



## The Tax Fairness, Transparency and Accountability Act

*November 2018 Statewide Ballot Measure (Initiative 17-0050)*

**The California Taxpayers Association supports the Tax Fairness, Transparency and Accountability Act (Initiative 17-0050)** because it restores the intent of Proposition 13 and strengthens taxpayer protections that have been eroded by California's courts. The measure protects the public's right to vote on taxes, makes state and local taxes more transparent, and holds government accountable to the taxpayers.

### Digest

This initiative, drafted and sponsored by the California Business Roundtable, clarifies the definition of a tax, and the procedures for how taxes are imposed. At the state level, the definition is expanded to include all tax-like impositions imposed by any state law, including any regulation or governor's executive order. At the local level, the definition is expanded to include all taxes and tax-like impositions, including taxes proposed via the initiative process. The initiative also requires all local taxes to be placed on the local ballot, where they would need a two-thirds vote to be approved.

### Major Provisions

#### **State Provisions**

- **Expands the Definition of a Tax.** Expands the definition of a state tax to include "every levy, charge or exaction of any kind." Under the proposed expansion, all revenue would be classified either as a tax or an exempt charge.
- **Broadens How the Tax Definition Applies.** Applies the definition of a tax to any change in state law that results in any taxpayer paying a higher tax, including any state statute, state regulation, executive order from the governor, state resolution, state ruling, state opinion letter, or other legal authority or interpretation. Charges imposed by government but paid to a non-governmental third party still must comply with the initiative's tax definition.
- **Charges That May Be Imposed by a Majority Vote of the Legislature.** Legitimate charges that may be imposed by a majority vote of the Legislature will be relabeled "exempt charges" because they are exempt from a two-thirds legislative vote. The initiative generally maintains what types of charges may be approved by a majority vote, but makes the following changes and clarifications:

- **Benefit or Privilege Charges.** A charge for a specific benefit or privilege would be reclassified as a tax, and a two-thirds vote of the Legislature would be required to impose or expand these charges.
- **Government Service or Product Charges.** The initiative does not modify procedures for, or characteristics of, a charge for a specific government service or product.
- **Regulatory Charges.** Expands the types of regulatory charges that may be approved by a majority vote to include an assessment for a tourism marketing district.
- **Fines and Penalties.** A fine or penalty (and related interest) levied for violating state law may be imposed by a majority vote of the Legislature.
- **Reasonable Charges for Actual Costs.** All exempt charges must be reasonable, to cover the actual costs of regulation or services/goods provided to the payer.
- **How Will the Revenue Be Spent?** Requires a state law that imposes a tax to contain a legally binding statement for how the revenue will be spent.
- **Tax-Like Regulations.** Specifies that no regulation may contain a levy, charge or exaction that is a tax, until the Legislature approves the regulation with a two-thirds vote. If a regulation contains an exempt charge, the Legislature must approve the regulation by a majority vote. Emergency regulations containing a tax or exempt charge may remain in effect no longer than 120 days.
- **Increases Evidentiary Standards for Majority-Vote Charges.** The initiative changes the evidentiary standards for when a government must prove that a charge can be approved by a majority vote, from a “preponderance of the evidence” to “clear and convincing.” Government continues to bear the burden of proving that a charge is exempt from a two-thirds legislative vote.
- **Characteristics of a Tax.** Specifies that payment of taxes can be compulsory or voluntary; paid in exchange for a benefit or asset, or for nothing in return; or retained by a non-governmental entity.
- **Effective Date.** The state provisions of the initiative would take effect November 7, 2018.

### **Local Provisions**

- **Requires a Two-Thirds Vote for All Local Taxes.** The measure provides that regardless of how local revenue is spent, all local taxes must be approved by a two-thirds vote of the electorate, and a two-thirds vote of the city council, board of supervisors or other local governing board is need to place a tax on the ballot (effectively enforcing Proposition 62 of 1986). Exempt charges can be approved

by a majority vote of the governing body, and no changes are made to the approval process for Article XIID levies.

- **Clarifies the Definition of a Tax.** Specifies that local revenue is either a tax; an exempt charge; or an Article XIID assessment, fee or charge.
- **Broadens How the Tax Definition Applies.** Applies the definition of a tax to any change in local law by a county, city, special district or the electorate when exercising the initiative power (effectively overturning the *California Cannabis Coalition v. City of Upland* decision). Any change that results in any taxpayer paying a higher tax from an ordinance, resolution, regulation, ruling, opinion letter, or other legal authority must be approved by two-thirds of the electorate.
- **Charges That May Be Imposed Without a Public Vote.** Legitimate charges that may be imposed by a majority vote of a local governing body will be relabeled “exempt charges” because they are exempt from a two-thirds vote of the electorate. The initiative generally maintains what types of charges may be approved without a public vote, but makes the following changes and clarifications:
  - **Benefit or Privilege Charges.** A charge for a specific benefit or privilege would be reclassified as a tax, and a two-thirds vote of the electorate would be needed to impose or expand these charges.
  - **Government Service or Product Charges, and Regulatory Charges.** The initiative does not modify procedures for, or characteristics of, these types of charges.
  - **Penalties.** Penalties and other unspecified monetary charges for violating state law can be imposed only if approved by a two-thirds vote of the electorate. Fines and non-payment interest for a fine may be imposed, increased or expanded without a public vote.
  - **Property Development Charges.** The definition of charges imposed as a condition of property develop will not include an assessment for a tourism marketing district, consistent with Government Code Section 53758.
- **Characteristics of a Tax.** Specifies that payment of taxes can be compulsory or voluntary; paid in exchange for a benefit or asset, or for nothing in return; or retained by a non-governmental entity.
- **Increases Evidentiary Standards for Exempt Charges.** The initiative changes the evidentiary standards for when a government seeks to prove that a charge is exempt from being approved by a two-thirds vote of the electorate, from a “preponderance of the evidence” to “clear and convincing.” Government continues to bear the burden of proving that a charge is exempt from a public vote.

- **Actual and Reasonable Costs.** All exempt charges may cover only the actual costs of regulation or services/goods provided to the payer. No unreasonable cost may be imposed on a payer for an exempt charge.
- **How Will the Revenue Be Spent?** Requires any local law that imposes a tax to contain a legally binding statement for how the revenue will be spent.
- **Fair and Balanced Ballot Description.** Requires a local tax on a ballot to contain an impartial statement of facts, identifying each tax, and specifying how revenue will be spent.
- **Effective Date.** Local taxes approved by voters on or after January 1, 2018, must comply with the initiative's local tax guidelines and approval requirements.

## Fiscal Impact

Because each proposed tax is judged by legislators/voters based on a variety of everchanging factors – including the state of the economy, government needs, how existing tax dollars are being used, and voters' views of different types of taxes – it is impossible to predict future elections or to quantify this measure's fiscal impact.

## Background

CalTax has been a key proponent of every recent statewide ballot measure that has sought to expand taxpayer protections. In 1986, CalTax drafted the legislative constitutional amendments that were later used for drafting Proposition 62, which was approved by voters to require a two-thirds vote of local governments before placing a tax on the ballot, and a public vote for all local taxes. In 1996, CalTax cosponsored and signed the ballot arguments in support of Proposition 218, which established voting procedures for local taxes and assessments. Throughout the 1990s and early 2000s, CalTax also played an integral role in developing the definition of a tax and a fee, seeking to stop hidden taxes, and setting the vote requirements necessary to impose such levies. This effort eventually led to the passage of the CalTax-cosponsored Proposition 26, the Stop Hidden Taxes Act of 2010.

## Policy Considerations

Shortly after Proposition 26 was approved by the voters, some provisions of the initiative were unraveled in the courts. The Tax Fairness Initiative restores the intent of Proposition 26, and provides clarification to strengthen the existing definitions of taxes and fees, by overturning the following court decisions:

- ***Chamber of Commerce v. California Air Resources Board.*** The court specified that the cap-and-trade auction is not a tax because it is a voluntary business decision made by participants. The initiative clarifies that taxes may be voluntary, and monetary exactions by a regulatory agency are a tax. (This initiative does not repeal the existing cap-and-trade program, or the auction going forward. In 2017, the Legislature, by a two-thirds vote, agreed to extend the cap-and-trade auction through 2030.)

- ***Lee Schmeer v. County of Los Angeles.*** The court found that Proposition 26 does not apply to revenue mandated by a local government, but never collected by local government. The initiative specifies that revenue collected by a non-governmental entity still may be a tax.
- ***California Cannabis Coalition v. City of Upland.*** The court found that local tax initiatives proposed by the people are not subject to the vote requirements contained in the constitution. This initiative specifies that local tax initiatives must be approved by a two-thirds vote of the electorate.
- ***City and County of San Francisco v. Farrell.*** The court ruled that “special taxes” were taxes levied for a specified purpose. Because of the decision, later initiatives and rulings required special taxes that fund specific programs to receive a two-thirds vote, and general taxes that fund general governmental expenditures to receive a majority vote. This initiative requires all local taxes to receive a two-thirds vote.

The clear definition of what constitutes a tax will keep the state government from being able to get around the two-thirds vote requirement for tax hikes by structuring them as “regulatory fees,” etc.

At the local level, a two-thirds vote threshold for all tax increases is a reasonable protection for taxpayers, and will force local governments to be more accountable to the people for how tax dollars are spent.

The two-thirds vote threshold ensures that taxes – including regressive taxes like the sales tax, which hits low-income Californians and the middle class especially hard – will be imposed only if they have broad support from the community.