment. Experience has shown that if the state awaits the coming of excessive unemployment it can neither create immediately the organization necessary to orderly, economical and effective relief nor bear the financial burden of relief without disrupting its whole system of ordinary revenues and without jeopardizing its credit." (Stats. 1935, art. 1, § 1.) Thus, "this act is enacted as a part of a National plan of unemployment reserves and social security . . . ." (Stats. 1935, ch. 352, art. 1, § 2.) "There is hereby created the unemployment fund in the State treasury, to be administered . . . without liability on the part of the State beyond the amounts paid into and earned by the fund." (Stats. 1935, ch. 352, art. 3, § 19.) "The unemployment fund shall be administered in trust and used solely to pay benefits . . . and no other disbursement shall be made therefrom." (Stats. 1935, ch. 352, art. 3, § 20.)

The constitutionality of the original Act was upheld in *Gillum* v. *Johnson* (1936) 7 Cal. 2d 744. The court noted that:

> "It must be conceded that the moneys so contributed under the act are not public moneys in the sense that they are subject to appropriation other than as provided in the act. The funds thus raised are in their nature a continuing appropriation for a specific purpose. (See *Daugherty* v. *Riley*, 1 Cal. (2d) 298.) The balances therein do not revert to the general fund at the end of the fiscal year and under both the state and federal acts constitute trust funds . . . ." (*Gillum* v. *Johnson*, *supra*, 7 Cal. 2d at p. 758.)

The state act required certain state funds to be deposited in the federal Unemployment Trust Fund. In construing this provision the court noted that:

> "[T]he funds so deposited do not belong to the United States. The beneficial title thereto is in the state or in the state agency depositing the same, which in turn is trustee for those who had made the contributions, or for the beneficiaries under the state act." (*Gillum* v. *Johnson*, *supra*, 7 Cal.

2d at p. 762.)

The provisions of the Unemployment Compensation Disability Act were enacted in 1946 (Stats. 1946, ch. 81), which legislation was designed to provide benefits for loss of wages by an employee while disabled under conditions not entitling him or her to the protection of the Workmen's Compensation Act. (*Garcia* v. *Industrial Acc. Comm.* (1953) 41 Cal. 2d 689, 692; *Calif. Comp. Ins. Co.* v. *Ind. Acc. Com.* (1954) 128 Cal. App. 2d 797, 805.)

The unemployment compensation disability insurance program, the Unemployment Insurance Act and the Workmen's Compensation Act "are all component elements of a general coordinated plan of social insurance developed by the Legislature." (*Calif. Comp. Ins. Co.* v. *Ind. Acc. Com.*, *supra*, 128 Cal. App. 2d at p. 806; see *Bryant* v. *Industrial Acc. Com.* (1951) 37 Cal. 2d 215, 218.)

The original provisions regarding unemployment and disability compensation were consolidated in the Unemployment Insurance Code, which was enacted in 1953 (Stats. 1953, ch. 308).

Division 1 of the Unemployment Insurance Code relates to "unemployment and disability compensation." Part 1 of division 1(§§ 100–2113) pertains to Unemployment Compensation and part 2 of division 1 (§§ 2601–3272) relates to Disability Compensation. In addition, the definitions found in article I of chapter 1 of part 1 pertain to the entirety of division 1 (5125).

We are concerned herein with the "disability fund," denominated the "Unemployment Compensation Disability Fund" (§ 134.5) and the "unemployment fund." (§ 1521.) Section 2901 provides that "each individual performing services for an employer in employment shall contribute to the Disability Fund the contributions required of such individual by Sections 984 and 985." Section 984 provides in part that each worker shall pay worker contributions at the rate therein specified with respect to the wages paid to him by each employer . . . ." (See *Gypsum Carrier, Inc.* v. *Handelsman* (1962) 307 F.2d 525.) Section 985 excludes from the rate established by section 984 wages in excess of an amount determined by reference to a formula therein specified. Section 144 provides that " 'Worker contributions,' 'contributions by workers,' 'employee contributions,' or 'contributions by employees' mean contributions to the Disability Fund."

Section 976 *et seq*. establishes with respect to employers the obligation to pay and the rate of payment of "employer contributions" to the Unemployment Fund. (See, e.g., 55 976, 976.5.)

Section 131 provides that " 'contributions' means the money payments to the Unemployment Fund or Unemployment Compensation Disability Fund which are required by this division."

Financial provisions relating to the Unemployment Fund are contained in chapter 6 (§§ 1521–1537) of part 1 of division 1. Financial provisions relating to the Disability Fund are contained in chapter 5 (§§ 3001–3158) of part 2 of division 1. (See also §§ 1555–1562.) We shall advert to several of these sections in order to establish the essential character of these funds.

Section 1521 provides that:

> "The Unemployment Fund is continued in existence as a special fund, separate and apart from all public money or funds of this state. This fund shall consist of (1) all employer contributions collected under this division; (2) interest earned upon any money in the fund; (3) any property or securities acquired through the use of money belonging to the fund; (4) all earnings of such property or securities; (5) all money credited to this state's account in the Unemployment Trust Fund pursuant to Section 903 of the Social Security Act, as amended; and (6) all other money received for the fund from any other source. All money in the fund shall be mingled and undivided.
>
> "All money in the Unemployment Fund and in the various accounts of that fund, except any money deposited pursuant to Section 1528.5, is continuously appropriated without regard to fiscal years for the purposes authorized in this article."

Section 1522 provides that:

> "The Unemployment Fund shall be administered by the director exclusively for the purposes of this division without liability upon the part of the State beyond the amounts paid into and earned by the fund."

Section 1525 provides that:

> "There shall be maintained within the fund three separate accounts:
>
> "(a) A clearing account.
>
> "(b) An Unemployment Trust Fund account.

"(c) A benefit account.

Section 1526 provides that:

"All contributions and amounts payable to the Unemployment Fund after proper clearance shall be forwarded to the Treasurer who shall immediately deposit them in the clearing account.

Section 1527 provides that:

"Immediately after clearance, all money in the clearing account except interest on contributions, and penalties collected shall be deposited in or invested in the obligations of the Unemployment Trust Fund of the United States of America or its authorized agent to the credit of this State, any provisions of law in this State relating to the deposit, administration, release, or disbursement of money in the possession or custody of this State to the contrary notwithstanding. The amounts so deposited or invested shall be entered in the Unemployment Trust Fund Account."

Section 1528 provides that:

"The benefit account consists of all money requisitioned from this State's account in the Unemployment Trust Fund, except money requisitioned for administration pursuant to Section 1528.5, and any money so requisitioned, except money requisitioned for administration pursuant to Section 1528.5, shall be transferred out of the Unemployment Trust Fund account into the benefit account.

Section 1528.5 pertains to funds received by the state pursuant to section 903 of the federal Social Security Act, and to restrictions on the use of said funds as contained therein.

Section 3001 provides that:

"The Unemployment Compensation Disability Fund is continued in existence as a special fund in the State Treasury, separate and apart from all other public money or funds of this State. The money and assets of this fund shall be held in trust by the State Treasurer and administered under the direction of the director exclusively, for the purpose of this part."

Section 3002 provides that:

"The State Treasurer is the treasurer of the Disability Fund and shall have the custody of all money belonging to the Disability Fund and not otherwise held, deposited or invested under this part. The official bond of the State Treasurer shall cover the faithful performance of his duties as treasurer of the Disability Fund. The State Treasurer shall invest or otherwise deal with the Disability Fund under the supervision of the director."

Section 3004 provides that:

"The Disability Fund consists of all contributions required of individuals under Section 984 with respect to wages paid by employers for employment; all money received for the purpose of disability benefits from the United States of America or any agency thereof, or from any other source; and any property or securities acquired through the use of money belonging to the Disability Fund and all earnings of such money or securities.

Section 3012, subdivision (a) provides that:

"(a) All money in the Disability Fund is continuously appropriated without regard to fiscal years for the purpose of providing disability benefits pursuant to this part, including the payment of refunds, credits, or judgments, and interest thereon, the payment of disability benefits to all eligible persons not covered exclusively by an approved voluntary plan, and the payment of the expenses of administration of this part by the Department of Human Resources Development and the Franchise Tax Board. 'Eligible persons' as used in this section, means those individuals who are covered by the Disability Fund at the time their period of disability commences, or whose employment has terminated or who are in noncovered employment at the time their period of disability commences, and who are otherwise eligible for benfits under this part.

". . . . . ."

The programs providing unemployment benefits and disability benefits have been characterized as part of a comprehensive, integrated program of "insurance" calculated to alleviate the burden of loss of wages by protecting employees during "seasonal, cyclical and technological idleness" as well as by protecting workers suffering a disability not usually connected to their employment. (*Calif. Comp. Ins. Co.* v. *Industrial Acc. Com.*, *supra*, 128 Cal. App. 2d at pp. 805–806; *Calif Emp. Stabilization Comm.* v. *Lewis* (1945) 68 Cal. App. 2d 552, 554; *Northrop Aircraft* v. *California Emp. Stabilization Com.* (1948) 32 Cal. 2d 872, 880; *Chrysler Corp.* v. *Calif Emp. Stab. Com.* (1953) 116 Cal. App. 2d 8, 16; *Jones* v. *Calif Emp. Stab. Com.* (1953) 120 Cal. App. 2d 770, 777; *Calif Portland Cement Co.* v. *Calif Unemp. Ins. Appeals Board* (1960) 178 Cal. App. 2d 263, 269–270; *Garcia* v. *Industrial Acc. Comm.* (1953) 41 Cal. 2d 689.)

In *California Emp. Stabilization Com.* v. *Lewis*, *supra*, 68 Cal. App. 2d at page 554, it was stated that the California Unemployment Insurance Act was enacted, not as a revenue-measure, but as part of a national plan to assist in the stabilization of employment conditions and to ameliorate conditions of unemployment. In *Wiltsee* v. *Calif. Emp. Com.* (1945) 69 Cal. App. 2d 120, 126–127, it was stated that the Act should not be construed as a taxing statute.

In *Modern Barber College* v. *Cal. Empl. Stab. Comm.*, (1948) 31 Cal. 2d 720, the court characterized the "contributions" by an employer under the Unemployment Insurance Act of 1935 as a "special tax." The court held that a statute prohibiting judicial review in advance of payment of the "contribution" was constitutional. In so concluding, the court noted that:

> "It follows, therefore, that this proceeding in mandamus is prohibited by the statute, and, unless the statute is void, the writ must be denied. In this connection, it is appropriate to pass upon a minor contention of respondent. It is argued that the statute is not the only bar to this action, for it is merely declaratory of section 15 of article XIII of the Constitution. That section provides: 'No injunction or writ of mandate or other legal or equitable process shall ever issue in any suit, action or proceeding in any court against this State, or any officer thereof, to prevent or enjoin the collection of any tax levied under the provisions of this article.' It would seem, however, that contributions under the Unemployment Insurance Act, while in the nature of taxes, are not taxes levied under the provisions of article XIII. They are not specifically mentioned therein, and they do not appear to be included within the general provisions of article XIII relating to taxes for revenue. On the contrary, the act specifically provides (§ 19) that contributions shall be held in a specific fund, separate and apart from all public moneys or funds of the

> state, and shall be administered exclusively for the purposes of the act. The contributions therefore constitute special taxes for a special purpose distinct from the general revenues of the state. For this, as well as other reasons, we see no basis upon which the constitutional provision can apply to this case.

(See also *Gillum* v. *Johnson*, *supra*, 7 Cal. 2d at p. 763; *Charles C. Steward Machine Co.* v. *Davis* (1936) 301 U.S. 548, 578.)

In *Wiltsee* v. *Calif. Employment Comm.* (1945) 69 Cal. App. 2d 120, 126–127, it was stated that:

> "Respondent is in error in contending that this statute should be construed as a taxing statute, and should be construed strictly in favor of the taxpayer. In the quite recent case of *California Emp. Com.* v. *Butte County etc. Assn.*, 25 Cal. 2d 624, 630, the Supreme Court defined the nature of the act and the proper rule of construction as follows: 'The tax feature as to the reciprocal contributions of employers and their employees is but an incident, not the essence of the state unemployment insurance law, which in turn is integrated with the operation of comparable federal legislation. (*Gillum* v. *Johnson*, 7 Cal. 2d 744.) Such legislation is remedial in character, subject to a liberal construction to effectuate its purpose and to coincide with its reflection of public policy. (*County of Los Angeles* v. *Frisbie*, 19 Cal. 2d 634; *California Employment Com.* v. *Black-Foxe Military Inst.*; 43 Cal. App. 2d Supp. 868.) In the latter case the broad coverage intent of the act here involved is recognized in the following language at page 872: 'The income tax law is purely a revenue measure, and upon the rule of strict construction applied to such laws, its scope may well be restrained to such matters as are clearly covered by it. Here we have a statute which, while it requires a 'contribution' that in itself may possibly be regarded as a tax, has a much broader object than the mere raising of revenue. It sets up a scheme for ameliorating the hardships of unemployment, and undertakes, in conjunction with the United States Government, to pay unemployment benefits to those who, without fault of their own, are out of work, to impose the financial burden of doing this upon both employers and employees, and to measure both burden and benefits by the amount of compensation paid to employees when they are working. . . ."

The "insurance" facet of these programs has been cogently summarized by the state Legislative Analyst as follows:

> "Revenues to the [Unemployment Insurance] Fund are generated by employer payroll taxes. The fund operates on an insurance principle, building reserves in good times for use during periods of high unemployment. Taxes vary according to the size of the fund's reserves and the experience of the individual employers in terms of the benefits paid to former employees." (Report of the Legislative Analyst, Analysis of the Budget Bill for fiscal 1981–1982. item 510, p. 913.)

Thus, it appears that in the usual context the contributions of employers and employees are exactments or "special" taxes financing a social "insurance" program on a mandatory basis, with the taxes thereby collected distinct from the general revenues of the state.

We return to the question of whether these "contributions," which we have determined are "special taxes," are "proceeds of taxes" within the meaning of article XIIIB. It may be recalled that the court in *County of Placer* v. *Corin*, *supra*, 113 Cal. App. 3d at p. 443, construed the phrase "proceeds of taxes" as one that "generally contemplates only those impositions which raise general tax revenues for the entity." This conclusion may be an over-broad generalization in the light of the language of section 8(c) of article XIIIB, which speaks in terms of the "proceeds of taxes" as including "*all* tax revenues . . ." (emphasis added), which phrase may include general revenue taxes as well as special revenue taxes. The fact that section 8(c) of article XIIIB also refers to the excess of fees over costs as constituting the "proceeds of taxes" does not logically resolve the issue of general revenue taxes versus special revenue taxes, since while it must be admitted that the excess of fees over costs constitutes general revenue taxes, not special revenue taxes, that observation does not really tell us what "all tax revenues" *excludes*.

However, under the rationale of *County of Placer* v. *Corin*, *supra*, 113 Cal. App. 3d 443, these exactments funding the Unemployment Insurance Fund and the Unemployment Compensation Disability Fund would not constitute the "proceeds of taxes" because they are not "impositions which raise general tax revenues for" the state.

Even without reference to the reasoning of the court in *County of Placer* v. *Corin*, *supra*, 113 Cal. App. 3d 443, these special taxes do not constitute the proceeds of taxes within the meaning of article XIIIB. These special taxes constitute an insurance-type trust fund which operates to increase collections in years of prosperity so as to create a reserve which will fund payments of benefits to workers during adverse economic

conditions. Thus, there is an inverse correlation between receipt of tax payments and payment of benefits as a general proposition. (See generally 29 Ops. Cal. Atty. Gen. 105 (1957).) The essence of article XIIIB is to limit appropriations by reference to population growth and to cost of living factors so as to permit any excess of the proceeds of taxes collected in a fiscal year to be returned to the voters. (Art. XIIIB, § 1, 2.) However, the factor that determines the amount to be expended in making these benefit payments is not the discretion of the Legislature but the degree of unemployment being experienced at any point in time. The more unemployment there is extant, fewer taxes are realized and expenditures increase. Greater employment produces greater unexpended revenue. Thus, the relationship between authorizations to expend by the Legislature and the proceeds from these special taxes being generally inverse, they simply do not fall within the fiscal limitation provisions established by article XIIIB.

In summary, since the authorizations to expend unemployment benefits and disability benefits are excluded from the calculation of the appropriations limit and of authorizations to expend, the revenues financing those authorizations to expend are excluded also. We conclude that they are excluded because they are not the "proceeds of taxes" within the meaning of article XIIIB. Alternatively, even if they be deemed to be within the concept of "proceeds of taxes" they are impliedly excluded in order to effectuate their express exclusion from the concept of appropriations subject to limitation of the expenditure of "benefits" from these "funds."

We turn now to the issue of the correct characterization of the "interest" authorized by sections 1112 and 1129 and of the "penalty" authorized by sections 1113 and 1142.

Section 1112 provides that.

> "Any employer who without good cause fails to pay any contributions required of him or of his workers, within the time required shall pay a penalty of 10 percent of the amount of such contributions."

Section 1113 provides that:

> "Any employer who fails to pay any contributions required of him or of his workers . . . within the time required shall become liable for interest on such contributions at the rate of one-half percent per month or fraction thereof from and after the date of delinquency until paid."

Section 1129 authorizes "interest" of one percent per month on "deficiency"

assessments made by the director of employers as therein specified.

Both the "interest" of section 1112 and "penalty" of section 1113 result from the failure of the employer to remit to the state the amount he is required to remit by reason of wages paid by him to his employees, which amount goes into the unemployment fund, or by reason of amounts collected by him from the wages of his employees, which amounts finance the disability fund.

The concept of "interest" in this context involves, two variables, the "value" of the loss of use of the money to the state resulting from the failure of the employer to pay the sum due promptly and the increased costs to the state of administration required in order to obtain the money due it. (See *Meilink* v. *Unemployment Reserves Comm. of Calif.* (1941) 314 U.S. 564.) In some instances, a part of the "interest" may be deemed to be a "penalty." (Op. cit., *supra*.) Thus, the "interest" at issue here represents, at the least, "revenue" to replace that which the state has lost because of the delay in receiving payment and of increased costs of administering the program. Accordingly, it is in substance an increase in the amount of the "special taxes" due from the employer as a result of his failure to pay the principal sum when due.

Thus, the "interest" received by the state in lieu of prompt payment by an employer could be deemed to be "revenue" of the same type and kind as the special taxes themselves. However, the "interest" so received is not deposited in the Unemployment Fund but rather is deposited in a special fund denominated the Department of Employment Development Contingent Fund. (§ 1585; see also § 1527.) Such sums are appropriated for the payment of costs of administering the Department (§ 1586) as well as for other authorized expenditures. (See §§ 1586, 1586.5, 1588.)

While the federal statute sets up standards and requirements to which state legislation must conform in order that California's employers be eligible for a credit against the federal tax (*Lorco Properties, Inc.* v. *Department of Benefit Payments* (1976) 57 Cal. App. 3d 809, 813), the federal act requires neither the collection of interest nor the collection of a penalty. (21 Ops. Cal. Atty. Gen. 47, 48 (1953).) Thus, in the absence of some constitutional restriction, the Legislature is free to appropriate these revenues in accordance with its own policy determinations. (21 Ops. Cal. Atty. Gen. 47, *supra*.) Thus, it is free to appropriate accrued surpluses in the contingent fund to the general fund. (21 Ops. Cal. Atty. Gen. 47, 49–51, *supra*.)

Nevertheless, we are unable to conclude that this power of the Legislature over these revenues changes their character but merely extends the uses to which such

revenues may be put by the Legislature.[1] Thus, in essence, we conclude that "interest" is not a tax and thus does not constitute the proceeds of taxes within the meaning of article XIIIB. (*Cf. County of Placer* v. *Corin*, *supra*, 113 Cal. App. 3d 443.)

The "penalty" required to be collected pursuant to section 1113 is neither a special tax nor the proceeds of taxes. It is an exaction imposed as a matter of legislative policy to penalize the employer's behavior rather than to recover "damages" in lieu of prompt payment of the principal sum. (See *Meilink* v. *Unemployment Reserves Comm. of Calif. supra*, 314 U.S. at pp. 568–569.) In addition, a penalty is imposed pursuant to section 1142 in an amount not less than two nor more than ten times the weekly benefit amount of a claimant where the employer willfully makes a false statement or representation or willfully fails to report a material fact when submitting facts concerning the termination of employment of a former employee who is now claiming benefits. These section 1142 penalties must be deposited in the Contingent Fund, as are the penalties collected pursuant to section 1113. Since the penalties are not taxes at all much less "special taxes" arising from the fact of an employer-employee relationship or of interest received in lieu of prompt payment of sums due, they cannot be the "proceeds of taxes" and we so conclude.

*****

[1] We do not decide herein whether funds transferred from the Department of Employment Development Contingent Fund to the State's General Fund would be deemed to be the "proceeds of taxes" within the meaning of article XIIIB.