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THE STATE BOARD OF EQUALIZATION has requested an opinion on the following questions:

1. Does the Multistate Tax Compact require California to remain a member of the Multistate Tax Commission unless and until the compact is repealed in accordance with its provisions?

2. What is the effect of the Legislature's language regarding California's continuing membership on the Multistate Tax Commission that is contained in the budget legislation for fiscal year 1996-1997?

3. Is California required to continue paying its Multistate Tax Commission assessments unless and until it withdraws from the Multistate Tax Compact?

4. Which state agency or agencies bears responsibility for the payment of California's Multistate Tax Commission dues?

CONCLUSIONS

1. The Multistate Tax Compact provides that California is a member of the Multistate Tax Commission unless and until the compact is repealed in accordance with its provisions.

2. The effect of the Legislature's language regarding California's continuing membership on the Multistate Tax Commission that is contained in the budget legislation for fiscal year 1996-1997 is to declare a policy disapproving attendance at commission meetings by the California member if the meetings are not generally open to the public after January 1, 1997.

3. California remains liable for its Multistate Tax Commission assessments chargeable to it prior to the time of its withdrawal from the Multistate Tax Compact.

4. Only the Legislature bears responsibility for the payment of California's Multistate Tax Commission dues.

ANALYSIS

In 1974 the Legislature enacted the Multistate Tax Compact ("Compact") as part of California law. (Rev. & Tax. Code, §§ 38001-38021.)[1] The purposes of the Compact are to:

> "1. Facilitate proper determination of State and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes. The Compact, in turn, created the Multistate Tax Commission, and California is a member of the Commission by virtue of its participation in the Compact.
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> "2. Promote uniformity or compatibility in significant components of tax systems.
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> "3. Facilitate taxpayer convenience and compliance in the filing of tax returns and other phases of tax administration.

[1] All references hereafter to the Revenue and Taxation Code are by section number only.

"4. Avoid duplicative taxation." (§ 38006, art. I.)

The Compact is administered by the Multistate Tax Commission ("Commission") "composed of one `member' from each party state who shall be the head of the State agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the Commission member from the heads of the relevant agencies." (§ 38006, art. VI, subd. (1)(a).) In California, the Franchise Tax Board ("FTB") and the State Board of Equalization ("SBE") take turns annually representing California on the Commission. Section 38011 provides:

> "The executive officer of the Franchise Tax Board shall be the member of the Multistate Tax Commission to represent this state for the commission's fiscal year period beginning in even-numbered calendar years and the executive secretary of the State Board of Equalization shall be such member for the commission's fiscal year period beginning in odd-numbered calendar years."

The four questions presented for resolution concern the following language included by the Legislature in the Budget Act for the 1996-1997 fiscal year:

> "Continuing membership by California in the Multistate Tax Commission shall be contingent upon the commission adopting, by publicly-recorded action, and implementing, by January 1, 1997, an open-meeting policy that is consistent with the Bagley-Keene Open Meeting Act (§ 11120 and following, Gov. Code) so as to provide public access to all commission meetings except those involving discussions of personnel matters, confidential taxpayer information, or litigation." (Stats. 1996, ch. 162, items 1730-001-0001, provision 4, and 0860-001-0001, provision 1.)

1. Membership on the Commission

The first question to be resolved is whether the Compact requires California to remain a member of the Commission unless and until the Compact is repealed. We conclude that it does.

As previously quoted, the Compact makes California one of the members of the Commission by virtue of the Legislature's enactment of the Compact as part of the law of California. (§ 38001.) The Commission "shall be composed of one `member' from each party State . . . ." (§ 38006, art. VI, subd. 1(a).) No provision of the Compact allows for withdrawal from membership on the Commission by a member state.

The only way for California to withdraw from Commission membership would be for the Legislature to repeal the statute enacting the Compact. Section 38006, article X states in part:

> "1. This compact shall enter into force when enacted into law by any seven States. Thereafter, this compact shall become effective as to any other State upon its enactment thereof. The Commission shall arrange for notification of all party States whenever there is a new enactment of the compact.
>
> "2. Any party State may withdraw from the compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party State prior to the time of such withdrawal."[2]

No provision of the Compact allows for a state to withdraw from the Commission separate and apart from withdrawing from the Compact. The latter must be accomplished by the enactment of a state statute repealing the Compact.

In answer to the first question, therefore, we conclude that the Compact requires California to be a member of the Commission unless and until the Compact is repealed in accordance with its provisions.

2. Budget Control Language

If California is a member of the Commission until the Legislature repeals the Compact, what is the effect of the budget control language contained in the 1996-1997 Budget Act? We conclude that the Legislature has declared its policy disapproving attendance at Commission meetings by the California member after January 1, 1997, unless the meetings are generally open to the public.

Clearly the budget control language in question does not effectuate a repeal of the Compact. A fair reading of the language expresses no such interest by the Legislature. The term "Compact" is not used; the Compact's repeal is not mentioned. Neither does the budget control language attempt to repeal or change the provisions of section 38011, quoted above, establishing the FTB and the SBE as the California member on the Commission in alternate years.

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[2] California's legislation adopting the Compact contained uncodified provisions allowing California's withdrawal upon the occurrence of certain conditions. (Stats. 1974, ch. 93, § 5.) None of the specified conditions have occurred, and none relate to the subjects of this opinion.

In reaching this determination, we rely upon well established principles of statutory construction. "`A statute must be construed "in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts." [Citation.]' (*People* v. *Woodhead* (1987) 43 Cal.3d 1002, 1009.)" (*People* v. *Hill* (1991) 1 Cal.4th 266, 272.) "A statute should be constructed whenever possible so as to preserve its constitutionality. [Citations.]" (*Dyna-Med, Inc.* v. *Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.)

Section 9 of article IV of the Constitution requires that a statute "shall embrace but one subject." The subject of the annual budget bill is the appropriation of funds. The budget bill may only deal with the subject of appropriations and may not substantively amend or change existing statutory law. (64 Ops.Cal.Atty.Gen. (1981) 910, 917.) The reasons for this constitutional rule were explained by the court in *Planned Parenthood Affiliates* v. *Swoap* (1985) 173 Cal.App.3d 1187, 1196:

> ". . . As has been stated, `[t]he primary and universally recognized purpose . . . is to prevent log-rolling in the enactment of laws . . . . [Citation.] As our Supreme Court has pointed out, `[i]n times past an abuse had grown up, which consisted in attaching to a bill dealing with one matter of legislation a clause entirely foreign to that subject matter, to the end that, hidden under the cloak of the meritorious legislation, the obnoxious measure might `ride through.' Such `riders,' as they came to be designated, not infrequently embraced ill-digested and pernicious legislation, relief bills, private appropriation measure, and the like, which would not have carried if the legislative mind had been directed to them. It was to cure this evil that the constitution made it mandatory that a bill should embrace but one subject-matter, and to meet the case of such a `rider' actually slipping through, declared that any matter foreign to the title of the bill should be held void.' [Citations.]"

Restrictive language in a budget bill is impermissibly amendatory even when it does not flatly contradict a statute but merely seeks to "clarify" it while imposing substantive conditions that do not appear in the existing statutory law. (*California Lab. Federation* v. *Occupational Safety & Health Stds Bd*, (1992) 5 Cal.App.4th 985, 995.) In *Franchise Tax Board* v. *Cory* (1978) 80 Cal.App.3d 772, 777, the court refused to give effect to budget control language "clarifying the standards" contained in an initiative measure, noting that an amendment is "a legislative act designed to change some prior or existing law by adding or taking from it some particular provision."

Applying these principles of statutory construction, we believe that the Legislature has indicated through its budget control language a policy of support for members of the

public to attend Commission meetings. The Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132), to which the budget control language refers, implements "the public policy of this state that . . . the proceedings of public agencies be conducted openly so that the public may remain informed." (Gov. Code, § 11120; see 75 Ops.Cal.Atty.Gen. 263 (1992)). Exceptions for closed sessions are recognized in the state act for such topics of discussion as personnel matters, confidential taxpayer information, and litigation (Gov. Code, § 11126), also referenced in the Legislature's budget control language.

If the Commission does not adopt an open-meeting policy by January 1, 1997, the Legislature will disapprove of the California member attending such closed sessions. The budget control language may thus be viewed as a declaration of policy to be implemented by the Legislature in the future, in keeping with the single subject rule of the Constitution and harmonizing the budget control language with the terms of sections 38001, 38006, and 38011.

We conclude in answer to the second question that the effect of the Legislature's language regarding California's continuing membership on the Commission contained in the budget legislation for fiscal year 1996-1997 is to declare a policy disapproving attendance at Commission meetings by the California member if the meetings are not generally open to the public after January 1, 1997.

3. Continued Payment of Assessments

The third question presented concerns whether California is required to continue paying its Commission assessments unless and until California withdraws from the Compact. We conclude that California remains liable for its assessments until the Legislature repeals the Compact.

California's obligation to make payments to the Commission is found in statutory law. (§ 38006.) For the same reasons that the Legislature's budget control language may not amend the statutory law to effectuate California's withdrawal from the Commission, California's fiscal obligations under the Compact may not be changed by such language. California's financial obligations under the Compact thus remain the same, whether or not the Commission adopts an open meeting policy.

The Compact provides in part:

> "4. (a) The Commission shall submit to the Governor or designated officer or officers of each party State a budget of its estimated expenditures for such period as may be required by the laws of that State for presentation to the legislature thereof.

> "(b) Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party States. The total amount of appropriations requested under any such budget shall be apportioned among the party States as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party State and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the Commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party States. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph." (§ 38006, art. VI.)

Accordingly California's assessments owed to the Commission have been apportioned to it under a formula set forth in the Compact, which is part of California law. As previously quoted, the Compact obligates each State to pay "any liability already incurred by or chargeable to a party State prior to the time of . . . withdrawal" from the Compact. (§ 38006, art. X.)

The liability of a member state at the time of its withdrawal from the Compact must be based upon the provisions of the Compact, which is a contract among the member states. *(Texas* v. *New Mexico* (1987) 482 U.S. 124, 128; see *Oklahoma* v. *New Mexico* (1991) 501 U.S. 221, 245 (conc. opn. of Rehnquist, C.J.).)[3] To the extent that California's assessments to the Commission are "already incurred by or chargeable to" California at the time the Legislature repeals the Compact, such assessments would remain the liability of California under the terms of the Compact. If, for example, the assessments for the Commission are "chargeable" on January 1, California would be liable for such assessments if California were to repeal the Compact thereafter on May 1. This would be an administrative matter to be determined by the Commission, its staff, and California's member on the Commission.

[3] The United States Supreme Court has original jurisdiction over "controversies between two or more states" (U.S. Const., art. III, § 2), and its judgment rendered against a state upon a contractual claim would be enforceable as "a plain duty resting upon [the state] under the Constitution" (*Virginia* v. *West Virginia* (1918) 246 U.S. 565, 604; see *Kentucky* v. *Indiana* (1930) 281 U.S. 163; *South Dakota* v. *North Carolina* (1904) 192 U.S. 286; *Rhode Island* v. *Massachusetts* (1838) 37 U.S. (12 Pet.) 657).

In answer to the third question, therefore, we conclude that California remains liable for its assessments to the Commission chargeable to it prior to the time of its withdrawal from the Compact.

4. Agency Responsible for Payment

The final question presented concerns whether the FTB, SBE, or some other agency or official is responsible for paying California's apportioned assessments to the Commission. We conclude that only the Legislature is responsible for the payment of Commission assessments.

The Compact provides that California's member on the Commission is "the head of the State agency charged with the administration of the types of taxes" to which the Compact applies. (§ 38006, art. X, subd. 1(a).) While there must be an individual who acts on behalf of a state, it is the state itself which is the party to the Compact and is represented on the Commission. The individual "member" is simply the person designated to represent the state.

As previously observed, the Compact is an agreement among sovereign states, with the benefits and obligations accruing to the state itself, not to a particular state agency. While we have no doubt that the Legislature may appropriate funds to particular agencies and direct them to make the assessment payments to the Commission, the obligation created by the Compact falls upon each state regardless of which agency is delegated the responsibility to provide a "member" for the Commission.

Moreover, the FTB and SBE must conduct their fiscal affairs in accordance with the directives of the Legislature, including the making of payments to the Commission from funds appropriated therefor. (See Cal. Const., art. XVI, § 7; Gov. Code, §§ 11006, 13323, 13402; *Mandel* v. *Myers* (1981) 29 Cal.3d 531, 539-540; *California State Employees' Assn.* v. *State of California* (1973) 32 Cal.App.3d 103, 107.) It is not within the purview of a particular state agency to determine whether to pay California's assessments associated with membership on the Commission.

In answer to the final question, therefore, we conclude that only the Legislature bears responsibility for the payment of California's assessments to the Commission.

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