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CHAPTER XI - Taxation

Witkin Summary of California Law

I. INTRODUCTION

A. Nature of Taxing Power.

9 *Witkin Sum. Cal. Law Tax* § 1

[§ 1] Nature of Taxing Power.

The taxing power resembles the power of eminent domain in that there is a taking of private property for a public purpose. However, in taxation, the taking applies uniformly among all persons in a particular class, and no compensation is given to the taxpayer except by way of governmental protection and other general benefits. Moreover, a tax need not be related to benefits received; i.e., classes of businesses or activities may be taxed, and the money may be used for wholly unrelated public purposes that do not benefit the particular taxpayers. (See *Carmichael v. Southern Coal & Coke Co.* (1937) 301 U.S. 495, 57 S.Ct. 868, 879, 81 L.Ed. 1245, 1261, *infra*, §16; 71 *Am.Jur.2d* (2001 ed.), *State and Local Taxation* §§1 et seq., 57 et seq.)

Although it is common to levy taxes on property or its use, taxes may also be laid on the exercise of personal rights and privileges, such as employment. (*Barwise v. Sheppard* (1936) 299 U.S. 33, 57 S.Ct. 70, 81 L.Ed. 23; *Carmichael v. Southern Coal & Coke Co.*, *supra*; see *Modern Barber Colleges v. California Emp. Stabilization Com.* (1948) 31 C.2d 720, 724, 192 P.2d 916 [nature of unemployment contributions]; *Ventura v. Southern Calif. Edison Co.* (1948) 85 C.A.2d 529, 534, 193 P.2d 512 [compensation required by statute for expenses incurred in fighting fires that were wilfully or negligently caused was not tax].)

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SUPPLEMENT: [This section is current through the latest supplement]
See 31 *Hastings Const. L. Q.* 413 [fairness concepts in tax policy].



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CHAPTER XI - Taxation

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I. INTRODUCTION

B. Limitations on Power.

9 Witkin Sum. Cal. Law Tax § 2

[§ 2] Limitations on Power.

(1) *In General.* The taxing power of a state, while basic to its sovereignty, is subject to a number of limitations. These limitations are discussed in detail in this chapter under the following topics:

- (a) The public purpose requirement (infra, §16 et seq.).
- (b) Substantive due process: territorial jurisdiction (infra, §31 et seq.; 7 *Summary* (10th), *Constitutional Law*, §636), retroactive tax (infra, §30), special assessment without benefits (infra, §25 et seq.).
- (c) Equal protection: unequal assessment and invalid discrimination (infra, §39 et seq.).
- (d) Immunity of federal Government's agencies (infra, §6 et seq.).
- (e) Immunity of imports and exports (infra, §55 et seq.).
- (f) Invalidity of unreasonable burden on interstate commerce (infra, §66 et seq.).
- (g) Invalidity of local tax infringing on fundamental rights of free speech, press, and religion (infra, §311).
- (h) Procedural due process in collection (infra, §20 et seq.).

Some of the jurisdictional (substantive due process) aspects of state power were summarized in *Miller Bros. Co. v. Maryland* (1954) 347 U.S. 340, 74 S.Ct. 535, 98 L.Ed. 744. A Maryland use tax against a Delaware seller was held void as extraterritorial without considering the effect of the Commerce Clause (infra, §82). The Court said that its decisions, although not always clear, reflect adherence to one time-honored concept: "that due process requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax." (74 S.Ct. 539, 98 L.Ed. 748.)

"Thus, the Court has frequently held that domicile or residence, more substantial than mere presence in transit or sojourn, is an adequate basis for taxation, including income, property, and death taxes. Since the Fourteenth Amendment makes one a citizen of the state wherein he resides, the fact of residence creates universally reciprocal duties of protection by the state and of allegiance and support by the citizen. The latter obviously includes a duty to pay

taxes, and their nature and measure is largely a political matter. Of course, the situs of property may tax it regardless of the citizenship, domicile or residence of the owner, the most obvious illustration being a tax on realty laid by the state in which the realty is located. Also, the keeping of tangible or intangible personalty within a state may give it a similar taxable situs there (sometimes called a business or commercial situs or domicile). Certain activities or transactions carried on within a state, such as the use and sale of property, may give jurisdiction to tax whosoever engages therein, and the use of highways may subject the use to certain types of taxation. These cases overlap with those in which incorporation by a state or permission to do business there forms the basis for proportionate taxation of a company, including its franchise, capital, income and property. Recent cases in which a taxable sale does not clearly take place within the taxing state, elements of the transaction occurring in different states, have presented peculiar difficulties, as have those where the party liable for a use tax does not use the product within the taxing state." (74 S.Ct. 539, 98 L.Ed. 748, 749.) (See 12 *Hastings L. J.* 23 [general discussion of constitutional limitations]; 71 *Am.Jur.2d* (2001 ed.), *State and Local Taxation* §57 et seq.)

(2) *Indian Tribes on Indian Land.* The sovereign immunity of Indian tribes limits the state taxing power with respect to transactions occurring on Indian land. (See *Oklahoma Tax Com. v. Citizen Band Potawatomi Indian Tribe of Oklahoma* (1991) 498 U.S. 505, 111 S.Ct. 905, 908, 112 L.Ed.2d 1112, 1118 [sovereign immunity of Indian tribes precludes state tax on sale to members of federally recognized tribe on land held in trust for tribe, but does not preclude tax on sale to nonmembers]; *Yakima v. Confederated Tribes & Bands of Yakima Indian Nation* (1992) 502 U.S. 251, 112 S.Ct. 683, 692, 116 L.Ed.2d 687, 702, 703 [Indian General Allotment Act permitted county to impose property tax on reservation lands patented in fee but not to impose excise tax on sale of property]; *Oklahoma Tax Com. v. Sac & Fox Nation* (1993) 508 U.S. 114, 113 S.Ct. 1985, 1991, 124 L.Ed.2d 30, 40 [in absence of express congressional authorization, state lacks jurisdiction to impose income and excise taxes within "Indian country," whether formal or informal reservation, allotted lands, or dependent Indian communities]; *Department of Taxation & Finance of New York v. Milhelm Attea & Bros.* (1994) 512 U.S. 61, 114 S.Ct. 2028, 2038, 129 L.Ed.2d 52, 66 [regulatory scheme that imposed recordkeeping requirements and quantity limitations on wholesalers of untaxed cigarettes sold to reservation Indians did not violate federal Indian Trader Statutes]; *Oklahoma Tax Com. v. Chickasaw Nation* (1995) 515 U.S. 450, 115 S.Ct. 2214, 2217, 132 L.Ed.2d 400, 406 [state could not impose motor fuels excise tax on fuel sold by tribal retail stores on tribal trust land; it could impose income tax on tribal members who were employed by tribe but who resided outside Indian country].)

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I. INTRODUCTION

C. Construction of Tax Statutes.

1. Early Position: Strict Construction Against Government.

9 *Witkin Sum. Cal. Law Tax* § 3

[§ 3] Early Position: Strict Construction Against Government.

In the earlier cases dealing with state property taxes, it was frequently declared that tax proceedings are "in invitum," and that the statutes are to be "strictly construed against the governmental authority." (See *Merced v. Helm & Nolan* (1894) 102 C. 159, 165, 36 P. 399; *Whitmore v. Brown* (1929) 207 C. 473, 482, 279 P. 447; *Los Angeles v. Jones* (1939) 13 C.2d 554, 561, 90 P.2d 802.)

This point of view is less prevalent today. "Revenue or taxation acts are not to be approached with a spirit of hostility and with a purpose of ignoring the intention of the Legislature. ... The interpretation of tax statutes must in all cases be reasonable." (*Estate of Rath* (1937) 10 C.2d 399, 406, 75 P.2d 509; see *Feather River Power Co. v. State Bd. of Equalization* (1929) 206 C. 486, 491, 274 P. 962 ["It is the policy of the law that all property within the state should bear its fair and equal burden of taxation and a liberal construction will be indulged to accomplish that end"]; *Chicago Bridge & Iron Co. v. Johnson* (1941) 19 C.2d 162, 169, 119 P.2d 945; *RCA Photophone v. Huffman* (1935) 5 C.A.2d 401, 405, 42 P.2d 1059; *Thompson v. Board of Supervisors of Fresno* (1936) 13 C.A.2d 134, 137, 56 P.2d 571.)

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C. Construction of Tax Statutes.

2. Exemptions Construed Against Taxpayer.

9 *Witkin Sum. Cal. Law Tax* § 4

[§ 4] Exemptions Construed Against Taxpayer.

Even where the earlier rule of strict construction of tax statutes is followed, tax exemptions are strictly construed against the taxpayer. (*Cypress Lawn Cemetery Assn. v. San Francisco* (1931) 211 C. 387, 390, 295 P. 813; see *Weber v. Santa Barbara* (1940) 15 C.2d 82, 88, 98 P.2d 492 [statute "releasing property from a particular form of tax should be strictly construed against the taxpayer"]; *Cedars of Lebanon Hosp. v. Los Angeles* (1950) 35 C.2d 729, 734, 221 P.2d 31, *infra*, §192 ["[I]t is immaterial that the institutions in question may contribute to the public welfare and serve the interests of the state, for they, like other private owners of property, have the burden of showing that they clearly come within the terms of the exemption."]; *Estate of Simpson* (1954) 43 C.2d 594, 597, 275 P.2d 467; *Laurel Hill Cemetery Assn. v. San Francisco* (1947) 81 C.A.2d 371, 376, 184 P.2d 160; *Memorial Hills Assn. v. Sequoia Inv. Corp.* (1958) 157 C.A.2d 119, 123, 320 P.2d 567; *Alpha Therapeutic Corp. v. Franchise Tax Bd.* (2000) 84 C.A.4th 1, 5, 100 C.R.2d 548 [rule of strict construction applied to Rev.C. 33, *infra*, §210]; 71 *Am.Jur.2d* (2001 ed.), *State and Local Taxation* §254 et seq.)

In *Atlantic Coast Line R. Co. v. Phillips* (1947) 332 U.S. 168, 67 S.Ct. 1584, 91 L.Ed. 1977, a statute chartered a railroad and gave it certain immunity from taxation. *Held*, this did not grant immunity from income tax, a type of taxation not in common use at the time the statute was enacted. "A legislature is not to be presumed to have relinquished its power of taxation beyond the narrowest rational reading of an exemption." (67 S.Ct. 1587, 91 L.Ed. 1981.)

Again, however, this view should not be carried to extremes. Where the language of a statute is clear, plain, and unambiguous, "there is no room for construction, strict or otherwise." (*Lockhart v. Wolden* (1941) 17 C.2d 628, 631, 111 P.2d 319; see *Cedars of Lebanon Hosp. v. Los Angeles*, *supra*, 35 C.2d 735 ["strict construction must still be a reasonable construction"]; *Church Divinity School of Pacific v. Alameda* (1957) 152 C.A.2d 496, 500, 314 P.2d 209; *Fellowship of Humanity v. Alameda* (1957) 153 C.A.2d 673, 680, 315 P.2d 394, *infra*, §186.)

Moreover, some exceptions to the strict construction rule have been recognized. Thus, the rule is not applicable where the property belongs to the state or a municipality, for taxation of public property is the exception rather than the rule. (*San Francisco v. San Mateo* (1941) 17 C.2d 814, 817, 112 P.2d 595.) Nor does the strict construction rule apply to social security and unemployment compensation acts. "Exemption provisions in statutes of the latter character will be liberally construed so as to effectuate their beneficent purpose to encourage and promote organizations seeking classification within the broad scope of the statutory language." (*Cedars of Lebanon Hosp. v. Los Angeles*, *supra*, 35

C.2d 734, 735.)

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I. INTRODUCTION

D. Types of Taxes.

9 Witkin Sum. Cal. Law Tax § 5

[§ 5] Types of Taxes.

(1) *Direct and Indirect.* Taxes have been classified as direct, including property taxes, poll taxes, and taxes on the income from real or personal property, and indirect, including duties, imposts, and excises (privilege taxes). (See *Pollock v. Farmers' Loan & Trust Co.* (1895) 158 U.S. 601, 15 S.Ct. 912, 39 L.Ed. 1108, *infra*, §106; *Charles C. Steward Machine Co. v. Davis* (1937) 301 U.S. 548, 57 S.Ct. 883, 81 L.Ed. 1279; *Fernandez v. Wiener* (1945) 326 U.S. 340, 66 S.Ct. 178, 90 L.Ed. 116; *Ingels v. Riley* (1936) 5 C.2d 154, 53 P.2d 939; *Brunton v. Superior Court* (1942) 20 C.2d 202, 207, 124 P.2d 831 [distinction between property tax and privilege tax]; *Glendale v. Trondsen* (1957) 48 C.2d 93, 103, 308 P.2d 1 [same]; *Edward Brown & Sons v. McColgan* (1942) 53 C.A.2d 504, 507, 128 P.2d 186 [same]; *Huntington Beach v. Superior Court* (1978) 78 C.A.3d 333, 340, 144 C.R. 236 [local documentary transfer tax is excise tax, not property tax]; 92 Harv. L. Rev. 1575 [progressive consumption tax as alternative to income tax]; 71 Am.Jur.2d (2001 ed.), *State and Local Taxation* §17 et seq.)

(2) *Distinction: Local or Special Assessment.* A local or special assessment, though a tax in the broad sense of the term, is distinguishable in that it is a charge on property to compel payment for a benefit to the particular property. (See *Spring Street Co. v. Los Angeles* (1915) 170 C. 24, 29, 148 P. 217; *Woodill & Hulse Elec. Co. v. Young* (1919) 180 C. 667, 670, 182 P. 422; *Anaheim Sugar Co. v. Orange* (1919) 181 C. 212, 216, 183 P. 809; *Wells v. Union Oil Co. of Calif.* (1938) 25 C.A.2d 165, 166, 76 P.2d 696; *Northwestern Mut. Life Ins. Co. v. State Bd. of Equalization* (1946) 73 C.A.2d 548, 552, 166 P.2d 917 [quoting Am.Jur.: "special or local assessments, sometimes called special taxes, are imposed upon property within a limited area for the payment of a local improvement supposed to enhance the value of all property within that area"]; cf. *Paso Robles War Memorial Hosp. Dist. v. Negley* (1946) 29 C.2d 203, 205, 173 P.2d 813 ["A levy imposed on all of the property in a district, both real and personal, according to its value and not upon the basis of special benefit, is a general tax and not a special assessment."].) (See *Solvang Mun. Imp. Dist. v. Board of Supervisors* (1980) 112 C.A.3d 545, 552, 169 C.R. 391, *infra*, §140 [nature of special assessments and distinction between special assessment and ad valorem tax]; 17 Stanf. L. Rev. 247 [difficulty of contesting special assessments]; 29 Stanf. L. Rev. 795 [use of special assessment in rapid transit financing]; 20 U.C.L.A. L. Rev. 201 [right of nonowners of property to protest]; 88 A.L.R.2d 1250 [exclusiveness of statutory method of enforcement]; 97 A.L.R.2d 1079 [what is abutting property]; 46 A.L.R.3d 127 [street widening as local improvement justifying special assessment of adjoining property]; 70C Am.Jur.2d (2000 ed.), *Special or Local Assessments* §1 et seq.; *infra*, §25 et seq.)

(3) *Distinction: License Fees.* Another important distinction is between property taxes, which are imposed for revenue purposes in proportion to value, and license fees, we are exacted for regulatory purposes without regard to

value, but are limited to an amount reasonably necessary to meet the cost of regulation. (See *Union Brokerage Co. v. Jensen* (1944) 322 U.S. 202, 64 S.Ct. 967, 88 L.Ed. 1227; *San Francisco v. Pacific Tel. & Tel. Co.* (1913) 166 C. 244, 251, 135 P. 971; *Watchtower Bible & Tract Soc. v. Los Angeles* (1947) 30 C.2d 426, 429, 182 P.2d 178; *infra*, §309 et seq.)

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E. Intergovernmental Taxation and Immunity.

1. Theory and Scope of Immunity.

a. Federal Immunity.

9 *Witkin Sum. Cal. Law Tax* § 6

[§ 6] Federal Immunity.

M'Culloch v. Maryland (1819) 17 U.S. 316, 4 L.Ed. 579, 609, voided a Maryland statute taxing operations of a federal bank. The Court declared that "the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government."

Although this decision could have rested on the narrow ground that a state cannot discriminate against a federal instrumentality by a tax different from that laid on local activities (see *Helvering v. Gerhardt* (1938) 304 U.S. 405, 58 S.Ct. 969, 82 L.Ed. 1427), instead the broad rule was established, and is still followed, that invalidates any state tax on the activities, institutions, or possessions of the federal Government. (See *Mayo v. United States* (1943) 319 U.S. 441, 63 S.Ct. 1137, 1140, 87 L.Ed. 1504, 1508 [federal agency distributing fertilizer under Soil Conservation Act was immune from state inspection fee]; *United States v. Allegheny, Pa.* (1944) 322 U.S. 174, 64 S.Ct. 908, 916, 88 L.Ed. 1209, 1220 [value of government-owned machinery in contractor's war plant could not be included in assessment of state property tax]; *Kern-Limerick v. Scurlock* (1954) 347 U.S. 110, 74 S.Ct. 403, 411, 98 L.Ed. 546, 556 [state sales tax cannot be imposed on government purchase even though made through private purchasing agent; distinguishing *Alabama v. King & Boozer* (1941) 314 U.S. 1, 62 S.Ct. 43, 86 L.Ed.3, infra, §12, as involving an independent contractor]; *United States v. Tax Com. of Mississippi* (1975) 421 U.S. 599, 95 S.Ct. 1872, 44 L.Ed.2d 404 [Mississippi tax on liquor supplied to military installations, in essence sales tax on buyer, was invalid tax on instrumentalities of United States]; *TRW Space & Defense Sector v. Los Angeles* (1996) 50 C.A.4th 1703, 1710, 58 C.R.2d 602, infra, §181 [property tax constitutionally imposed on federal contractor's "overhead" property]; *Coso Energy Developers v. Inyo* (2004) 122 C.A.4th 1512, 1519, 19 C.R.3d 669 [statute did not effect transfer of exclusive jurisdiction over property from state to federal Government, and thus geothermal energy projects could be taxed by state]; 71 *Am.Jur.2d* (2001 ed.), *State and Local Taxation* §158 et seq.; 2 Rotunda and Nowak, *Treatise on Constitutional Law* 3d, §13.9; 1 Ehrman 3d, §5:2.) (On taxes discriminating against federal Government, see *Phillips Chemical Co. v. Dumas Independent School Dist.* (1960) 361 U.S. 376, 80 S.Ct. 474, 4 L.Ed.2d 384; *Moses Lake Homes v. Grant* (1961) 365 U.S. 744, 81 S.Ct. 870, 6 L.Ed.2d 66; infra, §14.)

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1. Theory and Scope of Immunity.

b. State Immunity.

9 *Witkin Sum. Cal. Law Tax* § 7

[§ 7] State Immunity.

The same basic theory of freedom from interference with sovereign authority (see *supra*, §6) is applied to the state, protecting its governmental activities from federal taxation. However, an important difference exists. Because the federal Government possesses only delegated powers, all of its constitutional activities are governmental and immune, but a state may engage in proprietary as well as governmental activities, and its proprietary enterprises are subject to federal taxes. (*Ohio v. Helvering* (1934) 292 U.S. 360, 54 S.Ct. 725, 78 L.Ed. 1307 [liquor business]; *Helvering v. Powers* (1934) 293 U.S. 214, 55 S.Ct. 171, 173, 79 L.Ed. 291, 295 [street railway business]; *New York v. United States* (1946) 326 U.S. 572, 66 S.Ct. 310, 90 L.Ed. 326 [state was subject to federal tax on mineral waters sold by state]; see 23 *Santa Clara L. Rev.* 867 [constitutionality of federal limits on state natural resource severance taxes].)

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1. Theory and Scope of Immunity.

c. Express Waiver of Immunity.

9 *Witkin Sum. Cal. Law Tax* § 8

[§ 8] Express Waiver of Immunity.

The immunity may be waived by express governmental consent to the tax. (*Baltimore Nat. Bank v. Tax Com. of Maryland* (1936) 297 U.S. 209, 56 S.Ct. 417, 420, 80 L.Ed. 586, 591 [state could tax national bank shares held by Reconstruction Finance Corporation (R.F.C.), where Congress had consented]; see *United States v. Bekins* (1938) 304 U.S. 27, 58 S.Ct. 811, 82 L.Ed. 1137; *C.R. Fedrick v. State Bd. of Equalization* (1974) 38 C.A.3d 385, 390, 120 C.R. 434 [federal statute that cedes to states power to levy and collect sales and use taxes in federal enclaves].) (On Congressional consent to taxation of national banks, see *infra*, §337.)

Although Congress expressly consented to local taxation of the large land holdings of the R.F.C., where R.F.C. land was declared surplus and transferred to the War Assets Administration (later the General Services Administration), it became ordinary land owned by an instrumentality of the United States, immune from taxation. (*Rohr Aircraft Corp. v. San Diego* (1960) 362 U.S. 628, 80 S.Ct. 1050, 1053, 4 L.Ed.2d 1002, 1106 [reversing 51 C.2d 759; California court thought taxation was still proper because, although War Assets Administration had possession and other incidents of beneficial ownership, no deed had passed from R.F.C.])

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1. Theory and Scope of Immunity.

d. Express Grant of Immunity.

9 *Witkin Sum. Cal. Law Tax* § 9

[§ 9] Express Grant of Immunity.

It has also been recognized that Congress has the power to grant express immunity to federal agencies. (See *Graves v. New York* (1939) 306 U.S. 466, 59 S.Ct. 595, 83 L.Ed. 927; *Pittman v. Home Owners' Loan Corp. of Washington, D.C.* (1939) 308 U.S. 21, 60 S.Ct. 15, 84 L.Ed. 11; *Federal Land Bank of St. Paul v. Bismarck Lumber Co.* (1941) 314 U.S. 95, 62 S.Ct. 1, 86 L.Ed. 65; *Oklahoma Tax Com. v. Texas Co.* (1949) 336 U.S. 342, 69 S.Ct. 561, 574, 93 L.Ed. 721, 735; *Carson v. Roane-Anderson Co.* (1952) 342 U.S. 232, 72 S.Ct. 257, 96 L.Ed. 257; *Dameron v. Brodhead* (1953) 345 U.S. 322, 73 S.Ct. 721, 97 L.Ed. 1041 [statute protecting servicemen from multiple taxation when domicile is changed by military assignments]; cf. *Woodland Production Credit Assn. v. Franchise Tax Bd.* (1964) 225 C.A.2d 293, 296, 37 C.R. 231 [farm credit association; immunity was lost when federally held stock was retired and association became farmer-owned].)

In *Rockford Life Ins. Co. v. Illinois Dept. of Revenue* (1987) 482 U.S. 182, 107 S.Ct. 2312, 96 L.Ed.2d 152, the Court held that "Ginnie Maes" (mortgage-backed securities guaranteed by the federal National Mortgage Association) were not exempt from state taxation either under the federal immunity statute or the doctrine of intergovernmental immunity. The opinion points out that the immunity statute was principally a restatement of the constitutional rule (107 S.Ct. 2315, 96 L.Ed.2d 159), and that the Ginnie Maes were neither direct nor certain obligations of the United States; i.e., the United States was only the guarantor, not the obligor. (107 S.Ct. 2316, 96 L.Ed.2d 159.)

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2. Indirect Burdens.

a. Former Rule of Immunity.

9 *Witkin Sum. Cal. Law Tax* § 10

[§ 10] Former Rule of Immunity.

Originally, the immunity, state or federal, was upheld not only in situations where the tax was laid directly on governmental property or activities, but also where the tax, actually on individuals or private activities, constituted an indirect burden on the government. Thus, the salaries of federal or state officers and employees were exempt from income taxes. (*Collector v. Day* (1870) 78 U.S. 113, 20 L.Ed. 122; *New York v. Graves* (1937) 299 U.S. 401, 57 S.Ct. 269, 81 L.Ed. 306; *Brush v. Commissioner of Internal Revenue* (1937) 300 U.S. 352, 57 S.Ct. 495, 81 L.Ed. 691; cf. *James v. Dravo Contracting Co.* (1937) 302 U.S. 134, 58 S.Ct. 208, 82 L.Ed. 155 [independent contractor doing work for United States was subject to tax].) Likewise, royalties received from federal patents were immune from state taxes. (*Long v. Rockwood* (1928) 277 U.S. 142, 48 S.Ct. 463, 72 L.Ed. 824.) And income from the sale of oil and gas produced under a lease of state school lands was immune from federal taxes. (*Burnet v. Coronado Oil & Gas Co.* (1932) 285 U.S. 393, 52 S.Ct. 443, 76 L.Ed. 815.)

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2. Indirect Burdens.

b. Rejection of Indirect Burden Theory.

1. In General.

9 Witkin Sum. Cal. Law Tax § 11

[§ 11] In General.

The indirect burden theory (see *supra*, §10) is no longer followed, and the taxing power in those cases has been sustained. (See *Fox Film Corp. v. Doyal* (1932) 286 U.S. 123, 52 S.Ct. 546, 76 L.Ed. 1010 [state tax on income from federal copyrights; overruling *Long v. Rockwood* (1928) 277 U.S. 142, 48 S.Ct. 463, 72 L.Ed. 824, *supra*, §10]; see *Helvering v. Mountain Producers Corp.* (1938) 303 U.S. 376, 58 S.Ct. 623, 82 L.Ed. 907 [federal income tax on proceeds from sale of oil under lease of state school lands; overruling *Burnet v. Coronado Oil & Gas Co.* (1932) 285 U.S. 393, 52 S.Ct. 443, 76 L.Ed. 815, *supra*, §10]; *Helvering v. Gerhardt* (1938) 304 U.S. 405, 58 S.Ct. 969, 82 L.Ed. 1427 [federal tax on state employee's salary]; *Graves v. New York* (1939) 306 U.S. 466, 59 S.Ct. 595, 83 L.Ed. 927 [state tax on federal employee's salary; overruling *Collector v. Day* (1870) 78 U.S. 113, 20 L.Ed. 122, *supra*, §10, and *New York v. Graves* (1937) 299 U.S. 401, 57 S.Ct. 269, 81 L.Ed. 306; *supra*, §10]; *Massachusetts v. United States* (1978) 435 U.S. 444, 98 S.Ct. 1153, 1161, 55 L.Ed.2d 403, 416 [federal annual registration tax on all civil aircraft that fly in navigable airspace of United States was validly applied to state-owned aircraft used exclusively for police functions]; *Jefferson, Alabama v. Acker* (1999) 527 U.S. 423, 119 S.Ct. 2069, 2077, 144 L.Ed.2d 408, 423 [upholding county's license tax on federal judges' compensation]; *Oakland Raiders v. Berkeley* (1976) 65 C.A.3d 623, 626, 137 C.R. 648, citing the text [municipal license tax on professional sports events including those presented by lessees of public property].)

The modern approach was explained in *Helvering v. Gerhardt*, *supra*, and *Graves v. New York*, *supra*, where the court set forth two limiting principles: (a) Immunity is confined to activities essential to the preservation of the government, i.e., strictly governmental; and (b) the tax is valid where the burden is speculative and immunity would afford no substantial protection. Hence, the possible competitive advantage that the government might have over private industry in obtaining employees at lower pay was deemed too uncertain to warrant the exemption of the salary from taxation.

In *S.R.A. v. Minnesota* (1946) 327 U.S. 558, 66 S.Ct. 749, 90 L.Ed. 851, petitioner entered into an executory contract to purchase land from the federal Government. Before payment of the full price, and while title was still retained by the Government as security, a state property tax was imposed on petitioner as the beneficial owner. *Held*, the tax was valid. "There is a suggestion that to hold United States property subject to state taxation pending the

completion of payment will injuriously affect its salability and therefore interfere with the Government's handling of its affairs. Our recent cases have disposed of this economic argument in a way which is contrary to petitioner's contention." (66 S.Ct. 756, 90 L.Ed. 860.)

In *Oklahoma Tax Com. v. Texas Co.* (1949) 336 U.S. 342, 69 S.Ct. 561, 93 L.Ed. 721, land held by the United States in trust for Indians was leased for oil production, and a state gross production (excise) tax was imposed on the lessees. The tax was upheld on the authority of *Helvering v. Mountain Producers Corp.*, *supra*, the court declaring that the foundation of that case "was a repudiation of those insubstantial bases for securing broad private tax exemptions, unjustified by actual interfering or destructive effects upon the performance of obligations to or work for the government, state or national." (69 S.Ct. 573, 93 L.Ed. 738.) (See *Wilson v. Cook* (1946) 327 U.S. 474, 66 S.Ct. 663, 668, 90 L.Ed. 793, 799 [state tax on severance of timber from federal land under contract with federal Government]; *Esso Standard Oil v. Evans* (1953) 345 U.S. 495, 73 S.Ct. 800, 97 L.Ed. 1174; *Kaiser Co. v. Reid* (1947) 30 C.2d 610, 629, 184 P.2d 879; *Timm Aircraft Corp. v. Byram* (1950) 34 C.2d 632, 636, 213 P.2d 715; *General Dynamics Corp. v. Los Angeles* (1958) 51 C.2d 59, 63, 330 P.2d 794; *National Distillers Products Corp. v. Board of Equalization* (1947) 83 C.A.2d 35, 37, 187 P.2d 821 [state excise tax on seller of distilled spirits to federal Government].)

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SUPPLEMENT: [This section is current through the latest supplement]



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2. Indirect Burdens.

b. Rejection of Indirect Burden Theory.

2. Government Contractors.

9 *Witkin Sum. Cal. Law Tax* § 12

[§ 12] Government Contractors.

In *Alabama v. King & Boozer* (1941) 314 U.S. 1, 62 S.Ct. 43, 86 L.Ed. 3, a contractor on a cost-plus fixed fee contract for federal Government construction bought materials, title to which vested in the government on delivery. *Held*, a state sales tax could apply, for the legal incidence of the tax was on the buyer, and the fact that the tax enters into the cost to the government is no longer a basis for immunity. (See *Kern-Limerick v. Scurlock* (1954) 347 U.S. 110, 74 S.Ct. 403, 98 L.Ed. 546 [distinguishing *Alabama v. King & Boozer*; state sales tax was not applicable to government purchase made through private purchasing agent].)

In *United States v. New Mexico* (1982) 455 U.S. 720, 102 S.Ct. 1373, 71 L.Ed.2d 580, the Court reviewed the cases dealing with the "recurring problem" of the extent to which a state may impose taxes on contractors that conduct business with the federal Government, and came to this conclusion: "[T]ax immunity is appropriate in only one circumstance: when the levy falls on the United States itself, or on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned." (102 S.Ct. 1376, 1383, 71 L.Ed.2d 584, 592.)

In *United States v. California* (1993) 507 U.S. 746, 113 S.Ct. 1784, 123 L.Ed.2d 528, the federal Government, under a fixed fee plus cost contract, advanced a private contractor money to pay state sales and use taxes. The government failed to intervene in the contractor's refund action in state court, alleging in a federal action for declaratory relief that it had a federal common-law cause of action for money had and received. *Held*, the government was merely subrogated to the contractor's claim; shouldering the entire burden of the tax through indemnification "does not give the Federal Government a federal common-law cause of action for money had and received to challenge a state tax on state-law grounds simply because it is the Government." (113 S.Ct. 1792, 123 L.Ed.2d 542, citing *United States v. New Mexico*.) (See *Washington v. United States* (1983) 460 U.S. 536, 103 S.Ct. 1344, 1347, 75 L.Ed.2d 264, 272 [sales tax was validly applied to government contractors]; *Arizona Dept. of Revenue v. Blaze Const. Co.* (1999) 526 U.S. 32, 119 S.Ct. 957, 960, 143 L.Ed.2d 27, 32 [transaction privilege tax on proceeds of private contractor's highway improvement contracts with federal Government was valid, even though contracts were performed on Indian reservation; citing *United States v. New Mexico*]; *ITT Gilfillan v. Los Angeles* (1977) 72 C.A.3d 421, 436, 140 C.R. 193 [municipal business license tax measured by gross receipts was validly applied to receipts from government contracts].)

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c. Privilege or Use Tax.

9 *Witkin Sum. Cal. Law Tax* § 13

[§ 13] Privilege or Use Tax.

Under the direct burden test (*supra*, §11), an ordinary undisguised ad valorem property tax on property of the federal Government is invalid. (See *United States v. Allegheny, Pa.* (1944) 322 U.S. 174, 64 S.Ct. 908, 915, 88 L.Ed. 1209, 1218.) However, later cases indicate that where federal property is leased or otherwise privately used, by characterizing the tax as a privilege or use tax to avoid the appearance of such a direct burden, the practical effect of a property tax may be achieved.

In *United States v. Detroit* (1958) 355 U.S. 466, 78 S.Ct. 474, 2 L.Ed.2d 424, a Michigan statute imposed a privilege tax on private lessees and users of tax-exempt property in business; thus, the tax did not directly fall on federal property. But the *measure* of the tax was the *value of the property*, not the value of the leasehold or use; hence the state received the same amount that it would have obtained from an invalid tax on the property itself. *Held*, nevertheless, the statute was valid. "Other things being the same, it seems obvious enough that use of exempt property is worth as much as use of comparable taxed property during the same interval. In our judgment it was not an impermissible subterfuge but a permissible exercise of its taxing power for Michigan to compute its tax by the value of the property used." (78 S.Ct. 476, 2 L.Ed.2d 427.) (See *United States v. Muskegon* (1958) 355 U.S. 484, 78 S.Ct. 483, 2 L.Ed.2d 436 [similar issue; *United States v. Detroit* followed]; *California State Bd. of Equalization v. Sierra Summit* (1989) 490 U.S. 844, 109 S.Ct. 2228, 2232, 104 L.Ed.2d 910, 917 [intergovernmental tax immunity doctrine does not prohibit California from imposing use tax on goods purchased at bankruptcy liquidation sale].)

In *Detroit v. Murray Corp. of America* (1958) 355 U.S. 489, 78 S.Ct. 458, 2 L.Ed.2d 441, materials owned by the federal Government, but used by a contractor, were held subject to a "personal property tax." The Court supplied its own characterization, disregarding the statutory label, to uphold the tax as equivalent to the use or privilege tax sustained in the other two cases: "We see no essential difference so far as constitutional tax immunity is concerned between taxing a person for using property he possesses and taxing him for possessing property he uses when in both instances he uses the property for his own private ends." (78 S.Ct. 460, 461, 2 L.Ed.2d 445.) (See 72 *Harv. L. Rev.* 157 [critical analysis of *United States v. Detroit*, *United States v. Muskegon*, and *Detroit v. Murray Corp.*].)

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d. Exception: Discriminatory Tax Is Invalid.

9 *Witkin Sum. Cal. Law Tax* § 14

[§ 14] Exception: Discriminatory Tax Is Invalid.

The power of a state to reach leased federal land by a tax on the leasehold using the value of the land as the measure (see *supra*, §13) is subject to an obvious limitation: The tax must not be discriminatory.

In *Phillips Chemical Co. v. Dumas Independent School Dist.* (1960) 361 U.S. 376, 80 S.Ct. 474, 4 L.Ed.2d 384, plaintiff leased valuable Texas land from the federal Government for 15 years, subject to cancellation on 30 or 90 days' notice. A school district levied an ad valorem tax measured by the value of the land. However, under Texas law, property leased from the *state* was less severely taxed, and if a lease was for less than 3 years or was terminable on notice, it was not taxed at all. *Held*, the tax was an unconstitutional discrimination against lessees of the federal Government. "[W]e have made it clear, in the equal protection cases, that our decisions in that field are not necessarily controlling where problems of intergovernmental tax immunity are involved." When dealing with domestic concerns, the state's power to classify is extremely broad. "But where taxation of the private use of the Government's property is concerned, the Government's interest must be weighed in the balance. Accordingly, it does not seem too much to require that the State treat those who deal with the Government as well as it treats those with whom it deals itself." (80 S.Ct. 480, 4 L.Ed.2d 390.) (See *Moses Lake Homes v. Grant* (1961) 365 U.S. 744, 81 S.Ct. 870, 874, 6 L.Ed.2d 66, 71 [federal lessee was taxed on basis of full value of buildings and improvements, other property was assessed at 50% of value; tax was unconstitutional, under *Phillips Chemical Co.*]; *Davis v. Michigan Dept. of Treasury* (1989) 489 U.S. 803, 109 S.Ct. 1500, 1507, 103 L.Ed.2d 891, 904 [statute that excludes retirement benefits of state but not federal employees from taxation violates principles of intergovernmental tax immunity].)

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3. Income From Government Obligations.

9 *Witkin Sum. Cal. Law Tax* § 15

[§ 15] Income From Government Obligations.

(1) *Obligations of Federal Government.* To protect the borrowing power of the United States from state encroachment, the obligations of the federal Government have been held immune from state taxation, both under the Constitution and express federal statutes. "The rule has been carried forward to embrace indirect taxation of such obligations through their inclusion in a tax imposed on all the property of a taxpayer. It is quite immaterial that the state tax does not discriminate against the federal obligation." (*Society for Savings in Cleveland v. Bowers* (1955) 349 U.S. 143, 75 S.Ct. 607, 608, 99 L.Ed. 950, 955, 956.)

This principle gave rise to a peculiar problem where the state levied a franchise tax on corporations, based on net income, including income received from federal, state, and municipal bonds. With respect to the federal bonds, the contention was that this was an unconstitutional interference with the functions of the federal Government, and with respect to the state and municipal bonds, which had been issued "free and exempt from taxation," the objection was that the tax impaired the obligation of the contract.

However, a franchise tax, or tax on the privilege of doing business in the state, may be measured by the entire net income, even though part of the income is exempt from any property or income tax. (*Flint v. Stone Tracy Co.* (1911) 220 U.S. 107, 31 S.Ct. 342, 55 L.Ed. 389; *Educational Films Corp. of America v. Ward* (1931) 282 U.S. 379, 51 S.Ct. 170, 75 L.Ed. 400.) *Macallen Co. v. Massachusetts* (1929) 279 U.S. 620, 49 S.Ct. 432, 73 L.Ed. 874, held that a reversal of legislative policy, thereby showing a definite intention to reach such tax-exempt income, was sufficient to invalidate the tax. But this theory was soon disapproved, and the propriety of inquiring into intent, where such a tax was instituted by legislative change, was denied. (*Pacific Co. v. Johnson* (1932) 285 U.S. 480, 52 S.Ct. 424, 76 L.Ed. 893; *Tradesmens Nat. Bank of Oklahoma v. Oklahoma Tax Com.* (1940) 309 U.S. 560, 60 S.Ct. 688, 84 L.Ed. 947.)

These cases were distinguished in see *New Jersey Realty Title Ins. Co. v. Division of Tax Appeals in Sept. of Taxation and Finance of New Jersey* (1950) 338 U.S. 665, 70 S.Ct. 413, 94 L.Ed. 439. A tax was levied against intangible personal property of a corporation. Tax exempt bonds were excluded with the exception that a minimum assessed valuation of 15% of net worth was made. This minimum tax was imposed, and the court held that regardless of the accounting label, in practical effect and operation it was in part an invalid tax on federal bonds. (70 S.Ct. 418, 94 L.Ed. 444; see *Society for Savings v. Bowers*, supra; *Werner Machine Co. v. Director of Div. of Taxation, Dept of Treasury, New Jersey* (1956) 350 U.S. 492, 76 S.Ct. 534, 100 L.Ed. 634 [following *Tradesmens Nat. Bank* and *Pacific*

Co.].)

In *Brown v. Franchise Tax Bd.* (1987) 197 C.A.3d 300, 242 C.R. 810, California sought to tax income originating in federal securities and paid to shareholders in registered investment companies. *Held*, the tax violated the immunity of federal obligations.

(a) Congress has expressly recognized the role of investment companies as conduits for investment in federal securities and has expressed the goal of preserving the market value and investment attractiveness of federal securities. (197 C.A.3d 305.)

(b) The proceeds of federal securities are immune whether directly or indirectly taken into account in computing the tax. Here, "the distributions Companies pay to their investors must be considered as so closely identified with their source that the computation of the tax involves indirect consideration of federal obligations." (197 C.A.3d 305.)

A federal statute, 31 U.S.C., §3124(a), exempts stocks and obligations of the United States Government from state taxation. However, §3124 does not exempt from state taxation income derived from repurchase agreements involving federal securities. (*Nebraska Dept. of Revenue v. Loewenstein* (1994) 513 U.S. 123, 115 S.Ct. 557, 563, 130 L.Ed.2d 470, 479; *Bewley v. Franchise Tax Bd.* (1995) 9 C.4th 526, 532, 533, 37 C.R.2d 298, 886 P.2d 1292 [following *Loewenstein*]; see 23 *Pepperdine L. Rev.* 328 [Bewley].)

(2) *Obligations of State and Local Governments.* In 1982, the Tax Equity and Fiscal Responsibility Act (TEFRA) removed the federal income tax exemption for interest earned on publicly offered long-term bonds issued by state and local governments unless those bonds are issued in registered form. The legislation was designed to cut down tax evasion resulting from issuance of unregistered (bearer) bonds that "left no paper trail." In *South Carolina v. Baker* (1988) 485 U.S. 505, 108 S.Ct. 1355, 99 L.Ed.2d 592, the constitutionality of the revised statute was upheld against the contention, based on *Pollock v. Farmers' Loan & Trust Co* (1895) 158 U.S. 601, 15 S.Ct. 912, 39 L. Ed. 1108, *infra*, §106, that interest earned on a state bond was immune from federal taxation.

(a) "The rationale underlying *Pollock* and the general immunity for government contract income has been thoroughly repudiated by the modern intergovernmental immunity case law. ... *King & Boozer* thus completely foreclosed any claim that the nondiscriminatory imposition of costs on private entities that pass them on to States or the Federal Government unconstitutionally burdens state or federal functions." (108 S.Ct. 1365, 99 L.Ed.2d 607, 608.)

(b) "That this Court has yet to overrule *Pollock* explicitly, however, is explained not by any distinction between the income derived from government bonds and the income derived from other government contracts, but by the historical fact that Congress has always exempted state bond interest from taxation by statute, beginning with the very first federal income tax statute." (108 S.Ct. 1366, 99 L.Ed.2d 609, 610.) "In sum, then, under current intergovernmental tax immunity doctrine the States can never tax the United States directly but can tax any private parties with whom it does business, even though the financial burden falls on the United States, as long as the tax does not discriminate against the United States or those with whom it deals. ... We thus confirm that subsequent case law has overruled the holding in *Pollock*." (108 S.Ct. 1366, 1367, 99 L.Ed.2d 610, 611.) (See 102 *Harv. L. Rev.* 222 [Baker].)

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(2) *Obligations of State and Local Governments.* See *Poway Royal Mobilehome Owners Assn. v. Poway* (2007) 149 C.A.4th 1460, 1480, 58 C.R.3d 153 [TEFRA hearing to determine whether private activity bonds qualified for tax-exempt status was inadequate; city did not adequately inform public of nature of plan to issue bonds]. *Correction:* Page 38, 10th line from bottom, "*New Jersey Realty Title Ins. Co. v. Division of Tax Appeals in Sept. of Taxation and Finance of New Jersey*" should be "*New Jersey Realty Title Ins. Co. v. Division of Tax Appeals in Dept. of Taxation and Finance of New Jersey*".



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II. PUBLIC PURPOSE IN STATE TAXATION
A. In General.

9 Witkin Sum. Cal. Law Tax § 16

[§ 16] In General.

The state taxing power can be exercised only for a public purpose. To tax for a private purpose is considered a violation of due process. (See *The Citizens' Saving & Loan Assn. of Cleveland, Ohio v. Topeka* (1874) 87 U.S. 655, 22 L.Ed. 455; *Green v. Frazier* (1920) 253 U.S. 233, 40 S.Ct. 499, 64 L.Ed. 878; *Los Angeles v. Lewis* (1917) 175 C. 777, 779, 167 P. 390; 71 Am.Jur.2d (2001 ed.), *State and Local Taxation* §36 et seq.)

The issue of public purpose is usually presented by an attack on the expenditure of funds previously collected by taxation; i.e., the levy itself may be a familiar type of property or income tax, and the only objection is to the use of tax money for a nonpublic purpose. (See Cal. Const., Art. XVI, §6, infra, §17 [preventing gifts of public money].) Sometimes, however, the money to be collected by a special tax is earmarked for particular purposes, and the tax itself is attacked in an action to enjoin its collection. (See *Carmichael v. Southern Coal & Coke Co.* (1937) 301 U.S. 495, 57 S.Ct. 868, 81 L.Ed. 1245; *United States v. Butler* (1936) 297 U.S. 1, 56 S.Ct. 312, 80 L.Ed. 477, infra, §108 [federal tax].)

However, a wide range of permissible purposes is recognized, and the legislative determination will rarely be overturned. (*Carmichael v. Southern Coal & Coke Co.*, *supra*.) Thus, the state may enter into the field of an ordinary proprietary business where it deems it in the public interest. (See *Jones v. Portland* (1917) 245 U.S. 217, 38 S.Ct. 112, 62 L.Ed. 252 [upholding statute authorizing city to establish municipal wood and coal business to sell fuel at cost]; *Green v. Frazier*, *supra* [upholding North Dakota statutes providing for organization of state bank, state grain elevators, etc.]; 11 U.C. Davis L. Rev. 599 [public purpose doctrine and University of California farm mechanization research]; 67 A.L.R.3d 1186 [borrowing or expenditure for acquisition, maintenance, or improvement of stadium for use of professional athletic team].)

Where there is a public interest involved, a tax or expenditure of funds for the benefit of private individuals in a particular class is valid. Thus, a state unemployment compensation act, providing for a payroll tax on employers and employees, the money to be kept in a fund and eventually paid out as benefits to unemployed workers, was upheld in *Carmichael v. Southern Coal & Coke Co.*, *supra*. The Court pointed out that the relief of poverty has long been recognized as a public purpose, and held it proper to extend relief to unemployed persons, even though they were not indigent, on the ground that poverty is not the only evil consequence of unemployment. (See *Everson v. Board of Education of Ewing* (1947) 330 U.S. 1, 67 S.Ct. 504, 507, 91 L.Ed. 711, 719, 7 Summary (10th), *Constitutional Law*, §539 [upholding state statute authorizing local school districts to expend tax-raised funds to reimburse parents for

payment of bus fares of their children to and from schools, including parochial schools]; *Gillum v. Johnson* (1936) 7 C.2d 744, 758, 62 P.2d 1037, 63 P.2d 810 [upholding California Unemployment Reserves Act].)

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B. California Constitution: Gift of Public Money.
1. Invalid Expenditures.

9 *Witkin Sum. Cal. Law Tax* § 17

[§ 17] Invalid Expenditures.

Cal. Const., Art. XVI, §6 prohibits the state and its subdivisions from lending their credit or making gifts of public money or property to an individual or corporation (except to certain types of charitable institutions). Numerous decisions have condemned legislative expenditures as violative of the constitutional prohibition, including the following:

Conlin v. Board of Supervisors of San Francisco (1893) 99 C. 17, 22, 33 P. 753 [appropriation to contractor for work done, where no legal obligation to pay].

Estate of Stanford (1899) 126 C. 112, 118, 58 P. 462 [retroactive amendment releasing liability for inheritance tax].

Lamb v. Board of County Peace Officers Retirement Commission of Los Angeles (1938) 29 C.A.2d 348, 350, 84 P.2d 183 [retroactive application of disability pension act to give pension to person injured prior to its passage].

Allen v. Hussey (1950) 101 C.A.2d 457, 473, 225 P.2d 674 [long-term lease of airport for \$ 1 per year].

Doctors General Hosp. of San Jose v. Santa Clara (1957) 150 C.A.2d 53, 55, 309 P.2d 501 [retroactive amendment giving welfare exemption to property formerly not within exemption].

Los Angeles v. Hollinger (1963) 221 C.A.2d 154, 159, 34 C.R. 387, 7 *Summary* (10th), *Constitutional Law*, §555 [public funds for Christmas spectacle].

Estate of Cooke (1976) 57 C.A.3d 595, 602, 129 C.R. 354 [retroactive application of disclaimer statute to reduce inheritance tax].

Orange County Foundation v. Irvine Co. (1983) 139 C.A.3d 195, 200, 188 C.R. 552 [money paid to compromise invalid real property title claim known to be baseless; promise to compromise unfounded claim is not valuable consideration].

Westly v. U.S. Bancorp. (2003) 114 C.A.4th 577, 582, 7 C.R.3d 838 [retroactive forgiveness of interest charges on holders of escheated property; see 13 *Summary* (10th), *Personal Property*, §42].

In *Golden Gate Bridge & Highway Dist. v. Luehring* (1970) 4 C.A.3d 204, 84 C.R. 291, the Legislature authorized the Golden Gate Bridge and Highway District to pay surplus revenues to the governments of the counties within the district. *Held*, this was an invalid gift of public money.

(a) The public purpose exception (*infra*, §18) applies only where the donee entity obtains the money for the particular public purpose of the donor entity. Here, there was no showing that the money would be used for the district's purpose of facilitating public transportation across the *Golden Gate*. (4 C.A.3d 210.)

(b) This was not a refund of money contributed by county taxpayers for financing the district's preliminary expenses; the payments were to go to county governments, not to taxpayers. (4 C.A.3d 212.)

(c) Essentially, the proposal was to take money from one group of citizens--the tollpayers--and improperly apply it to the benefit of another group--the county taxpayers. (4 C.A.3d 214.)

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See *San Diego County Dept. of Social Services v. Superior Court* (2005) 134 C.A.4th 761, 765, 36 C.R.3d 294 [juvenile court made prohibited gift of public funds when it ordered use of county funds to hire independent counsel who would investigate possibility of filing civil action on behalf of dependent child].



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B. California Constitution: Gift of Public Money.
2. Public Purpose Exception.

9 *Witkin Sum. Cal. Law Tax* § 18

[§ 18] Public Purpose Exception.

Most of the decisions uphold the "gift" on the ground that it was a proper appropriation or expenditure of public funds. The following are examples:

Allied Architects' Assn. of Los Angeles v. Payne (1923) 192 C. 431, 434, 221 P. 209 [erection of a memorial to soldiers, for the purpose of promoting patriotism].

Veterans' Welfare Bd. v. Riley (1922) 188 C. 607, 610, 206 P. 631; *Veterans' Welfare Bd. v. Riley* (1922) 189 C. 159, 208 P. 678 [educational aid to war veterans].

Macmillan Co. v. Clarke (1920) 184 C. 491, 499, 194 P. 1030 [free textbooks for high schools].

Pasadena City High School Dist. of Los Angeles v. Upjohn (1929) 206 C. 775, 780, 276 P. 341 [free transportation for high school pupils living in outlying parts of school district].

Patrick v. Riley (1930) 209 C. 350, 356, 287 P. 455 [compensation to owners of diseased cattle destroyed by public authorities under police power].

San Diego v. Hammond (1936) 6 C.2d 709, 721, 59 P.2d 478 [refunding bond statutes, under which counties are authorized to give certain measure of financial aid to assessment districts with heavy delinquencies].

Alameda v. Janssen (1940) 16 C.2d 276, 281, 106 P.2d 11 [release of liens held against property of indigent recipients of aid under Old Age Security Act].

California Emp. Stabilization Com. v. Payne (1947) 31 C.2d 210, 216, 187 P.2d 702 [amendment establishing, retroactively, 3-year statute of limitations on state's action against employer to compel payment of unemployment contributions was upheld; Unemployment Insurance Act is part of broad social program for relief of unemployment, and if employers were suddenly compelled to pay large assessments and penalties based on many years of innocent delinquencies, bankruptcies might follow, with resulting unemployment, thus defeating primary object of statute].

Gregory v. California (1948) 32 C.2d 700, 703, 197 P.2d 728 [payment of interest from statute's effective date on

unrefunded amounts overpaid by taxpayers before effective date; state received benefit in return--use of taxpayers' money].

Allen v. Franchise Tax Bd. (1952) 39 C.2d 109, 113, 245 P.2d 297 [retroactive amendment allowing lump sum paid as compensation for services over period of 5 or more years to be spread over years in which it was earned was not gift of public money]. (See 5 *Stanf. L. Rev.* 156 [criticism of *Allen*].)

Mannheim v. Superior Court (1970) 3 C.3d 678, 691, 91 C.R. 585, 478 P.2d 17 [amendment of escheat statute].

Alameda v. Carleson (1971) 5 C.3d 730, 746, 97 C.R. 385, 488 P.2d 953 [AFDC grants; Legislature could reasonably conclude that employment incentives were essential to accomplish goal, and income-disregard provision was necessary and proper device for encouraging employment].

California Housing Finance Agency v. Elliott (1976) 17 C.3d 575, 582, 131 C.R. 361, 551 P.2d 1193 [subsidized public housing]; see *Redevelopment Agency of San Pablo v. Shepard* (1977) 75 C.A.3d 453, 457, 458, 142 C.R. 212, [following *Elliott*].

Goodall v. Brite (1936) 11 C.A.2d 540, 548, 54 P.2d 510 [free treatment in county hospital, but only for those unable to pay].

People v. Standard Acc. Ins. Co. (1941) 42 C.A.2d 409, 413, 108 P.2d 923 [payment by state of premiums on insurance taken out to protect public officers from liability].

Community Television of Southern Calif. v. Los Angeles (1975) 44 C.A.3d 990, 997, 119 C.R. 276 [support of Public Educational Television].

Board of Supervisors v. Dolan (1975) 45 C.A.3d 237, 247, 119 C.R. 347 [payments for urban residential redevelopment].

Community Memorial Hosp. of San Buena Ventura v. Ventura (1996) 50 C.A.4th 199, 208, 56 C.R.2d 732 [although treating patients who could afford available private hospitals for free constitutes gift of public funds, accepting nonindigent patients as revenue generating device to further policy of treating indigents does not; distinguishing *Goodall v. Brite*].

Scott v. State Bd. of Equalization (1996) 50 C.A.4th 1597, 1601, 58 C.R.2d 376, *infra*, §153 [statute that extended time period for claiming parent-child property tax exclusion did not violate Cal. Const., Art. XVI, §6].

Auerbach v. Board of Supervisors (1999) 71 C.A.4th 1427, 1440, 84 C.R.2d 592 [county's practice of transferring money from county trust or agency funds to cover cash flow deficits in county general fund did not violate Cal. Const., Art. XVI, §6; prohibition on transfers applies only to transactions between one political subdivision and another].

White v. California (2001) 88 C.A.4th 298, 311, 105 C.R.2d 714 [distinguishing *Golden Gate Bridge & Highway Dist. v. Luehring* (1970) 4 C.A.3d 204, 214, 84 C.R. 291, *supra*, §17; laws transferring county agency funds to county's general fund, to help county recover from bankruptcy, did not violate Cal. Const., Art. XVI, §6].

Martin v. Santa Clara Unified School Dist. (2002) 102 C.A.4th 241, 252, 125 C.R.2d 337 [back pay for teacher who had been placed on compulsory leave and then reinstated following completion of drug diversion program was not unconstitutional gift of public funds].

California Assn. of Retail Tobacconists v. California (2003) 109 C.A.4th 792, 814, 135 C.R.2d 224 [initiative measure that increased tobacco excise tax to reduce teenage tobacco use and to fund early child development and antismoking programs (see *infra*, §387) did not violate Cal. Const., Art. XVI, §3, which is comparable to Cal. Const., Art. XVI, §6].

The gift of money limitation does not apply to appropriations within the scope of the constitutional enabling provision of the Workers' Compensation Act, for the Legislature has plenary power under that provision unlimited by other provisions of the Constitution. (See *Subsequent Injuries Fund v. Industrial Acc. Com.* (1952) 39 C.2d 83, 88, 244 P.2d 889, 2 Summary (10th), *Workers' Compensation*, §297.) (See 27 A.L.R.2d 1442 [validity of additional retirement or disability allowances for public employees previously retired or disabled].)

SUPPLEMENT: [This section is current through the latest supplement]

See *California Family Bioethics Council, LLC v. California Institute for Regenerative Medicine* (2007) 147 C.A.4th 1319, 1353, 55 C.R.3d 272 [initiative that provided funding for stem cell research did not violate Cal. Const., Art. XVI, §3; statute provides for sufficient state management and control and significant accountability standards]; *Sturgeon v. Los Angeles* (2008) 167 C.A.4th 630, 637, 84 C.R.3d 242 [employment benefits provided to judges by county, in addition to those prescribed by Legislature, were not gifts within meaning of Cal. Const., Art. XVI, §6(a); benefits promoted public interest in recruiting and retaining high-caliber judicial officers].



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CHAPTER XI - Taxation

Witkin Summary of California Law
II. PUBLIC PURPOSE IN STATE TAXATION
B. California Constitution: Gift of Public Money.
3. Retroactive Cancellation of Tax.

9 Witkin Sum. Cal. Law Tax § 19

[§ 19] Retroactive Cancellation of Tax.

What appeared superficially to be the retroactive creation of a tax exemption was upheld as a valid procedural change in *Doctors General Hosp. of San Jose v. Santa Clara* (1961) 188 C.A.2d 280, 10 C.R. 423. Some hospitals, entitled to a welfare exemption (infra, §187), inadvertently waived it by failing to file the required affidavit within the prescribed time limit (infra, §234). The exemption being thus waived, the lien of the tax attached, and became "a vested property right of the taxing powers." (188 C.A.2d 284.) But the 1957 Legislature then enacted Rev.C. 263, an urgency measure, providing that such a tax should be cancelled, and declaring the public policy in favor of the exemption and the legislative purpose to relieve against default. *Held*, the statute was valid. The Legislature could have created the exemption originally without any condition of a claim by affidavit; it therefore could retroactively dispense with this requirement. An earlier *Doctors General Hosp.* case (supra, §17) was distinguished. There, the amendment attempted to retroactively grant an exemption that did not previously exist. Here, no substantive grant was made, but only a procedural change that, in effect, permitted the hospital to withdraw the implied waiver of its existing exemption. (188 C.A.2d 287.) (See *Church of the Brethren v. Pasadena* (1961) 196 C.A.2d 814, 817, 17 C.R. 30 [following *Doctors General Hosp.*]; *Community Television of Southern Calif. v. Los Angeles* (1975) 44 C.A.3d 990, 996, 119 C.R. 276 [former Rev.C. 271.4, authorizing refund when property was acquired after lien attached was valid; following *Doctors General Hosp.*].)

Rev.C. 263 was repealed in 1968, without, however, affecting the rights of prior claimants for cancellation or refund under the section.

A later statute providing retroactive relief from waiver of an exemption (former Rev.C 214.12) was held violative of Cal. Const., Art. XIII, §6 (failure to claim property tax exemption is deemed waiver). (See *Copren v. State Bd. of Equalization* (1988) 200 C.A.3d 828, 837, 246 C.R. 361.)

Rev.C. 18533 relieves an innocent spouse of tax liability resulting from "understatement of tax attributable to erroneous items of one individual filing the joint return." (Rev.C. 18533(b)(1)(B); see Rev.C. 6456 [similar relief for innocent spouse liable for sales and use tax]; C.E.B., 2 Bankruptcy Practice in California, §17.11 [discharge in bankruptcy for innocent spouse].) The innocent spouse must act within 2 years after the date the Franchise Tax Board has begun collection activities with respect to this spouse. (Rev.C. 18533(b)(1)(E), (c)(3)(B).)

An individual making a joint return who has been granted relief under 26 U.S.C., §6015, relating to joint and several liability with respect to a federal joint income tax return, is eligible for relief under California law if specified conditions are satisfied. (Rev.C 18533(g)(2).)

West's Key Number Digest, Taxation k.18

SUPPLEMENT: [This section is current through the latest supplement]

See 27 A.L.R. Fed 2d 541 [standing of nonrequesting spouse to challenge innocent spouse determination under federal law].



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CHAPTER XI - Taxation

Witkin Summary of California Law III. DUE PROCESS AND EQUAL PROTECTION

A. Procedural Due Process.

1. Notice and Hearing.

a. In General.

9 *Witkin Sum. Cal. Law Tax* § 20

[§ 20] In General.

(1) *Ad Valorem Tax*. If a tax is levied on property according to its value ("ad valorem" tax), due process requires that the taxpayer have notice, and an opportunity for hearing, at some stage of the proceedings. But this may be either before or after the assessment. "There is no constitutional command that notice of the assessment of a tax, and opportunity to contest it, must be given in advance of the assessment. It is enough that all available defenses may be presented to a competent tribunal before exaction of the tax and before the command of the state to pay it becomes final and irrevocable." (*Nickey v. Mississippi* (1934) 292 U.S. 393, 54 S.Ct. 743, 744, 78 L.Ed. 1323, 1326; see *People v. Skinner* (1941) 18 C.2d 349, 354, 115 P.2d 488, *infra*, §22.)

Thus, although an arbitrary assessment may be imposed if a taxpayer fails to file a return, it cannot be made conclusive. The taxpayer must be allowed a subsequent opportunity to contest its validity or amount. (*Central of Georgia Ry. Co. v. Wright* (1907) 207 U.S. 127, 28 S.Ct. 47, 51, 52 L.Ed. 134, 143.) To constitute due process, the hearing given must be adequate and fair. (See *Universal Consol. Oil Co. v. Byram* (1944) 25 C.2d 353, 361, 153 P.2d 746 [hearing was inadequate where less than majority of board acted and disregarded evidence]; *Bandini Estate Co. v. Los Angeles* (1938) 28 C.A.2d 224, 230, 82 P.2d 185 [no due process where only one member of equalization board heard case].)

(2) *Tax on Specific Property, Persons, or Activities*. On the other hand, if the tax is on specific property, persons, or activities, e.g., a license tax on occupations, or a property tax in a fixed amount without regard to value, the right to notice and hearing exists only where the taxpayer objects to any levy or disputes the number of items. (*Hagar v. Reclamation Dist. No. 108* (1884) 111 U.S. 701, 4 S.Ct. 663, 668, 28 L.Ed. 569, 571; *Hodge v. Muscatine* (1905) 196 U.S. 276, 25 S.Ct. 237, 49 L.Ed. 477 [license tax].)

(3) *Special Assessment*. In the case of special assessments for local improvements, if the assessment on the land included in the district is determined by an administrative body on the basis of benefits received, a landowner is entitled to be heard on the question whether his or her land was in fact benefited. (*Fallbrook Irr. Dist. v. Bradley* (1896) 164 U.S. 112, 17 S.Ct. 56, 41 L.Ed. 369; *Browning v. Hooper* (1926) 269 U.S. 396, 46 S.Ct. 141, 70 L.Ed. 330; *Miller & Lux v. Board of Supervisors of Madera* (1922) 189 C. 254, 261, 208 P. 304.) But if the Legislature fixes the boundaries, its determination that all the lands in the district are benefited may be made conclusive, and notice and hearing dispensed

with. (*Chesebro v. Los Angeles County Flood Control Dist.* (1939) 306 U.S. 459, 59 S.Ct. 622, 83 L.Ed. 921 [affirming *Los Angeles v. Los Angeles County Flood Control Dist.* (1938) 11 C.2d 395, 80 P.2d 479]; see 70C Am.Jur.2d (2000 ed.), *Special or Local Assessments* §115 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



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CHAPTER XI - Taxation

Witkin Summary of California Law III. DUE PROCESS AND EQUAL PROTECTION

A. Procedural Due Process.

1. Notice and Hearing.
- b. Sufficiency of Notice.

9 *Witkin Sum. Cal. Law Tax* § 21

[§ 21] Sufficiency of Notice.

In some circumstances, the method of notice employed may constitute a denial of due process. In *Johnson v. Alma Inv. Co.* (1975) 47 C.A.3d 155, 159, 120 C.R. 503, where mailed notice was feasible, published notice of a water district assessment under *Water C.* 46696 was insufficient as to plaintiffs owning land in the district but living in another county. In *Banas v. Transamerica Title Ins. Co.* (1982) 133 C.A.3d 845, 851, 184 C.R. 262, published notice was insufficient and on-site posted notice was required before a tax sale for delinquent real property taxes, where the taxpayer in possession had no reason to know of the delinquency.

In *Mennonite Bd. of Missions v. Adams* (1983) 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180, 2 Cal. Proc. (4th), *Jurisdiction*, §257, the court followed *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865, 2 Cal. Proc., (4th), *Jurisdiction*, §255, in holding that notice by publication and posting of the sale of mortgaged property for nonpayment of taxes did not provide sufficient notice to the mortgagee. And in *Sinclair & Valentine Co. v. Los Angeles* (1988) 201 C.A.3d 1021, 1026, 1027, 247 C.R. 568, mailed notice of a tax sale known to be undeliverable as addressed was insufficient, where the correct address was reasonably ascertainable.

SUPPLEMENT: [This section is current through the latest supplement]

When mailed notice of a tax sale is returned unclaimed, the tax collector must, if practicable, take additional reasonable steps to attempt to provide notice to the property owner before selling the property. (*Jones v. Flowers* (2006) 547 U.S. 220, 126 S.Ct. 1708, 1713, 1718, 164 L.Ed.2d 415, 425, 430 [after notice was returned to collector's office marked "unclaimed," collector could have resent notice by regular mail, posted notice on front door, or addressed mail to "occupant"].)

Mennonite case:

Cross-Reference: 2 Cal. Proc. (5th), *Jurisdiction*, §266.*Mullane case:*

Cross-Reference: 2 Cal. Proc. (5th), *Jurisdiction*, §266.



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CHAPTER XI - Taxation

Witkin Summary of California Law
III. DUE PROCESS AND EQUAL PROTECTION

- A. Procedural Due Process.
- 2. Summary Collection Procedure.
- a. In General.

9 *Witkin Sum. Cal. Law Tax* § 22

[§ 22] In General.

Summary remedies to collect taxes are consistent with due process, so long as the taxpayer has a right to a hearing at some stage of the proceedings. (*Phillips v. Commissioner of Internal Revenue* (1931) 283 U.S. 589, 51 S.Ct. 608, 611, 75 L.Ed. 1289, 1296; *Winters v. State Bd. of Equalization* (1949) 93 C.A.2d 87, 89, 208 P.2d 731; *Baldassari v. United States* (1978) 79 C.A.3d 267, 271, 272, 144 C.R. 741 [following *Phillips*]; see *Kanarek v. Davidson* (1978) 85 C.A.3d 341, 345, 148 C.R. 86 [jeopardy income tax assessment]; 22 U.C.L.A. L. Rev. 1191 [criminal defendants and abuse of jeopardy tax procedures]; 3 West L.A. L. Rev. 159 [summary seizure by Internal Revenue Service].)

People v. Skinner (1941) 18 C.2d 349, 115 P.2d 488, upheld a Sales Tax Act provision that requires the clerk of the superior court to enter judgment for the state and issue execution on filing by the State Board of Equalization of a certificate showing delinquency. (18 C.2d 354; on validity of provisions for jeopardy determinations in excise tax acts, see *People v. Sonleitner* (1960) 185 C.A.2d 350, 357, 8 C.R. 528, *infra*, §24 [following *Skinner*].)

SUPPLEMENT: [This section is current through the latest supplement]



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Witkin Summary of California Law III. DUE PROCESS AND EQUAL PROTECTION

- A. Procedural Due Process.
- 2. Summary Collection Procedure.
- b. Sale Without Hearing Is Invalid.

9 Witkin Sum. Cal. Law Tax § 23

[§ 23] Sale Without Hearing Is Invalid.

In *Dupuy v. Superior Court* (1975) 15 C.3d 410, 124 C.R. 900, 541 P.2d 540, the Franchise Tax Board determined that petitioner's income for 1972 and 1973 substantially exceeded the amount declared on his return, and made a jeopardy assessment of taxes in the amounts of \$ 40,569.27 and \$ 39,525. The notices of assessment advised him that he could obtain a stay only by furnishing a bond in the amount of \$ 88,104. He did not furnish a bond, and the board directed the marshal to levy and sell petitioner's personal property. He sued for an injunction, which the lower court denied on the ground that the California Constitution prohibited injunctions against the collection of taxes (Art. XIII, §32; see *infra*, §297). *Held*, mandamus granted to compel a ruling on the merits of the request for an injunction.

(a) *Summary collection of income taxes.* The Personal Income Tax Law (*infra*, §332) gives the taxpayer two different administrative remedies. (1) Where a deficiency assessment is made under former Rev.C. 18583 (now Rev.C. 19033), the taxpayer may file a protest and have a hearing to contest the validity of the proposed assessment, with an appeal to the Board of Equalization and the right to petition for rehearing. Thus, the taxpayer may stay collection of the tax for a substantial period. (2) Where a jeopardy assessment is made under former Rev.C. 18641 (now Rev.C. 19081), the taxpayer may stay seizure and sale of his or her property only by posting a bond in the amount set by the Board or by showing that jeopardy does not exist. Thus, the taxpayer is not entitled to an administrative hearing before seizure and sale, and is prevented from seeking judicial review by the constitutional anti-injunction provision. (15 C.3d 415, 416.)

(b) *Procedural due process under Sniadach rule.* Due process does not require a judicial determination of tax liability before the collection of a tax. (15 C.3d 416, citing *Phillips v. Commissioner of Internal Revenue* (1931) 283 U.S. 589, 51 S.Ct. 608, 611, 75 L.Ed. 1289, 1296.) This is one of the "extraordinary situations" noted in *Sniadach v. Family Finance Corp. of Bay View* (1969) 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349, 7 Summary (10th), *Constitutional Law*, §646. (15 C.3d 416.) Thus, the bond requirement for a stay of seizure of the property is valid. (15 C.3d 417.) However, the requirement of a bond to stay a sale is invalid. No legitimate governmental function is served by it, and the taxpayer's remedy is largely illusory, for the seized property may be needed as collateral for a bond. (15 C.3d 417.) And the statutory remedy of a suit for refund after seizure and sale is inadequate, for the recovery is limited to the amount obtained at the sale, and the fair market value is rarely realized at a forced sale. (15 C.3d 417.) "Since no legitimate interest of the state would be prejudiced by affording the taxpayer an administrative hearing prior to the sale

of his property, and the disruption in the revenue collection procedures would be minimal, we hold that, although no hearing is required prior to seizure of the property, due process requires that the taxpayer be afforded, if desired, an administrative hearing prior to *sale* of his property." (15 C.3d 417.)

(c) *Anti-injunction provision.* The provision of the California Constitution must yield to the paramount Due Process Clause of the federal Constitution. Hence, petitioner was entitled to enjoin the marshal's sale. (15 C.3d 418.) (See *T.M. Cobb Co. v. Los Angeles* (1976) 16 C.3d 606, 614, 616, 128 C.R. 655, 547 P.2d 431, *infra*, §280 [restating and applying *Dupuy* holding to seizure and sale of property for delinquent personal property taxes].)

SUPPLEMENT: [This section is current through the latest supplement]



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CHAPTER XI - Taxation

Witkin Summary of California Law
III. DUE PROCESS AND EQUAL PROTECTION
A. Procedural Due Process.
3. Security for Administrative Review.

9 *Witkin Sum. Cal. Law Tax* § 24

[§ 24] Security for Administrative Review.

In *People v. Sonleitner* (1960) 185 C.A.2d 350, 8 C.R. 528, defendant acted as a distributor of motor vehicle fuel without the license required by Rev.C. 7451. The State Board of Equalization made a jeopardy assessment with a penalty pursuant to former Rev.C. 7727 (now Rev.C. 7726). Under Rev.C. 7699, a petition for redetermination may be filed within 10 days on giving security; but defendant, claiming financial inability, did not post security. Thereafter, this action was brought to collect the tax, and judgment was rendered against defendant. *Held*, affirmed.

(a) *Security requirements in excise tax acts.* The excise tax acts generally provide for jeopardy determinations and administrative review conditioned on posting of security. "Thus we find under the law in question, as well as under other excise tax laws, the Legislature has provided that a designated administrative agency, where it appears that a person is engaging in a taxable operation without compliance with the tax law applicable thereto, may determine as best it may the tax due, and has further provided for an opportunity for the taxpayer to be heard by the designated agency to challenge the determination upon the posting of security as authorized by the Legislature and fixed by the board." (185 C.A.2d 356.)

(b) *Requirement does not deny due process.* "Any other conditions would permit a person engaged in the distribution of motor vehicle fuel to refrain from securing a license and the posting of a bond, collect the taxes from his customers, compel the board to discover such violation and then to ascertain as best it can the tax collected and due from the distributor and then permit such unlicensed distributor without payment of the tax or security for its payment to contest the claim of the state in proceedings initiated by it to collect such tax. In short, it would relegate the state to the position of an individual seeking to collect a civil debt." (185 C.A.2d 368.) Moreover, due process is fully preserved by an alternative method of review. The Revenue Code also permits payment under protest and suit for refund. (185 C.A.2d 369.)

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Witkin Summary of California Law III. DUE PROCESS AND EQUAL PROTECTION

B. Substantive Due Process.

1. Special Assessment for Local Improvements.

a. Assessment Without or in Excess of Benefits.

1. In General.

9 Witkin Sum. Cal. Law Tax § 25

[§ 25] In General.

In making local improvements such as highways or bridges, the Legislature may defray the cost from general tax money, or may create special taxing districts for the maintenance of those improvements within the district without a showing of special benefits to the land taxed. (*St. Louis & Southwestern Ry. Co. v. Nattin* (1928) 277 U.S. 157, 48 S.Ct. 438, 72 L.Ed. 830; *Memphis & Charleston Ry. Co. v. Pace* (1931) 282 U.S. 241, 51 S.Ct. 108, 75 L.Ed. 315; see *American Co. v. Lakeport* (1934) 220 C. 548, 560, 32 P.2d 622; *Joint Highway Dist. No. 13 v. Hinman* (1934) 220 C. 578, 584, 32 P.2d 144.) In California, irrigation districts are state governmental agencies; hence, their assessments are general taxes that, like county taxes, are not dependent on actual benefit to property within the district. (See *In re Bonds of Madera Irr. Dist.* (1891) 92 C. 296, 322, 28 P. 272; *American Co. v. Lakeport*, supra; *Joint Highway Dist. v. Hinman*, supra; *Crawford v. Los Angeles* (1932) 128 C.A. 368, 373, 17 P.2d 1017.) (On formation of special assessment district by school district, see *Sts. & H.C. 22500 et seq.*; *Howard Jarvis Taxpayers Assn. v. Whittier Union High School Dist.* (1993) 15 C.A.4th 730, 736, 19 C.R.2d 109 [improvements to facilities heavily used by community groups during nonschool hours, such as playing fields, grandstands, and lighting].)

However, if the state creates assessment districts, and purports to apportion the assessments among the landowners in accordance with benefits, it is a violation of due process to include land that receives no benefits, or to make an assessment substantially in excess of benefits. (See *Norwood v. Baker* (1898) 172 U.S. 269, 19 S.Ct. 187, 43 L.Ed. 443; *Myles Salt Co. v. Board of Commrs. of Iberia & St. Mary Drainage Dist.* (1916) 239 U.S. 478, 36 S.Ct. 204, 60 L.Ed. 392 [island of high land was not benefited by, and so could not be included in, drainage district]; *Plymouth v. Superior Court* (1970) 8 C.A.3d 454, 464, 87 C.R. 240, 96 C.R. 636.) It is not essential that the benefits be direct and immediate, but they must have a better basis than speculation or conjecture. (*Kansas City Southern Ry. Co. v. Road Imp. Dist. No. 3 of Sevier, Arkansas* (1924) 266 U.S. 379, 45 S.Ct. 136, 69 L.Ed. 335.) (See 11 U.C. Davis L. Rev. 43 [new developments in special assessment law]; 70C Am.Jur.2d (2000 ed.), *Special or Local Assessments* §21 et seq.; infra, §140 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



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B. Substantive Due Process.

1. Special Assessment for Local Improvements.
 - a. Assessment Without or in Excess of Benefits.
2. Judicial Review.

9 *Witkin Sum. Cal. Law Tax* § 26

[§ 26] Judicial Review.

The legislative determination of the lands benefited, and the amount of benefit to each landowner, will be upheld unless plainly arbitrary. (See *Milheim v. Moffat Tunnel Imp. Dist.* (1923) 262 U.S. 710, 43 S.Ct. 694, 67 L.Ed. 1194; *Kansas City Southern Ry. Co. v. Road Imp. Dist. No. 3 of Sevier, Arkansas* (1924) 266 U.S. 379, 45 S.Ct. 136, 69 L.Ed. 335; *Roberts v. Richland Irr. Dist.* (1933) 289 U.S. 71, 53 S.Ct. 519, 520, 77 L.Ed. 1038, 1041 [determination of benefits cannot be assailed "unless palpably arbitrary and a plain abuse"]; *In re Orosi Public Util. Dist.* (1925) 196 C. 43, 51, 235 P. 1004; *Los Angeles v. Los Angeles County Flood Control Dist.* (1938) 11 C.2d 395, 402, 80 P.2d 479; *Dawson v. Los Altos Hills* (1976) 16 C.3d 676, 688, 129 C.R. 97, 547 P.2d 1377 [fact that benefits to assessed property accrued prior to establishment of district did not invalidate assessment]; *White v. San Diego* (1980) 26 C.3d 897, 904, 163 C.R. 640, 608 P.2d 728; *Kalashian v. Fresno* (1973) 35 C.A.3d 43, 49, 110 C.R. 429.) (For reversal of legislative determination, see *Harrison v. Board of Supervisors* (1975) 44 C.A.3d 852, 857, 858, 118 C.R. 828 [special assessment for construction of storm sewer to relieve traffic congestion caused by street flooding in rainy weather; no showing of special benefit to assessed property].)

Not About Water Committee v. Board of Supervisors (2002) 95 C.A.4th 982, 116 C.R.2d 526, states the standard of judicial review as follows: "A court will not declare the assessment void unless it can plainly see from the face of the record, or from facts judicially known, that the assessment so finally confirmed is not proportional to the benefits, or that no benefits could accrue to the property assessed, or that the agency has failed to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large." (95 C.A.4th 994.)

The question of arbitrariness, however, may be extremely difficult to resolve. In *Los Angeles v. Offner* (1961) 55 C.2d 103, 10 C.R. 470, 358 P.2d 926, a statute authorized inclusion in a special assessment for sewer connections of "any charge" established by a city as a condition of providing sewer service. Los Angeles established a reasonable extra charge of \$ 400 per acre, part of the money being used for general sewer facilities and purposes throughout the city. *Held*, the statute was unconstitutional. The court relied on the rule that a local assessment can be levied only for the actual cost of the improvement, and that the Legislature cannot add any amount that exceeds the actual cost and incidental expenses. The ordinance sought to take \$ 400 per acre from landowners to use for general sewer purposes

away from the lands (including the sewage treatment plant and other facilities made necessary by the state's decree abating the nuisance of discharge of sewage into Santa Monica Bay). This was held to be unequal taxation of real property in the guise of a special assessment for a local improvement. (55 C.2d 103.)

SUPPLEMENT: [This section is current through the latest supplement]



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Witkin Summary of California Law III. DUE PROCESS AND EQUAL PROTECTION

B. Substantive Due Process.

1. Special Assessment for Local Improvements.
 - a. Assessment Without or in Excess of Benefits.
3. Curative Act Does Not Make Invalid Assessment Safe From Attack.

9 Witkin Sum. Cal. Law Tax § 27

[§ 27] Curative Act Does Not Make Invalid Assessment Safe From Attack.

An invalid assessment cannot be rendered safe from attack by a curative act. In *Plymouth v. Superior Court* (1970) 8 C.A.3d 454, 96 C.R. 636, 86 C.R. 535, petitioner city, proceeding under the Improvement Bond Act of 1915 (Sts. & H.C. 8500 et seq.), created an assessment district and issued bonds for sewer improvements. Property owners filed a timely complaint for declaratory relief and an injunction, alleging that their lands would receive no benefits and that the assessment was arbitrary and fraudulent. Although they could have obtained a temporary restraining order (see Sts. & H.C. 8625), they did not. The city, with full knowledge of the suit, sold the bonds to a federal agency, and then moved to dismiss the property owners' suit on the ground that it was moot and barred by the curative act (Sts. & H.C. 8655, issuance of bonds is conclusive evidence of regularity of proceedings). On denial of the motion to dismiss, the city sought prohibition. *Held*, writ denied.

(a) A curative act, such as Sts. & H.C. 8655, will not cure a jurisdictional defect. (8 C.A.3d 461, 464; see *infra*, §283.)

(b) Sts. & H.C. 8625 is permissive, not mandatory; i.e., failure to seek a restraining order does not bar a later attack on the bonds for the fundamental defect of assessment without benefits. (8 C.A.3d 464.)

(c) The city's contention in reliance on the two sections could lead to the absurd result of defeat of property owners' rights by the erroneous denial of a temporary restraining order and sale of the bonds thereafter. (8 C.A.3d 464, 466.)

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- b. Reassessment Where Benefits Are Not Realized.

9 *Witkin Sum. Cal. Law Tax* § 28

[§ 28] Reassessment Where Benefits Are Not Realized.

In *Furey v. Sacramento* (1979) 24 C.3d 862, 157 C.R. 684, 598 P.2d 844, the court summarized the issue presented by complicated facts as follows: "whether a city, having participated with other public entities in the creation of a special sewer assessment district in a county area intended for transition to urban development, and later having annexed the area, may thereafter amend its general plan and enact an open space ordinance in a manner precluding certain of the owners of property subject to assessment from realizing all or substantially all benefits from the underlying public improvement for an indefinite period of time." (24 C.3d 865, 866.) *Held*, reversing judgments on demurrer, plaintiff landowners were not entitled to damages for inverse condemnation, but were entitled to a reassessment.

(a) Plaintiffs did not allege facts supporting a cause of action in inverse condemnation. They were not deprived of substantially all reasonable use of the property. (24 C.3d 872; see 8 *Summary* (10th), *Constitutional Law*, §1058.)

(b) The pleadings did show, however, that the city's actions had the effect of assessing plaintiffs substantial amounts of money for special benefits that they were later prevented from realizing. (24 C.3d 872, 876.) If these allegations are supported by proof, plaintiffs are entitled to declaratory relief or mandamus to preclude application of the new land-use regulations to them. Also, defendant city should be given a reasonable opportunity to make use of statutory reassessment procedures or to take other appropriate steps to eliminate the gross inequities shown. (24 C.3d 877, 878.)

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c. Fraudulent Assessment.

9 *Witkin Sum. Cal. Law Tax* § 29

[§ 29] Fraudulent Assessment.

In *Maxwell v. Santa Rosa* (1959) 53 C.2d 274, 1 C.R. 334, 347 P.2d 678, plaintiffs' land was included in an assessment district for improving a street. They sued defendant city and members of the city council to enjoin enforcement of the assessments and for a declaratory judgment that they were void. *Held*, reversing judgment on demurrer, the complaint was sufficient, and the relief was authorized. Although assessment proceedings generally cannot be collaterally attacked unless a jurisdictional defect appears on the face of the record, an exception is recognized where the basis for equitable relief is shown by matters outside the record, e.g., conduct amounting to fraud, a manifestly or grossly unjust assessment, or arbitrary or unreasonable action amounting to an abuse of discretion. (53 C.2d 277.) Plaintiffs here complied with the requirement of pleading fraud specifically, alleging a predetermined plan without investigation, and only token compliance with the law. (53 C.2d 280.)

In *Lawrence v. Santa Rosa* (1959) 53 C.2d 282, 1 C.R. 339, 347 P.2d 683, the court held that the allegations of fraud were not sufficient. But the demurrer had been sustained without leave, and "[i]t was an abuse of discretion not to grant leave to amend." (52 C.2d 283.) Plaintiffs sought to allege that a board member had made up his mind in advance to overrule protests, and this would be sufficient pleading of fraud. Hence, it was unnecessary to discuss allegations "concerning defendant city's contract with the State of California, and its attempt to use this assessment proceeding for the sole purpose of raising sufficient money to acquire the property." (53 C.2d 283, 284.) (For forms in actions for relief, see 22B Am.Jur. P.P. Forms (2001 ed.), Special or Local Assessments §26 et seq.; on contesting assessments, see 19 Proof of Facts 313 [correlation of paving benefit and special assessment].)

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9 Witkin Sum. Cal. Law Tax § 30

[§ 30] Retroactive Tax.

A tax imposed with respect to past transactions (retroactive as to subject), or the amount of which is determined by past transactions (retroactive as to measure), is not necessarily bad, but it may deny due process where its effect is arbitrary and oppressive. (See *Untermeyer v. Anderson* (1928) 276 U.S. 440, 48 S.Ct. 353, 72 L.Ed. 645; *Coolidge v. Long* (1931) 282 U.S. 582, 51 S.Ct. 306, 75 L.Ed. 562.) But a number of types of retroactive tax have been sustained:

(1) A property tax based on benefits from local improvements, enacted after the improvements were completed. (*Phillip Wagner v. Leser* (1915) 239 U.S. 207, 36 S.Ct. 66, 60 L.Ed. 230; *Crescent City v. Moran* (1938) 25 C.A.2d 133, 137, 77 P.2d 281.)

(2) A gift tax on a prior gift, where the taxpayer might have foreseen the possibility of an increase in the rate of tax. (*Milliken v. United States* (1931) 283 U.S. 15, 51 S.Ct. 324, 75 L.Ed. 809 [statute at time of gift taxed gifts in contemplation of death; retroactive statute merely increased rates].)

(3) A death tax on a prior transfer inter vivos, where the transferor did not wholly divest himself of control, but retained an interest until death, e.g., a power of revocation. (*Reinecke v. Northern Trust Co.* (1929) 278 U.S. 339, 49 S.Ct. 123, 73 L.Ed. 410; see *Fernandez v. Wiener* (1945) 326 U.S. 340, 66 S.Ct. 178, 186, 90 L.Ed. 116, 128.)

(4) A recent transactions tax. The Legislature, meeting and enacting tax legislation during a particular session, may make the tax effective as of the beginning of the year, so as to cover the entire year's transactions or to reach profits from transactions completed while the statute was being considered. (See *United States v. Hudson* (1937) 299 U.S. 498, 57 S.Ct. 309, 81 L.Ed. 370 [Silver Purchase Act, 50% tax on transfer, retroactive 35 days]; *Westfield-Palos Verdes Co. v. Rancho Palos Verdes* (1977) 73 C.A.3d 486, 494, 141 C.R. 36 [business license tax on residential developers, measured by number of dwelling units in construction or completed during tax year, was not fatally retroactive; business activity, even as to units substantially completed, was ongoing].)

In *Welch v. Henry* (1938) 305 U.S. 134, 59 S.Ct. 121, 126, 83 L.Ed. 87, 94, this doctrine was extended to support a statute that taxed a certain type of income previously neglected, and made it cover the receipt of that income during the year of the previous legislative session, 2 years before. (See *United States v. Carlton* (1994) 512 U.S. 26, 114 S.Ct. 2018, 129 L.Ed.2d 22 [retroactive tax legislation need only satisfy "rational basis" test to avoid violating due process];

Holmes v. McColgan (1941) 17 C.2d 426, 431, 110 P.2d 428 [gains realized from sales of property after effective date of Income Tax Act was constitutionally taxable although property was acquired and gain accrued before enactment]; *American States Water Service Co. of Calif. v. Johnson* (1939) 31 C.A.2d 606, 613, 88 P.2d 770; *Sunset Nut Shelling Co. v. Johnson* (1942) 49 C.A.2d 354, 359, 121 P.2d 849 [amendment to Franchise Tax Act raising rate was applicable to corporation that had paid under old rate even though tax under old law had become lien]; *Gutknecht v. Sausalito* (1974) 43 C.A.3d 269, 282, 117 C.R. 782 [retroactivity of increased tax rate must be limited to current tax year]; 26 West. L.A. L. Rev. 533 [Carlton].)

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See *Modesto v. National Med* (2005) 128 C.A.4th 518, 525, 27 C.R.3d 215 [city was not entitled to recalculate taxpayer's alleged business license tax deficiency using apportionment guidelines that city adopted after tax ordinance was declared unconstitutional; city had filed underlying complaint to enforce ordinance that was later declared unenforceable, amended ordinance changed substantive law, and retroactive application of amended ordinance to 5 tax years would be overly burdensome to taxpayer].



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a. Jurisdiction Over Person.

9 *Witkin Sum. Cal. Law Tax* § 31

[§ 31] Jurisdiction Over Person.

The recognized bases on which income may be taxed include citizenship, place where the income is earned, and domicile. Thus, the United States may tax income of an American citizen, because of the relation the citizen bears to the government, although he or she is domiciled in a foreign country and receives income there. (*Cook v. Tait* (1924) 265 U.S. 47, 44 S.Ct. 444, 68 L.Ed. 895.) Moreover, a state may tax income from property or business within the state, although the taxpayer is domiciled elsewhere. (*Shaffer v. Carter* (1920) 252 U.S. 37, 40 S.Ct. 221, 64 L.Ed. 445; see *International Harvester Co. v. Wisconsin Dept. of Taxation* (1944) 322 U.S. 435, 64 S.Ct. 1060, 88 L.Ed. 1373; *Davis v. Franchise Tax Bd.* (1977) 71 C.A.3d 998, 1002, 139 C.R. 797; 2 Rotunda 3d, §13.4; 2 U.C.L.A. L. Rev. 595; 82 A.L.R.3d 1274 [domicile for state tax purposes of spouses living separately]; *infra*, §103.)

The state in which a taxpayer is domiciled may tax his or her income, though it is derived from land located in another state or from services rendered in another state. (*Lawrence v. Tax Com. of Mississippi* (1932) 286 U.S. 276, 52 S.Ct. 556, 76 L.Ed. 1102; *New York v. Graves* (1937) 300 U.S. 308, 57 S.Ct. 466, 81 L.Ed. 666 [property tax on interests in land outside state would be invalid, but that income itself is basis for taxation in state of domicile, regardless of its source, and is not clothed with tax immunity of its source]; see *Rainier Brewing Co. v. McColgan* (1949) 94 C.A.2d 118, 119, 210 P.2d 233; *Christman v. Franchise Tax Bd.* (1976) 64 C.A.3d 751, 757, 134 C.R. 725 [source of income of California domiciliary is determined by California law].)

If, for any reason, the taxes imposed on income of a trust that is taxable to the trust because the fiduciary or beneficiary is a resident of California are not paid when due and remain unpaid when that income is distributable to the beneficiary, the income will be taxable to the beneficiary when distributable to the beneficiary. (Rev.C. 17745(a).) This statute was held constitutional in *McCulloch v. Franchise Tax Bd.* (1964) 61 C.2d 186, 37 C.R. 636, 390 P.2d 412. The state of a beneficiary's residence may tax the beneficiary on current income paid by a trustee in another state; and "[i]n similar fashion, the beneficiary's state of residence may properly tax the trust on income which is payable in the future to the beneficiary, although it is actually retained by the trust, since that state renders to the beneficiary that protection incident to his eventual enjoyment of such accumulated income." (61 C.2d 196.)

It follows that multiple taxation of the same income, by different states or the federal Government, may be valid. (See *Guaranty Trust Co. of New York v. Virginia* (1938) 305 U.S. 19, 59 S.Ct. 1, 83 L.Ed. 16 [trust, with corpus and

trustee in New York, beneficiary in Virginia; New York could tax income in hands of trustee, Virginia could tax income paid to beneficiary].)

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b. Jurisdiction Over Real Property.

9 *Witkin Sum. Cal. Law Tax* § 32

[§ 32] Jurisdiction Over Real Property.

Real property can be taxed only by the state in which it is situated. Only that state has the physical power to protect the property and to enforce the tax. (*Louisville & Jeffersonville Ferry Co. v. Kentucky* (1903) 188 U.S. 385, 23 S.Ct. 463, 47 L.Ed. 513; *Treichler v. Wisconsin* (1949) 338 U.S. 251, 70 S.Ct. 1, 94 L.Ed. 37; see *Estate of Fasken* (1977) 19 C.3d 412, 423, 138 C.R. 276, 563 P.2d 832 [estate with property in two states; "pick-up" tax limited to federal credit attributable to in-state property]; 2 Rotunda 3d, §13.2.)

In *Senior v. Braden* (1935) 295 U.S. 422, 55 S.Ct. 800, 79 L.Ed. 1520, Ohio sought to tax the interest of a beneficiary of a business trust in lands located partly outside the state. *Held*, the tax was void. The beneficiary had an equitable interest in the land, and a tax on that interest was a tax on land outside the state. (55 S.Ct. 802, 79 L.Ed. 1523.) If the tax had been laid on the income from the trust instead of on the value of the equitable interests, it would have been valid. (*New York v. Graves* (1937) 300 U.S. 308, 57 S.Ct. 466, 81 L.Ed. 666.)

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1. Property With Fixed Situs.

9 Witkin Sum. Cal. Law Tax § 33

[§ 33] Property With Fixed Situs.

The same rule that governs real property (*supra*, §32) applies to tangible personal property with a fixed situs, i.e., only the state where it is located can tax the property, and consequently there can be no multiple taxation with respect to the property. (*Union Refrigerator Transit Co. v. Kentucky* (1905) 199 U.S. 194, 26 S.Ct. 36, 50 L.Ed. 150; *Frick v. Pennsylvania* (1925) 268 U.S. 473, 45 S.Ct. 603, 69 L.Ed. 1058; *Treichler v. Wisconsin* (1949) 338 U.S. 251, 70 S.Ct. 1, 94 L.Ed. 37; see *Estate of Fasken* (1977) 19 C.3d 412, 423, 138 C.R. 276, 563 P.2d 832 [estate with property in two states; "pick-up" tax limited to federal credit attributable to in-state property]; 90 Harv. L. Rev. 1656 [effect of inconsistent determinations of decedent's property interest on multistate death taxation]; 2 Rotunda 3d, §13.2; 2 A.L.R.4th 432 [situs of tangible personal property for purposes of property taxation].)

The situs of the property for purposes of taxation is its permanent location. Thus, in *Brock & Co. v. Board of Supervisors of Los Angeles* (1937) 8 C.2d 286, 65 P.2d 791, plaintiff's officer took a valuable stock of jewels from its Los Angeles place of business to Hawaii, just before the tax assessment date (March 4), and returned them shortly afterwards. *Held*, the temporary removal did not change their permanent situs in Los Angeles, despite the fact that some attempt was made to display them for sale in *Hawaii*. (8 C.2d 292.)

On the other hand, in *City Bank Farmers Trust Co. v. Schnader* (1934) 293 U.S. 112, 55 S.Ct. 29, 79 L.Ed. 228, a New York resident lent paintings to a Pennsylvania museum, with an offer to sell, and they remained there over 2 years. *Held*, on the death of the owner, Pennsylvania could impose an inheritance tax. The property attained a situs there, despite the "floating intention" to return them at some indefinite future time. (55 S.Ct. 31, 79 L.Ed. 232.)

In *Seegmiller v. Nevada* (1997) 53 C.A.4th 1397, 62 C.R.2d 238, plaintiff taxpayer received a tax bill on personal property and business fixtures from defendant county for the fiscal year July 1, 1994, to June 30, 1995. The lien date for that fiscal year was March 1, 1994. On August 8, 1994, plaintiff relocated his entire business and inventory to another state. Plaintiff paid the property tax bill and filed a refund claim. Because plaintiff moved his business out of state 38 days after the commencement of the 1994-1995 tax year, he sought a refund of all property taxes that exceeded that fractionated portion (38/365) of the time that his property was located in California. Defendant rejected the claim and plaintiff filed a complaint for a refund. The trial court sustained defendant's demurrer. *Held*, affirmed.

(a) *Failure to apportion the tax did not violate Commerce Clause.* There is ample authority that, with respect to transient property that acquires more than one tax situs during a given year, property tax must be apportioned on the basis of the time spent within *California*. (53 C.A.4th 1401, citing *Flying Tiger Line v. Los Angeles* (1958) 51 C.2d 314, 333 P.2d 323, *infra*, §75, and *Sea-Land Service v. Alameda* (1974) 12 C.3d 772, 117 C.R. 448, 528 P.2d 56, *infra*, §79.) However, these cases are inapposite to plaintiff's situation. Plaintiff simply moved his business from its permanent location in California to another permanent location in Nevada. There is no allegation that the property moved back and forth between states or that plaintiff's business was an interstate operation. Only multiple taxation of interstate operations offends the *Commerce Clause*. (53 C.A.4th 1401.)

(b) *Failure to apportion the tax did not violate due process.* Plaintiff concedes that his property was located in California on the lien date. Plaintiff's assumption that the 1994-1995 tax bill operates prospectively only is unwarranted. The tax lien date is simply a practical method for determining that the taxpayer enjoyed the benefit of governmental services during the year preceding the assessment. (53 C.A.4th 1402.) The fact that defendant permitted plaintiff to pay the taxes in a subsequent fiscal year does not mitigate the fact that he was subject to the "opportunities, benefits, and protection" afforded by defendant and the state during the year in which the taxes were assessed. Because the tax levy corresponded to the benefits of governmental services enjoyed as of the tax lien date, the timing of plaintiff's exit from the state was, for due process purposes, irrelevant. (53 C.A.4th 1403.)

(c) *Failure to apportion the tax did not violate equal protection.* Personal property continuously in interstate transit, unlike stationary property with a permanent home, has multiple tax situs in any given year, thus requiring apportionment. "Because the tax classification is rationally based on the qualitatively different character of the two forms of property, the state's disparate treatment does not offend the equal protection clause." (53 C.A.4th 1404.)

A vessel that is not used in commerce, but is kept in port, completely inoperative, acquires a taxable situs there. (*Ships & Power Equipment Corp. v. San Diego* (1949) 93 C.A.2d 522, 526, 209 P.2d 143 [decommissioned naval landing craft bought from federal Government and probably held for resale].)

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2. Property Without Fixed Situs.

9 *Witkin Sum. Cal. Law Tax* § 34

[§ 34] Property Without Fixed Situs.

(1) *Ordinary Property*. If the property has no fixed situs, the state of domicile of the owner may tax it. (*Southern Pac. Co. v. Kentucky* (1911) 222 U.S. 63, 32 S.Ct. 13, 56 L.Ed. 96; *Sayles v. Los Angeles* (1943) 59 C.A.2d 295, 298, 138 P.2d 768; see 2 A.L.R.4th 432 [situs of tangible personal property for purposes of property taxation].)

(2) *Railway Rolling Stock*. In the case of railroad rolling stock that moves in interstate commerce, the property may be actually located outside the state of domicile, though not in any other single state. The doctrine of apportionment is applied: Each of the several states in which the fleet of cars is operated may tax its share or proportion of the property, determined by some appropriate method, e.g., by computing the average number of cars physically present in the state. (See *Johnson Oil Refining Co. v. Oklahoma* (1933) 290 U.S. 158, 54 S.Ct. 152, 78 L.Ed. 238 [tax by one state on entire fleet was invalid]; *Central R. Co. of Pennsylvania v. Pennsylvania* (1962) 370 U.S. 607, 82 S.Ct. 1297, 8 L.Ed.2d 720, *infra*, §74 [extensive power of state of domicile upheld]; 3 A.L.R.4th 837 [property tax situs of rolling stock].)

(3) *Vessels*. In *Ott v. Mississippi Valley Barge Line Co.* (1949) 336 U.S. 169, 69 S.Ct. 432, 434, 93 L.Ed. 585, 589, this rule was applied to vessels, owned by foreign corporations, and used in transportation on *inland waters* to and from New Orleans. The court upheld ad valorem taxes based on the ratio between the total number of miles of the taxpayer's lines in Louisiana and the total number of miles of the entire line. (See 63 *Harv. L. Rev.* 139, 144; and see *Standard Oil Co. v. Peck* (1952) 342 U.S. 382, 72 S.Ct. 309, 310, 96 L.Ed. 427, 430 ["The rule which permits taxation by two or more states on an apportionment basis precludes taxation of all of the property by the state of the domicile"]; *Sea-Land Service v. Alameda* (1974) 12 C.3d 772, 778, 117 C.R. 448, 528 P.2d 56, *infra*, §79; *Star-Kist Foods v. Byram* (1966) 241 C.A.2d 313, 50 C.R. 381, *infra*, §79; *San Diego v. Lafayette Steel Co.* (1985) 164 C.A.3d 690, 693, 210 C.R. 493 [fishing vessel registered out-of-state and owned by foreign corporation but physically present in county for 11 months during tax year was properly taxed in county]; 3 A.L.R.4th 837 [property tax situs of vessels].)

(4) *Traveling Shows*. In *Ice Capades v. Los Angeles* (1976) 56 C.A.3d 745, 128 C.R. 717, Ice Capades was a Delaware corporation with its principal place of business in Los Angeles County. Its business was staging ice shows in the United States and Canada. The shows were planned at the Los Angeles headquarters, and the props, equipment, and costumes were purchased and assembled there during the early months of each year. They were then shipped to training

quarters in New Jersey (for the "East Show" in the larger cities) and Minnesota (for the "West Show" in smaller communities). The rehearsals took place in the training quarters, following which the shows went on tour. The West Show used the equipment of the previous East Show, and at the conclusion of its tour, the property was shipped to Los Angeles and stored there or scrapped. Los Angeles levied a tax based on the value of all of the property, including that outside the county on the lien date. *Held*, the tax was invalid in part for lack of apportionment.

(a) The transitory contact with the cities in which the shows were held did not establish a tax situs there; the period was predetermined and short, and it was intended that the property would move on. (56 C.A.3d 754.)

(b) The contact with the training quarters in New Jersey was substantial. The property was physically present there for months each year, and the company maintained a permanent headquarters there while the East Show was on tour. Hence, the California tax must be apportioned to exclude values attributable to the *New Jersey tax situs*. (56 C.A.3d 755.)

(c) The contact with Minnesota was less substantial. The property was there for only 1 to 2 months each year, and evidence as to the nature of the training headquarters there was sketchy. In this state of the record, the issue of quantum of contact necessary for a tax situs was one of fact (56 C.A.3d 753), and the trial judge properly concluded that the company had failed to meet its burden of proof (56 C.A.3d 755).

(d) The trial judge should apply the usual formula for apportionment developed in the railroad car case (*Johnson Oil Refining Co. v. Oklahoma, supra*): Apportion to Los Angeles, the domicile of the taxpayer, "the proportion of the value of the property which the period of the tax year during which the property was not present in New Jersey bears to 365 days." (56 C.A.3d 755.)

(5) *Airlines*. In *Northwest Airlines v. Minnesota* (1944) 322 U.S. 292, 64 S.Ct. 950, 88 L.Ed. 1283, the court refused to apply the apportionment doctrine to the new field of commercial airlines. A Minnesota corporation, with its principal place of business, home port, and repair and maintenance facilities in Minnesota, operated planes flying fixed routes through seven states. *Held*, Minnesota, the state of domicile, could tax the whole fleet. (64 S.Ct. 951, 88 L.Ed. 1285; see 3 A.L.R.4th 837 [property tax situs of aircraft].)

This case was, however, distinguished and its effect limited by *Braniff Airways v. Nebraska State Bd. of Equalization & Assessment* (1954) 347 U.S. 590, 74 S.Ct. 757, 98 L.Ed. 967. Nebraska, not the state of domicile or principal place of business, but merely a state in which the airline made 18 stops per day, was held entitled to tax on a proper apportionment basis. The distinction, said the Court, was that in the *Northwest Airlines* case, no showing was made of a taxable situs outside the domicile. Moreover, the apportionment rule, as reaffirmed in *Ott v. Mississippi Valley Barge Line Co., supra*, and *Standard Oil Co. v. Peck, supra*, was held applicable to airlines. "We perceive no logical basis for distinguishing the constitutional power to impose a tax on such aircraft from the power to impose taxes on river boats." (74 S.Ct. 763, 98 L.Ed. 977.) (See *Flying Tiger Line v. Los Angeles* (1958) 51 C.2d 314, 333 P.2d 323, *infra*, §75; *Scandinavian Airlines System v. Los Angeles* (1961) 56 C.2d 11, 14 C.R. 25, 363 P.2d 25, *infra*, §76; *Slick Airways v. Los Angeles* (1956) 140 C.A.2d 311, 315, 295 P.2d 46 [allocation rule was applicable to plane delivered but not yet engaged in flights on tax day]; *Zantop Air Transport v. San Bernardino* (1966) 246 C.A.2d 433, 54 C.R. 813, *infra*, §77.)

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(5) *Airlines*. See *Auerbach v. Los Angeles County Assessment App. Bd. No. 2* (2008) 167 C.A.4th 1415, 1422, 85 C.R.3d 118 [assessment of air taxis located in both Nevada and California was not arbitrary or unfair, even though two states' combined valuation of air taxis exceeded 100% of their value; apportionment bore rational relationship to opportunities, benefits, and protections afforded to airline by air taxis' presence in California; citing *Ice Capades v. Los Angeles* (1976) 56 C.A.3d 745, 128 C.R. 717, text, p. 61].



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d. Jurisdiction Over Intangibles: Multiple Taxation.

1. Earlier Theories and Decisions.

9 *Witkin Sum. Cal. Law Tax* § 35

[§ 35] Earlier Theories and Decisions.

Intangible property interests, such as debts, accounts receivable, and shares of stock, have no actual physical situs. Hence, several states may have a reasonable basis for asserting the power to tax, including the domicile of the creditor, the domicile of the debtor, and the business situs or place where the intangibles are used in a business.

It was originally held that taxation of intangibles by more than one state did not violate the Due Process Clause. (See *Blackstone v. Miller* (1903) 188 U.S. 189, 23 S.Ct. 277, 47 L.Ed. 439; *St. Louis & Southwestern Ry. Co. v. Arkansas* (1914) 235 U.S. 350, 35 S.Ct. 99, 59 L.Ed. 265.) Debts, for example, were taxable at the domicile of the debtor (*Blackstone v. Miller*, *supra*; *Frick v. Pennsylvania* (1925) 268 U.S. 473, 45 S.Ct. 603, 69 L.Ed. 1058); at the domicile of the creditor (*Fidelity & Columbia Trust Co. v. Louisville* (1917) 245 U.S. 54, 38 S.Ct. 40, 62 L.Ed. 145); or at their business situs, if they had one (*New Orleans v. Stempel* (1899) 175 U.S. 309, 20 S.Ct. 110, 44 L.Ed. 174; *Metropolitan Life Ins. Co. v. New Orleans* (1907) 205 U.S. 395, 27 S.Ct. 499, 51 L.Ed. 853). Shares of stock were taxable at the domicile of the stockholder (*Hawley v. Malden* (1914) 232 U.S. 1, 34 S.Ct. 201, 58 L.Ed. 477), and at the domicile of the corporation (*Corry v. Baltimore* (1905) 196 U.S. 466, 25 S.Ct. 297, 49 L.Ed. 556; *Frick v. Pennsylvania*).

In a series of cases commencing with *Safe Deposit & Trust Co. of Baltimore, Maryland v. Virginia* (1929) 280 U.S. 83, 50 S.Ct. 59, 74 L.Ed. 180, and *Farmers Loan & Trust Co. v. Minnesota* (1930) 280 U.S. 204, 50 S.Ct. 98, 74 L.Ed. 371, and culminating in *First Nat. Bank of Boston v. Maine* (1932) 284 U.S. 312, 52 S.Ct. 174, 76 L.Ed. 313, the Supreme Court overruled prior contrary decisions and established the doctrine that multiple taxation of intangibles was a violation of due process, and that ordinarily only the state of the domicile of the creditor could tax. (See 2 Rotunda 3d, §13.2.)

However, exceptions and qualifications to this rule soon developed. (See *Burnet v. Brooks* (1933) 288 U.S. 378, 53 S.Ct. 457, 77 L.Ed. 844 [British subject died domiciled in Cuba, left stocks and bonds in foreign corporations, but with business situs in New York; federal estate tax applied]; *Estate of McCreery* (1934) 220 C. 26, 29, 29 P.2d 186.) In *First Bank Stock Corp. v. Minnesota* (1937) 301 U.S. 234, 57 S.Ct. 677, 81 L.Ed. 1061, a Delaware corporation did business in Minnesota, consisting of investment in shares of banks in various states, the certificates being kept in Minnesota.

Held, Minnesota could levy a property tax on the shares. The business carried on in Minnesota established a commercial domicile and gave the intangibles used there a business situs. (See *Wheeling Steel Corp. v. Fox* (1936) 298 U.S. 193, 56 S.Ct. 773, 80 L.Ed. 1143, *infra*, §44.)

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9 *Witkin Sum. Cal. Law Tax* § 36

[§ 36] Present Rule: Multiple Taxation Is Valid.

In 1939, the Supreme Court departed from the view that multiple taxation is unconstitutional and restored the former rules (*supra*, §35).

In *Curry v. McCanless* (1939) 307 U.S. 357, 59 S.Ct. 900, 83 L.Ed. 1339, decedent, domiciled in Tennessee, created a trust of stocks and bonds with an Alabama corporation trustee, but reserved a power of appointment to dispose of them upon death. In her will, she exercised the power. *Held*, both Alabama (domicile of trustee, physical situs of certificates) and Tennessee (domicile of trustor-decedent) could levy death taxes on the transfer by will. (a) Where the owner of intangibles confines his or her activity to the state of domicile, they are taxable there alone; but when the owner extends his or her activities to another state and obtains the protection of its laws, that state also can tax; it is an unwarranted curtailment of state power to attribute a single situs to the property in such a case. (b) Here, "the intangibles for some purposes are identified with the trustee, their legal owner, at the place of its domicile and ... in another and different relationship and for a different purpose--the exercise of the power of disposition at death, which is the equivalent of ownership--they are identified with the place of domicile of the testatrix, Tennessee." (59 S.Ct. 908, 83 L.Ed. 1350.) (See 59 A.L.R.3d 837 [business situs of intangibles held in trust in state other than beneficiary's domicile].)

In *State Tax Com. of Utah v. Aldrich* (1942) 316 U.S. 174, 62 S.Ct. 1008, 86 L.Ed. 1358, decedent died domiciled in New York, leaving stock in a Utah corporation. The certificates, corporate records, and transfer agents were in New York. *Held*, Utah could levy a death tax; it created the corporation, defined and protected the shareholders' rights, and had power over the transfer of shares. The court declared that "there is no constitutional rule of immunity from taxation of intangibles by more than one state"; in the case of shares of stock, jurisdiction to tax is in any state that has extended benefits or protection, or that can demonstrate the "practical fact of its power" over the shares. "In other words, we restore these intangibles to the constitutional status which they occupied up to a few years ago." (62 S.Ct. 1012, 86 L.Ed. 1370.) *First Nat. Bank of Boston v. Maine* (1932) 284 U.S. 312, 52 S.Ct. 174, 76 L.Ed. 313, *supra*, §35, was expressly overruled. (62 S.Ct. 1012, 86 L.Ed. 1370.)

In *Graves v. Elliott* (1939) 307 U.S. 383, 59 S.Ct. 913, 83 L.Ed. 1356, decedent, domiciled in New York, had bonds held by the trustee of a revocable trust in Colorado, and died without revoking the trust. *Held*, both Colorado and New

York could impose death taxes. Relinquishment of property by nonexercise of a power to revoke was similar to exercise of the power of disposition in *Curry v. McCanless*. (59 S.Ct. 915, 813 L.Ed. 1360.)

In *Graves v. Schmidlapp* (1942) 315 U.S. 657, 62 S.Ct. 870, 86 L.Ed. 1097, the donor, domiciled in Massachusetts, gave a power of appointment over intangibles in a trust, and the power was exercised by the decedent donee, domiciled in New York. *Held*, New York could levy an estate tax, despite the facts that the power was created by a nonresident donor and the intangibles were located outside. (62 S.Ct. 874, 86 L.Ed. 1101.) *Wachovia Bank & Trust Co. v. Doughton* (1926) 272 U.S. 567, 47 S.Ct. 202, 71 L.Ed. 413, was overruled. (62 S.Ct. 875, 86 L.Ed. 1103.) (See *Pearson v. McGraw* (1939) 308 U.S. 313, 60 S.Ct. 211, 84 L.Ed. 293; *Estate of Newton* (1950) 35 C.2d 830, 831, 221 P.2d 952; 19 A.L.R.2d 1415 [inheritance, succession, or estate tax on property covered by power of appointment as affected by location of property, or residence of parties, outside the taxing state or country].)

A striking illustration of the present approach, and of the relatively slight contact with intangible property that will constitute an adequate basis for state taxation, is furnished by *Greenough v. Tax Assessors of Newport* (1947) 331 U.S. 486, 67 S.Ct. 1400, 91 L.Ed. 1621. Decedent, a resident of New York, left a will, probated in New York, that created a testamentary trust. The trust res consisted of stock; the certificates were at all times in New York, and the beneficiary was domiciled in New York. Two trustees were appointed, one residing in New York and the other in Rhode Island. Local ad valorem personal property taxes were assessed in Rhode Island against the Rhode Island trustee on one-half of the value of the corpus. *Held*, the tax was valid. (a) The close relation between intangibles and the owner furnishes an adequate basis for a tax on the owner by the state of his residence. (b) A similar relationship exists between a trustee and the intangibles of a trust, for Rhode Island confers similar benefits: its courts and its law are available for suits against the trustee, or suits by the trustee to enforce trust claims against residents of that state. (67 S.Ct. 1404, 91 L.Ed. 1628; see 8 U.C.L.A. L. Rev. 69 [multiple death taxation].)

In *Estate of Tutules* (1962) 204 C.A.2d 481, 22 C.R. 427, a trust was created in Illinois land, with title in an Illinois trustee. Decedent beneficiary was domiciled in California. His executor, relying on *Senior v. Braden* (1935) 295 U.S. 422, 55 S.Ct. 800, 79 L.Ed. 1520, *supra*, §32, challenged California's inheritance tax. *Held*, the tax was valid. *Curry v. McCanless*, *supra*, though dealing with a corpus of stocks and bonds, is equally applicable to a real estate trust where, as here, the interest of the beneficiary is only a personal right. (204 C.A.2d 489.) (See 90 Harv. L. Rev. 1656 [property definitions in multistate death taxation].)

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See *Milhous v. Franchise Tax Bd.* (2005) 131 C.A.4th 1260, 1268, 32 C.R.3d 640 [California could not fairly tax any portion of payments nonresident taxpayers received for covenant not to compete; no part of payments arose from activities in California or from capital that was located in or associated with California; citing *Curry v. McCanless* (1939) 307 U.S. 357, 59 S.Ct. 900, 83 L.Ed. 1339, text, p. 63].



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aa. Validity of Multiple Taxation.

9 *Witkin Sum. Cal. Law Tax* § 37

[§ 37] Validity of Multiple Taxation.

Another form of multiple taxation may occur where a decedent dies after maintaining residences in more than one state, and each state levies a death tax on the theory that it is the state of domicile. If the highest court of each state affirms the finding of domicile, each may collect the tax. And because the controversy is between the taxpayer and the state, there is no way in which the issue of domicile can be raised by the taxpayer in the United States Supreme Court, for the Eleventh Amendment prohibits an individual suit against a state without its consent. (*Worcester County Trust Co. v. Riley* (1937) 302 U.S. 292, 58 S.Ct. 185, 82 L.Ed. 268; see 7 *Summary* (10th), *Constitutional Law*, §41.)

However, in *Texas v. Florida* (1939) 306 U.S. 398, 59 S.Ct. 563, 83 L.Ed. 817, four states claimed the domicile, and Texas sued Florida, Massachusetts, and New York, alleging that the assets after payment of the federal estate tax would be insufficient to pay claims of all the states. *Held*, under these circumstances, it was proper for the Supreme Court to take jurisdiction. A master was appointed, and Massachusetts was found to be the true domicile and to have the sole right to tax. But the court declared that the rule of the *Worcester County Trust Co.* case still applies in ordinary circumstances. "That two or more states may each constitutionally assess death taxes on a decedent's intangibles upon a judicial determination that the decedent was domiciled within it in proceedings binding upon the representatives of the estate, but to which the other states are not parties, is an established principle of our federal jurisprudence." (59 S.Ct. 569, 83 L.Ed. 827.) (See 2 *Rotunda* 3d, §13.3.)

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9 Witkin Sum. Cal. Law Tax § 38

[§ 38] Statutory Solutions: Compromise or Arbitration.

The National Conference of Commissioners on Uniform State Laws devised a solution to the problem of multiple findings of domicile (*supra*, §37), and in 1949, California adopted the Uniform Act on Interstate Compromise of Death Taxes (former Rev.C. 14195 et seq.; now Rev.C. 13801 et seq.) and the Uniform Act on Interstate Arbitration of Death Taxes (former Rev.C. 14197 et seq.; now Rev.C. 13820 et seq.). (See generally 8A U.L.A. (Master Ed.), pp. 521 et seq. [Arbitration Act, adopted in 14 jurisdictions], 8A U.L.A. (Master Ed.), pp. 535 et seq. [Compromise Act, adopted in 16 jurisdictions].)

Under the Compromise Act, the state controller and the personal representative may enter into a written compromise with the taxing authorities of other states. The agreement fixes the amount to be accepted by each state in full satisfaction of all death taxes. (Rev.C. 13810; see 8A U.L.A. (Master Ed.), p. 559 et seq.)

Under the Arbitration Act, the controller is authorized to enter into a written arbitration agreement with the taxing authorities of other states that have adopted the Act and with the personal representative of the decedent. The arbitration board, selected by the parties, determines the domicile of the decedent. This determination is final for the sole purpose of imposing and collecting death taxes. (Rev.C. 13820, 13820.3; see 8A U.L.A. (Master Ed.), p. 541 et seq.)

Thus, the effect of the two statutes is that proceedings under the Compromise Act results in each of several states sharing in the death taxes, while proceedings under the Arbitration Act settle the issue of domicile in favor of a single state.

In 1957, California adopted amendments providing an alternative arbitration method (former Rev.C. 14199 et seq.; now Rev.C. 13830 et seq.). An executor, or the taxing official of any of the states, may invoke the procedure by written notice. (Rev.C. 13830.1.) The Act applies, however, only where each state has a substantially similar law or a law empowering the tax authority to voluntarily enter into a binding arbitration or compromise agreement, and an agreement is made. (Rev.C. 13830.13.)

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1. Unequal Assessment: Administrative Discrimination.
a. What Constitutes Invalid Discrimination.

9 *Witkin Sum. Cal. Law Tax* § 39

[§ 39] What Constitutes Invalid Discrimination.

An intentional and systematic valuation of property on a higher basis than that of other property of the same class is held to be a denial of equal protection to the taxpayer whose property has the higher assessment. It is no defense that it is correctly assessed at its true value and that the other property is undervalued; the taxpayer is entitled to equality of treatment. (*Sioux City Bridge Co. v. Dakota* (1923) 260 U.S. 441, 43 S.Ct. 190, 192, 67 L.Ed. 340, 343; *Iowa-Des Moines Nat. Bank v. Bennett* (1931) 284 U.S. 239, 52 S.Ct. 133, 135, 76 L.Ed. 265, 272; *Lilli Ann Corp. v. San Francisco* (1977) 70 C.A.3d 162, 190, 138 C.R. 759.)

The governing principle is stated in *Hillsborough Township, Somerset, New Jersey v. Cromwell* (1946) 326 U.S. 620, 66 S.Ct. 445, 90 L.Ed. 358, as follows: "The equal protection clause ... protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment. He may not complain if equality is achieved by increasing the same taxes of other members of the class to the level of his own. The constitutional requirement, however, is not satisfied if a State does not itself remove the discrimination, but imposes on him against whom the discrimination has been directed the burden of seeking an upward revision of the taxes of other members of the class." (66 S.Ct. 448, 90 L.Ed. 363.)

In *Allegheny Pittsburgh Coal Co. v. County Com. of Webster County, West Virginia* (1989) 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688, a county assessor's system valued recently purchased real property on the basis of purchase price, but made only minor changes in the assessments of other land and resulted in a disparity in assessed value of 8 to 35 times. *Held*, the assessment was invalid.

The Court made this distinction: "We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIII A of its Constitution, popularly known as 'Proposition 13.' Proposition 13 generally provides that property will be assessed at its 1975-1976 value, and reassessed only when transferred or constructed upon, or in a limited manner for inflation. Cal. Const., Art. XIII A, § 2 (limiting inflation adjustments to 2% per year). The system is grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property." (109 S.Ct. 638, 102 L.Ed.2d 698, footnote 4.) (See 26 *San Diego L. Rev.* 1173 [*Allegheny Pittsburgh Coal*]; on Cal.

Const., Art. XIII A, §2, see *Nordlinger v. Lynch* (1990) 225 C.A.3d 1259, 1271, 275 C.R. 684, *infra*, §146 [upholding Proposition 13, but distinguishing *Allegheny*]; *infra*, §145 et seq.)

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b. Showing of Intentional Discrimination.

9 *Witkin Sum. Cal. Law Tax* § 40

[§ 40] Showing of Intentional Discrimination.

A taxpayer invoking the Equal Protection Clause has the burden of showing that the overvaluation is "intentional and systematic." "[M]ere differences in modes of assessment" are not alone enough; nor is there a denial of equal protection where the inequality results from "mere mistake or error in judgment of tax officials." (*Charleston Fed. Savings & Loan Assn. v. Alderson* (1945) 324 U.S. 182, 65 S.Ct. 624, 629, 630, 89 L.Ed. 857, 863, 864 [building and loan associations taxed on 100% of value of intangibles, small loan companies and others taxed at percentage of value of some intangibles; burden of showing unconstitutional discrimination was not sustained]; see *Southern R. Co. v. Watts* (1923) 260 U.S. 519, 43 S.Ct. 192, 195, 67 L.Ed. 375, 387; *Crothers v. Santa Cruz* (1957) 151 C.A.2d 219, 227, 311 P.2d 557; *Metropolitan Stevedore Co. v. Los Angeles* (1972) 29 C.A.3d 565, 572, 105 C.R. 595; *Great-West Life Assur. Co. v. State Bd. of Equalization* (1993) 19 C.A.4th 1553, 1561, 25 C.R.2d 1 [insurer failed to show intentional discrimination where gross premiums tax was imposed on insurer's minimum premium plan, even though similar plans were not taxed].) And if an administrative remedy is provided, e.g., a proceeding before a board of equalization, it must first be exhausted before the claim of unconstitutional discrimination can be made to a court. (*First Nat. Bank of Greeley v. Board of County Commrs. of Weld, Colorado* (1924) 264 U.S. 450, 44 S.Ct. 385, 68 L.Ed. 784; *Dawson v. Los Angeles* (1940) 15 C.2d 77, 81, 98 P.2d 495; *infra*, §286.)

There is no unconstitutional discrimination in a difference in classification of property unless it results in an unequal tax burden on the plaintiff. In *Simms v. Los Angeles* (1950) 35 C.2d 303, 217 P.2d 936, 13 Summary (10th), *Personal Property*, §105, the Los Angeles county assessor had formerly classified bank vault doors and counterlines as personal property, and personal property of national banks is exempt from local taxation. After 1940, following controlling decisions, he reclassified them as part of the realty, but continued to classify vault doors, counterlines, printing presses, and heavy industrial machinery of other businesses as personal property. In this action by national banks and their lessors to recover taxes paid under protest, the trial judge found the misclassification of the property of other businesses to be a purposeful and arbitrary discrimination. *Held*, judgment for plaintiffs reversed. General taxes had been levied at the same rate on both real and personal property; hence, the misclassification was "a mere informality or irregularity which did not affect the validity of the general taxes levied upon the correctly classified fixtures installed in plaintiffs' buildings." (35 C.2d 315.)

Plaintiffs' real complaint, of course, was that if its business fixtures had been classified with those of others, they

would have been wholly exempt from taxation. This did not mean, however, that plaintiffs were wrongfully subjected to taxes not imposed on others, but only that plaintiffs would have benefited if their property had also been misclassified. "Discrimination cannot be thus postulated. ... Classification of bank vault doors and counterlines as personalty would not have placed such property on a parity taxwise with similar property, but would have given the former an unwarranted exemption from taxation." (35 C.2d 311.)

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2. Classification of Subjects of Tax.
a. Power To Select and Grant Exemptions.

9 *Witkin Sum. Cal. Law Tax* § 41

[§ 41] Power To Select and Grant Exemptions.

The Equal Protection Clause has a limited scope in relation to state taxation, in view of the relatively unrestricted power to select subjects to be taxed and to grant exemptions. (See *Carmichael v. Southern Coal & Coke Co. (1937)* 301 U.S. 495, 57 S.Ct. 868, 81 L.Ed. 1245; *New York Rapid Transit Corp. v. New York (1938)* 303 U.S. 573, 58 S.Ct. 721, 82 L.Ed. 1024; *Madden v. Kentucky (1940)* 309 U.S. 83, 60 S.Ct. 406, 84 L.Ed. 590 [tax on bank deposits, higher on banks outside state than those within state, was justified by difficulties of collection]; *Walters v. St. Louis (1954)* 347 U.S. 231, 74 S.Ct. 505, 509, 98 L.Ed. 660, 665 [upholding municipal income tax based on gross salary and wages of employed but only net profits of self-employed]; *Allied Stores of Ohio v. Bowers (1959)* 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d 480; *Kahn v. Shevin (1974)* 416 U.S. 351, 94 S.Ct. 1734, 1737, 40 L.Ed.2d 189, 193, 8 *Summary* (10th), *Constitutional Law*, §772 [state law granting widows annual \$ 500 tax exemption was not unconstitutional discrimination against widowers]; *Fox Bakersfield Theatre Corp. v. Bakersfield (1950)* 36 C.2d 136, 142, 222 P.2d 879, *infra*, §49; *Roth Drug v. Johnson (1936)* 13 C.A.2d 720, 734, 57 P.2d 1022; *National Schools v. Los Angeles (1955)* 135 C.A.2d 311, 325, 287 P.2d 151; *San Jose v. Donohue (1975)* 51 C.A.3d 40, 45, 123 C.R. 804 [municipal tax on utility users exempting public entities and some others for administrative convenience]; *O.N.C. Freight Systems v. Department of Motor Vehicles (1983)* 149 C.A.3d 11, 20, 196 C.R. 592 [in imposing new registration fee on transfer of vehicle, state could validly distinguish commercial vehicles in interstate commerce from other vehicles]; *Park 'N Fly of San Francisco v. South San Francisco (1987)* 188 C.A.3d 1201, 1214, 234 C.R. 23 [business license tax designed to equalize tax burden on commercial parking facilities with burden on other businesses paying greater property tax was neither confiscatory nor prohibitory]; 2 *Rotunda* 3d, §13.7; 65 *A.L.R.3d* 434 [validity and construction of tax exemptions for property used in pollution control]; 98 *A.L.R.3d* 916 [preferential property tax treatment for agricultural land]; 50 *A.L.R.4th* 467 [tax or license fee on practice of law]; *supra*, §§1, 16 and *infra*, §42.)

Likewise, the Privileges and Immunities Clause of the Fourteenth Amendment is not a limitation on the taxing power so as to prevent a higher tax on activities crossing state lines. (*Madden v. Kentucky, supra*, overruling *Colgate v. Harvey (1935)* 296 U.S. 404, 56 S.Ct. 252, 80 L.Ed. 299, 7 *Summary* (10th), *Constitutional Law*, §608.)

It is equally well established that the Legislature may make whatever exclusions and exemptions appear desirable. Thus, *Carmichael v. Southern Coal & Coke Co., supra*, held that an unemployment compensation act could properly exclude small employers and exempt certain other classes on the ground of administrative convenience. (See *Allied*

Stores of Ohio v. Bowers, *supra*; *Fox Bakersfield Theatre Corp. v. Bakersfield*, *supra*, 36 C.2d 143; *Estate of Guthman* (1954) 125 C.A.2d 408, 413, 270 P.2d 875; on exemptions under California property tax laws, see *infra*, §180 et seq.)

An unusual Supreme Court decision held a state tax on properties of a railroad invalid on the ground that the assessment, in failing to give due weight to shrinkage in values, was so high as to violate due process. (*Great Northern Ry. Co. v. Weeks* (1936) 297 U.S. 135, 56 S.Ct. 426, 80 L.Ed. 532.) Ordinarily, however, a nondiscriminatory tax will be sustained although it is exceedingly burdensome on a particular business selected as the source of revenue. "[S]hort of being confiscatory or prohibitory, there is no rule of law that requires that a tax be reasonable in amount, for the power of taxation is a vital legislative function, ... and there can be no basis for a court to invalidate an exercise of that power other than the Constitutions, state or federal." (*Fox Bakersfield Theatre Corp. v. Bakersfield*, *supra*, 36 C.2d 139 [answering contention that theatres were being overtaxed].)

The principles were summarized in *Allied Stores of Ohio v. Bowers*, *supra*, as follows: "The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guaranties of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value." (79 S.Ct. 440, 441, 3 L.Ed.2d 484, 485.) (See *Franklin Life Ins. Co. v. State Bd. of Equalization* (1965) 63 C.2d 222, 232, 45 C.R. 869, 404 P.2d 477, quoting *Carmichael*, and citing the text.)

In *Allied Stores of Ohio*, an Ohio statute exempted from ad valorem taxes the merchandise or agricultural products of a nonresident held in storage. An Ohio resident challenged the tax as an arbitrary discrimination based on residence, relying on *Wheeling Steel Corp. v. Glander* (1949) 337 U.S. 562, 69 S.Ct. 1291, 93 L.Ed. 1544, *infra*, §44, where the discrimination was against a nonresident. In upholding the Ohio tax, the court saw a reasonable legislative purpose in encouraging the construction or leasing and operation of warehouses in Ohio by nonresidents, or in stimulating the market for Ohio products by enabling nonresidents to purchase and hold them there in storage free from taxes. (79 S.Ct. 442, 3 L.Ed.2d 486.) The concurring opinion offers a simpler explanation: Discrimination against nonresidents is unconstitutional, but discrimination against residents "presents no state action disruptive of the federal pattern." (79 S.Ct. 444, 3 L.Ed.2d 488.)

In *Lehnhausen v. Lake Shore Auto Parts Co.* (1973) 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351, an Illinois constitutional amendment abolished the ad valorem tax on personal property of individuals, but retained it for personal property of corporations. *Held*, there was no invidious discrimination. The individual tax had been found impossible to administer and economically unsound, for assessment practices varied from district to district, and many persons paid no tax at all. Moreover, the state asserted that the change made was only the first step toward total elimination of the ad valorem personal tax, but for fiscal reasons, it was impossible to abolish it at once. (93 S.Ct. 1006, 35 L.Ed.2d 357.)

In *Welch v. Henry* (1938) 305 U.S. 134, 59 S.Ct. 121, 83 L.Ed. 87, *supra*, §30, the Legislature, discovering a class of income not previously taxed, enacted a special statute, with distinct provisions applicable to that income alone, and made it retroactive to the prior legislative session. *Held*, it was permissible to select and classify separately this type of income that had theretofore escaped a tax. And if it could be done prospectively, there was no denial of equal protection in retroactively correcting an undesirable and unintended exemption. (59 S.Ct. 124, 83 L.Ed. 91; see *White River Lumber Co. v. Arkansas* (1929) 279 U.S. 692, 49 S.Ct. 457, 73 L.Ed. 903.)

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CHAPTER XI - Taxation

Witkin Summary of California Law
III. DUE PROCESS AND EQUAL PROTECTION
C. Equal Protection: Discriminatory Taxes.
2. Classification of Subjects of Tax.
b. Valid Discrimination for Regulatory Purposes.

9 *Witkin Sum. Cal. Law Tax* § 42

[§ 42] Valid Discrimination for Regulatory Purposes.

A state tax may be used to accomplish a regulatory or repressive purpose. Thus, a state may levy a heavy tax on butter substitutes such as oleomargarine, with no corresponding tax on butter, even though the motive of the Legislature and the effect of the act may be to burden one industry for the benefit of the other. Motive in these cases is not a relevant subject for judicial inquiry. (*Magnano Co. v. Hamilton* (1934) 292 U.S. 40, 54 S.Ct. 599, 601, 78 L.Ed. 1109, 1114.)

Under this principle, legislation imposing license taxes on chain stores at a higher rate than ordinary businesses, and increasing the tax with the number of units, was upheld. (*State Bd. of Tax Commrs. of Indiana v. Jackson* (1931) 283 U.S. 527, 51 S.Ct. 540, 75 L.Ed. 1248; see *Fullerton Oil Co. v. Johnson* (1934) 2 C.2d 162, 173, 39 P.2d 796.) This may be done for the purposes of discouraging the growth of such large organizations and benefiting independents. (See *Fox v. Standard Oil Co. of New Jersey* (1935) 294 U.S. 87, 55 S.Ct. 333, 79 L.Ed. 780; 9 So. Cal. L. Rev. 166.)

Great Atlantic & Pac. Tea Co. v. Grosjean (1937) 301 U.S. 412, 57 S.Ct. 772, 81 L.Ed. 1193, upheld a statute under which the higher taxes were based on the number of stores in the chain even though some were outside the state. The competitive advantages of large chains, derived chiefly from centralized and large scale purchasing power, justified the classification. (But see *infra*, §44.)

In *Stevens v. Watson* (1971) 16 C.A.3d 629, 94 C.R. 190, former Cal. Const., Art. XIII, §2.6 (now Cal. Const., Art. XIII, §10), granting preferential tax assessment treatment to nonprofit golf courses of 10 acres or more that have been operated for at least 2 years, was upheld against an equal protection challenge. Among other things, "it fits into an overall scheme in which the state's power to tax is directed toward discouraging premature development of urban and near urban land and toward encouraging the preservation of open spaces." (16 C.A.3d 635.)

The reasoning in *Magnano* was applied in *Pittsburgh v. Alco Parking Corp.* (1974) 417 U.S. 369, 94 S.Ct. 2291, 41 L.Ed.2d 132. A city imposed a 20% gross receipts tax on operators of off-street parking facilities, which was challenged as making it impossible to operate profitably and as giving tax-exempt public parking facilities an unfair competitive advantage. *Held*, the tax was valid. (a) The principle is established that "the judiciary should not infer a legislative attempt to exercise a forbidden power in the form of a seeming tax from the fact, alone, that the tax appears excessive or even so high as to threaten the existence of an occupation or business." (b) Nor does a taxing ordinance lose its

character and violate due process merely because the taxing authority competes with the taxpayer in a manner thought unfair by the judiciary. "This approach would demand not only that the judiciary undertake to separate those taxes that are too burdensome from those that are not, but also would require judicial oversight of the terms and circumstances under which the Government or its tax-exempt instrumentalities may undertake to compete with the private sector. The clear teaching of prior cases is that this is not a task that the Due Process Clause of the Federal Constitution demands of or permits to the judiciary." (94 S.Ct. 2296, 41 L.Ed.2d 138.) (See 26 *Hastings L. J.* 215 [*Pittsburgh v. Alco Parking*].)

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c. Valid Discrimination for Retaliatory Purposes.

9 *Witkin Sum. Cal. Law Tax* § 43

[§ 43] Valid Discrimination for Retaliatory Purposes.

Cal. Const., Art. XIII, §28(f)(3), and *Ins.C. 685* et seq. provide for a retaliatory tax on foreign insurance companies doing business in California when their own states discriminate against California companies doing business in those states, the retaliation being in the same proportion as the discrimination. The classification of foreign insurers for this separate treatment is designed to secure reciprocity, and is not a denial of equal protection. (*Franklin Life Ins. Co. v. State Bd. of Equalization* (1965) 63 C.2d 222, 226, 45 C.R. 869, 404 P.2d 477; see *Atlantic Ins. Co. v. State Bd. of Equalization* (1967) 255 C.A.2d 1, 14, 62 C.R. 784; *Western & Southern Life Ins. Co. v. State Bd. of Equalization* (1970) 4 C.A.3d 21, 33, 34, 84 C.R. 88 [predecessor provision in California Constitution was valid but not retroactive]; *Western & Southern Life Ins. Co. v. State Bd. of Equalization* (1979) 99 C.A.3d 410, 159 C.R. 539, affirmed by *Western & Southern Life Ins. Co. v. State Bd. of Equalization of Calif.* (1981) 451 U.S. 648, 101 S.Ct. 2070, 68 L.Ed.2d 514; 34 *Stanf. L. Rev.* 877 [equal protection analysis of taxing out-of-state corporations after *Western & Southern*]; 30 *A.L.R.4th* 873 [construction, operation, and application of retaliatory statutes].)

In *American Alliance Ins. Co. v. State Bd. of Equalization* (1982) 134 C.A.3d 601, 184 C.R. 674, the court construed the "special purpose" exception in the constitutional provision and *Ins.C. 685.1*. The retaliatory tax does not apply to special purpose obligations or assessments imposed by another state or foreign country in connection with particular kinds of insurance. Arizona levies a premium tax on workers' compensation insurance carriers including plaintiff; the proceeds are held in the general fund for the credit of the administrative fund, which earmarks the necessary money to cover workers' compensation. Plaintiff contended that this earmarking brought the Arizona tax within the "special purpose" exception. *Held*, the tax was validly imposed. Bearing in mind the distinction between taxes and assessments (134 C.A.3d 606, 607; *supra*, §5), the Arizona tax is not an assessment for benefits conferred on the taxpayer; it is a tax for a special purpose (134 C.A.3d 607). Plaintiff's interpretation would create a loophole in the constitutional and statutory provisions that would virtually eliminate the retaliatory tax: "It would permit a foreign jurisdiction to heavily tax a particular class of insurer by the simple expedient of adjusting its bookkeeping methods so that the proceeds of the taxes would be designated for a particular purpose, thus benefiting the general fund by relieving it of the obligation to pay an ordinary governmental expense." (134 C.A.3d 608.)

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d. Invalid Discrimination.

1. In General.

9 *Witkin Sum. Cal. Law Tax* § 44

[§ 44] In General.

(1) *Poll Tax*. A poll tax imposed on a particular class of persons, such as aliens, is clearly an unconstitutional discrimination. (*In re Kotta* (1921) 187 C. 27, 30, 200 P. 957.) Poll taxes are now prohibited by the Twenty-Fourth Amendment. (See 7 *Summary* (10th), *Constitutional Law*, §243.)

(2) *Foreign Corporations*. A tax that discriminates against foreign corporations is likewise objectionable. Under the doctrine of unconstitutional conditions (see 8 *Summary* (10th), *Constitutional Law*, §812), once a foreign corporation has complied with all conditions precedent to doing business, and has entered the state, it is deemed a person within the jurisdiction, entitled to equal protection of the laws, and cannot be subjected to discriminatory taxes or other unequal burdens as a condition to continuing in business. (*Hanover Fire Ins. Co. v. Carr* (1926) 272 U.S. 494, 47 S.Ct. 179, 185, 71 L.Ed. 372, 383.)

In *Wheeling Steel Corp. v. Glander* (1949) 337 U.S. 562, 69 S.Ct. 1291, 93 L.Ed. 1544, a system of ad valorem taxation of intangibles was adopted by the state of Ohio. Notes and accounts receivable of a foreign corporation, arising out of certain transactions, were taxed, while similar transactions of a domestic corporation were not. *Held*, the tax was invalid as applied to appellant, a foreign corporation authorized to do business in the state. (a) Under the doctrine of *Hanover*, Ohio, having admitted the appellant, could not deny it equal protection by imposing discriminatory ad valorem taxes. (b) The possibility that other states might adopt the same type of tax in relation to foreign corporations, including Ohio corporations, could not save this discriminatory *Ohio tax*. (69 S.Ct. 1296, 93 L.Ed. 1551.)

In *WHYY v. Glassboro* (1968) 393 U.S. 117, 89 S.Ct. 286, 21 L.Ed.2d 242, appellant was a nonprofit Pennsylvania corporation licensed for noncommercial television. It qualified to do business in New Jersey. New Jersey exempted domestic nonprofit corporations from property taxes. *Held*, refusal to exempt appellant was a denial of equal protection. (89 S.Ct. 288, 21 L.Ed.2d 245.)

(3) *Chain Stores*. A statute taxing owners of stores in more than one county at a higher rate than owners of stores in the same county was unreasonable and invalid. (*Louis K. Liggett Co. v. Lee* (1933) 288 U.S. 517, 53 S.Ct. 481, 485, 77 L.Ed. 929, 938.) And a percentage tax on gross sales, the rate of which was progressively raised with increased volume

of sales (e.g., 1/20% on \$ 400,000, 1% on \$ 1 million) was also invalid as unjustifiably unequal. Increased gross sales were not sufficiently related to ability to pay (net profits) to warrant the discrimination. (*Stewart Dry Goods Co. v. Lewis* (1935) 294 U.S. 550, 55 S.Ct. 525, 79 L.Ed. 1054.)

(4) *Commercial Fishing Vessels*. In *Haman v. Humboldt* (1972) 8 C.3d 922, 106 C.R. 617, 506 P.2d 993, the court nullified Rev.C. 227(a), which authorized assessment of fishing boats registered in California at 1% of their cash value, while those of out-of-state registry were assessed at 24%. Because the place of federal registration has nothing to do with the place of operation, the objectives of promoting local industry and eliminating double taxation were obviously inapplicable, and the only plausible justification advanced was the difficulty of proving that a boat registered in another state is used in this state and owned by a resident. Conceding that administrative convenience may justify different tax treatment, the court found the difference in rates too great: "The state has demanded that plaintiffs pay 24 times the tax paid by other residents of California who either documented their boats at the time of purchase in California or who were subsequently permitted by the Commissioner of Customs to change the home port designation to a California port. To accept the discrimination made by the tax statute would require that we conclude that approximately 95 percent of the money taken in is consumed in administering the tax on plaintiffs and other residents whose boats are not documented in California." (8 C.3d 927.)

(5) *Denial of Tax-Exempt Status*. Former Rev.C. 23704.5 provided in effect that, for purposes of Rev.C. 23701d, an educational or religious corporation lost its tax-exempt status if it offered a laundry service to the public for compensation. The purpose of the provision was to eliminate an asserted competitive advantage of tax-exempt laundries over commercial laundries. In *Southern Calif. Assn. of Seventh-Day Adventists v. Franchise Tax Bd.* (1975) 47 C.A.3d 207, 120 C.R. 622, the section was held unconstitutional: It isolated one type of business and two types of organizations, depriving them of tax exemptions enjoyed by others similarly situated: "Only churches and educational facilities operating laundries are singled out. The discrimination is compounded by the fact that other charitable organizations named in section 23701d--and apparently any other organization granted tax exemption under chapter 4--could operate a laundry servicing the public without losing its tax exemption." (47 C.A.3d 215.)

(6) *Tax on Nonresident Commuter*. California has held local city commuter taxes unconstitutional. (See *infra*, §52.) In *Austin v. New Hampshire* (1975) 420 U.S. 656, 95 S.Ct. 1191, 43 L.Ed.2d 530, the United States Supreme Court made the same holding as to a New Hampshire income tax on nonresidents commuting to work in the state. The decision was based on the Entitlement Clause (U.S. Const., Art. IV, §2; see 7 *Summary* (10th), *Constitutional Law*, §610.)

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2. Discriminatory Exemptions.

9 *Witkin Sum. Cal. Law Tax* § 45

[§ 45] Discriminatory Exemptions.

(1) *Use Tax on Car Purchased Out of State.* In *Williams v. Vermont* (1985) 472 U.S. 14, 105 S.Ct. 2465, 86 L.Ed.2d 11, the essential facts were as follows: "The State of Vermont collects a use tax when cars are registered with it. The tax is not imposed if the car was purchased in Vermont and a sales tax has been paid. The tax is also reduced by the amount of any sales or use tax paid to another State if that State would afford a credit for taxes paid to Vermont in similar circumstances. The credit is available, however, only if the registrant was a Vermont resident at the time he paid the taxes. Appellants, who bought cars outside of Vermont before becoming residents of that State, challenge the failure to grant them a similar credit." (105 S.Ct. 2468, 86 L.Ed.2d 14, 15.) *Held*, this failure was a denial of equal protection.

(a) Although the question whether a state must credit a sales tax paid to another state against its own use tax has been expressly reserved (*Southern Pac. Co. v. Gallagher* (1939) 306 U.S. 167, 59 S.Ct. 389, 83 L.Ed. 586), all but three states do provide a credit. But to provide a credit only to those who were residents at the time they paid the sales tax to another state is a discriminatory exemption that furthers no legitimate purpose. (105 S.Ct. 2471, 86 L.Ed.2d 18, 19.)

(b) "This customary rationale for the use tax has no application to purchases made out-of-state by those who were not residents of the taxing State at the time of purchase. These home-state transactions cannot be seen as lost Vermont sales, and are certainly not ones lost as a result of Vermont's sale tax. Imposing a use tax on them in no way protects local business." (105 S.Ct. 2472, 86 L.Ed.2d 20.)

Three justices dissented, asserting that the Court "has imagined a fanciful hypothetical discrimination" in a tax designed to help defray the state's cost for building and maintaining its roads: "[T]he exceptions and credits accomplish two related legitimate purposes: they facilitate the flow of interstate commerce by ensuring that residents and nonresidents alike are not penalized for purchasing cars in a foreign State, and they protect against the possibility that someone using the roads primarily in only one State will be forced to pay taxes in two States." (105 S.Ct. 2475, 86 L.Ed.2d 23.)

(2) *Property Tax Exemption for Special Class of Veterans.* In *Hooper v. Bernalillo County Assessor* (1985) 472 U.S. 612, 105 S.Ct. 2862, 86 L.Ed.2d 487, a New Mexico statute granted a tax exemption limited to Vietnam veterans

who resided in the state before May 8, 1976. *Held*, this was an unconstitutional discrimination. Citing *Zobel v. Williams* (1982) 457 U.S. 55, 102 S.Ct. 2309, 72 L.Ed.2d 672, 8 Summary (10th), *Constitutional Law*, §737, the Court said: "The New Mexico statute creates two tiers of resident Vietnam veterans. ... This discrimination on the basis of residence is not supported by any identifiable state interest; the statute is not written to benefit only those residents who suffered dislocation within the State's borders by reason of military service. *Zobel* made clear that the Constitution will not tolerate a state benefit program that 'creates fixed, permanent distinctions ... between ... classes of concededly bona fide residents, based on how long they have been in the State.' ... Neither the Equal Protection Clause, nor this Court's precedents, permit the State to prefer established resident veterans over newcomers in the retroactive apportionment of an economic benefit." (105 S.Ct. 2869, 86 L.Ed.2d 496, 497.)

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3. Domestic Preference Tax on Insurance Companies.

9 Witkin Sum. Cal. Law Tax § 46

[§ 46] Domestic Preference Tax on Insurance Companies.

In *Metropolitan Life Ins. Co. v. Ward* (1985) 470 U.S. 869, 105 S.Ct. 1676, 84 L.Ed.2d 751, the Court held that Alabama's domestic preference tax statute, that taxed out-of-state insurance companies at a higher rate than domestic insurance companies, violated the Equal Protection Clause. The statute taxed foreign insurance companies at three or four times the amount paid by domestic companies, but allowed foreign companies to reduce (though not eliminate) the differential by investing prescribed percentages of their worldwide assets in specified Alabama assets and securities.

(a) *Western & Southern Life Ins. Co. v. State Bd. Of Equalization of Calif.* (1981) 451 U.S. 648, 101 S.Ct. 2070, 68 L.Ed.2d 514, reviewing prior cases, concluded that *Lincoln Nat. Life Ins. Co. v. Read* (1945) 325 U.S. 673, 65 S.Ct. 1220, 89 L.Ed. 1861, *infra*, §104, "was no more than 'a surprising throwback' to the days before enactment of the Fourteenth Amendment and in which incorporation of a domestic corporation or entry of a foreign one had been granted only as a matter of privilege by the State in its unfettered discretion." The rule of *Lincoln* was rejected, and it was explicitly held that the Equal Protection Clause imposes limits on a state's power to condition the right of a foreign corporation to do business within its borders. (105 S.Ct. 1680, 84 L.Ed.2d 757.)

(b) One asserted legitimate purpose of the classification here is to encourage the formation of new domestic insurance companies in Alabama. But the principal case relied on, *Western & Southern*, furnishes no support to the state's position. That case held that the purpose of the retaliatory tax--to promote the interstate business of domestic insurers by deterring other states from enacting discriminatory or excessive taxes--was legitimate. "In contrast, Alabama asks us to approve its purpose of promoting the business of its domestic insurers *in Alabama* by penalizing foreign insurers who also want to do business in the State. ... The crucial distinction between the two cases lies in the fact that Alabama's aim to promote domestic industry is purely and completely discriminatory, designed only to favor domestic industry within the State." (105 S.Ct. 1681, 84 L.Ed.2d 758, 759.) This discrimination is condemned by a long line of cases. (105 S.Ct. 1682, 84 L.Ed.2d 759, citing numerous cases; see *supra*, §44.)

(c) The state contends that the McCarran-Ferguson Act, exempting the insurance industry from Commerce Clause restrictions (8 Summary (10th), *Constitutional Law*, §1309), intended to authorize states to impose taxes that burden interstate commerce in the insurance field. This ignores the differences between Commerce Clause and equal protection

analysis. "Under Commerce Clause analysis, the State's interest, if legitimate, is weighed against the burden the state law would impose on interstate commerce. In the equal protection context, however, if the State's purpose is found to be legitimate, the state law stands as long as the burden it imposes is found to be rationally related to that purpose, a relationship that is not difficult to establish." (105 S.Ct. 1683, 84 L.Ed.2d 761.) Here, "[e]qual protection restraints are applicable even though the effect of the discrimination in this case is similar to the type of burden with which the Commerce Clause also would be concerned." (105 S.Ct. 1683, 84 L.Ed.2d 761.)

(d) "In whatever light the State's position is cast, acceptance of its contention that promotion of domestic industry is always a legitimate state purpose under equal protection analysis would eviscerate the Equal Protection Clause in this context. A State's natural inclination frequently would be to prefer domestic business over foreign. If we accept the State's view here, then any discriminatory tax would be valid if the State could show it reasonably was intended to benefit domestic business." (105 S.Ct. 1683, 1684, 84 L.Ed.2d 762.)

(e) The other asserted purpose is the encouragement of capital investment in Alabama assets and governmental securities; but this is not a legitimate purpose when furthered by discrimination. "Domestic insurers remain entitled to the more favorable rate regardless of whether they invest in Alabama assets. Moreover, the investment incentive provision of the Alabama statute does not enable foreign insurance companies to eliminate the discriminatory effect of the statute. No matter how much of their assets they invest in Alabama, foreign insurance companies are still required to pay a higher gross premiums tax than domestic companies. The State's investment incentive provision therefore does not cure, but reaffirms, the statute's impermissible classification based solely on residence." (105 S.Ct. 1684, 84 L.Ed.2d 762.)

A strong dissenting opinion of four justices asserts that the holding "is unsupported by precedent and subtly distorts the constitutional balance." (105 S.Ct. 1684, 84 L.Ed.2d 763.) (See 38 *Stanf. L. Rev.* 1 [*Metropolitan Life Ins. Co. v. Ward*].)

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9 *Witkin Sum. Cal. Law Tax* § 47

[§ 47] In General.

The issue of discrimination, and occasionally of invalid extraterritorial reach (substantive due process), has frequently arisen in California in connection with municipal ordinances imposing license fees or taxes on business. The following are illustrative of valid classifications:

(1) A license tax on partnerships or other associations of professionals, calling for an additional amount for each additional person. (*San Mateo v. Mullin* (1943) 59 C.A.2d 652, 655, 139 P.2d 351.)

(2) A license tax on vehicles, graded according to type, size, or use. (*Los Angeles v. Tannahill* (1951) 105 C.A.2d 541, 545, 233 P.2d 671.)

(3) Classification of charter vehicles for hire, in imposing an apportioned gross receipts tax as distinguished from other kinds of vehicles for hire taxed on other bases. (See *Willingham Bus Lines v. Municipal Court* (1967) 66 C.2d 893, 897, 59 C.R. 618, 428 P.2d 602.)

(4) A license tax on coin-operated washing machines with a minimum fee for each location, although an apartment house with a few machines paid the same minimum as a Laundromat with many. (*Web Service Co. v. Spencer* (1967) 252 C.A.2d 827, 833, 61 C.R. 493.)

(5) A general business license tax with a higher rate for take-out food businesses, to compensate for increased litter collection. (*Gutknecht v. Sausalito* (1974) 43 C.A.3d 269, 281, 117 C.R. 782.)

(6) A parking tax exempting revenues derived from (a) parking by registered hotel guests or apartment residents in facilities that are part of the hotel or apartment; (b) parking by registered hotel guests in parking facilities that are separate from the hotel (if parking fee is part of hotel room rent); and (c) long-term parking by active duty service personnel. (*San Francisco v. Flying Dutchman Park* (2004) 122 C.A.4th 74, 80, 18 C.R.3d 532.)

Arbitrary and invalid classifications include the following:

(a) An ordinance discriminating among persons operating hog ranches, imposing a license fee and special burdensome regulations on those who had not occupied the same premises for a year. (*In re Fassett* (1937) 21 C.A.2d 557, 560, 69 P.2d 865.)

(b) An attempt to prohibit fire or bankrupt stock sales, by imposing a license fee of \$ 100 per day on persons conducting these sales, exempting a person who sold his or her own damaged stock; the classification based on prior ownership of the goods was wholly arbitrary. (*In re Hoskins* (1936) 16 C.A.2d 251, 253, 60 P.2d 535.)

(c) An ordinance placing a greater tax on persons who had been in business for under a year than on those who had been in business over a year. (*Soares v. Santa Maria* (1940) 38 C.A.2d 215, 217, 100 P.2d 1108.)

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2. No Fixed Place of Business.

9 *Witkin Sum. Cal. Law Tax* § 48

[§ 48] No Fixed Place of Business.

Ordinances aimed at persons having no fixed place of business within the city have been frequently upheld. Their manner of doing business is a reasonable basis of classification, for they escape property taxes and other local burdens. (*Sivertsen v. Menlo Park* (1941) 17 C.2d 197, 201, 109 P.2d 928; *E.A. Hoffman Candy Co. v. Newport Beach* (1932) 120 C.A. 525, 528, 8 P.2d 235.)

The theory was explained in *Continental Baking Co. v. Escondido* (1937) 21 C.A.2d 388, 69 P.2d 181, as follows: "[F]or the purpose of fixing and imposing license taxes merchants having fixed places of business within the city and other merchants may be separately classified and license taxes in different amounts may be laid upon those in the two classifications, so long as a tax is actually imposed upon both classes, and provided that the tax on one class is not so disproportionately heavy as to demonstrate that the classification is 'a mere subterfuge for legislation directed against a particular group of taxpayers.' " (21 C.A.2d 393.)

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3. Places of Amusement.

9 *Witkin Sum. Cal. Law Tax* § 49

[§ 49] Places of Amusement.

In *Fox Bakersfield Theatre Corp. v. Bakersfield* (1950) 36 C.2d 136, 222 P.2d 879, defendant added to its general business license tax an additional tax on places of amusement or entertainment, based on a percentage of the admission charge. It covered theatres and eating places with a floor show or dance floor, but exempted pool halls and arcades that charged no admission, and religious, charitable, and educational affairs charging no admission. *Held*, the selection of subjects and exempted classes was valid. The greater tax was mainly directed at businesses where larger groups were likely to gather, with accompanying effects on the activities of government. (36 C.2d 144.)

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4. Transient Lodger.

9 *Witkin Sum. Cal. Law Tax* § 50

[§ 50] Transient Lodger.

The classification of a transient lodger was held invalid in *Gowens v. Bakersfield* (1960) 179 C.A.2d 282, 3 C.R. 746. Defendant city levied an excise tax of 4% on the compensation for lodging rentals paid by transients. These were defined as persons taking lodging for not more than 7 days in a hotel (defined as a lodging place for five or more persons). Thus, persons obtaining lodging in a place having fewer than five accommodations were exempt. Conceding that the size of a business may sometimes be a reasonable basis for classification, the court saw no proper ground for this classification of a consumer, in taxing the privilege of occupancy of a single lodging. "Whether he will want to stay in a large hostelry or a small one, whether he may desire additional entertainment or service, will depend on personal preference and habits, but we can find no reasonable distinction for tax purposes from the viewpoint of a lodger between one seeking and using a large hostelry capable of accommodating many people and a small one accommodating a lesser number. The ordinance clearly violates the constitutional requirements of uniformity of intended application." (179 C.A.2d 286.)

The court also held that plaintiff hotel owner had standing to sue although he was not the person taxed. Under his pleading and common knowledge, the law required him to collect the tax, and he could lose customers to equally acceptable untaxed lodgings available near by. (179 C.A.2d 285.) (See *Britt v. Pomona* (1990) 223 C.A.3d 265, 274, 272 C.R. 724 [tax on persons residing in transient-type housing violated equal protection requirements]; 7 *Summary* (10th), *Constitutional Law*, §85.)

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5. Extraterritorial Tax.

9 Witkin Sum. Cal. Law Tax § 51

[§ 51] Extraterritorial Tax.

The most difficult cases are those in which the tax appears to reach outside the area of municipal power, and they are numerous.

In *Bueneman v. Santa Barbara* (1937) 8 C.2d 405, 65 P.2d 884, an ordinance imposed a \$ 200 yearly license fee on laundries doing business in the city, where the plant was located outside. Laundries with local plants paid no fee. *Held*, the ordinance was void. Conceding that the legislative body might classify different kinds of business and different modes of doing business, it could not use this power as a subterfuge to single out one group for taxation and entirely exempt others doing the same business in substantially the same way. (8 C.2d 415.)

In *Ferran v. Palo Alto* (1942) 50 C.A.2d 374, 122 P.2d 965, an ordinance imposing a license fee on laundries, calculated on the number of employees at the plant, wherever located, was held improperly discriminatory against those picking up laundry within the city but having their plants located outside. The effect was to reach out and impose a tax largely on business not locally transacted, using a small local business as the means. (50 C.A.2d 383.)

But some extraterritorial effects may be validly gained by applying the distinctions between subject and measure, and between property and privilege taxes. Thus, in *Los Angeles v. Belridge Oil Co.* (1954) 42 C.2d 823, 271 P.2d 5, the Los Angeles general business license tax had a catch-all provision for every person "selling" goods and not otherwise licensed, the tax being measured by his or her gross receipts. Defendant operated oil wells in Kern County, so that its property was never in Los Angeles, but its business--negotiations, banking, purchases, and sales--took place at its offices in Los Angeles. *Held*, the tax was validly based on the privilege of engaging in the activity of selling in the city, despite the fact that the gross receipts were in some degree attributable to the extraterritorial activity of production and delivery. However, the tax could only be valid as to selling activities carried out in the city. If gross receipts attributable to selling outside were included, there would be an unjust discrimination against firms whose selling activities in the city compose only a small fraction of the total. (42 C.2d 831.) (See *Los Angeles v. Belridge Oil Co.* (1957) 48 C.2d 320, 309 P.2d 417 [decision on retrial]; *Los Angeles v. Moore Business Forms* (1966) 247 C.A.2d 353, 361, 55 C.R. 820 [allocation under *Belridge* rule].)

This limiting principle, and the *Ferran* decision, were applied in another context in *Security Truck Line v. Monterey* (1953) 117 C.A.2d 441, 256 P.2d 366, 257 P.2d 755. Defendant city imposed an annual \$ 13.50 license tax on the business of operating a truck with a terminus in Monterey. Plaintiff, with no place of business or other activity there, had 60 trucks that hauled occasional loads of fish into the city. The local taxable event (subject)--deliveries into the city--was clear. But the measure was held invalid as based on factors not entirely related to that taxable event. Thus, a company that makes 100 deliveries with one truck pays \$ 13.50, and another that makes the same number with 100 trucks pays 100 times the tax. "Here, the standard selected ... is a purely accidental and extraneous event that has no relation to the taxable event occurring in Monterey or the quantum of business there carried on." (117 C.A.2d 454.) (See *Carnation Co. v. Los Angeles* (1966) 65 C.2d 36, 38, 52 C.R. 225, 416 P.2d 129 [distinguishing *Belridge* and upholding business tax on privilege of manufacturing, measured by gross receipts of sales within and outside the city].)

The subject was reexamined and the controlling principles were stated in *Los Angeles v. Shell Oil Co.* (1971) 4 C.3d 108, 93 C.R. 1, 480 P.2d 953. Shell Oil Company had a division office and bulk terminal in the city of Los Angeles. The city claimed a business license tax relating to wholesale sales of gasoline delivered from the bulk terminal in the city to retailers outside the city. The city sought to base the tax on Shell's total gross receipts from those sales. *Held*, the tax should be apportioned.

(a) The *Belridge* cases, *supra*, had their roots in the United States Supreme Court decision dealing with state taxes on interstate enterprises and requiring apportionment to prevent multiple tax burdens (*infra*, §§66, 67). Although the California Constitution contains no provisions preventing political subdivisions from enacting laws affecting commerce between them, many of the considerations relevant to interstate commerce apply to intrastate or intercity commerce. "If fifty independent economic units within the United States are undesirable, 387 economic enclaves within California would be intolerable." (4 C.3d 119, quoting 53 Cal. L. Rev. 818.)

(b) The *Belridge* and other decisions, based on federal and state constitutional provisions guaranteeing equal protection, "proscribe local taxes which operate to unfairly discriminate against intercity businesses by subjecting such businesses to a measure of taxation which is not fairly apportioned to the quantum of business actually done in the taxing jurisdiction." (4 C.3d 124.) If, however, the apportionment is fairly made, the local license tax may be applied to businesses "doing business" both within and outside the taxing jurisdiction. (4 C.3d 124.)

(c) Applying these principles, Shell sustained its burden of showing that the apportionment formula used was constitutionally invalid. (4 C.3d 126.) (See *General Motors Corp. v. Los Angeles* (1971) 5 C.3d 229, 244, 245, 95 C.R. 635, 486 P.2d 163 [applying *Shell Oil* principles to business of assembly and shipment of trucks; tax partly valid and partly invalid]; *Volkswagen Pac. v. Los Angeles* (1972) 7 C.3d 48, 59, 101 C.R. 869, 496 P.2d 1237 [same]; 60 Cal. L. Rev. 1009 [*Los Angeles v. Shell* and *General Motors Corp. v. Los Angeles*].)

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6. Nonresident Commuter.

9 *Witkin Sum. Cal. Law Tax* § 52

[§ 52] Nonresident Commuter.

In *Alameda v. San Francisco* (1971) 19 C.A.3d 750, 97 C.R. 175, defendant city enacted a commuter tax, consisting of a fee of one percent of adjusted gross income of persons employed in San Francisco at annual wages of \$ 4,000 or more, but residing elsewhere. The ordinance recited that commuters constitute 19.9% of the population of the city and had not theretofore paid for services furnished to them. Plaintiffs, five Bay Area counties, sued on behalf of their residents to enjoin its enforcement. *Held*, the ordinance was unconstitutional.

(a) A state may not discriminate against residents of other states, and intercity discrimination is equally bad. (19 C.A.3d 754; see *supra*, §51.)

(b) The contention that the ordinance does no more than require commuters to pay their fair share of the cost of services is untenable. The commuters spend more time elsewhere than in San Francisco, and a formula based on percentage of commuters rather than time spent here is arbitrary. (19 C.A.3d 756.) Thus, while a city can allocate certain costs to nonresidents, it may not do this by imposing a tax on nonresidents engaged in a particular activity while exempting residents engaged in the same activity. (19 C.A.3d 756.) (See 48 A.L.R.3d 343 [validity of municipal ordinance imposing income tax or license upon nonresidents employed in taxing jurisdiction].)

Govt.C. 50026 expressly prohibits such a tax. The court in *Alameda v. San Francisco* referred to the statute as an indication of legislative intent, but did not rely on it because of uncertainty as to the legislative authority to restrict the municipal taxing power. (19 C.A.3d 757, and footnote 3.) (See 20 *Hastings L. J.* 813 [general problem of commuter taxes]; on invalidity of state-imposed commuter tax, see *supra*, §44.)

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7. Tax To Defeat Exemption.

9 *Witkin Sum. Cal. Law Tax* § 53

[§ 53] Tax To Defeat Exemption.

In *John Tennant Memorial Homes v. Pacific Grove* (1972) 27 C.A.3d 372, 103 C.R. 215, defendant city imposed a tax of 5% of the annual payments made by occupants of retirement homes operated by nonprofit charitable corporations. The stated purpose was to obtain tax revenues from a source that was exempt from property taxes under Rev.C. 214 (infra, §187). *Held*, the tax was invalid.

(a) It was a denial of equal protection, because nonprofit institutions were singled out, and a retirement home operated for profit was not subject to the tax. Exemption from property taxes was a unique and improper basis of classification. (27 C.A.3d 381, 385.)

(b) It was also void as in conflict with controlling state law, for former Cal. Const., Art. XIII, §1c (now Cal. Const., Art. XIII, §4(b)) and Rev.C. 214, creating the welfare exemption, would be nullified by a tax on those entitled to the exemption. (27 C.A.3d 385.)

The reasoning in *Tennant* was followed in *English v. Alameda* (1977) 70 C.A.3d 226, 241, 138 C.R. 634, infra, §188, a taxpayers' action seeking to compel assessment.

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9 *Witkin Sum. Cal. Law Tax* § 54

[§ 54] School Taxes.

The public schools in California are financed mainly by local property taxes (*infra*, §114). The result has been that revenue for school purposes, dependent on the tax base, differs widely in poor and wealthy districts. In *Serrano v. Priest* (1971) 5 C.3d 584, 614, 96 C.R. 601, 487 P.2d 1241, the financing system was held to be an unconstitutional denial of equal protection. (See 50 U.C.L.A. L. Rev. 801 [whether *Serrano v. Priest* "caused" adoption of Proposition 13 (*infra*, §125)].) But the United States Supreme Court, in *San Antonio Independent School Dist. v. Rodriguez* (1973) 411 U.S. 1, 93 S.Ct. 1278, 1308, 36 L.Ed.2d 16, 51, saw no invalid discrimination in the Texas system of combined state and local financing, even though local districts suffered disparities by reason of differences in the value of assessable property. (For full discussion of both cases, and commentary on *Serrano* and its impact, see 8 *Summary* (10th), *Constitutional Law*, §805.)

The California Supreme Court reaffirmed its 1971 *Serrano* holding (*Serrano I*) in *Serrano v. Priest* (1976) 18 C.3d 728, 135 C.R. 345, 557 P.2d 929 (*Serrano II*). But in view of the decision of the Supreme Court of the United States in the *Rodriguez* case, the decision in *Serrano II* was based exclusively on the *California Constitution*. (18 C.3d 762.) (See 8 *Summary* (10th), *Constitutional Law*, §806.)

The legislative response to *Serrano II* was the enactment of a new law, effective in the fiscal year 1978-79. (Stats. 1977, Chap. 894.) This law: (1) adjusted minimum support levels from state and local revenues and the mechanism for equalization of voted overrides of revenue limits (former Educ.C. 42280 et seq.); and (2) established a Guaranteed Yield Program to provide supplemental state support (former Educ.C. 42000 et seq.), a State District Equalization Tax (former Educ.C. 42500), and a minimum general purpose tax rate for all school districts (former Educ.C. 42520). (See 9 *Pacific L. J.* 653.) Currently, the county school superintendent determines a revenue limit for each district in the county, taking into account average daily attendance. The Superintendent of Public Instruction then computes a revenue limit equalization adjustment and makes appropriations for revenue limit increases. (See *Educ.C.* 42238 et seq.)

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9 *Witkin Sum. Cal. Law Tax* § 55

[§ 55] Constitutional Prohibition.

Article I, §10 of the federal Constitution, the Import-Export Clause, prohibits the states from laying taxes on imports without the consent of Congress. Thus, only the national government may tax imports. The states are wholly without power to impose any exaction except reasonable inspection fees. (See *Hooven & Allison Co. v. Evatt* (1945) 324 U.S. 652, 65 S.Ct. 870, 89 L.Ed. 1252; *American Smelting & Refining Co. v. Contra Costa* (1969) 271 C.A.2d 437, 453, 77 C.R. 570 [valid property tax on imported metal-bearing ores and concentrates]; 4 *Pepperdine L. Rev.* 39 [inconsistency in property taxation of foreign goods and enterprises]; 7 *Southwestern U. L. Rev.* 247 [immunity of goods imported for resale from personal property taxes]; 71 *Am.Jur.2d* (2001 ed.), *State and Local Taxation* §81 et seq.) (On power to tax instrumentalities of foreign commerce under apportionment rule governing interstate commerce, see *infra*, §75 et seq.; on application of interstate commerce cases to foreign commerce, see *Blue Star Line v. San Francisco* (1978) 77 C.A.3d 429, 440, 441, 143 C.R. 647.)

Imports are goods brought into the United States from outside. They need not come from a foreign country. Thus, shipments from the Philippines, while an American possession, were held to be imports. (*Hooven & Allison Co. v. Evatt, supra*.) The purchaser is an importer, and immune from tax, if the purchase was the inducing cause of bringing in the goods, as where they were shipped pursuant to a contract with the purchaser, even though title actually passed to the importer after their arrival. (*Hooven & Allison Co. v. Evatt, supra*.)

The contention that the Twenty-First Amendment (see 8 *Summary* (10th), *Constitutional Law*, §1311) impliedly repealed Article I, §10, to the extent of permitting taxation of liquor imports, was rejected in *Parrott & Co. v. San Francisco* (1955) 131 C.A.2d 332, 280 P.2d 881. The court held that foreign imported liquor still in its original packages and neither sold nor consigned on the assessment date was immune from a local personal property tax. (131 C.A.2d 334.)

Parrott was followed in *Department of Revenue v. James B. Beam Distilling Co.* (1964) 377 U.S. 341, 84 S.Ct. 1247, 12 L.Ed.2d 362. Kentucky levied a "permit" tax of 10 cents a gallon on liquor shipped into the state. It was construed as not a license or permit tax, because no actual inspection was provided; hence, as applied to defendant importer of Scotch whiskey, it was a violation of the Import-Export Clause. The Court observed that it had never intimated that the Twenty-First Amendment authorized such a tax, and "now that the claim for the first time is squarely presented, we expressly reject it." (84 S.Ct. 1250, 12 L.Ed.2d 366.)

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- A. State Cannot Tax Imports.
 - 2. Original Package Doctrine.
 - a. Theory and Scope of Doctrine.

9 *Witkin Sum. Cal. Law Tax* § 56

[§ 56] Theory and Scope of Doctrine.

The question early arose as to how long after arrival the goods retained their character and immunity as imports. In *Brown v. Maryland* (1827) 25 U.S. 419, 6 L.Ed. 678, 686, the rule was laid down that the immunity lasts as long as they remain in the original packages, or until they are sold or put to use. This doctrine was repeatedly affirmed. (See *Hooven & Allison Co. v. Evatt* (1945) 324 U.S. 652, 65 S.Ct. 870, 89 L.Ed. 1252; *Department of Revenue v. James B. Beam Distilling Co.* (1964) 377 U.S. 341, 84 S.Ct. 1247, 1248, 12 L.Ed.2d 362, 365; *Singer Co. v. Kings* (1975) 46 C.A.3d 852, 861, 121 C.R. 398 [sea van or cargo container, unloaded, stored, and unbroken until sold to retailers]; *Craig Corp. v. Los Angeles* (1975) 51 C.A.3d 909, 916, 124 C.R. 621; *Nelco Corp. v. Los Angeles* (1977) 72 C.A.3d 899, 902, 140 C.R. 328; *J.N. Ceazan Co. v. Los Angeles* (1980) 102 C.A.3d 486, 492, 162 C.R. 414; *Sears, Roebuck & Co. v. Los Angeles* (1980) 105 C.A.3d 58, 63, 164 C.R. 65; 71 *Am.Jur.2d* (2001 ed.), *State and Local Taxation* §82.)

In *Hooven & Allison Co. v. Evatt*, petitioner imported fiber from the Philippines for his manufacturing operations, but kept the goods in his warehouse in original packages until needed for use. *Held*, they were immune from taxation. In other words, the rule of *Brown v. Maryland* was held applicable not only to goods imported for resale, but to goods brought in for the use of the importer. (65 S.Ct. 877, 89 L.Ed. 1264.)

Considerable litigation developed over the meaning of "original package," particularly where ingenious attempts were made to avoid taxation by bringing in small units or "packages." In *Simon v. Los Angeles* (1956) 141 C.A.2d 74, 296 P.2d 381, in which many leading cases were examined, the court quoted the following from a New York case: "But the rule of the 'original package' is not an ultimate principle. It is an illustration of a principle. It assumes transmission in packages, and then supplies a test of the unity of the transaction. If other forms of transmission are employed, there is need of other tests. ... The essential unity of the transaction remains the final test." (141 C.A.2d 77.)

So long as the normal practices of the trade were followed and the packages were those ordinarily used in the particular kind of commerce, the small size of the container did not preclude a favorable holding. Thus, in *Simon*, hardware (nails, wire, etc.) was imported from England in kegs, bags, sacks, barrels, bundles, rolls, crates, and boxes. All were shown to be normal packages used for shipment throughout the world, and were accordingly held exempt from local taxation.

Where actual packaging was impossible or impracticable, the "unity" test was applied. Thus, in *E.J. Stanton & Sons v. Los Angeles* (1947) 78 C.A.2d 181, 177 P.2d 804, plaintiff taxpayer imported hardwoods by ship. The cargoes were unloaded and stacked, each shipment separately, in plaintiff's storage yard, and sales were made from the stacks. Plaintiff contended that each piece of lumber was an original package, exempt from tax. Defendant took the position that the cargo was the package, and, accordingly, imposed its tax on "broken lots," i.e., the balances remaining in stacks after sales had been made therefrom. *Held*, the tax was valid.

(a) After a lengthy review of the authorities, the court came to the conclusion that an original package within the meaning of the doctrine is the unit transported, regardless of whether it is wrapped, crated, or left wholly unbound. (78 C.A.2d 187.)

(b) This "package" was broken by the local sales. "[W]hen such cargo sheds its invisible cover, even though in the warehouse of the importer, and is so sorted and classified as to facilitate its sale, and portions thereof are sold until the pile is depleted and the remnants thereof are commingled with new shipments of the same type of timbers, also to be offered for sale," the immunity is terminated. (78 C.A.2d 188.)

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- A. State Cannot Tax Imports.
- 2. Original Package Doctrine.
- b. Limitations on Application.

9 *Witkin Sum. Cal. Law Tax* § 57

[§ 57] Limitations on Application.

(1) *Goods Put to Use.* A significant limitation of the original package doctrine, based on a narrow distinction of *Hooven & Allison Co. v. Evatt* (1945) 324 U.S. 652, 65 S.Ct. 870, 89 L.Ed. 1252, supra, §56, was made in *Youngstown Sheet & Tube Co. v. Bowers* (1959) 358 U.S. 534, 79 S.Ct. 383, 3 L.Ed.2d 490, and the companion case of *United States Plywood Corp. v. Algoma*. (a) Youngstown imported iron ores that it stacked in piles in ore yards, daily drawing on the stacks for stock bins to supply the furnaces, and regularly replenishing the piles with new ores. (b) United States Plywood imported lumber for veneered wood products, stacked it in the open for air-drying, and periodically took boards from the stacks for the last stage of kiln-drying. *Held*, the state tax was valid. The materials were not merely stored for eventual use; the lower courts found that the piles and stacks were essential to current manufacturing operations. (79 S.Ct. 389, 3 L.Ed.2d 498.) "Breaking the original package is only one of the ways by which packaged goods that have been imported for use in manufacturing may lose their distinctive character as imports. Another way is by putting them 'to the use for which they [were] imported.' " (79 S.Ct. 391, 3 L.Ed.2d 500.)

The same theory was applied in California. (See *Sugarman v. State Bd. of Equalization* (1958) 51 C.2d 361, 369, 333 P.2d 333 [use tax was properly applied to imported yacht after it was unloaded and put to use]; *South Coast Fisheries v. Department of Fish & Game* (1963) 213 C.A.2d 325, 28 C.R. 537 [imported frozen fish committed to current use lost character as import].)

Youngstown was again followed in *Virtue Bros. v. Los Angeles* (1966) 239 C.A.2d 220, 48 C.R. 505. Manufacturers imported plywood, steel tubing, and wire, and kept them in warehouses for use in manufacturing. They contended that the limited amount taken each week from the warehouse to meet the week's production schedule was alone taxable, and that the remainder retained the character of exempt imports in original packages. *Held*, the entire warehouse inventory was taxable.

(a) Materials imported for manufacturing purposes lose their tax immunity when irrevocably committed to the use. (239 C.A.2d 223.)

(b) To uphold the manufacturers' position would enable them to manipulate the production inventory and completely escape taxation, e.g., by a conveyor belt directly from the warehouse in the unbroken package to the

machine, or a close down at tax day. (239 C.A.2d 229.)

(c) The tax would not inhibit imports, for manufacturers would continue to take advantage of price and shipping terms in determining the quantity to buy. (239 C.A.2d 230.)

(2) *Pledged Goods*. In *Halo Sales Corp. v. San Francisco* (1971) 6 C.3d 164, 98 C.R. 473, 490 P.2d 1161, plaintiff imported candles from Japan and stored them in a public warehouse in San Francisco in their original packages. They were financed through H, who supplied plaintiff's working capital and took a lien on inventory and accounts receivable. The actual importation was under a letter of credit given by UCB, a bank, which held a lien on the candles as security. On arrival of the goods in San Francisco, H took the warehouse receipts, paid UCB, and his security interest became primary. *Held*, the goods were taxable by defendant. An article loses its status as an import when it is pledged to a third party after its arrival in this country. (6 C.3d 167.) In the federal case so holding, the hypothecation was a new transaction, treated as a beneficial use of the property, while here it was in accordance with a previously formulated financing plan; but the distinction is one of form only. In substance, H did not obtain a lien on these goods until he paid off UCB and made a new loan; thus the goods were refinanced in a new transaction. (6 C.3d 168, 169.)

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- A. State Cannot Tax Imports.
- 2. Original Package Doctrine.
- c. Doctrine Abrogated.

9 *Witkin Sum. Cal. Law Tax* § 58

[§ 58] Doctrine Abrogated.

(1) *Abrogating Decision*. In *Michelin Tire Corp. v. Wages* (1976) 423 U.S. 276, 96 S.Ct. 535, 46 L.Ed.2d 495, the United States Supreme Court reexamined the long-settled rule that imported goods in their original packages are exempt from a nondiscriminatory ad valorem property tax. The Court declared (a) that the leading case of *Low v. Austin* (1871) 80 U.S. 29, 20 L.Ed. 517, with little analysis, misapplied a dictum in *Brown v. Maryland* (1827) 25 U.S. 419, 6 L.Ed. 678, 686, *supra*, §56; (b) that commentators have been uniformly critical of the holding that ad valorem property taxes are included in the prohibited "imposts" or "duties"; and (c) that none of the evil effects the constitutional provision sought to avoid would be brought about by such taxes on imported goods that have come to rest in the taxing area. *Low v. Austin* was therefore overruled. (96 S.Ct. 548, 46 L.Ed.2d 512.) (See 2 Rotunda 3d, §13.2; 1 Ehrman 3d, §5:9 et seq.; 50 So. Cal. L. Rev. 719 [*Michelin Tire Corp.*].)

Michelin was followed in *Ralston Purina Co. v. Los Angeles* (1976) 56 C.A.3d 547, 554, 128 C.R. 556, *Michelin Tire Corp. v. San Mateo* (1976) 57 C.A.3d 332, 334, 127 C.R. 791, and *Japan Food Corp. v. Sacramento* (1976) 58 C.A.3d 891, 898, 130 C.R. 392.

In *Limbach v. Hooven & Allison Co.* (1984) 466 U.S. 353, 104 S.Ct. 1837, 80 L.Ed.2d 356, the Court said: "[W]e think it clear that this Court in *Michelin* specifically abandoned the concept that the Import-Export Clause constituted a broad prohibition against all forms of state taxation that fell on imports. *Michelin* changed the focus of Import-Export Clause cases from the nature of the goods as imports to the nature of the tax at issue. The new focus is not on whether the goods have lost their status as imports but is, instead, on whether the tax sought to be imposed is an 'Impost or Duty.' " (104 S.Ct. 1842, 80 L.Ed.2d 363.) *Hooven & Allison Co. v. Evatt* (1945) 324 U.S. 652, 65 S.Ct. 870, 89 L.Ed. 1252, *supra*, §56, retains no validity and is overruled. (104 S.Ct. 1842, 80 L.Ed.2d 363.)

(2) *No Retroactive Application in California*. In *Ralston Purina Co. v. Los Angeles*, *supra*, the taxpayer urged that the *Michelin* rule should be applied prospectively so as to preserve the immunity of goods from a levy of taxes made prior to the decision. In rejecting the suggestion, the court noted that a similar request was made by the taxpayer in the *Michelin* case on petition for rehearing and that the United States Supreme Court denied the petition. (56 C.A.3d 558.) Hence, in the absence of a declaration of prospective operation by that Court, the usual retroactive effect should be given by other courts (56 C.A.3d 558), particularly because the principal basis for prospective operation--reliance on a

clear past precedent--was not established (56 C.A.3d 559). (See *Sears, Roebuck & Co. v. Kings* (1976) 59 C.A.3d 446, 449, 130 C.R. 694 [following *Ralston Purina*].)

The 1976 Legislature nullified these decisions by adopting former Rev.C. 226, providing that, with certain exceptions, the "validity of any ad valorem property tax assessment on imported goods, heretofore or hereafter imposed, levied or collected with respect to tax years prior to the 1976-1977 tax year, shall be determined pursuant to statutory and case law in effect prior to the decision in *Michelin v. Wages*." (See 8 *Pacific L. J.* 474.)

The enacting statute (Stats. 1976, Chap. 335) contains a legislative finding that importers relied on the prior statutory and case law, and that it would cause severe economic hardship to apply the new rule retroactively, for that application would cause many importers to become insolvent, relocate, or go out of business, with serious economic injury to California businesses and a deterioration of the California labor market. This statement was designed to overcome the objection of the constitutional prohibition against gift of public money (see *supra*, §17) by establishing a proper public purpose (see *supra*, §18). (See 8 *Pacific L. J.* 475.)

Former Rev.C. 226 was upheld against constitutional challenge in *Schettler v. Santa Clara* (1977) 74 C.A.3d 990, 141 C.R. 731. The court saw no substance in the contentions that the statute was void for uncertainty (74 C.A.3d 999) or that it created an unreasonable classification in giving the trial court discretion to apply the statute retroactively (74 C.A.3d 1001). In answer to the more serious point that the statute violated the prohibition against making a gift of public funds (see *supra*, §17), the court relied on *California Emp. Stabilization Com. v. Payne* (1947) 31 C.2d 210, 187 P.2d 702, *supra*, §18, holding that an expenditure of public funds for a public purpose is valid although it may incidentally involve a benefit to private persons. (74 C.A.3d 1003, 1004.) Here, the public purpose--prevention of undue hardship on employers and deterioration of the employment situation--was clearly stated in the legislative finding.

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B. State Cannot Tax Exports.

1. In General.

a. Constitutional Prohibition.

9 *Witkin Sum. Cal. Law Tax* § 59

[§ 59] Constitutional Prohibition.

Article I, §10 of the federal Constitution, the Import-Export Clause, also prohibits the states from taxing exports. To export within the meaning of the clause is to transport goods from the United States to a foreign country. (See *Hostetter v. Idlewild Bon Voyage Liquor Corp.* (1964) 377 U.S. 324, 84 S.Ct. 1293, 12 L.Ed.2d 350, 8 Summary (10th), *Constitutional Law*, §1311 [Twenty-First Amendment does not authorize tax]; *Kosydar v. National Cash Register Co.* (1974) 417 U.S. 62, 94 S.Ct. 2108, 2111, 40 L.Ed.2d 660, 664, *infra*, §64; 71 *Am.Jur.2d* (2001 ed.), *State and Local Taxation* §81.)

A restrictive interpretation of the clause, which would protect only a consumable article of commerce and not a relatively imperishable instrumentality of commerce, was rejected in *Matson Navigation Co. v. State Bd. of Equalization* (1955) 136 C.A.2d 577, 289 P.2d 73. Plaintiff, a steamship company and not a ship merchant, sold a used ocean passenger liner to a Panamanian corporation, pursuant to federal statutes calling for surrender of American registration and prohibition against further use in domestic trade. *Held*, the ship was personal property, subject to sale, and a proper object of export; hence it was immune from a state sales tax. (136 C.A.2d 583.)

The objectionable tax is usually directly on the article exported, e.g., an ad valorem property tax or sales tax. But the Constitution also protects against any equivalent imposition, such as a stamp tax on foreign bills of lading, charter parties in foreign commerce, or policies insuring exports against maritime risks. (See cases discussed in *Canton R. Co. v. Rogan* (1951) 340 U.S. 511, 71 S.Ct. 447, 448, 95 L.Ed. 488, 492.) And an imposition in the form of a license tax, but measured by gross receipts from sales in foreign commerce, is in effect a tax on the exports and invalid. (*Crew Levick Co. v. Pennsylvania* (1917) 245 U.S. 292, 38 S.Ct. 126, 62 L.Ed. 295.)

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B. State Cannot Tax Exports.

1. In General.

b. Commerce Clause Distinguished.

9 *Witkin Sum. Cal. Law Tax* § 60

[§ 60] Commerce Clause Distinguished.

There is a distinction between the limitation on state power resulting from the Commerce Clause and that resulting from the Import-Export Clause, which is emphasized in cases dealing with both imports and exports. In *Richfield Oil Corp. v. State Bd. of Equalization* (1946) 329 U.S. 69, 67 S.Ct. 156, 91 L.Ed. 80, the court, referring to the modern theory that there is some state power to levy a nondiscriminatory tax affecting interstate commerce (see *infra*, §66), held that the theory does not apply to taxes on exports, which are expressly prohibited. The Import-Export Clause and the Commerce Clause "are not coterminous." (67 S.Ct. 159, 91 L.Ed. 88.) The one prohibits taxation on the import or export; the other "is cast not in terms of a prohibition against taxes, but in terms of a power on the part of Congress to regulate commerce." The scope of the Commerce Clause limitation "has been determined by the Court in an effort to maintain an area of trade free from state interference and at the same time to make interstate commerce pay its way. ... It seems clear that we cannot write any such qualifications into the Import-Export Clause. ... [t]he two clauses, though complementary, serve different ends. And the limitations of one cannot be read into the other." (67 S.Ct. 160, 91 L.Ed. 89.) (See *Union Oil Co. of Calif. v. Los Angeles* (1964) 227 C.A.2d 608, 613, 38 C.R. 923 [oil sold to United States for transportation to and use outside continental limits; relying on *Richfield*]; *Parrott & Co. v. San Francisco* (1955) 131 C.A.2d 332, 340, 280 P.2d 881 [imports]; 40 So. Cal. L. Rev. 528 [*Richfield*].)

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B. State Cannot Tax Exports.

1. In General.

c. Sale of Bunker Fuel Is Not Export.

9 Witkin Sum. Cal. Law Tax § 61

[§ 61] Sale of Bunker Fuel Is Not Export.

In *Shell Oil Co. v. State Bd. of Equalization* (1966) 64 C.2d 713, 51 C.R. 524, 414 P.2d 820, Shell Oil Co. sold bunker fuel oil to (1) ships registered in foreign countries and engaged in foreign commerce; (2) ships registered in the United States and engaged in foreign commerce; and (3) ships registered in the United States and engaged in interstate commerce. *Held*, California retail sales taxes were properly imposed on all sales.

(a) To constitute an export, there must be more than a carrying out of the country without purpose of return; there must be an intended destination in a foreign country. Hence, fuel or other consumables utilized during the voyage are not exports. (64 C.2d 718.)

(b) The argument that the sale was an export at the time of delivery because the ships of foreign registry were foreign territory is unsound. The foreign territory concept is a fiction or metaphor that does not control constitutional issues, and delivery to a vessel flying a foreign flag is not receipt at a foreign country. (64 C.2d 720.)

(c) A tax, though not on articles of export, may be unconstitutional as being so related to the process of exportation that it is equivalent to a tax on the articles. But this rule only applies to activities closely related, e.g., on a marine insurance policy. A sales tax on bunker fuel oil is not closely related--it does not vary with the volume or value of export articles, and is imposed without regard to whether export cargo is even carried. The cases on interstate commerce burdens are on point and persuasive. (64 C.2d 721.) (On validity of tax on ships engaged in interstate commerce, see *infra*, §87.)

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Witkin Summary of California Law IV. STATE TAXES AFFECTING FOREIGN COMMERCE

- B. State Cannot Tax Exports.
 - 2. When Immunity Arises.
 - a. Test: Course of Transportation.

9 *Witkin Sum. Cal. Law Tax* § 62

[§ 62] Test: Course of Transportation.

The acts of importation and exportation "begin and end at water's edge." (*Canton R. Co. v. Rogan* (1951) 340 U.S. 511, 71 S.Ct. 447, 449, 95 L.Ed. 488, 493.) This observation, while helpful as an approach, furnishes no practical test.

Generally speaking, the immunity arises when the goods are in the course of transportation to a foreign destination, e.g., when delivered to a common carrier for this purpose. (See *A.G. Spalding & Bros. v. Edwards* (1923) 262 U.S. 66, 43 S.Ct. 485, 67 L.Ed. 865 [similar rule under U.S. Const., Art. I, §9, prohibiting Congress from taxing exports from a state]; *Gough Industries v. State Bd. of Equalization* (1959) 51 C.2d 746, 748, 336 P.2d 161.) The test is whether the goods have been committed to export to a foreign destination and will not be diverted to domestic use. (See *Empresa Siderurgica, S.A. v. Merced* (1949) 337 U.S. 154, 69 S.Ct. 995, 997, 93 L.Ed. 1276, 1280, *infra*, §64; *Kosydar v. National Cash Register Co.* (1974) 417 U.S. 62, 94 S.Ct. 2108, 2111, 40 L.Ed.2d 660, 664, *infra*, §64; *Farmers' Rice Cooperative v. Yolo* (1975) 14 C.3d 616, 620, 122 C.R. 65, 536 P.2d 465, *infra*, §64.)

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B. State Cannot Tax Exports.

2. When Immunity Arises.

b. Test Met and Goods Immune.

9 *Witkin Sum. Cal. Law Tax* § 63

[§ 63] Test Met and Goods Immune.

Goods may become exports though not delivered to a common carrier. In *Richfield Oil Corp. v. State Bd. of Equalization* (1946) 329 U.S. 69, 67 S.Ct. 156, 91 L.Ed. 80, plaintiff sold oil to the New Zealand government. Delivery was made in California by pumping the oil from the seller's storage tanks at the dock into a tanker of the New Zealand navy. California's attempt to impose a sales tax, sustained by the *California Supreme Court* (27 C.2d 150, 163 P.2d 1), was held violative of Article I, §10 of the federal Constitution. The United States Supreme Court rejected the view that delivery of the oil to the vessel, which resulted in passage of title, occurred prior to the exportation. Delivery of the oil into the hold of the buyer's vessel "marked the commencement of the movement of the oil abroad"; hence, the incident that gave rise to the accrual of the tax was a step in the export process. (67 S.Ct. 163, 91 L.Ed. 93; see *Matson Navigation Co. v. State Bd. of Equalization* (1955) 136 C.A.2d 577, 583, 289 P.2d 73, supra, §59 [sale and delivery of ocean liner].)

In *McDonnell Douglas Corp. v. State Bd. of Equalization* (1992) 10 C.A.4th 1413, 13 C.R.2d 399, plaintiff sold airplane parts to a Mexican airline, which took title at plaintiff's California plant. The parts were then shipped to the border by common carrier, processed through customs by a forwarding agent, and shipped to their final destination in Mexico by common carrier. Plaintiff paid sales tax under protest and sued for a refund. *Held*, the parts were exports exempt from sales tax. (a) The parts were delivered into the export stream at the point of sale and neither diverted nor used until they reached their final destination. (10 C.A.4th 1424.) (b) The unavoidable delay at the border was incidental; the use of a forwarding agent was required because domestic and foreign common carriers were prohibited from operating on both sides of the border. (10 C.A.4th 1424.)

At one time, it was held that goods were immune if a foreign destination was certain, even though the goods had not yet been physically delivered. In *Montrose Chemical Corp. of Calif. v. Los Angeles* (1966) 243 C.A.2d 300, 52 C.R. 209, plaintiff company manufactured a chemical product that could not be sold in the United States. It contracted with GSA and UNICEF for a shipment to foreign countries. On tax day, the drums were standing in the plant of an assembler pending notification from the contracting agencies to deliver the product to the overseas vessel. This was done pursuant to the requirement of the contract ("F.A.S. vessel," i.e., delivered, free of expense, alongside vessel). *Held*, the tax was improper. (243 C.A.2d 304.) (See *Cargill of Calif. v. Yolo* (1972) 26 C.A.3d 704, 712, 103 C.R. 257 [alfalfa pellets with no domestic market were on dock elevators, but loading was halted through no fault of plaintiff; incidental interruption

did not justify tax]; 40 So. Cal. L. Rev. 552 [*Montrose*]; for disapproval of *Montrose* and *Cargill*, see *infra*, §64.)

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- B. State Cannot Tax Exports.
 - 2. When Immunity Arises.
- c. Test Not Met and Tax Valid.

9 Witkin Sum. Cal. Law Tax § 64

[§ 64] Test Not Met and Tax Valid.

In *Empresa Siderurgica, S.A. v. Merced* (1949) 337 U.S. 154, 69 S.Ct. 995, 93 L.Ed. 1276, the decision of the California Supreme Court (32 C.2d 68, 194 P.2d 527), upholding the tax, was affirmed. A South American company bought the machinery and equipment of a cement plant located in Merced County. At the time the property tax was imposed, part of the machinery and equipment taxed had been crated ready for shipment, part had been dismantled but not crated, and part had not been dismantled. The court declared that "it is not enough that there is an intent to export, or a plan which contemplates exportation, or an integrated series of events which will end with it." Rather "it is the entrance of the articles into the export stream that marks the start of the process of exportation." (69 S.Ct. 997, 93 L.Ed. 1279.) (See *Gough Industries v. State Bd. of Equalization* (1959) 51 C.2d 746, 750, 336 P.2d 161 [distinguishing *Empresa*]; 11 A.L.R.2d 938 [property destined for, or in course of, removal from state as subject to taxation].)

In *Hugo Neu Corp. v. Los Angeles* (1966) 241 C.A.2d 703, 50 C.R. 916, plaintiff, an exporter of iron and steel scrap, contracted with Japanese corporations for the sale of certain kinds of prepared scrap, on notification. It shipped a large quantity of scrap to its storage depot at Terminal Island, Los Angeles. On tax day some scrap, not physically separated, was taxed, on the basis that it was not committed to a particular purchaser. *Held*, the tax was valid. (a) Shipping the goods to the depot was merely preparatory and not pursuant to any definite or assured plan to export; it was still possible that Japanese buyers would never order it, and a domestic market did exist. (241 C.A.2d 709.) (b) As to contracts made prior to the day, where no particular identified scrap was committed, there was no immunity; the order could have been filled by other scrap. (241 C.A.2d 709.) (See *Hugo Neu Corp. v. Los Angeles* (1970) 7 C.A.3d 21, 25, footnote 4, 86 C.R. 332 [same result on retrial and second appeal]; *Rice Growers' Assn. of Calif. v. Yolo* (1971) 17 C.A.3d 227, 237, 94 C.R. 847 [rice milled and processed in California to specifications of foreign buyers and stored at California port preparatory to shipment was taxable].)

In *Kosydar v. National Cash Register Co.* (1974) 417 U.S. 62, 94 S.Ct. 2108, 40 L.Ed.2d 660, petitioner's machines were built to a foreign buyer's specifications and were kept in an Ohio warehouse awaiting shipment. Petitioner had both title and possession, no payment had been made by the buyers, no export license had issued, and there had been no movement of the goods. *Held*, under the basic test as set forth in *Empresa Siderurgica*, there had been no commencement of the process of exportation and the goods were not exports. (94 S.Ct. 2112, 40 L.Ed.2d 665.)

Farmers' Rice Cooperative v. Yolo (1975) 14 C.3d 616, 122 C.R. 65, 536 P.2d 465, follows *Empresa Siderurgica and Kosydar*. Plaintiff, a nonprofit cooperative marketing association, contracted for the sale of over 11 million pounds of rice to buyers in Okinawa and Puerto Rico. On the day, most of it had been delivered to dockside facilities, but the shipment had not yet occurred. *Held*, the delivery and storage of the rice in the port district's elevators was not a commencement of the process of exportation. (14 C.3d 625.) The court also took note of a conflict in the expressions of certain Court of Appeal decisions, and resolved it as follows: (a) *Rice Growers Assn. v. Yolo* and *Hugo Neu Corp. v. Los Angeles*, *supra*, were approved. (b) *Cargill of Calif. v. Yolo* (1972) 26 C.A.3d 704, 103 C.R. 257, *supra*, §63, and *Montrose Chemical Corp. of Calif. v. Los Angeles* (1966) 243 C.A.2d 300, 52 C.R. 209, *supra*, §63, were disapproved. (14 C.3d 627, 628.)

In *Schnitzer Steel Products of Calif. v. Alameda* (1976) 56 C.A.3d 104, 128 C.R. 293, plaintiff, a scrap metal dealer, had general contracts for sale of scrap to foreign buyers, but on the lien date, there was no specific contract with a specific buyer on a specific ship. Plaintiff argued, however, that dock receipts executed by a shipping company established delivery to the company, and therefore constituted entry into the export stream. *Held*, the tax was valid. The dock receipts raised only a rebuttable presumption of delivery to the shipper, and the trial court's finding that the property was still owned and possessed by plaintiff was supported by the evidence. (56 C.A.3d 110.) (See *Blue Star Line v. San Francisco* (1978) 77 C.A.3d 429, 438, 443, 143 C.R. 647 [local tax on payrolls of employers conducting business within city was valid; tax reached only dockside handling of imported and exported articles, not articles themselves]; *Los Angeles v. Marine Wholesale/Warehouse Co.* (1993) 15 C.A.4th 1834, 1844, 1846, 19 C.R.2d 664 [gross receipts and payroll taxes imposed on all city businesses did not violate Import-Export Clause as applied to customs-bonded warehouse storing goods sold to cruise lines and airlines with foreign destinations; following *Blue Star Line v. San Francisco*].)

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B. State Cannot Tax Exports.
3. Interruption of Transportation.

9 *Witkin Sum. Cal. Law Tax* § 65

[§ 65] Interruption of Transportation.

Decisions in the field of interstate commerce established the principle that when goods start on their journey, an interruption or delay en route, which is merely incident to the transportation, does not ordinarily deprive them of their immunity. (See *infra*, §81.) The same is true of goods exported in foreign commerce.

In *Export Leaf Tobacco Co. v. Los Angeles* (1949) 89 C.A.2d 909, 202 P.2d 622, plaintiff taxpayer had shipped goods by water from the East Coast of the United States, destined for the Orient. When World War II commenced, the vessel stopped in Los Angeles and unloaded its cargo in order to install additional equipment to meet war conditions. It never became available again for transportation of plaintiff's cargo, and plaintiff negotiated for return of the goods to the East Coast by rail. *Held*, although the goods had been in Los Angeles for 2 months when the local property tax was levied, the tax was invalid. (89 C.A.2d 924.)

However, in *Joy Oil Co. v. State Tax Com. of Michigan* (1949) 337 U.S. 286, 69 S.Ct. 1075, 93 L.Ed. 1366, 1369, the United States Supreme Court placed a practical limit on the application of this principle. Petitioner purchased gasoline at Grand Rapids and shipped it by rail, consigned to itself at Detroit, but under bills of lading marked "For Export Only." All the gasoline was stored in tanks at the adjacent city of Dearborn for 15 months, except for a small quantity shipped to Canada by truck. Additional shipments by this method were halted by a federal regulation prohibiting transportation of inflammables over an international bridge. Petitioner eventually shipped the remainder to Canada by water, explaining the delay as due to inability to obtain water transportation, although it could have used the more expensive transportation by rail. *Held*, the Dearborn property tax was valid. The period of storage was so long that it could not be treated as a mere temporary interruption of the export process. (69 S.Ct. 1076.)

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A. In General.
1. Commerce Is Not Wholly Immune.

9 *Witkin Sum. Cal. Law Tax* § 66

[§ 66] Commerce Is Not Wholly Immune.

The Commerce Clause is an implied limitation on the state taxing power, for an unrestricted power to tax interstate commerce would have a destructive effect. Hence, a discriminatory tax on interstate commerce, or one that unreasonably burdens it, is unconstitutional.

The early theory was substantially that no phase of interstate commerce could be taxed at all. The present view, however, is that interstate commerce "must pay its way," that it is not wholly immune from taxation, and that the test of validity is whether the tax discriminates against or unreasonably burdens interstate commerce. (See *Western Live Stock v. Bureau of Revenue* (1938) 303 U.S. 250, 58 S.Ct. 546, 82 L.Ed. 823; *McGoldrick v. Berwind-White Coal Mining Co.* (1940) 309 U.S. 33, 60 S.Ct. 388, 84 L.Ed. 565; *Ott v. Mississippi Valley Barge Line Co.* (1949) 336 U.S. 169, 69 S.Ct. 432, 435, 93 L.Ed. 585, 590 ["interstate commerce can be made to pay its way by bearing a nondiscriminatory share of the tax burden which each State may impose on the activities or property within its borders"]; *Northwestern States Portland Cement Co. v. Minnesota* (1959) 358 U.S. 450, 79 S.Ct. 357, 362, 3 L.Ed.2d 421, 429, *infra*, §72; *Maryland v. Louisiana* (1981) 451 U.S. 725, 101 S.Ct. 2114, 2133, 68 L.Ed.2d 576, 595 [first use natural gas tax discriminated against interstate commerce by using credits and exclusions to protect local consumers from impact of tax]; *Oregon Waste Systems v. Department of Environmental Quality of Oregon* (1994) 511 U.S. 93, 114 S.Ct. 1345, 1355, 128 L.Ed.2d 13, 27 [surcharge on disposal of solid waste discriminated against interstate commerce, where waste generated in other states was subject to fee almost three times greater than fee for waste generated within state]; *Martin Ship Service Co. v. Los Angeles* (1950) 34 C.2d 793, 796, 215 P.2d 24, *infra*, §92 ["provided it does not pay too much or too often"]; 110 *Harv. L. Rev.* 378 [Commerce Clause constraints on state tax incentives for businesses]; 112 *Harv. L. Rev.* 380 [whether tax benefits are constitutionally equivalent to direct expenditures of public funds].) (On enlarged scope of taxation where Congress expressly authorizes state to levy what would otherwise be considered invalid discriminatory tax on interstate commerce, see *Prudential Ins. Co. v. Benjamin* (1946) 328 U.S. 408, 66 S.Ct. 1142, 90 L.Ed. 1342, 8 *Summary* (10th), *Constitutional Law*, §1309.)

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A. In General.
2. Test of Unreasonable Burden.

9 Witkin Sum. Cal. Law Tax § 67

[§ 67] Test of Unreasonable Burden.

In determining whether a tax imposes a prohibited burden on interstate commerce, the tax's practical effect rather than its label or appearance will be controlling. (*Nippert v. Richmond* (1946) 327 U.S. 416, 66 S.Ct. 586, 593, 90 L.Ed. 760, 766; *Railway Express Agency v. Virginia* (1954) 347 U.S. 359, 74 S.Ct. 558, 561, 98 L.Ed. 757, 762; cf. *Martin Ship Service Co. v. Los Angeles* (1950) 34 C.2d 793, 803, 215 P.2d 24, infra, §92.) Thus, it is not enough to characterize some event or transaction within the taxing state as local. "[A] tax imposed on a local activity related to interstate commerce is valid if, and only if, the local activity is not such an integral part of the interstate process, the flow of commerce, that it cannot realistically be separated from it. ... And if a genuine separation of the taxed local activity from the interstate process is impossible, it is more likely that other states through which the commerce passes or into which it flows can with equal right impose a similar levy on the goods, with the net effect of prejudicing or unduly burdening commerce." (*Michigan-Wisconsin Pipe Line Co. v. Calvert* (1954) 347 U.S. 157, 74 S.Ct. 396, 401, 98 L.Ed. 583, 591, infra, §94; see 71 Am.Jur.2d (2001 ed.), *State and Local Taxation* §175 et seq.)

In the application of this test, particular decisions must be used with caution. The Supreme Court has commented upon "the tangled underbrush of past cases," and has described its "three hundred full-dress opinions" as not always clear, consistent, or reliable. "Commerce between the States having grown up like Topsy, the Congress meanwhile not having undertaken to regulate taxation of it, and the States having understandably persisted in their efforts to get some return for the substantial benefits they have afforded it, there is little wonder that there has been no end of cases testing out state tax levies. The resulting judicial application of constitutional principles to specific state statutes leaves much room for controversy and confusion and little in the way of precise guides to the States in the exercise of their indispensable power of taxation." (*Northwestern States Portland Cement Co. v. Minnesota* (1959) 358 U.S. 450, 79 S.Ct. 357, 362, 3 L.Ed.2d 421, 426, infra, §72.)

Nevertheless, "[f]rom the quagmire" there emerge some unquestioned conclusions. A state cannot impose taxes on persons passing through the state or coming into it merely for a temporary purpose, and it cannot impose a tax that discriminates against interstate commerce either by providing a direct commercial advantage to local business or by subjecting interstate commerce to multiple taxation. (*Northwestern States Portland Cement Co. v. Minnesota*, *supra*; see *Complete Auto Transit v. Brady* (1977) 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326, infra, §93 [taxing privilege of engaging in interstate commerce]; *Ceridian Corp. v. Franchise Tax Bd.* (2000) 85 C.A.4th 875, 882, 887, 102 C.R.2d 611 [former Rev.C. 24410 violated Commerce Clause by allowing deduction for insurance subsidiary dividends only to

corporations domiciled in California and by limiting amount of deduction according to formula based on subsidiary's gross receipts, payroll, and property within California; statute favored domestic corporations over their foreign competitors in raising capital among California corporations and discouraged domestic corporations from plying their trade in interstate commerce, from purchasing property or hiring employees in other states, and from purchasing subsidiary insurance corporations that do so]; *Farmers Bros. Co. v. Franchise Tax Bd.* (2003) 108 C.A.4th 976, 986, 134 C.R.2d 390 [by allowing deduction only for dividends received from corporations subject to tax in California, Rev.C. 24402 violates both Commerce Clause and internal consistency doctrine; imposition of deduction by every state would favor intrastate commerce by giving greater tax benefit to taxpayers investing in home state corporations; citing *Ceridian Corp.*]; 75 Harv. L. Rev. 955 [federal limitations on state taxation of interstate business]; 17 Stanf. L. Rev. 1207 [report of congressional committee]; 67 A.L.R.2d 1322 [validity, under federal constitution, of state tax on, or measured by, income of foreign corporation]; *infra*, §§70, 81, 87.)

In *Fulton Corp. v. Faulkner* (1996) 516 U.S. 325, 116 S.Ct. 848, 133 L.Ed.2d 796, the Supreme Court reiterated that a state tax law that, on its face, discriminates against interstate commerce is invalid, unless it is a "truly compensatory tax" designed to make interstate commerce bear the same burden already borne by intrastate commerce. (116 S.Ct. 854, 133 L.Ed.2d 805.)

Fulton involved a North Carolina intangibles tax imposed on the fair market value of corporate stock owned by North Carolina residents or having a "business, commercial, or taxable situs" in North Carolina. Residents calculated their tax liability by taking a taxable percentage deduction equal to the fraction of the issuing corporation's income subject to tax in the state. Thus, for example, a corporation doing all of its business in North Carolina would pay corporate income tax on 100% of its income and the resident owners of its stock would have a 100% deduction under the intangibles tax; none of their stock would be subject to the tax. Holders of stock in a corporation doing 5% of its business in North Carolina would receive a 5% deduction on the tax, and their stock would be taxable on 95% of its value. Plaintiff, a North Carolina resident, owned stock in several companies that did business exclusively in other states and that therefore were not subject to North Carolina's corporate income tax. Plaintiff's stock in these companies was accordingly subject to the intangibles tax on 100% of its value. Plaintiff paid the tax under protest and sought a refund. *Held*, the tax was invalid.

(a) The intangibles tax facially discriminates against interstate commerce. By taxing stock only to the degree that its issuing corporation participates in interstate commerce, the tax favors domestic corporations in raising capital among North Carolina residents and discourages domestic corporations from entering interstate commerce. (116 S.Ct. 855, 133 L.Ed.2d 806.)

(b) The tax cannot be sustained as compensatory. A state that invokes the compensatory tax defense must identify the intrastate tax for which it seeks to compensate, and that tax must serve some purpose for which the state may otherwise burden interstate commerce. North Carolina asserts that the intangibles tax compensates for the burden of general corporate income tax paid by corporations doing business in North Carolina, a tax that helps to maintain an intrastate capital market. However, treating general revenue measures as relevant intrastate burdens creates too expansive a loophole in the compensatory tax jurisprudence, and in any case, the state's Blue Sky laws, rather than its corporate income tax, provide for the upkeep of its capital markets. (116 S.Ct. 856, 133 L.Ed.2d 808.)

(c) The tax on interstate commerce must roughly approximate, without exceeding, the tax on intrastate commerce. North Carolina did not carry its burden of proof on this issue because it is not possible to determine what proportion of the corporate income tax goes to support the capital market, or whether that proportion represents a burden greater than the one that the intangibles tax imposes on interstate commerce. (116 S.Ct. 857, 133 L.Ed.2d 809.)

(d) The events on which the interstate and intrastate taxes are imposed must be substantially equivalent. (116 S.Ct. 857, 133 L.Ed.2d 809.) Here, however, "there are reasons to doubt" that "the corporate income tax amounts to a clear equivalent for the burden on shareholding imposed by the intangibles tax, and these doubts are dispositive." (116 S.Ct. 860, 133 L.Ed.2d 813.)

(e) It is doubtful that a state could ever meet the requirements of the compensatory tax defense outside the limited confines of sales and use taxes. (116 S.Ct. 860, 133 L.Ed.2d 813.)

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9 *Witkin Sum. Cal. Law Tax* § 68

[§ 68] Discriminatory Exemptions.

Former Rev.C. 225 created an exemption from taxation for personal property manufactured or produced (1) outside California and brought into California for transshipment out of the United States, or (2) outside of the United States and brought into California for transshipment out of California, for sale in the ordinary course of trade or business. (See 7 *Pacific L. J.* 541.) In *Zee Toys v. Los Angeles* (1978) 85 C.A.3d 763, 149 C.R. 750, the statute was held to be an unconstitutional invasion of the federal power to regulate interstate and foreign commerce. (a) Different tax treatment was accorded to goods solely on the basis of their place of origin, and foreign goods were given a competitive advantage over interstate goods of the same nature and competing in the same market. (85 C.A.3d 773.) (b) The Commerce Clause prohibits discrimination in favor of local commerce, but also prohibits discrimination in favor of any other class of commerce. (85 C.A.3d 775, following *Boston Stock Exchange v. State Tax Com.* (1977) 429 U.S. 318, 97 S.Ct. 599, 50 L.Ed.2d 514, *infra*, §94.)

Former Rev.C. 225 was also held unconstitutional in *Star-Kist Foods v. Los Angeles* (1986) 42 C.3d 1, 227 C.R. 391, 719 P.2d 987: "The exemption at issue not only removes the inventory of foreign companies transshipping through California from within the scope of the property tax, it exempts domestic companies involved in importing or exporting as well. Star-Kist is a California corporation which transships goods manufactured outside the country through California for sale in other states. To the extent that domestic corporations, like Star-Kist, can take advantage of section 225's tax exemption and thereby gain a competitive edge over domestic competitors operating exclusively within the United States, discrimination against a distinct class of interstate commerce is occurring." The tax thus fails the test of constitutionality set forth in *Complete Auto Transit v. Brady* (1977) 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326, *infra*, §93. (42 C.3d 15.)

The Legislature limited the retroactive application of *Zee Toys*, *supra*, by enacting former Rev.C. 225.3, which barred escape assessments on property that had received an exemption for tax years prior to the *Zee Toys* decision. The limitation was upheld, against a challenge that it also violated the Commerce Clause, in *Kawasaki Motors Corp. v. Orange* (1983) 146 C.A.3d 780, 783, 784, 194 C.R. 608 [following *Schettler v. Santa Clara* (1977) 74 C.A.3d 990, 141 C.R. 731, *supra*, §58].

In *Bacchus Imports, Ltd. v. Dias* (1984) 468 U.S. 263, 104 S.Ct. 3049, 82 L.Ed.2d 200, a Hawaii statute making a special exemption from its liquor tax for certain locally produced alcoholic beverages was held unconstitutional. "A

finding that state legislation constitutes 'economic protectionism' may be made on the basis of either discriminatory purpose ... , or discriminatory effect [W]e need not guess at the legislature's motivation, for it is undisputed that the purpose of the exemption was to aid Hawaiian industry. Likewise, the effect of the exemption is clearly discriminatory, in that it applies only to locally produced beverages, even though it does not apply to all such products. Consequently, as long as there is some competition between the locally produced exempt products and non-exempt products from outside the State, there is a discriminatory effect." (104 S.Ct. 3054, 3055, 82 L.Ed.2d 208, 209.) (See *New Energy Co. of Indiana v. Limbach* (1988) 486 U.S. 269, 108 S.Ct. 1803, 1807, 100 L.Ed.2d 302, 308; *General Motors Corp. v. Tracy* (1997) 519 U.S. 278, 117 S.Ct. 811, 829, 136 L.Ed.2d 761, 787; *Camps Newfound/Owatonna v. Harrison* (1997) 520 U.S. 564, 117 S.Ct. 1590, 1598, 137 L.Ed.2d 852, 864; *Jordan v. Department of Motor Vehicles* (1999) 75 C.A.4th 449, 460, 89 C.R.2d 333, *infra*, §384; 111 Harv. L. Rev. 197 [*Camps Newfound/Owatonna*].)

SUPPLEMENT: [This section is current through the latest supplement]

See *Department of Revenue of Kentucky v. Davis* (2008) 553 U.S. ___, 128 S.Ct. 1801, 1810, 170 L.Ed.2d 685, 698 [state's system of exempting interest on bonds issued by state or its subdivisions from state income tax, while imposing income tax on interest from out-of-state bonds, did not violate Commerce Clause].



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A. In General.

4. Postpayment Remedies for Invalid Taxes.

9 *Witkin Sum. Cal. Law Tax* § 69

[§ 69] Postpayment Remedies for Invalid Taxes.

In *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, Dept. of Business Regulation of Florida* (1990) 496 U.S. 18, 110 S.Ct. 2238, 110 L.Ed.2d 17, petitioner McKesson brought an action in the Florida state court alleging that Florida's liquor excise tax violated the Commerce Clause by providing preferences for distributors of certain local products. The Florida Supreme Court agreed, and enjoined the state from giving effect to the preferences in the future, but refused to provide petitioner a refund or any other form of relief for taxes already paid. *Held*, reversed:

"When a State penalizes taxpayers for failure to remit their taxes in timely fashion, thus requiring them to pay first before obtaining review of the tax's validity, federal due process principles long recognized by our cases require the State's postdeprivation procedure to provide a 'clear and certain remedy' ... for the deprivation of tax moneys in an unconstitutional manner. In this case, Florida may satisfy this obligation through any form of relief, ranging from a refund of the excess taxes paid by petitioner to an offsetting charge to previously favored distributors, that will cure any unconstitutional discrimination against interstate commerce during the contested tax period. The State is free to choose which form of relief it will provide, so long as that relief satisfies the minimum federal requirements we have outlined." (110 S.Ct. 2258, 110 L.Ed.2d 45.) (See *Ceridian Corp. v. Franchise Tax Bd.* (2000) 85 C.A.4th 875, 888, 102 C.R.2d 611 [relying on *McKesson Corp.*; trial court properly ordered refund to taxpayer after finding that statute imposing tax on insurance company dividends, with disparate treatment of foreign corporations and those domiciled in California, was unconstitutional under Commerce Clause; retroactive assessment of tax against taxpayer's competitors would have been impossible because statute of limitations had expired for relevant tax years]; 104 *Harv. L. Rev.* 188 [*McKesson Corp.*].)

SUPPLEMENT: [This section is current through the latest supplement]

See *Macy's Dept. Stores v. San Francisco* (2006) 143 C.A.4th 1444, 1449, 50 C.R.3d 79 [trial court erred in refunding full amount of discriminatory local business taxes paid by company, rather than simply amount necessary to remedy discrimination; relying on *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, Dept. of Business Regulation of Florida* (1990) 496 U.S. 18, 110 S.Ct. 2238, 110 L.Ed.2d 17, text, p. 104]; *Ventas Finance I, LLC v. Franchise Tax Bd.* (2008) 165 C.A.4th 1207, 1226, 81 C.R.3d 823 [instead of ordering full refund of unconstitutional tax, trial court should have ordered refund of difference between amount paid and amount that could have been collected without violating Commerce Clause; citing *McKesson Corp.* and *Macy's Dept. Stores*].



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Witkin Summary of California Law V. STATE TAXES AFFECTING INTERSTATE COMMERCE B. Gross Receipts and Net Income Taxes. 1. Gross Receipts Tax as Direct Burden.

9 *Witkin Sum. Cal. Law Tax* § 70

[§ 70] Gross Receipts Tax as Direct Burden.

Gross receipts do not necessarily indicate net profits, and a tax on all the gross receipts derived from interstate commerce, if imposed by each of a number of states, would ordinarily result in a serious burden. The older cases seemed to regard such a tax as necessarily resulting in a direct and serious burden on interstate commerce and consequently invalid. (See *Galveston, Harrisburg & San Antonio Ry. Co. v. Texas* (1908) 210 U.S. 217, 28 S.Ct. 638, 52 L.Ed. 1031; *J.D. Adams Mfg. Co. v. Storen* (1938) 304 U.S. 307, 58 S.Ct. 913, 82 L.Ed. 1365; *Gwin, White & Prince v. Henneford* (1939) 305 U.S. 434, 59 S.Ct. 325, 83 L.Ed. 272; 27 Cal. L. Rev. 336; 75 Harv. L. Rev. 1020.)

The later development of the multiple burden theory sustained certain kinds of apportioned gross receipts taxes (see *infra*, §71), but the direct burden theory is still applicable in some situations.

In *Freeman v. Hewit* (1946) 329 U.S. 249, 67 S.Ct. 274, 91 L.Ed. 265, an Indiana trustee had his Indiana broker sell trust securities on the New York Stock Exchange through a New York agent. The securities were delivered in New York, and the New York agent remitted the purchase price, less expenses and commissions. *Held*, Indiana could not tax the gross receipts of these sales. The majority condemned the tax in the language of earlier cases as a direct burden on the "very processes of commerce." (67 S.Ct. 277, 91 L.Ed. 273.)

In *Joseph v. Carter & Weekes Stevedoring Co.* (1947) 330 U.S. 422, 67 S.Ct. 815, 91 L.Ed. 993, the tax was on gross receipts from stevedoring (loading and discharging cargoes of vessels engaged in interstate and foreign commerce). It was held invalid, even though the activities occurred solely in New York and, consequently, the tax could not be repeated by any other state. "Although state laws do not discriminate against interstate commerce or in actuality or by possibility subject it to the cumulative burden of multiple levies, those laws may be unconstitutional because they burden or interfere with commerce. ... Stevedoring, we conclude, is essentially a part of the commerce itself and therefore a tax upon its gross receipts or upon the privilege of conducting the business of stevedoring for interstate and foreign commerce, measured by those gross receipts, is invalid." (67 S.Ct. 821, 91 L.Ed. 1004.) But *Joseph* was overruled in *Department of Revenue of Washington v. Association of Washington Stevedoring Cos.* (1978) 435 U.S. 734, 98 S.Ct. 1388, 55 L.Ed.2d 682, *infra*, §92.

Where the tax is clearly discriminatory, as where it treats out-of-state manufacturers differently from local manufacturers, it is unconstitutional. (*Armco v. Hardesty* (1984) 467 U.S. 638, 104 S.Ct. 2620, 2622, 82 L.Ed.2d 540,

545; see *Tyler Pipe Industries v. Washington State Dept. of Revenue* (1987) 483 U.S. 232, 107 S.Ct. 2810, 97 L.Ed.2d 199 [manufacturing tax imposed only on goods sold to out-of-state purchasers discriminated against interstate commerce]; *General Motors Corp. v. Los Angeles* (1995) 35 C.A.4th 1736, 1740, 42 C.R.2d 430 [city's tax scheme, under which out-of-city manufacturers pay selling tax that in-city manufacturers do not pay, is discriminatory and interferes with flow of commerce]; *General Motors Corp. v. San Francisco* (1999) 69 C.A.4th 448, 452, 81 C.R.2d 544 [tax that subjected in-city manufacturers to only one tax on gross receipts from sale of goods, while subjecting out-of-city manufacturers to tax on portion of gross receipts attributable to selling activity within city *and* to tax on gross receipts imposed by other city in which seller manufactured its goods, was discriminatory]; *Union Oil Co. of Calif. v. Los Angeles* (2000) 79 C.A.4th 383, 387, 94 C.R.2d 81 [city's tax scheme was discriminatory; taxpayers located in city and selling in city had to pay only payroll tax, whereas those located in city and selling outside city had to pay city's payroll tax and other jurisdiction's business license tax, and those located outside city and selling in city had to pay other jurisdiction's payroll tax and city's business license tax].)

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B. Gross Receipts and Net Income Taxes.
2. Multiple Burdens and Apportioned Gross Receipts Tax.

9 *Witkin Sum. Cal. Law Tax* § 71

[§ 71] Multiple Burdens and Apportioned Gross Receipts Tax.

The early tendency to condemn any tax on gross receipts (see *supra*, §70) ultimately gave way to the "multiple burden" theory. The vice of the gross receipts tax lies in the possibility of multiple burdens, and therefore it may be upheld if fairly apportioned, or, by reason of the localization of the business, incapable of being multiplied by other states. In *Western Live Stock v. Bureau of Revenue* (1938) 303 U.S. 250, 58 S.Ct. 546, 82 L.Ed. 823, plaintiffs published a trade journal in New Mexico, with interstate circulation. *Held*, New Mexico could tax the local publishing business, and measure the tax by the gross receipts from all advertising sales. These sales took place locally and could not possibly be taxed again elsewhere. (58 S.Ct. 550, 82 L.Ed. 830.) (See *Moorman Mfg. Co. v. Bair* (1978) 437 U.S. 267, 98 S.Ct. 2340, 57 L.Ed.2d 197 [single-factor sales formula upheld].)

Subsequent to the decisions in *Freeman v. Hewit* (1946) 329 U.S. 249, 67 S.Ct. 274, 91 L.Ed. 265, *supra*, §70, and *Joseph v. Carter & Weekes Stevedoring Co.* (1947) 330 U.S. 422, 67 S.Ct. 815, 91 L.Ed. 993, *supra*, §70, the theory of *Western Live Stock*, *supra*, was reaffirmed and applied in *Central Greyhound Lines of New York v. Mealey* (1948) 334 U.S. 653, 68 S.Ct. 1260, 92 L.Ed. 1633. A tax was imposed on gross receipts from transportation between points within New York but over routes utilizing the highways of Pennsylvania and New Jersey. *Held*, the tax on the entire gross receipts was invalid; but if fairly apportioned, the tax could be sustained. The case was sent back for further consideration of a possible apportionment. (68 S.Ct. 1266, 92 L.Ed. 1642.) (On validity of privilege tax on local activity, measured by gross receipts properly apportioned, see *infra*, §92.)

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B. Gross Receipts and Net Income Taxes.
3. Net Income From Interstate Commerce.

9 *Witkin Sum. Cal. Law Tax* § 72

[§ 72] Net Income From Interstate Commerce.

A tax on net income differs from a tax on property or gross receipts, and the state of domicile of a domestic corporation may levy a tax on all the net income derived from the state, although some of it came from interstate commerce. (*United States Glue Co. v. Oak Creek* (1918) 247 U.S. 321, 38 S.Ct. 499, 62 L.Ed. 1135.) "It is settled by decisions of the United States Supreme Court that a tax on net income from interstate commerce, as distinguished from a tax on the privilege of engaging in interstate commerce, does not conflict with the commerce clause." (*West Publishing Co. v. McColgan* (1946) 27 C.2d 705, 708, 709, 166 P.2d 861, affirmed *West Publishing Co. v. McColgan* (1946) 328 U.S. 823, 66 S.Ct. 1378, 90 L.Ed. 1603; see *Mobil Oil Corp. v. Commissioner of Taxes of Vermont* (1980) 445 U.S. 425, 100 S.Ct. 1223, 1231, 63 L.Ed.2d 510, 519 [income from dividends of subsidiaries and affiliates doing business outside taxing state]; *Exxon Corp. v. Wisconsin Dept. of Revenue* (1980) 447 U.S. 207, 100 S.Ct. 2109, 2118, 65 L.Ed.2d 66, 75; *Container Corp. of America v. Franchise Tax Bd.* (1983) 463 U.S. 159, 103 S.Ct. 2933, 77 L.Ed.2d 545 [income from foreign subsidiaries involved in unitary business]; *Luckenbach Steamship Co. v. Franchise Tax Bd.* (1963) 219 C.A.2d 710, 714, 33 C.R. 544; 2 Rotunda 3d, §13.4; 97 Harv. L. Rev. 122 [*Container Corp.*]; 22 *Hastings L. J.* 1035 [developing jurisdictional standards for state taxation of multistate corporate net income].) (On additional income tax on foreign corporations, see *Wisconsin v. J.C. Penney Co.* (1940) 311 U.S. 435, 61 S.Ct. 246, 85 L.Ed. 267, *infra*, §103; on invalidity of privilege tax measured by net income, see *infra*, §93.)

There was formerly some reason to believe that a net income tax was valid only where a corporation was organized in or had a commercial domicile in the taxing state, or transacted some intrastate business there. But in *Northwestern States Portland Cement Co. v. Minnesota* (1959) 358 U.S. 450, 79 S.Ct. 357, 3 L.Ed.2d 421, the power was recognized independently of local domicile or business. Appellant, an Iowa corporation, made interstate sales in Minnesota. Its activities in Minnesota consisted of maintaining a sales office, manager, and salesmen engaged in regular solicitation of orders, and 48% of its entire sales were made there. The state's net income tax, apportioned to business activities within the state by a formula that was not challenged, was upheld. The possibility of multiple burdens by reason of unfair apportionment formulae was recognized, but dismissed as an "abstraction," because no showing of unfairness in the present apportionment, or actual multiple taxation, was made. (79 S.Ct. 364, 365, 3 L.Ed.2d 430.) *Spector Motor Service v. O'Conner* (1951) 340 U.S. 602, 71 S.Ct. 508, 95 L.Ed. 573, *infra*, §93, was distinguished as having involved a privilege tax. (79 S.Ct. 365, 3 L.Ed.2d 431.) (See 47 *Cal. L. Rev.* 388 [*Northwestern States Portland Cement*]; 67 *A.L.R.2d* 1322 [validity, under federal constitution, of state tax on, or measured by, income of foreign corporation]; on

Multistate Tax Compact, to facilitate equitable apportionment, see *United States Steel Corp. v. Multistate Tax Com.* (1978) 434 U.S. 452, 98 S.Ct. 799, 804, 54 L.Ed.2d 682, 694; *ASARCO v. Idaho State Tax Com.* (1982) 458 U.S. 307, 102 S.Ct. 3103, 3107, 73 L.Ed.2d 787, 792.)

After the decision in *Northwestern States Portland Cement Co. v. Minnesota*, Congress enacted 15 U.S.C., §381, providing that a state cannot tax net income if the recipient confines its business to solicitation of orders approved and filled by shipment or delivery from a point outside the state. (See 182 A.L.R. Fed 291 [constitutionality, construction, and application of 15 U.S.C., §381].) Among the cases construing this statute are the following:

Heublein v. South Carolina Tax Com. (1972) 409 U.S. 275, 93 S.Ct. 483, 486, 34 L.Ed.2d 472, 475 [statute did not bar tax where recipient did more: it sent products to local representative who transferred them to local wholesaler].

Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co. (1992) 505 U.S. 214, 112 S.Ct. 2447, 2458, 120 L.Ed.2d 174, 192 [statute did not bar tax where recipient's in-state activities, such as replacing stale gum at no charge and storing gum in rented space, were neither ancillary to soliciting orders nor de minimis].

Consolidated Accessories Corp. v. Franchise Tax Bd. (1984) 161 C.A.3d 1036, 1042, 208 C.R. 74 [statute was not applicable to solicitation of orders for placement of goods on consignment].

Brown Group Retail v. Franchise Tax Bd. (1996) 44 C.A.4th 823, 836, 52 C.R.2d 202 [company's California activities were not ancillary to solicitation of orders, and thus company was not immune from franchise tax, where California employees, who assisted independent retail in establishing outlets, were separate from sales force and their activities were not undertaken in connection with sales activity and did not facilitate sales].

Reader's Digest Assn. v. Franchise Tax Board (2001) 94 C.A.4th 1240, 1245, 115 C.R.2d 53 [statute did not exempt out-of-state publisher from California franchise tax; California subsidiary solicited sales of advertising pages in publisher's magazine, subsidiary's sales activity was integral part of publisher's enterprise, publisher oversaw subsidiary's property, accounting, insurance, and employee benefits, publisher included subsidiary within its unitary group tax returns, and subsidiary did not hold itself out as being available to represent others regarding sales].

SUPPLEMENT: [This section is current through the latest supplement]

Correction: Page 108, seventh line from bottom, "*Spector Motor Service v. O'Conner*" should be "*Spector Motor Service v. O'Connor*".



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C. Property Tax on Instrumentalities or Goods.
1. Apportionment Required.
a. In General.

9 *Witkin Sum. Cal. Law Tax* § 73

[§ 73] In General.

The instrumentalities of interstate commerce, i.e., property such as railroad cars and other transportation facilities, may be taxed. Ordinarily, no single state may tax the entire property because this would obviously result in multiple burdens. A state may impose its tax only on that portion that may properly be attributed to operations within its borders. Failure to apportion may thus constitute not only a denial of due process (see *supra*, §34), but also an unreasonable burden on interstate commerce. (*Johnson Oil Refining Co. v. Oklahoma* (1933) 290 U.S. 158, 54 S.Ct. 152, 78 L.Ed. 238 [fleet of cars]; *Ott v. Mississippi Valley Barge Line Co.* (1949) 336 U.S. 169, 69 S.Ct. 432, 93 L.Ed. 585 [inland water transportation]; *Standard Oil Co. v. Peck* (1952) 342 U.S. 382, 72 S.Ct. 309, 96 L.Ed. 427 [same]; *Braniff Airways v. Nebraska State Bd. of Equalization & Assessment* (1954) 347 U.S. 590, 74 S.Ct. 757, 98 L.Ed. 967 [aircraft]; *Central R. Co. of Pennsylvania v. Pennsylvania* (1962) 370 U.S. 607, 82 S.Ct. 1297, 8 L.Ed.2d 720; see 2 Rotunda 3d, §13.2; *infra*, §74.)

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1. Apportionment Required.
b. Railroad Rolling Stock.

9 *Witkin Sum. Cal. Law Tax* § 74

[§ 74] Railroad Rolling Stock.

The railroad rolling stock problem was reexamined and the broad power of the state of domicile reaffirmed in *Central R. Co. of Pennsylvania v. Pennsylvania* (1962) 370 U.S. 607, 82 S.Ct. 1297, 8 L.Ed.2d 720. Plaintiff was a Pennsylvania corporation authorized to operate a railroad only within the state. It owned 3,074 freight cars that were used (1) in Pennsylvania on its own tracks, (2) in New Jersey on fixed routes on the tracks of CNJ, its New Jersey parent corporation, and (3) in other parts of the country on lines of unaffiliated railroads under standard rental agreements. *Held*, Pennsylvania's property tax was valid as to all except the CNJ operations.

(a) *General principles*. Neither the Commerce Clause nor the Due Process Clause precludes a tax on cars used in part outside the state:

(1) A state does not unconstitutionally burden interstate commerce by subjecting its own corporations to nondiscriminatory property taxes, even though they are engaged in interstate commerce. Only multiple taxation of interstate operations offends the clause, and that occurs only if there is some state other than that of the domicile that may constitutionally impose an ad valorem tax. (82 S.Ct. 1301, 8 L.Ed.2d 725.)

(2) The state of the owner's domicile does not violate the due process clause by taxing all the tangible property of the owner for which no tax situs has been established elsewhere. It is unnecessary to confine the tax to a proportion of the value of the property equal to the fraction of the tax year that the property spends within the state's borders; if the property has had insufficient contact with other states to give any a tax situs, the domicile may be regarded as the only state affording the benefits which justify taxation. (82 S.Ct. 1302, 8 L.Ed.2d 725.)

(b) *Burden of proof*. "[T]he burden is on the taxpayer who contends that some portion of its total assets are beyond the reach of the taxing power of its domicile to prove that the same property may be similarly taxed in another jurisdiction." Hence, the issue is whether the stipulated facts show that some determinable portion of the value of plaintiff's freight cars had acquired a tax situs in a state other than *Pennsylvania*. (82 S.Ct. 1302, 8 L.Ed.2d 725.)

(c) *Nontaxable property*. The cars used on CNJ lines in New Jersey on fixed routes and regular schedules were clearly subject to an ad valorem tax by New Jersey, hence could not be constitutionally included in the *Pennsylvania*

tax. (82 S.Ct. 1302, 8 L.Ed.2d 726.)

(d) *Taxable property.* The rest of the fleet could be taxed by Pennsylvania at full value, because plaintiff failed to prove a possible tax situs in another state. (1) If a showing had been made of fixed routes and regular schedules in a particular state, this would be a possible tax situs and would invalidate the domicile's tax to that extent. (2) And if a showing had been made of habitual employment of a substantial number of cars in a particular state, even though not in fixed numbers or regular routes or times, this also would justify a tax by the other state and would invalidate the domicile's tax to that extent. (82 S.Ct. 1303, 8 L.Ed.2d 726.) But the record showed only that a determinable number of plaintiff's cars were used outside Pennsylvania; it did not show any basis for taxation by any particular no domiciliary state except as to the *CNJ cars*. (82 S.Ct. 1304, 8 L.Ed.2d 727.)

The dissenting opinion argued that *Ott v. Mississippi Valley Barge Line Co.* (1949) 336 U.S. 169, 69 S.Ct. 432, 93 L.Ed. 585, supra, §73, and *Braniff Airways v. Nebraska State Bd. of Equalization & Assessment* (1954) 347 U.S. 590, 74 S.Ct. 757, 98 L.Ed. 967, supra, §73, were contra, that the average of 2,189.30 cars that run habitually outside Pennsylvania could be taxed by other states, regardless of any lack of information as to the average number in any given state, and that, in consequence, the decision sanctions double taxation. (82 S.Ct. 1307, 8 L.Ed.2d 732; see 76 Harv. L. Rev. 154 [critical of both reasoning and result].) (See *Norfolk & Western Ry. Co. v. Missouri State Tax Com.* (1968) 390 U.S. 317, 88 S.Ct. 995, 19 L.Ed.2d 1201 [rigid application of mileage formula led to grossly distorted result, exceeding constitutional power to tax]; 3 A.L.R.4th 837 [situs of rolling stock].)

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1. Apportionment Required.

c. Aircraft.

1. Domestic Aircraft in Foreign Commerce.

9 *Witkin Sum. Cal. Law Tax* § 75

[§ 75] Domestic Aircraft in Foreign Commerce.

The apportionment rule was applied to instrumentalities of foreign commerce in *Flying Tiger Line v. Los Angeles* (1958) 51 C.2d 314, 333 P.2d 323. Plaintiff was a common carrier of freight by air, with a commercial domicile in Los Angeles, operating in interstate and foreign commerce. Certain planes operated on the Pacific airlift from the United States to Japan were assessed by Los Angeles county at 100% of their value without regard to the time of their physical presence in the county. *Held*, the interstate commerce cases (supra, §§73, 74) were controlling, and the tax was invalid for lack of apportionment. (51 C.2d 319.)

A significant distinction, however, was made in the concurring and dissenting opinions: It was probable that the foreign operations would not be taxed, and that the result of the decision was not to prevent multiple taxation but rather to allow avoidance of some of the normal tax. The concurring justice considered this an immaterial factor (51 C.2d 326); the three dissenters asserted that "[m]igratory property not subject to taxation elsewhere remains taxable at the owner's domicile," and that the county was not precluded from taxing the aircraft "except to the extent that they are taxable elsewhere." (51 C.2d 327.) (See *GeoMetrics v. Santa Clara* (1982) 127 C.A.3d 940, 179 C.R. 850 [aircraft owned by corporation domiciled in county, but physically located in foreign countries and engaged in foreign commerce for most of the year; unapportioned tax was invalid]; 3 A.L.R.4th 837 [situs of aircraft].)

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1. Apportionment Required.

c. Aircraft.

2. Foreign Aircraft in Foreign Commerce.

9 Witkin Sum. Cal. Law Tax § 76

[§ 76] Foreign Aircraft in Foreign Commerce.

Scandinavian Airlines System v. Los Angeles (1961) 56 C.2d 11, 14 C.R. 25, 363 P.2d 25, denied any taxing power of the state over foreign aircraft engaged exclusively in foreign commerce. Plaintiff was an airline flying foreign-owned, foreign-based, and foreign-registered airplanes exclusively in foreign commerce. The Los Angeles International Airport was its sole United States terminus. The flights averaged eight round trips per year, and the planes remained in Los Angeles less than 34 hours on each flight. Los Angeles county levied an apportioned ad valorem personal property tax on each plane, and it was admitted that each plane was taxed in its home port without apportionment. *Held*, the Los Angeles tax was invalid.

(a) Under the home port doctrine, established a century ago, the home port, i.e., the state of domicile of the owner or permanent location of a vessel, may tax it at full value, and no other jurisdiction may tax it at all. The authorities establishing this doctrine for foreign commerce in shipping are equally applicable to foreign airlines. (56 C.2d 21.) The apportionment theory, which allows a tax while protecting against double taxation, cannot be applied to foreign commerce, because no American court can control foreign taxing authorities. (56 C.2d 33.)

(b) An analysis of treaties with the Scandinavian countries in which the planes were owned leads to the conclusion that the treaty with Sweden prohibited local property taxation in America. To interpret the other treaties to allow taxation of some of the planes would involve discriminatory action against foreign commerce. Hence, the treaty with Sweden prevents "the several states from imposing any type of property tax upon airplanes owned, based and registered in any foreign country" except as allowed by the treaty. (56 C.2d 42.)

The dissenting opinion of two justices relied on *Ott v. Mississippi Valley Barge Line Co.* (1949) 336 U.S. 169, 69 S.Ct. 432, 93 L.Ed. 585, *supra*, §73, *Braniff Airways v. Nebraska State Bd. of Equalization & Assessment* (1954) 347 U.S. 590, 74 S.Ct. 757, 98 L.Ed. 967, *supra*, §73, and *Flying Tiger Line v. Los Angeles* (1958) 51 C.2d 314, 333 P.2d 323, *supra*, §75, and found the constitutional objections without substance. Regarding discriminatory cumulative burdens: "This argument erroneously attributes to such taxation the risk of discrimination. Actually it is attributable to the freedom of foreign countries, not permitted to our own states, to adopt rules of their own that can result in multiple burdens. The court cannot prevent foreign countries from taxing instrumentalities of foreign commerce owned by their

domiciliaries even if those instrumentalities are permanently located here, just as it cannot prevent foreign countries from taxing American aircraft temporarily abroad even though they have been taxed at full value at the domicile of their owners here. It is without power to compel independent nations to adopt a uniform nondiscriminatory system of taxation. It does not follow that the states must forego the power to impose taxes that are not in themselves discriminatory. It bears noting that Congress remains free to prohibit altogether state taxation of instrumentalities of foreign commerce. Alternatively, treaties could govern such taxation to preclude the risk of discrimination." (56 C.2d 44.) (See 49 Cal. L. Rev. 968 [critical of majority holding]; 35 So. Cal. L. Rev. 316 [same]; 9 U.C.L.A. L. Rev. 509 [same].)

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1. Apportionment Required.

c. Aircraft.

3. Aircraft Operating Between Air Force Bases.

9 *Witkin Sum. Cal. Law Tax* § 77

[§ 77] Aircraft Operating Between Air Force Bases.

In *Zantop Air Transport v. San Bernardino* (1966) 246 C.A.2d 433, 54 C.R. 813, plaintiff, a foreign corporation, was solely engaged in transportation of cargo and passengers between U.S. Air Force bases, in and out of California. Defendant county, in which one of the bases (Norton) is situated, levied an ad valorem tax, apportioned to reflect the average physical presence of the planes in the county. Three other counties levied similar taxes on bases there. *Held*, both the tax and the method of apportionment were valid.

(a) The constitutional power of the state to levy a properly apportioned ad valorem tax was established in *Braniff Airways v. Nebraska State Bd. of Equalization & Assessment* (1954) 347 U.S. 590, 74 S.Ct. 757, 98 L.Ed. 967, *supra*, §§34, 73. (246 C.A.2d 436.)

(b) The contention that California has not done so because former Cal. Const., Art. XIII, §10 (now Cal. Const., §14) and Rev.C. 404 only provide for assessment of property in a county in which it is "situated," and migratory flight equipment is not "permanently situated" in any county, is unsound. The word "situated" is synonymous with "situs," and means "having such contacts as confer jurisdiction to tax." (246 C.A.2d 436, 437.) And cases holding that temporary presence of property on the lien date does not confer power to tax, and that temporary absence on tax day does not terminate taxable status, have no relevancy to migratory property habitually employed in a county. (246 C.A.2d 437.)

(c) It was proper to include "flight time" (air time in the state) in the formula. The objection, that "flight time" has no relation to benefits given by the state or county, is unsound. State laws extend protection to air space, and state and local agencies must contend with problems of noise, air crashes, and use regulations of lands under take-off and approach patterns. (246 C.A.2d 440.) "It is thus unrealistic to suggest that the owner of aircraft does not begin to enjoy the benefits, opportunities, and protection afforded by the state until the moment the plane touches down and ceases to enjoy them the instant the plane is again airborne." (246 C.A.2d 440, 441.)

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c. Aircraft.

4. Codification of Law on Interstate Flight.

9 *Witkin Sum. Cal. Law Tax* § 78

[§ 78] Codification of Law on Interstate Flight.

The theory of cases like *Zantop Air Transport v. San Bernardino* (1966) 246 C.A.2d 433, 54 C.R. 813, supra, §77, is implemented in Rev.C. 1150 et seq. (See *American Airlines v. San Diego* (1990) 220 C.A.3d 164, 167, 269 C.R. 372 [Rev.C. 1150 et seq. deal solely with determining situs of aircraft; they do not impose any tax or limit any exemption].)

Rev.C. 1150 et seq. cover "certificated aircraft" operating under federal certificate or permit. The aircraft are deemed situated in California only to the extent that they are "normally physically present within the state, whether in flight or on the ground." (Rev.C. 1151.) To determine this, "a representative period" must be selected and the proportionate amount of time computed. (See *Alameda v. State Bd. of Equalization* (1982) 131 C.A.3d 374, 380, 182 C.R. 450 [Board of Equalization properly excluded abnormal and unusual aircraft activity in determining "representative period"].) For purposes of Rev.C. 404 (supra, §77), the aircraft are deemed situated only in those taxing agencies in which they "normally make physical contact with sufficient regularity" to give constitutional authority to tax. (Rev.C. 1155.) Provision is also made for allocation of flight time. (Rev.C. 1152.)

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1. Apportionment Required.
d. Oceangoing Vessels.

9 Witkin Sum. Cal. Law Tax § 79

[§ 79] Oceangoing Vessels.

The home port doctrine (see *supra*, §76) was applied in *Star-Kist Foods v. Byram* (1966) 241 C.A.2d 313, 50 C.R. 381. Plaintiff corporation and plaintiff individuals were owners of fishing vessels, documented under United States laws, with their home port at Los Angeles. The corporation, organized in Delaware, was doing business in California; the individuals were residents of Los Angeles. The vessels engaged in fishing on the high seas, returning the catch to the home port; one vessel, for example, was outside the territorial boundaries of Los Angeles for 150 days. *Held*, Los Angeles could properly tax the whole value of the vessels, without apportionment, for the record did not show that they attained an actual situs elsewhere. (241 C.A.2d 319.)

On the other hand, in *Martinac v. San Diego* (1967) 255 C.A.2d 175, 63 C.R. 64, the home port was Tacoma, Washington; the vessels were at sea 265 days a year, spending only two-thirds of the remaining time in San Diego county. *Held*, that county could not levy a property tax against the full value. (255 C.A.2d 175.)

Sea-Land Service v. Alameda (1974) 12 C.3d 772, 117 C.R. 448, 528 P.2d 56, rejects the home port doctrine as a limitation on the power to tax. Plaintiff shipping company was a Delaware corporation with a commercial domicile in New Jersey. It operated cargo vessels in interstate and foreign trade, all being documented at Delaware or at foreign ports. The vessels were designed to carry cargo exclusively in its shipping containers (permanent, reusable articles of transport equipment, each carrying large numbers of packages of goods). Although no containers were used for intrastate transportation or were permanently located in California, some were in defendant county from time to time, awaiting new cargo, on the lien date; and that number was fairly representative of the number present on other days. Defendant county assessed apportioned ad valorem property taxes on the containers. *Held*, the tax was valid.

(a) The tax is supported by the constitutional principles set forth in *Braniff Airways v. Nebraska State Bd. of Equalization & Assessment* (1954) 347 U.S. 590, 74 S.Ct. 757, 98 L.Ed. 967, *supra*, §73, and *Zantop Air Transport v. San Bernardino* (1966) 246 C.A.2d 433, 54 C.R. 813, *supra*, §77. "The assessor here has not attempted to assess all Sea-Land's containers which pass through the county. He has levied a tax only on the value of that portion which represents the average number of containers located in the county on a daily basis. Such a method of assessment is permissible under *Braniff*." (12 C.3d 779.)

(b) There was no denial of equal protection by reason of the fact that other property owners are taxed on the basis of property in fact present on the lien date. "Local taxation based on an appraisal and valuation of the average amount of movable personal property habitually employed within the territorial limits of the taxing authority is clearly constitutional." (12 C.3d 780.) And taxation on an "average presence" basis of movable property consisting of similar units is fair and reasonable. (12 C.3d 780.)

(c) The home port doctrine, which would permit property taxes only in the home port (New Jersey), is inapplicable. The doctrine "has been eroded in a series of United States Supreme Court decisions approving apportioned ad valorem property taxes levied by other local jurisdictions having sufficient contacts with vehicles engaged in interstate commerce. The apportionment doctrine was applied first to railroad rolling stock, then to vessels operating on inland waters, and finally to airplanes flying interstate routes." (12 C.3d 782.)

(d) The argument, based on *Scandinavian Airlines System v. Los Angeles* (1961) 56 C.2d 11, 14 C.R. 25, 363 P.2d 25, supra, §76, that the apportionment decisions involved interstate commerce and cannot be applied to foreign commerce, is unsound; *Scandinavian Airlines* is distinguishable: (1) The aircraft in that case were engaged exclusively in foreign commerce; here, the containers were employed in interstate commerce as well. Thus in that case, the issue was whether any state could tax; here, it is which state may tax. (2) In that case, the aircraft had only minimum contacts with Los Angeles; here, the containers had a daily contact with Alameda County. (3) The holding in that case was partly based on treaties. (12 C.3d 785, 786.)

(e) The home port doctrine, characterized by the United States Supreme Court as "anachronistic," was formulated before the development of the apportionment rule, which has been recognized as appropriate for a variety of instrumentalities of commerce. (12 C.3d 786, 787.)

(f) As pointed out in the dissent in *Scandinavian Airlines*, the danger of cumulative burdens is not a controlling consideration. "Thus the threat of double taxation from foreign taxing authorities has no role in commerce clause considerations of multiple burdens. Indeed, it is gratuitous to suggest that a state is alleviating any threat of multiple burdens by limiting its own taxing power, when foreign nations may tax instrumentalities of commerce that touch their jurisdiction at any rate they choose. The commerce clause mandates apportionment among the several states in order to avoid discriminatory burdens on interstate or foreign commerce. But apportionment among nations is a matter for international agreement; it should not be considered as a limitation on a state's power to tax." (12 C.3d 788.) (See 64 Cal. L. Rev. 657 [Sea-Land Service]; 3 A.L.R.4th 837 [situs of vessels for purposes of property taxation].)

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e. Instrumentalities of Foreign Commerce.

9 *Witkin Sum. Cal. Law Tax* § 80

[§ 80] Instrumentalities of Foreign Commerce.

Japan Line, Ltd. v. Los Angeles (1979) 441 U.S. 434, 99 S.Ct. 1813, 60 L.Ed.2d 336, reversed the California Supreme Court decision in *Japan Line, Ltd. v. Los Angeles* (1977) 20 C.3d 180, 141 C.R. 905, 571 P.2d 254. The issue was whether the Commerce Clause prevented a nondiscriminatory ad valorem property tax on foreign-owned instrumentalities (cargo containers) of international commerce. *Held*, it did and the tax was invalid.

(a) *Home port doctrine is not controlling.* The California court thought that the home port doctrine was anachronistic (*Sea-Land Service v. Alameda* (1974) 12 C.3d 772, 117 C.R. 448, 528 P.2d 56, *supra*, §79), and to the extent that it was a corollary of the "movables follow the person" doctrine, it is out of date. But it is not necessary to decide the broad issue whether the mere use of international routes is enough to render an instrumentality immune from tax in a nondomiciliary state. The narrow question here is whether instrumentalities owned, based, and registered abroad, and used exclusively in international commerce, may be taxed by a state. (99 S.Ct. 1819, 60 L.Ed.2d 345.)

(b) *Interstate commerce rules are not controlling.* The state contends that the tax meets the tests of *Complete Auto Transit v. Brady* (1977) 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326, *infra*, §93, and that the Commerce Clause inquiry should be the same in both interstate and foreign commerce. This latter premise is rejected: Two additional considerations come into play when instrumentalities of foreign commerce are involved:

(1) *The enhanced risk of multiple taxation.* Neither this Court nor the Nation can ensure full apportionment when one of the taxing entities is a foreign sovereign; hence, there is a risk of a double tax burden to which domestic commerce is not exposed and which the Commerce Clause forbids. (99 S.Ct. 1821, 60 L.Ed.2d 347.)

(2) *Impairment of federal uniformity.* Foreign commerce is preeminently a matter of national concern, and a state tax on its instrumentalities may frustrate the achievement of federal uniformity by giving rise to disputes over apportionment formulae and by inciting retaliation against American-owned instrumentalities in foreign countries. The result would be that the Nation could not "speak with one voice" in regulating foreign commerce. (99 S.Ct. 1822, 1823, 60 L.Ed.2d 348, 349.)

(c) *California tax is invalid.* Applying these principles: (1) The tax results in multiple taxation, for Japan has the

right to tax the containers in full, and in fact has done so. (99 S.Ct. 1823, 60 L.Ed.2d 350.) (2) The tax prevents the Nation from "speaking with one voice" in international trade, and creates the risk of retaliation by Japan, which does not tax American-owned containers there. (99 S.Ct. 1823, 1824, 60 L.Ed.2d 350, 351.)

(d) *Answers to arguments in support of tax.* The contention that any multiple taxation is attributable to Japan ignores the realistic framework of the customs of nations. In interstate commerce cases, the Supreme Court has power to prevent an excessive tax (cf. *Moorman Mfg. Co. v. Bair* (1978) 437 U.S. 267, 98 S.Ct. 2340, 57 L.Ed.2d 197, supra, §71); it is powerless to correct malapportionment imposed from abroad. (99 S.Ct. 1824, 60 L.Ed.2d 351.) The contention that California's multiple taxation can be avoided by congressional action or international agreement has no merit. "California may not tell this Nation or Japan how to run their foreign policies." (99 S.Ct. 1825, 60 L.Ed.2d 352.) The policy argument that if the containers cannot be taxed the state will not be compensated for the services it undeniably renders the containers, and that in consequence the state will be forced to discriminate against domestic commerce, has weight, but is directed to the wrong forum. "The problems to which appellees refer are problems that admit only of a federal remedy. They do not admit of a unilateral solution by a State." (99 S.Ct. 1826, 60 L.Ed.2d 353.) (See 7 *Hastings Const. L. Q.* 316 [*Japan Line*]; on statutory exemption of ocean vessel cargo containers from property taxation, see Rev.C. 232, *infra*, §210.)

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2. Goods in Interstate Sale.

9 Witkin Sum. Cal. Law Tax § 81

[§ 81] Goods in Interstate Sale.

(1) *Goods in Movement*. A property tax on goods actually moving in the course of interstate commerce is void, as a direct burden on commerce. Goods are still considered "in the flow" of commerce, and immune from tax, even though their movement has been temporarily stopped or interrupted, e.g., for changes in transportation. (*Champlain Realty Co. v. Brattleboro* (1922) 260 U.S. 366, 43 S.Ct. 146, 149, 67 L.Ed. 309, 314; cf. *Carson Petroleum Co. v. Vial* (1929) 279 U.S. 95, 49 S.Ct. 292, 294, 73 L.Ed. 626, 629 [foreign commerce]; *Von Hamm-Young Co. v. San Francisco* (1947) 29 C.2d 798, 802, 178 P.2d 745 [goods temporarily stored in San Francisco warehouses because of shortage of shipping space resulting from war conditions].)

(2) *Goods at Rest*. Goods destined for interstate transportation that has not yet commenced are obviously subject to tax. Similarly, when goods have ceased their interstate movement, and have come to rest for business reasons, they are treated like other property within the state, and are subject to property taxes. (*Minnesota v. Blasius* (1933) 290 U.S. 1, 54 S.Ct. 34, 37, 78 L.Ed. 131, 136; *Yellow Cab Mfg. Co. v. San Diego* (1930) 106 C.A. 587, 597, 289 P. 913.)

For some time, it was contended that the original package doctrine (supra, §56) should be applied to determine whether or not the goods were still in the course of interstate commerce, but this view was ultimately rejected. Hence, when goods arrive within the state and are stored in the warehouse of the consignee, their interstate character is at an end and they are subject to state taxation. (*Sonneborn Bros. v. Cureton* (1923) 262 U.S. 506, 43 S.Ct. 643, 67 L.Ed. 1095.)

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D. Sales and Use Taxes.

1. Use Tax After Interstate Sale.

a. Theory of Tax.

9 *Witkin Sum. Cal. Law Tax* § 82

[§ 82] Theory of Tax.

Because goods in the course of interstate commerce cannot be taxed (*supra*, §81), a sales tax on the interstate sale would be invalid (*infra*, §84). In an effort to curb avoidance of the local sales tax by sellers who engaged in interstate sales, states devised the use tax, a tax on the privilege of the use of property by the buyer, equivalent in amount to the sales tax, and payable by those who purchased goods that were free from the sales tax. (See *Miller Bros. Co. v. Maryland* (1954) 347 U.S. 340, 74 S.Ct. 535, 538, 98 L.Ed. 744, 748; *infra*, §355 et seq.) This tax is justified on the same ground that sustains the ad valorem property tax (*supra*, §81), namely, that it applies to property that has come to rest within the state. (*Henneford v. Silas Mason Co.* (1937) 300 U.S. 577, 57 S.Ct. 524, 81 L.Ed. 814.)

Two practical questions arose in this connection: When do the goods cease to be part of interstate commerce, and how is the tax to be collected? The courts answered that no particular time need elapse (see *Southern Pac. Co. v. Gallagher* (1939) 306 U.S. 167, 59 S.Ct. 389, 83 L.Ed. 586), and that though the tax is on the buyer, the seller may be required to collect it and pay it to the state. The result is that the interstate sale is immune from a sales tax, but the valid use tax takes its place and operates in the same manner. (*Nelson v. Sears, Roebuck & Co.* (1941) 312 U.S. 359, 61 S.Ct. 586, 85 L.Ed. 888; see *General Trading Co. v. State Tax Com. of Iowa* (1944) 322 U.S. 335, 64 S.Ct. 1028, 88 L.Ed. 1309; *National Geographic Soc. v. State Bd. of Equalization* (1976) 16 C.3d 637, 641, 128 C.R. 682, 547 P.2d 458, *infra*, §83; *Atchison, Topeka & Santa Fe Ry. Co. v. State Bd. of Equalization* (1956) 139 C.A.2d 411, 415, 294 P.2d 181.)

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1. Use Tax After Interstate Sale.

b. Valid Taxes.

9 *Witkin Sum. Cal. Law Tax* § 83

[§ 83] Valid Taxes.

In *General Trading Co. v. State Tax Com. of Iowa* (1944) 322 U.S. 335, 64 S.Ct. 1028, 88 L.Ed. 1309, the seller, a foreign corporation with no office, store, or warehouse in Iowa, sold goods in Iowa through traveling salesmen having headquarters outside the state. *Held*, the Iowa use tax was validly applied, and the seller could be required to collect it.

The case was followed in *Scripto v. Carson* (1960) 362 U.S. 207, 80 S.Ct. 619, 4 L.Ed.2d 660. Plaintiff, from its place of business in Georgia, sold mechanical writing instruments by mail to customers in Florida. Sales were made through 10 specialty brokers operating on commission, and though designated independent contractors, they actively represented plaintiff in soliciting sales. *Held*, the Florida use tax was properly applied. (80 S.Ct. 622, 4 L.Ed.2d 664.)

In *Western Pac. R. Co. v. State Bd. of Equalization* (1963) 213 C.A.2d 20, 28 C.R. 453, plaintiff bought two cranes in Michigan for railroad service in California, Nevada, and Utah. After an initial period, their principal place of use was, for years, California. No sales or use tax was collected in Nevada or Utah, but California, following an administrative ruling, levied the tax. *Held*, this was proper; experience showed that there was no likelihood of multiple taxation, and a taxable "moment" occurred in California, despite the preliminary brief use in *Nevada and Utah*. (213 C.A.2d 26.) (See *United Air Lines v. Mahin* (1973) 410 U.S. 623, 93 S.Ct. 1186, 35 L.Ed.2d 545 [Illinois tax on aviation fuel stored in Illinois and loaded aboard aircraft for interstate flights; taxable event was local storage, not interstate consumption]; *American Airlines v. State Bd. of Equalization* (1963) 216 C.A.2d 180, 193, 30 C.R. 590.)

In *National Geographic Soc. v. State Bd. of Equalization* (1976) 16 C.3d 637, 128 C.R. 682, 547 P.2d 458, the court stated the principle of the controlling decisions as follows: "Where an out-of-state seller conducts a substantial mail order business with residents of a state imposing a use tax on such purchasers and the seller's connection with the taxing state is *not* exclusively by means of the instruments of interstate commerce, the slightest presence within such taxing state independent of any connection through interstate commerce will permit the state constitutionally to impose on the seller the duty of collecting the use tax from such mail order purchasers and the liability for failure to do so." (16 C.3d 644.)

In this case, plaintiff Society, a nonprofit scientific and educational organization with administrative offices in Washington, D.C., offered memberships at \$ 7.50 per year that carried with them a year's subscription to its magazine,

and also sold maps, atlases, globes, and books. Sales were made nationally by mail order, with delivery from Washington. Plaintiff maintained two offices in California--in San Francisco and Los Angeles--with two employees in each. Except for minimal over-the-counter sales of maps, etc., these employees confined their activity to solicitation of advertising for the magazine. *Held*, a use tax was properly imposed on the mail order sales to California residents.

(a) The Society conducted a widespread business with California residents. In June 1972, it had 872,000 members who subscribed to the magazine, and 21,000 nonmember subscribers; during a 9-month period, its mail order sales (exclusive of subscriptions) amounted to \$ 452,470; and it maintained two offices with employees here. Thus, its activities in California were sufficient to support the exercise of taxing authority. (16 C.3d 644.)

(b) The Society's principal contention was that apart from the minimal over-the-counter sales admittedly subject to tax, the activities in California were "dissociated" from the mail order activities taxed; i.e., the in-state activity was only solicitation of advertising for the magazine, which did not inform subscribers of the goods or induce them to buy the goods, and consequently had no relation to the mail order sales of the goods. This contention has "no constitutional relevance" under the reasoning of *Nelson v. Sears, Roebuck & Co.* (1941) 312 U.S. 359, 61 S.Ct. 586, 85 L.Ed. 888, *supra*, §82. The Society is a single business entity. Both the magazine and the mail order merchandise are ordered, paid for, and delivered in essentially the same way, and are similar in nature, function, and purpose. "The final result of the Society's course of business is the use by California residents of all of the above media of knowledge. In short, the mail orders are a part of the Society's business in California. As in *Sears, Roebuck*, the Society cannot avoid its use tax collection liability by claiming that its California business is departmentalized." (16 C.3d 647.) Neither *American Oil Co. v. Neill* (1965) 380 U.S. 451, 85 S.Ct. 1130, 14 L.Ed.2d 1, *infra*, §85, nor *Montgomery Ward & Co. v. State Bd. of Equalization* (1969) 272 C.A.2d 728, 78 C.R. 373, supports the "dissociation" argument. (16 C.3d 647, 648, 649.)

The California decision was affirmed in *National Geographic Soc. v. State Bd. of Equalization* (1977) 430 U.S. 551, 97 S.Ct. 1386, 51 L.Ed.2d 631. The court observed, however, that its opinion was not to be understood as implying agreement with the "slightest presence" standard of the California opinion. The maintenance of two offices and solicitation of advertising copy in the range of \$ 1 million annually "adequately establish a relationship or 'nexus' between the Society and the State." (97 S.Ct. 1390, 51 L.Ed.2d 637.) The court distinguished *Miller Bros. Co. v. Maryland* (1954) 347 U.S. 340, 74 S.Ct. 535, 98 L.Ed. 744, *infra*, §85, and *National Bellas Hess Co. v. Department of Revenue of Illinois* (1967) 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505, *infra*, §86, and rejected the contention that the relationship must exist not only between the seller and the taxing state, but also between the activity of the seller sought to be taxed and the seller's activity within the state. (97 S.Ct. 1392.) (See 91 Harv. L. Rev. 72 [*Complete Auto Transit* and *National Geographic Soc.*].)

In *D. H. Holmes & Co. Ltd. v. McNamara* (1988) 486 U.S. 24, 108 S.Ct. 1619, 100 L.Ed.2d 21, plaintiff, a Louisiana corporation, had catalogs printed outside Louisiana and shipped to prospective customers within the state. *Held*, a Louisiana use tax imposed on the catalogs was valid.

(a) The four-part formulation of *Complete Auto Transit v. Brady* (1977) 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326, *infra*, §93, employed to test the validity of a number of kinds of tax, applies here. "[I]t really makes little difference for Commerce Clause purposes" whether appellant's catalogs " 'came to rest' in the mailboxes of its Louisiana customers or whether they were still considered in the stream of interstate commerce. This distinction may be of some importance for other purposes (in determining, for instance, whether a 'taxable moment' has occurred ...), but for Commerce Clause analysis it is largely irrelevant." (100 S.Ct. 1623, 100 L.Ed.2d 27.)

(b) The tax complies with the four prongs of *Complete Auto Transit*: The corporation's activity had a substantial nexus with the state; the tax was fairly apportioned (by a credit for sales taxes paid in other states); it did not discriminate against interstate commerce, but was equal to the sales tax applicable to the same tangible personal property purchased in-state; and it was fairly related to benefits provided by the state (fire and police protection, mass transit, public roads for customers, and other civic services). (108 S.Ct. 1623, 1624, 100 L.Ed.2d 28.)

(c) *National Bellas Hess Co. v. Department of Revenue* is distinguishable, and plaintiff's connection with Louisiana far exceeds that of the magazine with California in *National Geographic Soc. v. State Bd. of Equalization*. (108 S.Ct. 1624, 100 L.Ed.2d 29.)

In *Scholastic Book Clubs v. State Bd. of Equalization* (1989) 207 C.A.3d 734, 255 C.R. 77, a New Jersey corporation in the business of interstate mail order book sales sold books in California by mailing catalogs to schoolteachers and librarians who received items from a catalog for orders they solicited from students. *Held*, this manner of doing business constituted a sufficient nexus for the imposition of California use taxes; the facts are more analogous to *Scripto v. Carson*, *supra*, than to *National Bellas Hess v. Department of Revenue of Illinois*, *supra*. (207 C.A.3d 739.) (See *Burbank-Glendale-Pasadena Airport Authority v. Burbank* (1998) 64 C.A.4th 1217, 1223, 76 C.R.2d 297 [city's transient parking tax, which was equivalent to sales and use tax on parking facilities, did not violate Commerce Clause]; *Yamaha Corp. of America v. State Bd. of Equalization* (1999) 73 C.A.4th 338, 365, 86 C.R.2d 362 [use tax on merchandise purchased outside California and delivered to common carrier in California for delivery to donee in another state did not violate Commerce Clause; taxpayer was protected from risk of multiple taxation by Rev.C. 38001 et seq. and by Rev.C. 6406, *infra*, §366].)

SUPPLEMENT: [This section is current through the latest supplement]

See *Borders Online, LLC v. State Bd. of Equalization* (2005) 129 C.A.4th 1179, 1196, 29 C.R.3d 176 [use tax on out-of-state on-line retailer did not violate Commerce Clause; retailer established sufficient physical presence in California by allowing its customers to return items purchased on-line to stores in California and by engaging in cross-marketing practices with stores to benefit their common brand; citing *Scripto v. Carson* (1960) 362 U.S. 207, 80 S.Ct. 619, 4 L.Ed.2d 660, text, p. 120].



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D. Sales and Use Taxes.

1. Use Tax After Interstate Sale.

c. Invalid Taxes.

1. Denial of Equal Protection.

9 *Witkin Sum. Cal. Law Tax* § 84

[§ 84] Denial of Equal Protection.

Discrimination will be fatal to a use tax. In *Halliburton Oil Well Cementing Co. v. Reily* (1963) 373 U.S. 64, 83 S.Ct. 1201, 10 L.Ed.2d 202, plaintiff manufactured and assembled specialized oil well equipment in Oklahoma and shipped it for use in its oil well servicing business in Louisiana. Louisiana's sales tax on a manufacturer-user of locally assembled equipment of this kind was based on the value of the materials; its use tax on an out-of-state manufacturer-user was based on that value plus the value of labor and shop overhead attributable to assembling. *Held*, this inequality was an unconstitutional discrimination against interstate commerce. "[E]qual treatment for in-state and out-of-state taxpayers similarly situated is the condition precedent for a valid use tax on goods imported from out-of-state." (83 S.Ct. 1204, 10 L.Ed.2d 207.)

Associated Industries of Missouri v. Lohman (1994) 511 U.S. 641, 114 S.Ct. 1815, 128 L.Ed.2d 639, involved Missouri's uniform, statewide use tax on goods purchased outside the state and stored, used, or consumed within the state. Although the use tax was purportedly designed to compensate for local sales taxes on goods sold in Missouri, local sales tax rates varied widely, and in many local jurisdictions, the use tax exceeded the sales tax. Even though the local sales taxes may have, in the aggregate, placed a greater burden on intrastate trade than the uniform use tax placed on interstate trade, the use tax was impermissibly discriminatory in those localities where it exceeded the sales tax. (114 S.Ct 1819, 128 L.Ed.2d 644.)

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1. Use Tax After Interstate Sale.

c. Invalid Taxes.

2. Violation of Due Process.

9 *Witkin Sum. Cal. Law Tax* § 85

[§ 85] Violation of Due Process.

The broad power to collect use or sales taxes from the seller where some local activity takes place (see *infra*, §87), was limited in *Miller Bros. Co. v. Maryland* (1954) 347 U.S. 340, 74 S.Ct. 535, 98 L.Ed. 744. Appellant operated a store in Delaware, and sought no business in Maryland. But Maryland customers, noting advertisements in Delaware papers and radio broadcasts, came to the store to buy, and some deliveries were made out-of-state to the Maryland customers. *Held*, the Maryland use tax could not be applied. *General Trading Co. v. State Tax Com. of Iowa* (1944) 322 U.S. 335, 64 S.Ct. 1028, 88 L.Ed. 1309, *supra*, §83, was thus distinguished: "But there is a wide gulf between this type of active and aggressive operation within a taxing state and the occasional delivery of goods sold at an out-of-state store with no solicitation other than the incidental effects of general advertising. ... That these inhabitants incurred a liability for the use tax when they used, stored or consumed the goods in Maryland, no one doubts. But the burden of collecting or paying their tax cannot be shifted to a foreign merchant in the absence of some jurisdictional basis not present here." (74 S.Ct. 540, 98 L.Ed. 749.) The court based its conclusion on the due process ground (extraterritorial transaction beyond the state's jurisdiction to tax), and expressly omitted any consideration of the *Commerce Clause*. (74 S.Ct. 541, 98 L.Ed. 750.)

In *American Oil Co. v. Neill* (1965) 380 U.S. 451, 85 S.Ct. 1130, 14 L.Ed.2d 1, the court again found a statute violative of due process and did not consider the Commerce Clause. Plaintiff's predecessor, U Co., sold gasoline to the A.E.C. for delivery in Utah at a price f.o.b. Salt Lake City. The A.E.C. then transported the fuel by carrier to Idaho for use by it there. Idaho levied an excise tax on the theory that U Co. was a licensed Idaho dealer in motor fuels and therefore constructively received the gasoline there when it sold it with knowledge of Idaho use. *Held*, the tax was invalid. The transfer was an out-of-state sale, entirely unconnected with Idaho business, and the fortuitous fact that the seller had an Idaho dealer's permit could not constitute the "nexus" between the taxing state and taxpayer necessary for an exercise of the state's taxing power. (85 S.Ct. 1134, 14 L.Ed.2d 6.)

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1. Use Tax After Interstate Sale.

c. Invalid Taxes.

3. Due Process and Commerce Power.

9 *Witkin Sum. Cal. Law Tax* § 86

[§ 86] Due Process and Commerce Power.

National Bellas Hess Co. v. Department of Revenue of Illinois (1967) 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505, reviews the prior cases and lays down a positive limit on the state's power. The two constitutional restrictions--commerce power and due process--raise similar inquiries and call for similar tests: The state can only ask that commerce bear a fair share of the cost of local government, which protects it, and due process requires that the state give something for which it asks return. And the same principles apply in determining the state's power to impose on a seller the burden of collecting a use tax on interstate sales. (87 S.Ct. 1391, 18 L.Ed.2d 508.)

In this case, plaintiff was a Delaware corporation licensed to do business only in Missouri and Delaware. It conducted a huge (\$ 60 million a year) mail order business throughout the country. It had no local offices, warehouses, or sales staff and made all of its contacts with customers by mailing catalogues and advertising flyers. Orders were mailed to Missouri and goods were sent to customers by mail or common carrier. Illinois demanded that plaintiff collect and remit to the state the Illinois use tax on sales. *Held*, imposition of this duty was unconstitutional.

(a) *Recognized reach of the power.* The cases have authorized imposition of the duty where the sale was arranged locally by agents (e.g., *General Trading Co. v. State Tax Com. of Iowa* (1944) 322 U.S. 335, 64 S.Ct. 1028, 88 L.Ed. 1309, *supra*, §83), where there were local retail stores (e.g., *Nelson v. Sears, Roebuck & Co.* (1941) 312 U.S. 359, 61 S.Ct. 586, 85 L.Ed. 888; *supra*, §82), or where jobbers or sales staff conducted continuous local solicitation (*Scripto v. Carson* (1960) 362 U.S. 207, 80 S.Ct. 619, 4 L.Ed.2d 660, *supra*, §83). (87 S.Ct. 1391, 1392, 18 L.Ed.2d 509.)

(b) *Limits of the power.* The holding of *Scripto v. Carson* was "the furthest constitutional reach to date." It has never been held that a state may impose the duty of use tax collection and payment on a seller whose only connection with customers in the state is by common carrier or mail. The distinction is generally recognized between "mail order sellers with retail outlets, solicitors, or property within a State, and those who do no more than communicate with customers in the State by mail or common carrier as part of a general interstate business." This distinction is valid "and we decline to obliterate it." (87 S.Ct. 1392, 18 L.Ed.2d 509.)

Three dissenting justices, pointing to the large-scale exploitation of the Illinois consumers' market, argued that

National received the same benefits from Illinois as it would if it maintained a retail store or sales staff there. (87 S.Ct. 1393, 18 L.Ed.2d 512.)

In *Woosley v. California* (1992) 3 C.4th 758, 13 C.R.2d 30, 838 P.2d 758, defendant imposed vehicle license fees and use taxes, using calculations that resulted in substantially higher fees and taxes on vehicles first sold outside California than on vehicles first sold within the state. For vehicles purchased in the state, the market value was the depreciated sticker price, excluding the cost of optional equipment; for vehicles purchased out of state, the market value was the actual purchase price. Plaintiff, a California resident who purchased his vehicle out of state, challenged the fees and taxes in a class action, contending that the differential treatment violated the Commerce Clause. *Held*, the tax and fees violated the Commerce Clause, but the class was properly composed only of those who had filed refund claims.

(a) While the computation methods here were authorized by statute, the discrimination between interstate and local commerce is plain. (3 C.4th 777.) This unequal treatment of interstate and intrastate transactions violates the Commerce Clause and cannot be justified on the basis of administrative convenience. (3 C.4th 782.)

(b) Although it may be difficult to determine a California sticker price for vehicles sold out of state, the state may not adopt a method of taxation that applies on its face only to the sale of vehicles within the state and then seek to justify the ensuing discrimination on the basis of the administrative difficulty in applying that discriminatory method to vehicles sold out of state, especially where nondiscriminatory alternative methods of computing the tax and fees exist. (3 C.4th 782.)

(c) Under *Javor v. State Bd. of Equalization* (1974) 12 C.3d 790, 117 C.R. 305, 527 P.2d 1153, a class action may be used to seek tax refunds, and under *San Jose v. Superior Court (Lands Unlimited)* (1974) 12 C.3d 447, 115 C.R. 797, 525 P.2d 701, 4 Cal. Proc. (4th), Pleading, §277, class claims may be used to seek damages from governmental entities. However, the extension of these authorities to authorize class claims to seek tax refunds is unwarranted. (3 C.4th 788, disapproving *Schoderbek v. Carlson* (1980) 113 C.A.3d 1029, 170 C.R. 400, *infra*, §286, *Lattin v. Franchise Tax Bd.* (1977) 75 C.A.3d 377, 142 C.R. 130, and *Santa Barbara Optical Co. v. State Bd. of Equalization* (1975) 47 C.A.3d 244, 120 C.R. 609, to the extent inconsistent.) Vehicle license fees and use taxes are excise taxes, refunds of which are subject to the limitations of Cal. Const., Art. XIII, §32. Under that provision, a refund action may be maintained "in such manner as may be provided by the Legislature." (3 C.4th 789.) The class claim here was not authorized by the statutes governing refunds of either vehicle license fees or use taxes. Each refund procedure contemplated individual claims (3 C.4th 789, 790), and the constitutional limitation precludes the court from expanding the methods of seeking tax refunds expressly provided by the Legislature (3 C.4th 792). Thus, the claim is valid as to plaintiff only in his individual capacity, and the class may properly include only those who timely filed valid refund claims. (3 C.4th 795.) (See 21 *Pepperdine L. Rev.* 674 [Woosley].)

National Bellas Hess Co. v. Department of Revenue of Illinois was reaffirmed in *Quill Corp. v. North Dakota* (1992) 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91, holding invalid the application of North Dakota's use tax to an out-of-state mail order company without in-state offices, warehouses, or employees. "In sum, although in our cases subsequent to *Bellas Hess* and concerning other types of taxes we have not adopted a similar bright-line, physical-presence requirement, our reasoning in those cases does not compel that we now reject the rule that *Bellas Hess* established in the area of sales and use taxes. To the contrary, the continuing value of a bright-line rule in this area and the doctrine and principles of *stare decisis* indicate that the *Bellas Hess* rule remains good law." (112 S.Ct. 1916, 119 L.Ed.2d 110.) (See 106 *Harv. L. Rev.* 163; 75 *So. Cal. L. Rev.* 419 [consequences of *Quill* for Internet retail business].)

In *Current v. State Bd. of Equalization* (1994) 24 C.A.4th 382, 29 C.R.2d 407, plaintiff, an out-of-state mail-order company that sold stationery and novelty items, challenged a use tax imposed under former Rev.C. 6203(g) (*infra*, §356). California levied the use tax after plaintiff was acquired by a check printing company with numerous commercial contacts in California. Plaintiff contended that the tax violated the Commerce Clause, and the trial court determined that the tax, as applied to plaintiff, was unconstitutional. *Held*, affirmed.

(a) *Commerce Clause*. The imposition of the use tax was invalid under the Commerce Clause.

(1) *Status before acquisition*. *National Bellas Hess Co.* and *Quill Corp.* establish that mail-order sellers with no retail outlets, solicitors, or property within California may not be taxed. Hence, prior to plaintiff's acquisition by the check printing company, it was not subject to taxation under Rev.C. 6203. (24 C.A.4th 390.)

(2) *Effect of acquisition*. The acquisition did not create a sufficient physical nexus with California to justify imposing the use tax. The two companies did not have integrated operations or management, they were organized and operated as separate and distinct corporate entities, and neither was the alter ego or agent of the other for any purpose. (24 C.A.4th 391.)

(b) *Applicability of former Rev.C. 6203(g)*. An alternative basis for affirmance is that plaintiff did not come within the purview of former Rev.C. 6203(g). Under that statute, the use tax applies only to retailers "owned or controlled by the same interests which own or control any retailer engaged in business in the same or similar line of business" in *California*. (24 C.A.4th 391.) The mail-order company and the check printing company were not engaged in the same or similar businesses. Their customer bases, the manner in which each marketed its products, and their product lines were dissimilar. Although both companies produced checks, only a small percentage of the mail-order company's revenue was derived from the sale of checks, whereas almost all of the check printing company's revenue came from that source. (24 C.A.4th 392.) (See *Montgomery Ward & Co. v. State Bd. of Equalization* (1969) 272 C.A.2d 728, 741, 78 C.R. 373.)

SUPPLEMENT: [This section is current through the latest supplement]

Lands Unlimited case:

Cross-Reference: 4 Cal. Proc. (5th), *Pleading*, §290.



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2. Sales Tax Where Local Activity Occurs.

9 *Witkin Sum. Cal. Law Tax* § 87

[§ 87] Sales Tax Where Local Activity Occurs.

In *McGoldrick v. Berwind-White Coal Mining Co.* (1940) 309 U.S. 33, 60 S.Ct. 388, 84 L.Ed. 565, a foreign corporation maintained a sales office in New York where contracts were made for interstate sales, with delivery of goods taking place in New York. *Held*, the New York sales tax applied. (60 S.Ct. 394, 84 L.Ed. 572; see 2 Rotunda 3d, §13.6.) This case established the proposition that any local activity in connection with the interstate sale may make it subject to the state sales tax. (See *Norton Co. v. Department of Revenue of Illinois* (1951) 340 U.S. 534, 71 S.Ct. 377, 95 L.Ed. 517, *infra*, §92 [upholding occupation tax on same theory]; *Diebold v. State Bd. of Equalization* (1959) 168 C.A.2d 628, 633, 336 P.2d 650 [sales tax; following *Norton*].)

In *Shell Oil Co. v. State Bd. of Equalization* (1966) 64 C.2d 713, 51 C.R. 524, 414 P.2d 820, *supra*, §61, the tax was also sustained against three additional challenges:

(a) It was not a prohibited burden on interstate commerce. A nondiscriminatory tax on local sales is valid even though the ultimate function of the fuel is to generate power for carrying on interstate commerce; i.e., the tax is on the general mass of property in the state. (64 C.2d 724.)

(b) It did not subject the taxpayer to multiple burdens. The argument was advanced that the fiction of territoriality of vessels and the home port doctrine subjects the vessels to the risk of taxation of the transaction by the state or country of their registry. This argument was unsupported by any showing of likelihood of such a tax; and even if it were imposed, it would not be the concern of our courts, which have no power to compel independent nations to adopt a nondiscriminatory system of taxation. (64 C.2d 726.)

(c) The tax was not rendered invalid by federal occupation of the field. Federal preclusion of state taxation should be governed by the same rules as federal preclusion of state regulation: An implied prohibition arises when a federal act impinges on the subject matter that a state statute attempts also to regulate; there is no requirement that Congress occupy the whole field; it may occupy a limited field and allow state regulation not in conflict with it. (64 C.2d 727.) The federal statutes exempt imported fuel oil held in warehouses and segregated. This limited occupation of the field does not conflict with California taxation on sale of domestically produced fuel oil. (64 C.2d 727.) (See 55 Cal. L. Rev. 559.)

But in the absence of some local activity, the usual rule applies that the interstate sale cannot be taxed. Thus, in *McLeod v. J.E. Dilworth Co.* (1944) 322 U.S. 327, 64 S.Ct. 1023, 88 L.Ed. 1304, the foreign corporation made sales in Arkansas through a traveling salesman, with no office or other local headquarters. Held, the Arkansas sales tax could not be applied.

Itel Containers Int. Corp. v. Huddleston (1993) 507 U.S. 60, 113 S.Ct. 1095, 122 L.Ed.2d 421, involved a Tennessee sales tax on cargo container leases, challenged as a violation of the Foreign Commerce Clause. In upholding the tax, the Court examined the Foreign Commerce Clause factors of *Japan Line, Ltd. v. Los Angeles* (1979) 441 U.S. 434, 99 S.Ct. 1813, 60 L.Ed.2d 336, supra, §80, as applied by *Container Corp. of America v. Franchise Tax Bd.* (1983) 463 U.S. 159, 103 S.Ct. 2933, 77 L.Ed.2d 545: "[T]he foreign commerce clause cannot be interpreted to demand that a State refrain from taxing any business transaction that is also potentially subject to taxation by a foreign sovereign. 'Japan Line does not require forbearance so extreme or so one-sided.' ... [T]he careful apportionment of a state tax on business transactions conducted within state borders does not create the substantial risk of international multiple taxation that implicates foreign commerce clause concerns." (113 S.Ct. 1104, 122 L.Ed.2d 436, 437, quoting *Container Corp.*) Further, the federal Government, in adopting various conventions, statutes, and regulations, restricts the state's ability to tax international cargo containers. The tax here does not fall within these prohibitions, and thus does not prevent the United States from speaking with one voice in foreign trade. (113 S.Ct. 1105, 122 L.Ed.2d 437.) (See *General Trading Co. v. State Tax Com. of Iowa* (1944) 322 U.S. 335, 64 S.Ct. 1028, 88 L.Ed. 1309, supra, §83 [on similar facts, use tax was upheld]; *Oklahoma Tax Com. v. Jefferson Lines* (1995) 514 U.S. 175, 115 S.Ct. 1331, 1346, 131 L.Ed.2d 261, 281 [Oklahoma sales tax on bus tickets sold in state for interstate travel was valid under test of *Complete Auto Transit v. Brady* (1977) 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326, infra, §93]; *Lyon Metal Products v. State Bd. of Equalization* (1997) 58 C.A.4th 906, 68 C.R.2d 285, infra, §351 [sales tax imposed on "drop shipments" within California was valid]; 68 Am.Jur.2d (2000 ed.), *Sales and Use Taxes* §25 et seq.; 109 Harv. L. Rev. 121 [Jefferson Lines]; 71 A.L.R.5th 671 [sufficient nexus for state to collect sales or use tax from out-of-state entity].)

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E. License Tax on Interstate Salesperson.

9 Witkin Sum. Cal. Law Tax § 88

[§ 88] License Tax on Interstate Salesperson.

In *Robbins v. Shelby County Taxing Dist.* (1887) 120 U.S. 489, 7 S.Ct. 592, 30 L.Ed. 694, a Tennessee statute required drummers, resident or nonresident, to pay a monthly license fee of \$ 25 for the privilege of soliciting orders within a certain taxing district. *Held*, the statute was void. The negotiation of sales of goods coming from without the state is part of the interstate commerce, and therefore an interstate salesperson cannot be subjected to a license tax even though the same tax is imposed on salespersons dealing with intrastate goods.

This view was later approved and similar impositions held void (*Crenshaw v. Arkansas* (1913) 227 U.S. 389, 33 S.Ct. 294, 57 L.Ed. 565), except where some local act took place after the interstate commerce had terminated (*Browning v. Waycross* (1913) 233 U.S. 16, 34 S.Ct. 578, 58 L.Ed. 828; *McGoldrick v. Berwind-White Coal Mining Co.* (1940) 309 U.S. 33, 60 S.Ct. 388, 397, 84 L.Ed. 565, 576 [explanation of *Robbins*].) (See 2 Rotunda, §13.6.)

The principle of *Robbins* was reaffirmed in *Nippert v. Richmond* (1946) 327 U.S. 416, 66 S.Ct. 586, 90 L.Ed. 760. A Richmond ordinance subjected solicitors to a license tax of \$ 50 plus one-half of 1% of the previous year's gross earnings in excess of \$ 1,000. *Held*, it was void as applied to appellant, a drummer soliciting for interstate sales. (a) The city's contention that soliciting is a "local activity" does not justify the tax; "there is no known limit to the human mind's capacity to carve out from what is an entire or integral economic process particular phases or incidents, label them as 'separate and distinct' or 'local,' and thus achieve its desired result." (66 S.Ct. 589, 90 L.Ed. 764.) (b) The real test is the practical effect of the tax. Here, though applicable to all solicitors, local and interstate, and thus on its face nondiscriminatory, it does in fact burden interstate commerce: A single act of solicitation makes the fixed sum (\$ 50) applicable, and the cumulative effect of such municipal taxes on an itinerant solicitor would eat away all possible return from his or her sales. Thus, the tax practically excludes the out-of-state solicitor who seeks only an occasional transaction, and discriminates in favor of the local merchant with various items to sell. (66 S.Ct. 590, 90 L.Ed. 766.)

In *Memphis Steam Laundry Cleaner v. Stone* (1952) 342 U.S. 389, 72 S.Ct. 424, 96 L.Ed. 436, Mississippi imposed a privilege tax on persons soliciting business, in a discriminatory amount against laundries not licensed in the state. As applied to appellant, who did an interstate laundry business, the tax was held void under the *Robbins* rule. The court also rejected the alternative theory that the tax was based on the local activity of picking up and delivering laundry, pointing out that such a tax cannot be upheld if it discriminates against interstate commerce. (72 S.Ct. 428, 96 L.Ed. 441; see 74 Harv. L. Rev. 407; 75 Harv. L. Rev. 1027; 26 So. Cal. L. Rev. 196.)

People v. Cole (1960) 187 C.A.2d Supp. 847, 9 C.R. 788, makes an important distinction. Appellant was an interstate salesperson for a Missouri plant nursery. His solicitation of sales, followed by shipment and billing direct from the Missouri seller to the local buyer, was clearly immune from tax under *Robbins* and *Nippert*. However, appellant regularly offered to prepare, without charge, a planting plan for each customer, and the municipality contended that this was a local activity which justified the tax. *Held*, appellant was immune. The offer of a planting plan was only a promotional scheme to aid in the sale; it produced no independent revenue and had no significance apart from the solicitation. "[T]he local activity must involve a substantial business or economic pursuit, carried on for profit, before it is subject to state or local taxation." (187 C.A.2d Supp. 851.)

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F. Privilege Taxes.
1. Privilege of Using Highways.

9 *Witkin Sum. Cal. Law Tax* § 89

[§ 89] Privilege of Using Highways.

The theory that the state, to conserve its highways, may regulate and restrict the activities of interstate motor carriers (see 8 *Summary* (10th), *Constitutional Law*, §1316), has its counterpart in the field of taxation. In *Aero Mayflower Transit Co. v. Board of R. Commrs. of Montana* (1947) 332 U.S. 495, 68 S.Ct. 167, 92 L.Ed. 99, flat fees totaling \$ 25 per vehicle were imposed by Montana on motor carriers using the state's highways. *Held*, the tax was validly imposed on an interstate carrier. (a) It was expressly laid in consideration of the use of the highways, was reasonable in amount, and was not discriminatory against interstate commerce. (b) The basis of the state's power is thus explained by the court: "Motor carriers for hire, and particularly truckers of heavy goods, like appellant, make especially arduous use of roadways, entailing wear and tear much beyond that resulting from general indiscriminate public use. ... Although the state may not discriminate against or exclude such interstate traffic generally in the use of its highways, this does not mean that the state is required to furnish those facilities to it free of charge or indeed on equal terms with other traffic not inflicting similar destructive effects." (68 S.Ct. 171, 92 L.Ed. 107.) (c) It was immaterial that the proceeds of the tax were not allocated directly and exclusively to maintenance of the highways. Allocation is significant only where there is doubt as to the nature of the tax, and not where, as here, its nature was expressly stated. (68 S.Ct. 172, 92 L.Ed. 109.)

The *Aero Mayflower* case was followed in *Capitol Greyhound Lines v. Brice* (1950) 339 U.S. 542, 70 S.Ct. 806, 94 L.Ed. 1053, involving a Maryland tax of 2% of the market value of motor vehicles used in interstate commerce as a condition to their operation within the state. The court noted that such a tax may be challenged if in excess of fair compensation for the privilege of using the highways, but held that no such showing had been made. (70 S.Ct. 809, 94 L.Ed 1057.) (See *Bode v. Barrett* (1953) 344 U.S. 583, 73 S.Ct. 468, 97 L.Ed. 567; 17 A.L.R.2d 421 [state taxation of motor carriers as affected by Commerce Clause].)

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SUPPLEMENT: [This section is current through the latest supplement]

See *American Trucking Assns. & USF Holland v. Michigan Public Service Com.* (2005) 545 U.S. 429, 125 S.Ct. 2419, 2422, 2425, 162 L.Ed.2d 407, 412, 415 [state's imposition of \$ 100 annual fee on trucks engaging in intrastate commercial hauling did not violate dormant Commerce Clause; fee was imposed only on intrastate transactions, did not facially discriminate against interstate or out-of-state activities or enterprises, was applied evenhandedly to all carriers making domestic journeys, and did not reflect effort to tax activity taking place outside state; distinguishing *American*

Trucking Assn. v. Scheiner (1987) 483 U.S. 266, 107 S.Ct. 2829, 97 L.Ed.2d 226, text, §94].



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2. Privilege of Using Airport.

9 *Witkin Sum. Cal. Law Tax* § 90

[§ 90] Privilege of Using Airport.

The theory of *Aero Mayflower Transit Co. v. Board of R. Commrs. of Montana* (1947) 332 U.S. 495, 68 S.Ct. 167, 92 L.Ed. 99, supra, §89, and *Capitol Greyhound Lines v. Brice* (1950) 339 U.S. 542, 70 S.Ct. 806, 94 L.Ed. 1053, supra, §89, was applied to a \$ 1 service charge on passengers emplaning at a state-maintained airport in *Evansville-Vanderburgh Airport Authority Dist. v. Delta Airlines* (1972) 405 U.S. 707, 92 S.Ct. 1349, 31 L.Ed.2d 620.

The main challenge was based on *Crandall v. Nevada* (1867) 73 U.S. 35, 18 L.Ed. 745, in which a Nevada tax of \$ 1 on every person leaving the state by railroad, stagecoach, or other commercial passenger vehicle was invalidated. The court in the instant case pointed out that the Nevada tax was levied without regard to facilities offered, while here the charge was fairly designed to make the user of state-provided facilities help defray the costs of construction and maintenance. (92 S.Ct. 1354, 31 L.Ed.2d 627.) Thus, the persuasive authorities were those upholding reasonable fees imposed on the privilege of using state highways. (92 S.Ct. 1355, 31 L.Ed.2d 628.)

The other challenge, to the narrow selection of persons subject to the tax, was insubstantial: There was no discrimination against interstate commerce, for the imposition was on both interstate and domestic travelers; the exceptions, such as those for military and noncommercial flights, were reasonable; and the exceptions for business users of the airport were justified by the fact that by rent they already contribute to airport upkeep. (92 S.Ct. 1356, 31 L.Ed.2d 629.) (See 9 Cal. Western L. Rev. 157 [*Evansville-Vanderburgh*].)

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9 Witkin Sum. Cal. Law Tax § 91

[§ 91] Privilege of Maintaining Facilities.

Another expansion of state power to tax in the field of interstate commerce was recognized in *Memphis Natural Gas Co. v. Stone* (1948) 335 U.S. 80, 68 S.Ct. 1475, 92 L.Ed. 1832. The taxpayer, a foreign corporation, owned and operated a natural gas pipeline. The line was located in part in Mississippi, but it originated and terminated outside the state and was used for interstate transportation of gas. In addition to an ad valorem property tax on the portion of the pipeline located in the state, Mississippi sought to collect an excise tax. This tax was construed by the Mississippi courts as imposed on the local activities of maintaining the facilities in the state. It was measured by the value of capital used, invested, or employed within the state. *Held*, the tax was valid. Although there was no majority concurring in any opinion, two distinct grounds appear in support of the state's power: (a) The tax was not imposed on the privilege of doing an interstate business but on local activities that, while essential, were not part of the flow of commerce. (b) The tax was imposed on incidents of carrying on interstate commerce, but those incidents occurred in Mississippi. (68 S.Ct. 1482, 92 L.Ed.1843.) (See *Interstate Oil Pipe Line Co. v. Stone* (1949) 337 U.S. 662, 69 S.Ct. 1264, 93 L.Ed. 1613 [tax on privilege of operating pipeline between points within state was sustained, though line was used to transmit oil to loading racks for immediate rail shipment interstate]; *Martin Ship Service Co. v. Los Angeles* (1950) 34 C.2d 793, 215 P.2d 24, *infra*, §92 [discussing *Memphis* and *Stone*]; *Colonial Pipeline Co. v. Traigle* (1975) 421 U.S. 100, 95 S.Ct. 1538, 1543, 1545, 44 L.Ed.2d 1, 9, 11 [following *Memphis*, and distinguishing *Spector Motor Service v. O'Connor* (1951) 340 U.S. 602, 71 S.Ct. 508, 95 L.Ed. 573, *infra*, §93, and *Railway Express Agency v. Virginia* (1954) 347 U.S. 359, 74 S.Ct. 558, 98 L.Ed. 757, *infra*, §94].)

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4. Privilege of Conducting Local Activity.

9 *Witkin Sum. Cal. Law Tax* § 92

[§ 92] Privilege of Conducting Local Activity.

A tax may be imposed on the privilege of conducting a local activity separable from the processes of interstate commerce, if it is not capable of being duplicated elsewhere, even though the activity is essential to interstate commerce. Many cases illustrate this principle.

In *Martin Ship Service Co. v. Los Angeles* (1950) 34 C.2d 793, 215 P.2d 24, a Los Angeles municipal license tax, measured by gross receipts, was imposed on the privilege of carrying on an occupation (not otherwise licensed) as an independent contractor. Plaintiffs were independent contractors furnishing maintenance and repair services to ships engaged only in interstate and foreign commerce while the ships were in the harbor. *Held*, the tax was validly applied to them. *Joseph v. Carter & Weekes Stevedoring Co.* (1947) 330 U.S. 422, 67 S.Ct. 815, 91 L.Ed. 993, *supra*, §70, was distinguished as involving the business of loading and unloading cargo shipped in interstate commerce--inseparable from the interstate transportation of the cargo; the tax there was on interstate commerce itself. Here, although the activities, e.g., loading ship stores, were essential to interstate commerce, they were separable local events, and involved no danger of multiple taxation. "They are carried on entirely within the harbor of Los Angeles, and a tax thereon is therefore self-apportioning. The fact that the ships might require similar service in the harbors of Seattle, Honolulu or New Orleans does not make taxation by each jurisdiction a multiple tax burden." (34 C.2d 801.)

Department of Revenue of Washington v. Association of Washington Stevedoring Cos. (1978) 435 U.S. 734, 98 S.Ct. 1388, 1399, 55 L.Ed.2d 682, 696, following the reasoning of *Complete Auto Transit v. Brady* (1977) 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326, *infra*, §93, overruled *Joseph v. Carter & Weekes Stevedoring Co.* and sustained a Washington business and occupation tax on stevedoring.

The theory that sustains a sales tax where there is local activity (see *supra*, §87) will also support an occupation tax on the business of retail selling, measured by gross receipts. In upholding such a tax, the court said in *Norton Co. v. Department of Revenue of Illinois* (1951) 340 U.S. 534, 71 S.Ct. 377, 95 L.Ed. 517: "Petitioner elected to localize itself in the Illinois market with the advantages of a retail outlet in the State, to keep close to the trade, to supply locally many items and take orders for others, and to reduce freight costs to local consumers. Although the concern does not, by engaging in business within the State, lose its right to do interstate business with tax immunity, ... it cannot channel business through a local outlet to gain the advantage of a local business and also hold the immunities of an interstate business." (71 S.Ct. 381, 95 L.Ed. 521.) (See *National Schools v. Los Angeles* (1955) 135 C.A.2d 311, 287 P.2d 151

[annual license tax, based on gross receipts from intrastate business, was validly applied to correspondence schools doing 82% and 90% interstate business].)

Alaska v. Arctic Maid (1961) 366 U.S. 199, 81 S.Ct. 929, 6 L.Ed.2d 227 held that freezer ships, processing fish taken in Alaska's waters, were engaged in a local activity subject to Alaska's occupation tax, even though the product was ultimately designed for the interstate market. (81 S.Ct. 931, 6 L.Ed.2d 231.)

In *Dunbar-Stanley Studios v. Alabama* (1969) 393 U.S. 537, 89 S.Ct. 757, 21 L.Ed.2d 759, Alabama levied a tax on photographers. Appellant, a North Carolina corporation without an office or place of business in Alabama, made a contract with J.C. Penney Co. to operate children's photography services in Penney stores. Appellant took the pictures, sent the film to North Carolina to be processed, and mailed the finished prints to the stores. *Held*, the tax was validly applied. The arrangement in the local stores was the essentially local activity of providing photographers' services, even though the intermediate processing stage was outside the state. If Penney had used its own employees to take the pictures, it would not have been significant that it sent the film outside the state to be processed; and substitution of a transient photographer did not convert this local activity into an interstate activity. (89 S.Ct. 760, 21 L.Ed.2d 763.) (See *American President Lines, Ltd. v. Franchise Tax Bd.* (1970) 3 C.A.3d 587, 596, 83 C.R. 702 [tax on local activity of obtaining crews for vessels of other shipowners, arranging for repair of vessels, etc., was valid].)

General Motors Corp. v. Washington (1964) 377 U.S. 436, 84 S.Ct. 1564, 12 L.Ed.2d 430, greatly extends the theory of these cases. General Motors, through various divisions, manufactured automobiles and parts outside the State of Washington and sold them to dealers, at wholesale, in Washington. It had about 40 employees residing in or principally employed in Washington, but no office there. Washington levied a tax on the privilege of engaging in Washington business, measured by the gross wholesale sales in the state, without apportionment. *Held*, the tax was valid.

(a) Local taxes measured by gross receipts from interstate commerce involve the danger of cumulative burdens, but are proper if fairly apportioned. The test is whether the state is expecting "a constitutionally fair demand for that aspect of interstate commerce to which it bears a special relation." (84 S.Ct. 1568, 12 L.Ed.2d 435.)

(b) Because General Motors has engaged in activities in the state, it has the burden of establishing its claimed exemption, and has not met it; i.e., on the record, the Washington court properly determined that there were local incidents sufficient for imposition of a tax. (84 S.Ct. 1571, 12 L.Ed.2d 438.)

(c) Although the tax was unapportioned and therefore "suspect," "we are not prepared to say" that the state's conclusion was impermissible, for the corporation had mingled its taxable business with that claimed to be nontaxable. (84 S.Ct. 1571, 12 L.Ed.2d 439.)

(d) The contention that because of Oregon-based activity and Missouri manufacturing there will be multiple taxation was similarly answered: The corporation had not demonstrated what definite burden the St. Louis license tax placed on the identical shipments, nor that Oregon levied a tax bearing on the Washington sales. "In such cases we have refrained from passing on the question of 'multiple taxation,' ... and we adhere to that position." (84 S.Ct. 1572, 12 L.Ed.2d 440.) (See *Standard Pressed Steel Co. v. Washington Dept. of Revenue* (1975) 419 U.S. 560, 95 S.Ct. 706, 709, 42 L.Ed.2d 719, 723 [following *General Motors*]; *Goldberg v. Sweet* (1989) 488 U.S. 252, 109 S.Ct. 582, 587, 102 L.Ed.2d 607, 615 [Illinois tax on interstate telecommunications was upheld under test of *Complete Auto Transit v. Brady* (1977) 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326, *infra*, §93].)

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5. Privilege of Doing Business.

9 *Witkin Sum. Cal. Law Tax* § 93

[§ 93] Privilege of Doing Business.

In *Spector Motor Service v. O'Connor* (1951) 340 U.S. 602, 71 S.Ct. 508, 95 L.Ed. 573, Connecticut imposed a franchise tax measured by net income, which its highest court construed as one on "the privilege of carrying on or doing business in the state." (71 S.Ct. 510, footnote 1.) It was properly apportioned and did not discriminate against or unduly burden interstate commerce, but the court thought that it could not be interpreted merely as an exaction for the use of highways or the taxation of a local activity. Petitioner, engaged exclusively in the interstate trucking business, successfully challenged the tax. "The constitutional infirmity of such a tax persists no matter how fairly it is apportioned to business done within the state." (71 S.Ct. 512, 95 L.Ed. 579.) (See *Northwestern States Portland Cement Co. v. Minnesota* (1959) 358 U.S. 450, 79 S.Ct. 357, 364, 3 L.Ed.2d 421, 429, supra, §72 [distinguishing *Spector*]; 65 Harv. L. Rev. 146.)

The *Spector* case was overruled in *Complete Auto Transit v. Brady* (1977) 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326. Plaintiff was a Michigan corporation transporting motor vehicles by motor carrier for General Motors Corp. As part of the interstate movement, it picked up the cars at a railhead in Mississippi and took them to Mississippi dealers. Mississippi assessed sales taxes on the privilege of doing business within the state. It was conceded that there was a sufficient local activity to justify a tax, that it was fairly related to benefits, that it was fairly apportioned, and that it did not discriminate against interstate commerce. Plaintiff nevertheless invoked the flat prohibition of *Spector* against a privilege tax on interstate commerce. *Held*, the tax was valid.

"[T]he *Spector* rule, as it has come to be known, has no relationship to economic realities. Rather it stands only as a trap for the unwary draftsman." (97 S.Ct. 1079, 51 L.Ed.2d 331.) The approach of *Colonial Pipeline Co. v. Traigle* (1975) 421 U.S. 100, 95 S.Ct. 1538, 44 L.Ed.2d 1, is approved. The underlying philosophy of *Spector* has been rejected and the rule itself has been stripped of any practical significance: "If Mississippi had called its tax one on 'net income' or on the 'going concern value' of appellant's business, the *Spector* rule could not invalidate it. There is no economic consequence that follows necessarily from the use of the particular words, 'privilege of doing business,' and a focus on that formalism merely obscures the question whether the tax produces a forbidden effect. Simply put, the *Spector* rule does not address the problems with which the Commerce Clause is concerned. Accordingly we now reject the rule of *Spector Motor Service v. O'Connor*, that a state tax on the 'privilege of doing business' is per se unconstitutional when it is applied to interstate commerce, and that case is overruled." (97 S.Ct. 1083, 1084, 51 L.Ed.2d 337.) (See *Commonwealth Edison Co. v. Montana* (1981) 453 U.S. 609, 101 S.Ct. 2946, 69 L.Ed.2d 884 [Montana's coal severance

tax met test of *Complete Auto Transit*]; *Trinova Corp. v. Michigan Dept. of Treasury* (1991) 498 U.S. 358, 111 S.Ct. 818, 828, 836, 112 L.Ed.2d 884, 903, 904, 913 [applying test to uphold state value-added tax]; 2 Rotunda 3d, §13.5; 10 Ecology L. Rev. 97 [*Commonwealth Edison*]; 95 Harv. L. Rev. 102 [same]; 105 Harv. L. Rev. 226 [*Trinova*].)

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See *Northwest Energetic Services, LLC v. Franchise Tax Bd.* (2008) 159 C.A.4th 841, 861, 862, 71 C.R.3d 642 [state tax on foreign company registered to do business in California violated Commerce Clause; tax was measured by company's total income wherever earned, not just income earned in California, amounting to extraterritorial taxation and greater burden on interstate commerce than on intrastate commerce; tax was not "fairly apportioned" as required by *Complete Auto Transit v. Brady* (1977) 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326, text, p. 137]; *Ventas Finance I, LLC v. Franchise Tax Bd.* (2008) 165 C.A.4th 1207, 1217, 81 C.R.3d 823 [addressing same issues and adopting reasoning of *Northwest Energetic*]. Correction: Page 137, 5th line from bottom, "10 Ecology L. Rev. 97" should be "10 Ecology L. Q. 97".



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6. Invalid Tax on Interstate Commerce.

9 Witkin Sum. Cal. Law Tax § 94

[§ 94] Invalid Tax on Interstate Commerce.

In *Michigan-Wisconsin Pipe Line Co. v. Calvert* (1954) 347 U.S. 157, 74 S.Ct. 396, 98 L.Ed. 583, appellants, operating an interstate gas pipeline, purchased all their gas from the producing company in Texas, and moved it from the producing wells to consumers outside Texas in a continuous flow. They paid a Texas ad valorem tax on the value of their facilities, and the producing company also paid its tax. But Texas attempted to levy an additional occupation tax for the privilege of "gathering of gas" (taking possession at the producing company's outlet), measured by the volume taken. *Held*, the tax was void.

(a) The so-called "gathering of gas" was not, like its production, a separate local activity; it took place after the local activities of production, gathering, and processing had been completed by others, and when the actual interstate movement began. "But receipt of the gas in the pipeline is more than its 'taking'; from a practical standpoint it is its 'taking off' in appellants' carrier into commerce; in reality the tax is, therefore, on the exit of the gas from the State. This economic process is inherently unsusceptible of division into a distinct local activity capable of forming the basis for the tax here imposed, on the one hand, and a separate movement in commerce, on the other. It is difficult to conceive of a factual situation where the incidence of taking or loading for transmission is more closely related to the transmission itself." (74 S.Ct. 401, 98 L.Ed. 592.)

(b) The statute involved the possibility of multiple burdens, for if Texas could measure the tax on the "first taking" by the total volume taken, Michigan and other recipient states could tax the first "unloading" of all the gas arriving, and Oklahoma might attempt to tax the "first taking" as it crossed into the state. (74 S.Ct. 403, 98 L.Ed. 593.)

In *Railway Express Agency v. Virginia* (1954) 347 U.S. 359, 74 S.Ct. 558, 98 L.Ed. 757, appellant under Virginia law did only an interstate express business, and paid local property taxes. But Virginia also imposed a tax labeled and construed as an "Annual license tax," "for the privilege of doing business" in the state, measured by the gross receipts earned in the state on business passing through, into, or out of the state. (74 S.Ct. 560, 98 L.Ed. 761.) *Held*, the local gathering up or putting down interstate commodities as an integral part of their interstate movement were not adequate grounds for a state privilege tax. (74 S.Ct. 563, 98 L.Ed. 764.)

In *Boston Stock Exchange v. State Tax Com.* (1977) 429 U.S. 318, 97 S.Ct. 599, 50 L.Ed.2d 514, New York changed its previously neutral transfer tax on securities transactions. Under the new law, out-of-state sales paid a higher

tax than sales within the state. *Held*, this discriminatory treatment of out-of-state sales was unconstitutional. (97 S.Ct. 607, 610, 50 L.Ed.2d 524, 526.)

In *American Trucking Assn. v. Scheiner* (1987) 483 U.S. 266, 107 S.Ct. 2829, 97 L.Ed.2d 226, Pennsylvania statutes imposing lump sum annual taxes on the operation of trucks and truck tractors was held invalid in a 5-4 decision. The court stated the issue as follows: "[D]o the methods by which the flat taxes are assessed discriminate against some participants in interstate commerce in a way that contradicts the central purpose of the Commerce Clause? We find dispositive those of our precedents which make it clear that the Commerce Clause prohibits a State from imposing a heavier tax burden on out-of-state businesses that compete in an interstate market than it imposes on its own residents who also engage in commerce among States." (107 S.Ct. 2839, 97 L.Ed.2d 242.) (See dissenting opinion, 107 S.Ct. 2848, 97 L.Ed.2d 252 [asserting that decision overrules *Capitol Greyhound Lines v. Brice* (1950) 339 U.S. 542, 70 S.Ct. 806, 94 L.Ed. 1053, *supra*, §89, and *Aero Mayflower Transit Co. v. Board of R. Commrs. of Montana* (1947) 332 U.S. 495, 68 S.Ct. 167, 92 L.Ed. 99, *supra*, §89].)

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A. Subject of Tax.

9 Witkin Sum. Cal. Law Tax § 95

[§ 95] Subject of Tax.

A foreign corporation may engage in interstate commerce, intrastate commerce, or both. It was formerly the strict rule that, to be subject to a state tax on the privilege of doing business in the state, it must engage in some local activity. If it was solely engaged in interstate commerce, and its activities involved no intrastate operations, there was no proper taxable subject. Any franchise tax would be on the privilege of engaging in interstate commerce and invalid as a direct burden on the commerce. (*Ozark Pipe Line Corp. v. Monier* (1925) 266 U.S. 555, 45 S.Ct. 184, 186, 69 L.Ed. 439, 443 [foreign corporation piped oil from Oklahoma to Illinois, through Missouri; Missouri tax was invalid]; see 71 Am.Jur.2d (2001 ed.), *State and Local Taxation* §212 et seq.; supra, §93.)

On the other hand, if the foreign corporation does engage in some local activity, this furnishes a taxable subject, and a franchise tax may be imposed on the privilege of engaging in the local activity or business. (*Southern Natural Gas Corp. v. Alabama* (1937) 301 U.S. 148, 57 S.Ct. 696, 698, 81 L.Ed. 970, 974 [corporation brought gas through interstate pipeline, but distributed it to consumers in Alabama; held that distribution was local activity and supported franchise tax]; *International Harvester Co. v. Evatt* (1947) 329 U.S. 416, 67 S.Ct. 444, 446, 91 L.Ed. 390, 393 [intrastate business of manufacturing and selling]; see supra, §92.)

The strict rule can no longer be stated in this unqualified manner, for other methods have been devised to accomplish the same purpose. (See *Aero Mayflower Transit Co. v. Board of R. Commrs. of Montana* (1947) 332 U.S. 495, 68 S.Ct. 167, 92 L.Ed. 99, supra, §89; *Memphis Natural Gas Co. v. Stone* (1948) 335 U.S. 80, 68 S.Ct. 1475, 92 L.Ed. 1832, supra, §91; *Interstate Oil Pipe Line Co. v. Stone* (1949) 337 U.S. 662, 69 S.Ct. 1264, 93 L.Ed. 1613; supra, §89 et seq.)

The most advanced departure from the strict rule was made in *Railway Express Agency v. Virginia* (1959) 358 U.S. 434, 79 S.Ct. 411, 415, 3 L.Ed.2d 450, 455, where the exclusively interstate business of Railway Express Agency was involved. The state's attempted privilege tax was previously held unconstitutional (supra, §94); the new Act levied a franchise tax measured by gross receipts from operations in Virginia, in lieu of all other property taxes on intangibles and rolling stock. Giving full weight to the legislative description, the court held that Commerce Clause objections had been eliminated because the privilege of doing the interstate business was no longer taxed, and that the new tax was a valid property tax on rolling stock, money, contract rights, and other intangibles, although its measure (gross receipts) was the same as that used in the prior act. (See 2 Rotunda 3d, §13.5; 67 A.L.R.2d 1322 [validity, under federal constitution, of state tax on, or measured by, income of foreign corporation].)

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B. Measure of Tax: Apportionment.
1. In General.

9 Witkin Sum. Cal. Law Tax § 96

[§ 96] In General.

Once a taxable subject is established by the doing of some local business, the state may choose among several methods of fixing the amount or measure of the tax, provided that its method does not unreasonably burden interstate commerce or operate extraterritorially so as to deny due process.

Thus, a tax measured by the entire capital or capital stock of a foreign corporation is invalid, for it reaches property outside the state, and cumulative burdens by a number of states are thereby made possible. (*Western Union Tel. Co. v. Kansas* (1910) 216 U.S. 1, 30 S.Ct. 190, 54 L.Ed. 355; *Perkins Mfg. Co. v. Jordan* (1927) 200 C. 667, 674, 254 P. 551.)

But if there is an apportionment by any formula that fairly reflects the extent of business done within the state, and the measure is confined to that proportion, the tax will be upheld. (*Southern Natural Gas Corp. v. Alabama* (1937) 301 U.S. 148, 57 S.Ct. 696, 700, 81 L.Ed. 970, 976 [tax of \$ 2 on every \$ 1,000 of "actual amount of capital employed" in state was valid, though part of property, an interstate pipeline, was used in interstate commerce]; *Ford Motor Co. v. Beauchamp* (1939) 308 U.S. 331, 60 S.Ct. 273, 84 L.Ed. 304; *Butler Bros. v. McColgan* (1942) 315 U.S. 501, 62 S.Ct. 701, 86 L.Ed. 991, affirming *Butler Bros. v. McColgan* (1941) 17 C.2d 664, 111 P.2d 334 [percentage of net income determined by allocation on basis of sales, value of property, etc.; formula was proper, and corporation's accounting system attributing no income to California was not controlling]; *Amerada Hess Corp. v. Director, Div. of Taxation, New Jersey Dept. of Treasury* (1989) 490 U.S. 66, 109 S.Ct. 1617, 104 L.Ed.2d 58 [New Jersey statute that precluded corporations from deducting federal windfall profit tax in calculating "entire net income" did not render otherwise properly apportioned state income tax unconstitutional]; see 36 *Santa Clara L. Rev.* 485 [factor representation in apportionment of income from intangibles].)

International Harvester Co. v. Evatt (1947) 329 U.S. 416, 67 S.Ct. 444, 91 L.Ed. 390, restates the policy of giving the greatest possible latitude to the states in devising formulae, and of placing a strong burden on the taxpayer to show that the apportionment actually reaches an unfair result. A franchise tax was measured by that portion of plaintiff's total capital stock that represented Ohio business and property. It was upheld with the observation that "this Court has long realized the practical impossibility of a state's achieving a perfect apportionment of expansive, complex business activities such as those of appellant, and has declared that 'rough approximation rather than precision' is sufficient." (67 S.Ct. 447, 91 L.Ed. 395.)

In *Railway Express Agency v. Virginia* (1959) 358 U.S. 434, 79 S.Ct. 411, 3 L.Ed.2d 450, the state's franchise tax "in lieu" of other property taxes was challenged on the ground that the "going concern" value of the property could not be measured by gross receipts even if apportioned. The court held, however, that (a) even though this might not be the best measure, it was a permissible one; and (b) by its failure to file information as to its gross receipts, the corporation had the burden of affirmatively showing such an extraterritorial reach as to violate the Due Process Clause, which it did not meet. (79 S.Ct. 415, 3 L.Ed.2d 454.)

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B. Measure of Tax: Apportionment.

2. Unitary Business/Formula Theory.

a. In General.

1. Apportionment of Total Business Income.

9 *Witkin Sum. Cal. Law Tax* § 97

[§ 97] Apportionment of Total Business Income.

California apportionment formulae have been sustained by our courts in a number of cases. In *Edison Calif. Stores v. McColgan* (1947) 30 C.2d 472, 479, 183 P.2d 16, apportionment by formula of the total business income of a group of corporations (parent and 15 subsidiaries, only one of which had qualified to do business in California), for the purpose of determining the net income of the California subsidiary, was upheld. The theory was that all of the corporations were engaged in a unitary business. (See, following *Edison*, *Safeway Stores v. Franchise Tax Bd.* (1970) 3 C.3d 745, 748, 91 C.R. 616, 478 P.2d 48; *Pacific Tel. & Tel. Co. v. Franchise Tax Bd.* (1972) 7 C.3d 544, 547, 102 C.R. 782, 498 P.2d 1030; and see generally *Container Corp. of America v. Franchise Tax Bd.* (1983) 463 U.S. 159, 103 S.Ct. 2933, 77 L.Ed.2d 545, *infra*, §99 [affirming *Container Corp. of America v. Franchise Tax Bd.* (1981) 117 C.A.3d 988, 173 C.R. 121]; *Security-First Nat. Bank of Los Angeles v. Franchise Tax Bd.* (1961) 55 C.2d 407, 416, 11 C.R. 289, 359 P.2d 625; *Superior Oil Co. v. Franchise Tax Bd.* (1963) 60 C.2d 406, 412, 34 C.R. 545, 386 P.2d 33; *Honolulu Oil Corp. v. Franchise Tax Bd.* (1963) 60 C.2d 417, 424, 34 C.R. 552, 386 P.2d 40; *Household Finance Corp. v. Franchise Tax Bd.* (1964) 230 C.A.2d 926, 929, 41 C.R. 565; *Fibreboard Paper Products Corp. v. Franchise Tax Bd.* (1968) 268 C.A.2d 363, 365, 74 C.R. 46; *Anaconda Co. v. Franchise Tax Bd.* (1982) 130 C.A.3d 15, 24, 27, 30, 181 C.R. 640; 60 Cal. L. Rev. 984 [*Safeway Stores*]; 14 Cal. Western L. Rev. 92 [ownership requirement of unitary concept]; 97 *Harv. L. Rev.* 112 [*Container Corp. of America*]; 18 *Pacific L. J.* 1161 [application of unitary business concept to diverse businesses]; 21 *San Diego L. Rev.* 879 [constitutionality of state unitary business taxation of multinational corporation]; 25 *Santa Clara L. Rev.* 633 [*Container Corp. of America*]; 15 *U.S.F. L. Rev.* 371 [unitary concept as applied to worldwide activities of foreign corporations].)

In other words, when one or more business operations are considered separate businesses, each is required to pay a tax on its own income derived from sources within the state, without regard to the profit or losses of any related operation. However, if a business enterprise is a unitary business, it files a combined report, and the income from its operations within the state is determined by a formula. (*Tenneco West v. Franchise Tax Bd.* (1991) 234 C.A.3d 1510, 1519, 286 C.R.354, *infra*, §102.)

Thus, if a corporation doing business in California is deemed to be part of a unitary group, the total income for that group worldwide, including corporations operating wholly outside the United States, is apportioned to California by a

three- factor formula. Under the formula, the property, payroll, and sales figures for the group in California are arithmetically compared to the property, payroll, and sales figures for the group worldwide. This comparison results in a proportion that is multiplied against the unitary group's worldwide income, producing an apportioned amount of the worldwide income taxable by California. Thus, if 25% of the property, payroll, and sales of the unitary group is located in California, then 25% of the group's worldwide income is apportioned to California. (*Colgate-Palmolive Co. v. Franchise Tax Bd.* (1992) 10 C.A.4th 1768, 1774, 13 C.R.2d 761; see *Barclays Bank Int., Ltd. v. Franchise Tax Bd.* (1992) 2 C.4th 708, 715, 8 C.R.2d 31, 829 P.2d 279, *infra*, §100.)

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B. Measure of Tax: Apportionment.

2. Unitary Business/Formula Theory.

a. In General.

2. Deductibility of Interest Expenses.

9 *Witkin Sum. Cal. Law Tax* § 98

[§ 98] Deductibility of Interest Expenses.

Under Rev.C. 24344, California permits nondomiciliary corporations to deduct interest expenses when calculating income subject to taxation, but only to the extent that the interest expense exceeds interest and dividends received from nonunitary business or investment. In *Hunt-Wesson v. Franchise Tax Bd. of Calif.* (2000) 528 U.S. 458, 120 S.Ct. 1022, 145 L.Ed.2d 974, a nondomiciliary corporation that had incurred interest expense was not allowed to deduct that interest, and its successor in interest challenged the disallowance on constitutional grounds. The Court of Appeal found Rev.C. 24344 constitutional and the Supreme Court denied review. *Held*, on certiorari to the United States Supreme Court, the interest deduction offset provision violates the Due Process and Commerce Clauses. Although Rev.C. 24344 does not directly impose a tax on nonunitary income, it measures the amount of additional unitary income that becomes subject to taxation (through reducing the deduction) by precisely the amount of nonunitary income that the taxpayer has received. (120 S.Ct. 1026, 145 L.Ed.2d 981.) If California could show that its deduction limit actually reflected the portion of the expense properly related to nonunitary income, the limit would be permissible. (120 S.Ct. 1027, 145 L.Ed.2d 981, 982.) However, the California rule goes too far. In effect, it assumes that a corporation that borrows any money at all has really borrowed that money to carry or purchase its nonunitary investments, even if the corporation has put no money at all into nonunitary business that year. (120 S.Ct. 1027, 145 L.Ed.2d 982.) No other taxing jurisdiction has taken so absolute an approach. (120 S.Ct. 1027, 145 L.Ed.2d 983.)

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2. Unitary Business/Formula Theory.

b. Multinational Business Involved.

1. In General.

9 *Witkin Sum. Cal. Law Tax* § 99

[§ 99] In General.

The United States Supreme Court decision in *Container Corp. of America v. Franchise Tax Bd.* (1983) 463 U.S. 159, 103 S.Ct. 2933, 77 L.Ed.2d 545, provides an elaborate review of the case law and established principles as they apply to American corporations with subsidiaries in foreign countries. Plaintiff was in the business of manufacturing custom-ordered paperboard packaging. Although the operation was largely domestic, the corporation controlled 20 foreign subsidiaries located in four Latin American and four European countries. The subsidiaries were relatively autonomous with respect to personnel and day-to-day management, but had a close relationship to the parent in several other respects; e.g., the parent held or guaranteed half the subsidiaries' long-term debt, it provided advice and consultation regarding many phases of the business, and occasionally assisted in procurement of equipment. *Held*, California properly treated the business as unitary and applied an acceptable formula in apportioning the taxable income.

(a) *Unitary business.* The prerequisite to a permissible finding of unitary business is a flow of value; a flow of goods is a factor but not the only one. (103 S.Ct. 2946, 2947, 77 L.Ed.2d 561, 562.) The California Court of Appeal relied on factors of relationship that, in combination, supported its conclusion. (103 S.Ct. 2947, 2948, 77 L.Ed.2d 562.)

(b) *Fair apportionment: in general.* Plaintiff challenged the three-factor formula by evidence showing that costs of production in foreign countries are significantly lower than in the United States. This evidence is insufficient to impeach the basic rationale behind the formula, and plaintiff has not shown that the margin of error is greater than that inherent in the separate accounting that it urges. (103 S.Ct. 2949, 2450, 77 L.Ed.2d 563, 564.)

(c) *Fair apportionment: where foreign governments tax business of subsidiaries.*

(1) A more difficult problem arises where, as here, the California method of taxing differs from that employed by the federal Government and by each of the relevant foreign jurisdictions. All have adopted a qualified separate accounting ("arm's length") approach, treating the subsidiary as if it were an independent entity. It is therefore necessary to subject the case to the additional scrutiny required by the *Foreign Commerce Clause*. (103 S.Ct. 2950, 77 L.Ed.2d 565, 566.)

(2) In *Japan Line, Ltd. v. Los Angeles* (1979) 441 U.S. 434, 99 S.Ct. 1813, 60 L.Ed.2d 336, supra, §80, a California property tax on cargo containers temporarily located in various California ports was held improper because it resulted in double taxation. (103 S.Ct. 2951, 2952, 77 L.Ed.2d 566, 567.) But the present case is distinguishable. It involves a tax on income, double taxation is not an inevitable result of the scheme, and the tax falls not on the foreign owners of an instrumentality of foreign commerce but on a corporation domiciled and headquartered in the *United States*. (103 S.Ct. 2952, 77 L.Ed.2d 568.) And the contention that the California formula may impair federal uniformity in an area in which uniformity is essential is answered by the fact that Congress has not yet spoken on this issue. (103 S.Ct. 2955, 2956, 77 L.Ed.2d 572, 573.) Thus, "we cannot conclude that the California tax at issue is preempted by federal law or fatally inconsistent with federal policy." (103 S.Ct. 2957, 77 L.Ed.2d 573.)

Three justices dissented, arguing that the tax is flatly inconsistent with federal policy and that the result reached is contrary to the views expressed in *Japan Line*. (103 S.Ct. 2957, 77 L.Ed.2d 573.)

In *Franchise Tax Bd. of Calif. v. Alcan Aluminium Ltd.* (1990) 493 U.S. 331, 110 S.Ct. 661, 107 L.Ed.2d 696, a Canadian corporation that was not a California taxpayer, and thus could not challenge application of California's unitary business formula to a California subsidiary in its own name, sought declaratory and injunctive relief in the federal court. *Held*, the federal Tax Injunction Act (28 U.S.C., §1341) barred the federal action. The California refund procedure would provide a plain, speedy, and efficient remedy for the foreign parent's claims where the parent had total control of the subsidiary and could direct all aspects of its pursuit of relief in state court. (110 S.Ct. 666, 667, 107 L.Ed.2d 705, 707.)

In *Colgate-Palmolive Co. v. Franchise Tax Bd.* (1992) 10 C.A.4th 1768, 13 C.R.2d 761, plaintiff, a domestic corporation with multinational subsidiaries, challenged application of formula apportionment. *Held*, the tax was validly applied.

(a) While *Barclays Bank Int., Ltd. v. Franchise Tax Bd.* (1992) 2 C.A.4th 708, 8 C.R.2d 31, 829 P.2d 279, *infra*, §100, involved the application of the unitary method of taxation to foreign-parent groups, its analysis of *Wardair Canada v. Florida Dept. of Revenue* (1986) 477 U.S. 1, 106 S.Ct. 2369, 91 L.Ed.2d 1, is equally applicable to the domestic-parent group here. (10 C.A.4th 1783.) Thus, as applied to domestic-parent groups, California's unitary method of taxation does not violate the *Foreign Commerce Clause*. (10 C.A.4th 1784.)

(b) Plaintiff contends that application of the unitary method distorts the amount of income apportioned to California and results in 70% more California income than the separate accounting method of income allocation. However, the distorted figure fails to take into account the flow of value between the parts of the unitary business, and plaintiff has not shown by clear and convincing evidence that the unitary method reaches an unreasonable result in its case. (10 C.A.4th 1785, 1786.)

On certiorari to the United States Supreme Court, *Colgate-Palmolive* was consolidated with *Barclays Bank PLC v. Franchise Tax Bd. of Calif.* (1994) 512 U.S. 298, 114 S.Ct. 2268, 129 L.Ed.2d 244, *infra*, §100. The Court upheld California's method of determining income, rejecting plaintiff's claim that the method impaired federal uniformity in international trade. (114 S.Ct. 2284, 129 L.Ed.2d 268.)

In *Allied-Signal v. Director, Div. of Taxation* (1992) 504 U.S. 768, 112 S.Ct. 2251, 119 L.Ed.2d 533, New Jersey sought to include gain on the sale of an unrelated business within the taxable income of a nondomiciliary corporation conducting business in fifty states and twenty-two foreign countries. The Court affirmed the unitary business theory and the reasoning of *ASARCO v. Idaho State Tax Com.* (1982) 458 U.S. 307, 102 S.Ct. 3103, 73 L.Ed.2d 787, *infra*, §102, and *F.W. Woolworth Co. v. Taxation & Revenue Dept. of New Mexico* (1982) 458 U.S. 354, 102 S.Ct. 3128, 73 L.Ed.2d 819, holding that ownership of the unrelated business served an investment rather than an operational function, and that gain on the sale was not properly included in the apportionable tax base.

(a) "New Jersey has not persuaded us to depart from the doctrine of *stare decisis* by overruling our cases which

announce and follow the unitary business standard." Those decisions are sound in principle and workable in practice. (112 S.Ct. 2261, 119 L.Ed.2d 549.) New Jersey's sweeping theory, that all income of a corporation doing any business in a state is, by virtue of common ownership, part of the corporation's unitary business, cannot be reconciled with constitutional limits on a state's power to tax value earned outside its borders. (112 S.Ct. 2261, 119 L.Ed.2d 550.)

(b) None of the three factors indicative of a unitary business, functional integration, centralized management, and economies of scale, was present here. (112 S.Ct. 2263, 119 L.Ed.2d 552.) The mere fact that the unrelated business was acquired under a "long-term corporate strategy of acquisitions and dispositions does not convert an otherwise passive investment into an integral operational one." (112 S.Ct. 2263, 2264, 119 L.Ed.2d 553.)

Four justices dissented, asserting that the business was operationally related to the taxpayer's business in *New Jersey*. (112 S.Ct. 2264, 119 L.Ed.2d 554.) (See 97 Harv. L. Rev. 1894 [standing of foreign holding companies to challenge unitary tax].)

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b. Multinational Business Involved.

2. Bank Cases.

9 Witkin Sum. Cal. Law Tax § 100

[§ 100] Bank Cases.

In *Barclays Bank Int., Ltd. v. Franchise Tax Bd.* (1992) 2 C.4th 708, 8 C.R.2d 31, 829 P.2d 279, plaintiffs, a domestic corporation and its multinational parent, challenged defendant's assessment of corporate income tax, contending that the application of California's three-factor apportionment formula violated the Foreign Commerce Clause. *Held*, judgment for plaintiffs reversed; the apportionment formula is permissible under the Commerce Clause.

(a) *Issue to be resolved.* In *Container Corp. of America v. Franchise Tax Bd.* (1981) 117 C.A.3d 988, 173 C.R. 121, *supra*, §99, the United States Supreme Court upheld defendant's use of formula apportionment to determine the taxable income of a domestic-based unitary business group with foreign subsidiaries. The question here, the use of formula apportionment to determine the taxable income of a foreign-based unitary business group with domestic subsidiaries, was left open. (2 C.4th 714.)

(b) *Formula apportionment is not per se objectionable.* Plaintiffs' argument that formula apportionment is an inherently inequitable method of allocating multijurisdictional income has been rejected by a long line of United States Supreme Court decisions, including the *Container* case. The Commerce Clause does not mandate the use of a particular methodology to allocate income, and formula apportionment is constitutionally permissible so long as it does not operate unreasonably and arbitrarily to attribute to the taxing state a percentage of income out of all appropriate proportion to the business transacted in state. (2 C.4th 720, 721.)

(c) *Appropriate analysis.* The traditional dormant Commerce Clause analysis, under which state legislation inimical to national commerce may be void even in the absence of congressional legislation, is not appropriate for state taxation. (2 C.4th 723.) The appropriate standard has been articulated by the United States Supreme Court in *Japan Line, Ltd. v. Los Angeles* (1979) 441 U.S. 434, 99 S.Ct. 1813, 60 L.Ed.2d 336, *supra*, §80, *Container Corp. of America, supra*, and *Wardair Canada v. Florida Dept. of Revenue* (1986) 477 U.S. 1, 106 S.Ct. 2369, 91 L.Ed.2d 1. The federal Government must "speak with one voice" in regulating foreign commerce, and a state tax scheme with "foreign resonances" is void if it violates a "clear federal directive" from Congress. (2 C.4th 724.)

(e) *No "clear federal directive" prohibiting formula apportionment.* "In our view, Congress, after being repeatedly

pushed and pulled in both directions, at least for the present has decided *not* to prohibit state use of formula apportionment." (2 C.4th 733.) The Senate has specifically rejected an income tax convention prohibiting the states from using formula apportionment, and numerous bilateral tax treaties, while precluding formula apportionment by the signatory nations, do not include political subdivisions within that prohibition. (2 C.4th 733.) In view of Congress' persistent refusal to regulate state taxation of multinational corporations, communications of the executive branch, including presidential statements, official letters from cabinet members, and the testimony of Treasury Department officials, do not provide a "clear federal directive." They "embody nothing more than executive aspirations of what the federal government's policy in this area *ought* to be." (2 C.4th 734.) "We adhere to the central meaning of the high court's opinion in *Wardair* in holding that Congress's refusal to legislate restrictions on state use of worldwide formula apportionment is not the sort of governmental silence that triggers a dormant foreign commerce clause analysis." (2 C.4th 742.)

On remand, in *Barclays Bank Int., Ltd. v. Franchise Tax Bd.* (1992) 10 C.A.4th 1742, 14 C.R.2d 537, the court considered plaintiff's additional claim that the administrative burden of worldwide combined reporting required for formula apportionment violated either the nondiscrimination component of dormant commerce clause analysis or due process. *Held*, the apportionment formula is constitutional.

(a) *Discrimination*. Under the principles articulated in *Japan Line, Ltd., supra*, and *Container Corp. of America, supra*, a state may not impose a tax that discriminates against foreign commerce either by providing a direct commercial advantage to domestic commerce or by subjecting foreign commerce to multiple taxation. Although foreign-country based corporate groups incur greater administrative costs than their domestic counterparts (e.g., translation of records into English; adjustments for foreign currency; conversion to domestic accounting principles), this compliance burden does not amount to an unconstitutional discrimination. (10 C.A.4th 1752.)

(1) The unitary method does not provide a direct commercial advantage to domestic groups. Both groups face the same tax rate and must furnish the same kind of information. No burden is imposed on foreign commerce that is not imposed on domestic commerce; no favor is granted to domestic commerce that is denied to foreign commerce. (10 C.A.4th 1753, citing the text.) In addition, the administrative cost of compliance alone traditionally has been insufficient to be deemed an unconstitutional burden. (10 C.A.4th 1754.)

(2) In determining whether a tax imposes a discriminatory burden on foreign commerce, the practical operation of the tax, rather than literal compliance, controls. (10 C.A.4th 1755, citing the text.) Here, the regulations governing formula apportionment require defendant to consider the expense of providing information and authorize defendant to accept "reasonable approximations" in appropriate circumstances. (10 C.A.4th 1756.) In addition, the cost of literal compliance is comparable for both foreign and domestic groups. (10 C.A.4th 1756.)

(b) *Due process*. The administrative cost of compliance is not unreasonable, undue, or arbitrary, and the regulations governing compliance have reasonably adequate standards to guide enforcement. (10 C.A.4th 1757.) By requiring defendant to consider the cost of compliance and authorizing it to use reasonable approximations of information from regularly maintained documents such as S.E.C. filings and profit and loss statements, the regulations provide a basis for courts to determine whether defendant is acting arbitrarily. (10 C.A.4th 1761, 1762.) Likewise, defendant's ability under the regulations to make advance determinations at the taxpayer's request is subject to reasonably adequate standards. (10 C.A.4th 1764.) Here, there is no evidence that defendant applied the regulations to plaintiff in an arbitrary, discriminatory, or unreasonable way. (10 C.A.4th 1767.) (See 19 *Hastings Const. L. Q.* 1077 [unconstitutional use of unitary method to apportion taxable income of foreign parent corporations]; 20 *Pepperdine L. Rev.* 854 [*Barclays Bank*].)

In *Barclays Bank PLC v. Franchise Tax Bd. of Calif.* (1994) 512 U.S. 298, 114 S.Ct. 2268, 129 L.Ed.2d 244, on certiorari from the California Court of Appeal decision in *Barclays Bank Int. v. Franchise Tax Bd.*, *supra*, the United States Supreme Court upheld California's use of worldwide combined reporting to determine the tax owed by foreign or domestic multinational corporations.

(a) *Discrimination*. Worldwide combined reporting does not unconstitutionally discriminate against foreign commerce, even though that method could require a foreign enterprise to gather information not maintained by it in the ordinary course of business. California permits a taxpayer to make reasonable approximations where the necessary data cannot be developed from financial records maintained in the regular course of business, and Barclays avoided large compliance costs by doing so. Barclays did not show that California's reasonable approximation provision systematically overtaxes foreign corporations generally or Barclays in particular. (114 S.Ct. 2278, 129 L.Ed.2d 260.)

(b) *Due process*. California's reasonable approximation provision did not violate due process. California cases have construed the law to curtail tax officials' discretion to determine when reporting on the basis of reasonable approximations will be permitted. Moreover, California offered Barclays the opportunity to clarify the tax consequences of a proposed course of action in advance. (114 S.Ct. 2278, 129 L.Ed.2d 261.)

(c) *Risk of multiple taxation*. The worldwide combined reporting method did not expose Barclays to an impermissible risk of multiple international taxation. Multiple taxation is not the inevitable result of that method, but depends on the facts of the individual case. Furthermore, California's reasonable alternative, the "separate accounting" method, "does not dispositively lessen the risk of multiple taxation." (114 S.Ct. 2280, 2281, 129 L.Ed.2d 263.)

(d) *Federal uniformity*. Worldwide combined reporting does not impair federal uniformity and does not impermissibly prevent the federal government from "speaking with one voice" in international trade, even though the United States employs a "separate accounting" method in imposing corporate income tax. In the time since *Container Corp. of America*, *supra*, Congress has indicated its willingness to tolerate the use of the worldwide combined reporting method; it has not enacted legislation prohibiting the states from using the method and has refused to ratify a treaty prohibiting it. (114 S.Ct. 2284, 129 L.Ed.2d 268.)

Two justices dissented in part, asserting that worldwide combined reporting cannot constitutionally be applied to a foreign-based parent company of a multinational corporate group. (114 S.Ct. 2287, 129 L.Ed.2d 271.)

The prospective significance of *Barclays Bank PLC*, *supra*, was diminished by 1986 amendments to Rev.C. 25110, which allow domestic and foreign enterprises to elect "water's edge," as opposed to worldwide combined reporting. (See 114 S.Ct. 2273, 2274, 129 L.Ed.2d 255; 31 Cal. Western L. Rev. 317 [*Barclays Bank*]; 108 Harv. L. Rev. 139 [same]; on "water's edge" reporting, see *infra*, §339.)

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9 Witkin Sum. Cal. Law Tax § 101

[§ 101] Unitary Business.

In *Mole-Richardson Co. v. Franchise Tax Bd.* (1990) 220 C.A.3d 889, 269 C.R. 662, two United States corporations, one operating an in-state lighting business and the other operating an out-of-state ranching business, were owned by the same family. Management was strongly centralized and the operations were functionally integrated. *Held*, the businesses were unitary. (220 C.A.3d 899.)

In *Dental Ins. Consultants v. Franchise Tax Bd.* (1991) 1 C.A.4th 343, 1 C.R.2d 757, a dental consulting business operated a subsidiary farming business. The two businesses had identical ownership, financial interdependence, and central management, including integrated accounting, a shared location, and common officers. *Held*, the businesses were unitary. (1 C.A.4th 348.)

In *A.M. Castle & Co. v. Franchise Tax Bd.* (1995) 36 C.A.4th 1794, 43 C.R.2d 340, the trial judge determined that plaintiff taxpayer and its wholly owned subsidiary operating in another state were a unitary business, and that California could therefore include the subsidiary's income in its tax calculation, even though the subsidiary did not directly do business in California. *Held*, affirmed.

(a) *Nature of tests.* Courts have generally used two tests to determine whether related business entities are engaged in a unitary business: the three unities test and the dependency or contribution test. Under the three unities test, unity exists where there is: (1) unity of ownership; (2) unity of operation evidenced by central purchasing, management, and accounting; and (3) unity of use in the centralized executive force and general system of operations. (36 C.A.4th 1803.) Under the more general dependency or contribution test, a business is unitary if the segments under consideration are dependent on or contribute to each other and the operations of the taxpayer as a whole. (36 C.A.4th 1803, 1804.) Either test is constitutionally permissible, and the California Supreme Court has used both tests. (36 C.A.4th 1804, citing *Butler Bros. v. McColgan* (1941) 17 C.2d 664, 678, 111 P.2d 334 [three unities], and *Edison Calif. Stores v. McColgan* (1947) 30 C.2d 472, 481, 183 P.2d 16, *supra*, §97 [dependency and contribution].)

(b) *Relationship between tests.* There is some confusion in later California cases concerning the relationship between the two tests. Some cases suggest that the two tests are alternative methods for finding unity. (36 C.A.4th 1804,

citing *Mole-Richardson Co. v. Franchise Tax Bd.*, *supra*, *Tenneco West v. Franchise Tax Bd.* (1991) 234 C.A.3d 1510, 1525, 286 C.R. 354, *infra*, §102, and *Dental Ins. Consultants v. Franchise Tax Bd.*, *supra*.) However, other cases suggest that the three unities are a part of the more general dependency or contribution test and that the three unities are prerequisite to finding a unitary business. (36 C.A.4th 1805, citing *Superior Oil Co. v. Franchise Tax Bd.* (1963) 60 C.2d 406, 412, 34 C.R. 545, 386 P.2d 33, *Household Finance Corp. v. Franchise Tax Bd.* (1964) 230 C.A.2d 926, 929, 41 C.R. 565, and *Chase Brass & Copper Co. v. Franchise Tax Bd.* (1970) 10 C.A.3d 496, 95 C.R. 805.)

(c) *Either test may be used.* "To the extent there is a conflict in the case law on this issue, we choose to follow the cases which suggest the two tests are alternative methods for determining unity." (36 C.A.4th 1805.) (1) *Butler Bros.*, *supra*, the seminal case on the three unities test, stated that the unitary nature of a business is definitely established when the three unities exist. It did not state the obverse: that unity cannot exist where one of the three unities is absent. (2) The pertinent California regulations do not apply the three unities test to determine if a taxpayer is engaged in a single trade or business. (3) There is no constitutional constraint compelling application of the three unities test in all cases. (36 C.A.4th 1805, 1806.)

(d) *Application of tests to plaintiff.* There is unity of ownership between plaintiff and its wholly owned subsidiary. There is also unity of use, given that plaintiff's executives made up the entire board of directors of the subsidiary and were effectively able to control the subsidiary with respect to major policy decisions. (36 C.A.4th 1806.) It is arguable, however, whether unity of operation exists; the companies maintain separate advertising, accounting, legal, research and development, and personnel departments and there is no significant integration between the companies' day-to-day administrative operations. It does not matter whether the three unities test indicates a unitary business because the companies are "unquestionably" unitary under the dependency or contribution test. (36 C.A.4th 1807.) (1) Two of the three unities clearly exist between the companies. (2) The companies are in the same line of business. (3) Plaintiff's distribution activities in California contributed to its subsidiary's operation and success. (4) Plaintiff helped its subsidiary with financing. (5) The subsidiary made regular business activity reports to plaintiff. (36 C.A.4th 1809.)

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9 *Witkin Sum. Cal. Law Tax* § 102

[§ 102] No Unitary Business.

In *ASARCO v. Idaho State Tax Com.* (1982) 458 U.S. 307, 102 S.Ct. 3103, 73 L.Ed.2d 787, the question was whether Idaho could include within the taxable income of a nondomiciliary parent corporation doing 2.5% of its business in the state intangible income (dividend and interest payments, and capital gains from the sale of stock) that the parent receives from domestic subsidiary corporations having no other connection with Idaho. Idaho contended that corporate purpose should define "unitary business"; the court rejected the contention, holding that no unitary business was shown and that consequently Idaho's tax was a violation of due process. (102 S.Ct. 3114, 3115, 458 L.Ed.2d 801, 802.) (See *F.W. Woolworth Co. v. Taxation & Revenue Dept. of New Mexico* (1982) 458 U.S. 354, 102 S.Ct. 3128, 73 L.Ed.2d 819; 96 Harv. L. Rev. 86 [ASARCO and Woolworth].)

In *Tenneco West v. Franchise Tax Bd.* (1991) 234 C.A.3d 1510, 286 C.R. 354, the Franchise Tax Board determined, on audit, that certain subsidiaries of a conglomerate corporation were engaged in a single unitary business with each other during a certain tax year, while other subsidiaries should be treated as a separate business for tax purposes. The corporation sued for a tax refund, claiming that its strong centralized management and intercompany financing warranted a unitary finding. *Held*, the excluded subsidiaries were not in a unitary business with the parent corporation.

(a) The relationship between the corporation and the excluded subsidiaries was such as would exist between any parent and its subsidiaries, and it was corporate policy to provide operating autonomy for the subsidiaries. The corporation lacked substantial centralized departments. The businesses of the excluded subsidiaries had a history of separateness and were of a diverse and unrelated nature. (234 C.A.3d 1526, 1533.)

(b) The corporation's intercompany financing did not justify a unitary determination. The financing primarily served the investment functions of diversifying the corporation's portfolio and reducing business cycle risks, rather than the operational function of making better use of the corporation's existing resources through economies of scale, operational integration, or sharing of expertise. The shared and joint costs between the corporation and the excluded subsidiaries were not substantial. Because the corporation and the excluded subsidiaries were in different lines of business, the corporation's management was not in a position to transfer value in some unquantifiable way from one subsidiary to the other. (234 C.A.3d 1532, 1533.)

SUPPLEMENT: [This section is current through the latest supplement]

In *MeadWestvaco Corp. v. Illinois Dept. of Revenue* (2008) 553 U.S. ___, 128 S.Ct. 1498, 170 L.Ed.2d 404, plaintiff, an Ohio corporation, sold one of its Illinois business divisions. Defendant State of Illinois taxed an apportioned share of the capital gain plaintiff realized from the sale. Plaintiff paid the tax under protest and filed an action challenging the classification of the gain as Illinois business income. The trial court determined that plaintiff and the business division did not constitute a unitary business because they were not functionally integrated or centrally managed and they enjoyed no economies of scale. It nevertheless held that defendant could tax an apportioned share of plaintiff's capital gain because the division served an "operational purpose" in plaintiff's business. The Illinois appellate court affirmed, on the ground that the division served an operational function, without addressing whether plaintiff and the division were unitary. *Held*, judgment for defendant vacated.

(a) The state courts erred in considering whether the division served an operational purpose in plaintiff's business after determining that the two were not unitary. (128 S.Ct. 1505, 170 L.Ed.2d 412.) References to "operational function" in *Container Corp. of America v. Franchise Tax Bd.* (1983) 463 U.S. 159, 103 S.Ct. 2933, 77 L.Ed.2d 545, text, §99, and *Allied-Signal v. Director, Div. of Taxation* (1992) 504 U.S. 768, 112 S.Ct. 2251, 119 L.Ed.2d 533, text, §99, "were not intended to modify the unitary business principle by adding a new ground for apportionment." (128 S.Ct. 1508, 170 L.Ed.2d 415.) The operational function concept merely recognizes that an asset (such as a taxpayer's bank deposit or its futures contracts) can be part of a taxpayer's unitary business even though there is no unitary relationship between the payee (the taxpayer) and the payor (such as the taxpayer's banker or the counterparty to the taxpayer's hedge). (128 S.Ct. 1508, 170 L.Ed.2d 415.)

(b) Where, as here, the taxpayer's asset is another business, a unitary relationship is shown by functional integration, central management, and economies of scale. The trial court found that none of these existed, and the appellate court did not make a determination about them. On remand, the appellate court may take up that question. (128 S.Ct. 1508, 170 L.Ed.2d 416.)



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C. Tax on Dividends Paid Outside State.

9 Witkin Sum. Cal. Law Tax § 103

[§ 103] Tax on Dividends Paid Outside State.

A tax may be levied on the privilege of declaring and receiving dividends out of income from property located or business transacted within the state.

In *Wisconsin v. J.C. Penney Co.* (1940) 311 U.S. 435, 61 S.Ct. 246, 85 L.Ed. 267, a Delaware corporation did business in Wisconsin, but had its commercial domicile in New York, and distributed dividends to shareholders there. *Held*, Wisconsin could levy a tax, to be deducted from the payments to nonresident as well as resident shareholders. The legislative designation of the tax as one on the privilege of declaring dividends would make it invalid as extraterritorial, because that process took place outside Wisconsin. But the tax was in substance an additional income tax on corporate earnings within Wisconsin, liability being postponed until those earnings were paid out as dividends. Disregarding the statutory label, the state clearly had power to impose this supplementary tax as the price of the corporate privilege of doing business. (61 S.Ct. 250, 85 L.Ed. 271.)

In *International Harvester Co. v. Wisconsin Dept. of Taxation* (1944) 322 U.S. 435, 64 S.Ct. 1060, 88 L.Ed. 1373, the same tax was upheld on another theory: The state could validly make the taxable event the corporation's relinquishment of earnings to the stockholders, even though the state did not so describe it; the incidence and practical operation of the tax is controlling, not the form. (64 S.Ct. 1063, 88 L.Ed. 1379.)

Both of these cases distinguish *Connecticut General Life Ins. Co. v. Johnson* (1938) 303 U.S. 77, 58 S.Ct. 436, 82 L.Ed. 673, in which the California gross premiums tax was held invalid as applied to premiums received by a foreign corporation on reinsurance contracts, where the contracts were made, and the premiums and losses were paid, in Connecticut. The reinsurance contracts were distinct from the local business, and the tax was not on property, business done, or transactions carried on within this state, or on a privilege granted by this state. (58 S.Ct. 439, 82 L.Ed. 678.)

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D. Entrance Fee Based on Entire Capital.

9 Witkin Sum. Cal. Law Tax § 104

[§ 104] Entrance Fee Based on Entire Capital.

As has been seen, the doctrine of unconstitutional conditions protects a foreign corporation against discriminatory taxes (see *supra*, §44), and the Commerce Clause protects it against taxes unduly burdening interstate commerce (see *supra*, §94). But neither inhibition on state power applies to an entrance fee, a single initial payment demanded in advance for the privilege of admission to the state. (*Atlantic Refining Co. v. Virginia* (1937) 302 U.S. 22, 58 S.Ct. 75, 77, 82 L.Ed. 24, 28 [statutory fee of \$ 5,000, computed on basis of entire capital stock of corporation with property outside state and doing interstate business].)

In *Lincoln Nat. Life Ins. Co. v. Read* (1945) 325 U.S. 673, 65 S.Ct. 1220, 89 L.Ed. 1861, the entrance fee theory was extended to cover what were, in effect, discriminatory taxes: The corporation was required to agree that it would continue to pay the special fee each year for the renewal of its license, and that it would pay such taxes as might be imposed by the Legislature in the future. But the theory of *Lincoln Nat. Life* was repudiated in *Western & Southern Life Ins. Co. v. State Bd. of Equalization of Calif.* (1981) 451 U.S. 648, 101 S.Ct. 2070, 68 L.Ed.2d 514. (See *Metropolitan Life Ins. Co. v. Ward* (1985) 470 U.S. 869, 105 S.Ct. 1676, 1680, 84 L.Ed.3d 751, 757, *supra*, §46.)

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VII. FEDERAL TAXING POWER
A. Nature of Power.

9 Witkin Sum. Cal. Law Tax § 105

[§ 105] Nature of Power.

Congress has power "to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States." (U.S. Const., Art. I, §8; see 1 Rotunda 3d, §5.2 et seq.) The power to pay the debts of the United States includes the power to pay those claims resting upon equitable or moral obligations; e.g., the obligation to act for the welfare of a territory or dependency over which we still retain certain powers. (*Cincinnati Soap Co. v. United States* (1937) 301 U.S. 308, 57 S.Ct. 764, 767, 81 L.Ed. 1122, 1128 [Philippines before independence].)

The principal forms of federal taxes, outside the scope of this work, are:

- (1) The income tax. (On substantially conforming California income tax law, see *infra*, §332 et seq.)
- (2) The estate tax.
- (3) The gift tax.
- (4) Customs or import duties.
- (5) Excise taxes of various types.

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B. Limitations on Power.

9 Witkin Sum. Cal. Law Tax § 106

[§ 106] Limitations on Power.

(1) *No Tax on Exports.* "No tax or duty shall be laid on articles exported from any state." (U.S. Const., Art. I, §9.) This prohibits a tax on goods in the course of exportation, or on the process of exporting, or any other tax that directly burdens the process. (*A.G. Spalding & Bros. v. Edwards* (1923) 262 U.S. 66, 43 S.Ct. 485, 486, 67 L.Ed. 865, 867; see *United States v. International Business Machines Corp.* (1996) 517 U.S. 843, 116 S.Ct. 1793, 1804, 135 L.Ed.2d 124, 141 [Export Clause prohibits tax on insurance premiums paid to foreign insurers to insure shipments of exported products]; *United States v. United States Shoe Corp.* (1998) 523 U.S. 360, 118 S.Ct. 1290, 1294, 140 L.Ed.2d 453, 459 [harbor maintenance tax imposed on value of commercial cargo shipped through U.S. ports was impermissible tax, not permissible user fee; tax is determined entirely on ad valorem basis, which does not correlate reliably with harbor services, facilities, and benefits used by exporter]; 110 Harv. L. Rev. 196 [*United States v. International Business Machines Corp.*].) But it does not invalidate a tax on net income from business including that derived from exports. (*William E. Peck & Co. v. Lowe* (1918) 247 U.S. 165, 38 S.Ct. 432, 434, 62 L.Ed. 1049, 1052.)

(2) *Direct Tax Must Be Apportioned.* A direct tax, including a capital (poll) tax, or a tax imposed on a person because of his or her general ownership of property, must be apportioned according to population. (U.S. Const., Art. I, §9.) The meaning of this limitation was considered in *Pollock v. Farmers' Loan & Trust Co.* (1895) 158 U.S. 601, 15 S.Ct. 912, 919, 39 L.Ed. 1108, 1125, holding invalid the federal income tax law enacted before the Sixteenth Amendment. The court reasoned that a tax on the income from real or personal property is as direct, in the sense that it cannot be shifted, as a tax on the land itself, and that therefore the law was void because the tax was not apportioned according to population. Thereafter, the Sixteenth Amendment gave express authority to tax incomes free from this restriction. (See *Brushaber v. Union Pac. R. Co.* (1916) 240 U.S. 1, 36 S.Ct. 236, 60 L.Ed. 493.) (For overruling of *Pollock* on this point, see *supra*, §15.)

(3) *Indirect Taxes Must Be Uniform.* Any other taxes (i.e., indirect taxes) "shall be uniform throughout the United States." (U.S. Const., Art. I, §8.) These, not subject to the rule of apportionment, include duties, imposts, and excises. (See *Bromley v. McCaughn* (1929) 280 U.S. 124, 50 S.Ct. 46, 74 L.Ed. 226 [tax on particular use of property, or exercise of single power incidental to ownership (here gift tax) is excise]; *Charles C. Steward Machine Co. v. Davis* (1937) 301 U.S. 548, 57 S.Ct. 883, 887, 81 L.Ed. 1279, 1286 [Social Security Act, excise tax on relation of employment]; 43 Stanf. L. Rev. 685 [Uniformity Clause and Puerto Rican statehood].) The uniformity required is geographical; i.e., the liability must be uniform throughout the United States; there is no requirement of equal protection or uniformity with respect to all persons. (*Steward Machine Co. v. Davis*, *supra*; *Fernandez v. Wiener* (1945) 326 U.S.

340, 66 S.Ct. 178, 188, 90 L.Ed. 116, 132.)

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C. Public Purpose: Regulatory Objects.
1. In General.

9 Witkin Sum. Cal. Law Tax § 107

[§ 107] In General.

(1) *Earlier Cases.* The earlier cases disclose some conflict as to the constitutional validity of attempts by Congress to use the taxing power to accomplish regulatory objects in fields thought to be beyond the scope of federal power. (See *United States v. Kahriger* (1953) 345 U.S. 22, 73 S.Ct. 510, 97 L.Ed. 754.)

The power was frequently upheld where the regulatory purpose or effect was deemed incidental. Thus, in *McCray v. United States* (1904) 195 U.S. 27, 24 S.Ct. 769, 49 L.Ed. 78, oleomargarine colored to look like butter was taxed 10 cents per pound. The court refused to consider the purposes of the statute, holding that on its face it was merely a tax and within the power of Congress. (See, to the same effect, *United States v. Doremus* (1919) 249 U.S. 86, 39 S.Ct. 214, 63 L.Ed. 493 [Narcotic Drug Act].)

On the other hand, in certain cases where the regulatory object was plain and the effect direct, the tax was annulled. Thus, in *Bailey v. Drexel Furniture Co.* (1922) 259 U.S. 20, 42 S.Ct. 449, 66 L.Ed. 817 (the child labor case), a tax was imposed on the net profits of anyone employing children under 16 in certain industries, and relieving from liability an employer who was ignorant of the true age of his or her employee. The exemption of innocent employers showed that the purpose of the act was regulatory, an attempt to prohibit child labor by the imposition of a penalty. (42 S.Ct. 450, 66 L.Ed. 818; see *United States v. Constantine* (1935) 296 U.S. 287, 56 S.Ct. 223, 80 L.Ed. 233 [penalty tax on persons engaged in liquor traffic in violation of state law was invasion of state police power].)

(2) *Modern View.* The present view appears to be that the tax will be sustained regardless of its regulatory object. In *Sonzinsky v. United States* (1937) 300 U.S. 506, 57 S.Ct. 554, 81 L.Ed. 772, a statute imposing taxes on small firearms capable of concealment, amounting to \$ 200 on each transfer of a single firearm, was upheld. The court declared that every tax is in some measure regulatory, imposing some economic impediment to the activity taxed, as compared with others not taxed; but that if on its face it is a taxing measure, and does not contain regulatory provisions so related to the tax as to show that the purported tax is a penalty to enforce the regulations, it is valid as a tax, despite its tendency to suppress the thing taxed, for inquiry into hidden motives of Congress in the exercise of constitutional power is improper.

The *Sonzinsky* case was followed in *United States v. Sanchez* (1950) 340 U.S. 42, 71 S.Ct. 108, 95 L.Ed. 47, upholding the Marihuana Tax Act, enacted both to raise revenue and to control illicit drug dealings. "It is beyond

serious question that a tax does not cease to be valid merely because it regulates, discourages, or even definitely deters the activities taxed. ... The principle applies even though the revenue obtained is obviously negligible, ... or the revenue purpose of the tax may be secondary." (71 S.Ct. 110, 95 L.Ed. 49.)

In *United States v. Kahriger, supra*, the statute imposed an occupational tax on persons engaged in the business of accepting wages, requiring registration and payment as a condition to conducting a gambling business, whether legal or illegal under state law. It was contended that the tax was designed solely to penalize illegal intrastate gambling and thus was an invasion of state police power. *Held*, distinguishing *United States v. Constantine, supra*, this was a valid exercise of taxing power, and not an unconstitutional penalty in the guise of a tax. Referring to the significant prior decisions upholding statutes that sought to curtail and hinder as well as tax (e.g., *McCray, Doremus, Sonzinsky*, and *Sanchez, supra*), the Court said: "As with the above excise taxes which we have held to be valid, the instant tax has a regulatory effect. But regardless of its regulatory effect, the wagering tax produces revenue. As such it surpasses both the narcotics and firearms taxes which we have found valid." (73 S.Ct. 513, 97 L.Ed. 760.) (See *Lewis v. United States* (1955) 348 U.S. 419, 75 S.Ct. 415, 99 L.Ed. 475 [sustaining same act as applied in District of Columbia].)

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C. Public Purpose: Regulatory Objects.
2. Federal Tax in Field of State Power.

9 Witkin Sum. Cal. Law Tax § 108

[§ 108] Federal Tax in Field of State Power.

To meet an economic emergency due to depressed prices for farm products, the federal Agricultural Adjustment Act of 1933 provided for contracts by the Secretary of Agriculture with farmers to reduce crop acreages or population; payment of compensation by the government in consideration; and taxation of manufacturers and processors of agricultural commodities to meet these benefit payments. In *United States v. Butler* (1936) 297 U.S. 1, 56 S.Ct. 312, 80 L.Ed. 477, receivers for a cotton manufacturer refused to pay the processing tax, and the government sued. *Held*, the Act was unconstitutional. (a) Congress has, under the General Welfare Clause (U.S. Const., Art. I, §8), a broad power to collect taxes and expend the money so collected. (b) But the present tax is merely an instrument in a plan of regulation of farm production, and that regulation is beyond the power of Congress and invades the reserved powers of the states. (c) The taxing power cannot be used as a means of accomplishing an unconstitutional end. (56 S.Ct. 320, 80 L.Ed. 489.)

Doubt was later cast on the *Butler* doctrine by *Charles C. Steward Machine Co. v. Davis* (1937) 301 U.S. 548, 57 S.Ct. 883, 81 L.Ed. 1279, upholding the federal Social Security Act of 1935. The statute established an excise tax on employers of eight or more persons, measured by prescribed percentages of wages paid; the proceeds go to the Treasury, are not earmarked, and are subject to general appropriation; credits are allowed the taxpayer for payments under approved state unemployment laws. *Held*, the Act was valid.

(a) The Court declared that the states do not surrender their sovereignty by making their statutes conform to the conditions prescribed by the federal law, for a wide range of choice is given in methods, and they are not coerced by the offer of the credit, which is merely an inducement, and not duress, similar to the credit allowed on the federal estate tax for payment of state inheritance taxes. (57 S.Ct. 893, 81 L.Ed. 1289, citing *Florida v. Mellon* (1927) 273 U.S. 12, 47 S.Ct. 265, 71 L.Ed. 511.)

(b) *Butler* is distinguished on the following grounds: (1) There the proceeds of the tax were earmarked for a special group, here they go into the Treasury for general appropriation. (2) There the condition of the grant was a contract made by the farmer without consent of the state; here, it is a state law. (3) There the grant was linked to an irrevocable agreement; here the state may repeal its law and terminate the credit. (4) There the condition was directed toward an unlawful end (regulating production); here, to an end (relief of unemployment) in which the nation and state may lawfully cooperate. (57 S.Ct. 893, 81 L.Ed. 1289.)

(c) The question whether a federal tax would be valid if it permitted the state to escape its operation by adoption of a statute unrelated in subject matter to activities fairly within the scope of national policy and power remains open. (57 S.Ct. 892, 81 L.Ed. 1287; see *Flemming v. Nestor* (1960) 363 U.S. 603, 80 S.Ct. 1367, 1371, 4 L.Ed.2d 1435, 1443 [history and nature of Social Security Tax]; 76 *Harv. L. Rev.* 369 [constitutionality of federal aid to education]; 77 *Harv. L. Rev.* 1353 [church-related colleges].)

SUPPLEMENT: [This section is current through the latest supplement]



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VIII. OVERVIEW OF CALIFORNIA TAXATION SYSTEM
A. Constitutional and Statutory Sources.

9 Witkin Sum. Cal. Law Tax § 109

[§ 109] Constitutional and Statutory Sources.

The California taxation system is chiefly set forth in the Constitution, particularly Article XIII and Article XIII A, and the Revenue and Taxation Code, superseding most of the provisions of the former Political Code and General Laws. Other codes also contain provisions relating to special assessments and taxes for special districts, such as mosquito abatement districts (*Health & Saf.C. 2070 et seq.*), garbage disposal districts (*Pub.Res.C. 49030 et seq.*), and port districts (*Harb. & Nav.C. 6298*). The Unemployment Insurance Code deals with unemployment contributions. (See *infra*, §386.)

The provisions in the Revenue and Taxation Code were enacted mainly in 1939, 1941, and 1943, and are deemed to continue those of substantially similar prior statutes. (Rev.C. 2; see *Estate of Willis (1950) 34 C.2d 782, 786, 215 P.2d 453*; for general discussion, see Ehrman & Flavin, *Taxing California Property* 3d (Ehrman 3d).)

Article XIII was revised in 1974. Most of the sections were renumbered. Some were rewritten to shorten and simplify their wording while retaining their substance, and a few nonsubstantive provisions were made statutory. In 1974, the Legislature amended many sections of the Revenue and Taxation Code to conform to Article XIII. (See Stats. 1974, Chap. 311.)

Much of the Article originated in the work of the Constitutional Revision Commission. (See Proposed Revision of the California Constitution, Part 6 (1971); 7 *Summary* (10th), *Constitutional Law*, §71.) The final version, however, was the product of a special Constitutional Task Force on Article XIII. The report of the Task Force, entitled "Proposed Revision of Article XIII, California Constitution" was incorporated as part of the public record and as a statement of legislative intent. (See Stats. 1974, Chap. 311, §78.) This document is cited in this chapter as "Task Force Report."

Article XIII A of the California Constitution was adopted in 1978 as Proposition 13. Its extensive changes to the California taxing system are discussed in detail later in this chapter, as are the changes rendered by the adoption of Article XIII B, Article XIII C, and Article XIII D. (See *infra*, §125 et seq.)

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SUPPLEMENT: [This section is current through the latest supplement]
See 48 *Santa Clara L. Rev.* 279 [argument for reform of California's tax collection system].



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9 Witkin Sum. Cal. Law Tax § 110

[§ 110] In General.

The Constitution gives the Legislature broad power to carry out the provisions of Article XIII (see Cal. Const., Art. XIII, §33), but this power is subject to the following important limitations:

- (1) The power to tax may not be surrendered or suspended by grant or contract. (Cal. Const., Art. XIII, §31.)
- (2) The Legislature cannot delegate the power to a private person or body. (See *infra*, §111.)
- (3) The Legislature cannot impose local taxes for local purposes, but by general laws may vest the power to tax for local purposes in counties and municipal corporations. (Cal. Const., Art. XIII, §24; see *Golden Gate Bridge & Highway Dist. v. Felt* (1931) 214 C. 308, 321, 5 P.2d 585 [provision does not apply to district organized for state purpose]; *Los Angeles v. Riley* (1936) 6 C.2d 621, 624, 59 P.2d 137 [state motor vehicle license fee, tax for benefit of state highways, was valid because it was for state purpose]; *Los Angeles v. Sasaki* (1994) 23 C.A.4th 1442, 1457, 29 C.R.2d 103, *infra*, §129 [Legislature's reallocation of local property tax revenue from counties, cities, and special districts to school districts and community college districts did not violate prohibition against imposing local taxes for local purposes].) However, the power of local governments to impose taxes, fees, and assessments is severely restricted by Cal. Const., Article XIII A through Article XIII D. (See *infra*, §131 et seq.)
- (4) Taxes may be imposed only for public purposes. (*Los Angeles v. Lewis* (1917) 175 C. 777, 779, 167 P. 390; see *supra*, §16.)
- (5) Double taxation is generally forbidden. (See *infra*, §112.)
- (6) The tax rate is subject to several express and implied limitations. (See *infra*, §113.)
- (7) The Legislature cannot enact local or special statutes that are not founded on a natural, intrinsic, or constitutional distinction. (See Cal. Const., Art. IV, §16; 8 *Summary* (10th), *Constitutional Law*, §706.)

SUPPLEMENT: [This section is current through the latest supplement]



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B. Legislative Power and Limitations. 2. No Delegation of Power to Private Entity.

9 Witkin Sum. Cal. Law Tax § 111

[§ 111] No Delegation of Power to Private Entity.

The Legislature cannot delegate the power to tax to a private person or body. (Cal. Const., Art. XI, §11(a).) But it may authorize the levy of taxes or assessments by governmental agencies such as irrigation and water districts. (*Willard v. Glenn-Colusa Irr. Dist.* (1927) 201 C. 726, 746, 258 P. 959; *Pasadena v. Chamberlain* (1928) 204 C. 653, 664, 269 P. 630; *In re Metropolitan Water Dist.* (1932) 215 C. 582, 586, 11 P.2d 1095; *English Manor Corp. v. Vallejo Sanitation & Flood Control Dist.* (1974) 42 C.A.3d 996, 1003, 117 C.R. 315, citing the text.) In addition, certain multicounty local districts may not levy property tax without the approval of a majority of the voters in the district. (Cal. Const., Art. XI, §14.)

Howard Jarvis Taxpayers' Assn. v. Fresno Metropolitan Projects Authority (1995) 40 C.A.4th 1359, 48 C.R.2d 269, contains an extensive review of the case law arising from Cal. Const., Art. XI, §11(a), and its predecessor, former Cal. Const., Art. XI, §13.

Fresno Metropolitan involved the Fresno Metropolitan Projects Act (*Govt.C. 68056 et seq.*), which created the Fresno Metropolitan Projects Authority and authorized it, subject to the approval of the majority of voters within its boundaries, to impose a retail transactions and use tax (*Govt.C. 68059.7*). The voters approved and the Fresno Metropolitan Projects Authority imposed the tax. *Held*, the tax is invalid under Cal. Const., Art. XI, §11(a).

(a) The authority, not "the people," levied the tax. The language of *Govt.C. 68059.7* states that the authority may impose the tax. The authority is also responsible for collecting and distributing the tax. (40 C.A.4th 1373.) The fact that the tax is subject to voter approval does not mean that the voters levy the tax. Voter approval is merely a condition on the delegation of the taxing power from the Legislature to the authority. (40 C.A.4th 1374.)

(b) The authority is a private body. Eleven of the 13 members of its board of directors are chosen by private entities without public accountability. The electorate cannot remove those 11 members, nor can it remove those who choose the 11 members. (40 C.A.4th 1388.)

(c) The regional nature of the authority does not exempt it from the limitations of Cal. Const., Art. XI, §11(a). The constitutional provision prohibits the Legislature from delegating to a private person or body the power "to levy taxes." The prohibition is not expressly limited to "local" taxes, nor does it contain an exception for a particular type of tax,

"regional" or otherwise. (*40 C.A.4th* 1390, 1396.)

SUPPLEMENT: [This section is current through the latest supplement]
Govt.C. 68056 et seq., including *Govt.C. 68059.7*, were repealed in 2008.



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9 Witkin Sum. Cal. Law Tax § 112

[§ 112] Double Taxation.

Although the Constitution contains no express reference to the subject, the Revenue Code states that its provisions on property taxation must not be construed to permit a double tax (Rev.C. 102), and it has been said that the Constitution impliedly prohibits double taxation (see *Central Mfg. Dist. v. State Bd. of Equalization of Calif.* (1931) 214 C. 288, 292, 5 P.2d 424; *Weber v. Santa Barbara* (1940) 15 C.2d 82, 87, 98 P.2d 492; *Flynn v. San Francisco* (1941) 18 C.2d 210, 215, 115 P.2d 3; *Spring Valley Water Co. v. Alameda* (1914) 24 C.A. 278, 280, 141 P. 38).

Excise taxes, however, are free from this limitation, and hence, more than one excise may be imposed by different statutes or ordinances on the same privilege. (*Redwood Theatres v. Modesto* (1948) 86 C.A.2d 907, 915, 196 P.2d 119; see *Ingels v. Riley* (1936) 5 C.2d 154, 164, 53 P.2d 939.)

In *Fox Bakersfield Theatre Corp. v. Bakersfield* (1950) 36 C.2d 136, 222 P.2d 879, plaintiff theatre, which paid the usual business license tax, challenged an ordinance levying an additional tax, consisting of a percentage of the admission charge, on places of amusement. (See supra, §49.) Answering the double taxation argument, the court said: "Taxation, other than of property, upon the same activity or incident for the same purpose by the same taxing agency, more than once in the same period, sometimes called double taxation, standing alone, is not forbidden by the Constitutions, state or federal. ... It is a factor in determining whether the tax is invalidly discriminatory when it is levied upon some activities but not others, or it may pose a question of substantive due process if its imposition assumes confiscatory or prohibitory characteristics." (36 C.2d 140.)

Similarly, the simultaneous imposition of a property tax and a tax on the income from the property is valid. (*Burhans v. Kern* (1959) 170 C.A.2d 218, 227, 338 P.2d 546; see *Berkeley v. Cukierman* (1993) 14 C.A.4th 1331, 1340, 18 C.R.2d 478 [business license tax and lodging rental license tax imposed on hotel operator].) The same is true of the imposition of both an ad valorem property tax and an excise tax on certain uses of real property. (*San Francisco v. Flying Dutchman Park* (2004) 122 C.A.4th 74, 87, 18 C.R.3d 532 [city's parking tax was not tax on real estate itself, but was separate tax on use of property, and was thus legal; citing *Cukierman*].)

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SUPPLEMENT: [This section is current through the latest supplement]



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CHAPTER XI - Taxation

Witkin Summary of California Law VIII. OVERVIEW OF CALIFORNIA TAXATION SYSTEM

B. Legislative Power and Limitations.

4. Limitations Relating to Tax Rate.

9 Witkin Sum. Cal. Law Tax § 113

[§ 113] Limitations Relating to Tax Rate.

(1) *Full Value Assessment.* All property must be taxed in proportion to its full value. (Cal. Const., Art. XIII, §1(b); see *Imperial Irr. Dist. v. Riverside* (1950) 96 C.A.2d 402, 407, 215 P.2d 518 [valid distinction between ordinary lands and district lands, justifying special rule on escaped assessment]; for meaning of "full value," see *infra*, §214; on acquisition value as full cash value, see *infra*, §§145, 146; on one percent limit on ad valorem taxation of real property, see *infra*, §126 et seq.) This provision, "which leaves the present Constitutional language unchanged, does not mean that tax rates will be equal in all areas. Different governmental bodies will apply different rates to their assessed values, and a single parcel of property will be taxed by a number of government bodies. Moreover, a government body may impose more than one rate within its jurisdiction because annexed territory is not always subject to taxation for service of pre-annexation debt and because certain services, such as library facilities, may be provided in only part of its jurisdiction. By retaining language now in the Constitution, the revision preserves the constitutional protection now accorded these variations." (Task Force Report, p. 1; see *supra*, §109.)

(2) *Personal Property Rate No Higher Than Real Property Rate.* "The tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction." (Cal. Const., Art. XIII, §2.)

(3) *Maximum Appropriation From Property Tax.* No more than 25% of state fund appropriations may be raised by ad valorem real and personal property taxes. (Cal. Const., Art. XIII, §22.)

(4) *Maximum Rates for Local Governments.* Cal. Const., Art. XIII, §20, authorizes the Legislature to "provide maximum property tax rates and bonding limits for local governments." Rev.C. 2201 et seq. implement this authority, and the maximum rates are set by Rev.C. 2260 et seq. (On tax rate limitation elections, see Rev.C. 2285 et seq.; on levying rate in addition to maximum rate for special purpose after majority approval of qualified voters, see Rev.C. 2280.01; on procedure for consent to maximum rate when local agency is formed without election, see Rev.C. 2287.5; on increase of maximum rate by local agency or district formed by city to perform services theretofore provided by county service area, see Rev.C. 2262.2.)

(5) *Rate on Unsecured Property.* The taxes on unsecured property (*infra*, §277) become due in March, before the year's rate is actually fixed, and formerly the practice was to make a tentative computation based on the previous year's rate, with refunds or further claims depending on whether the actual tax rate was lower or higher than that of the

preceding year. Now, under Cal. Const., Art. XIII, §12(a), and Rev.C. 2901 et seq., the taxes are based on the rates for taxes levied for the preceding year on property of the same kind where the taxes were a lien on land sufficient to secure their payment. (See *Delaney v. Lowery* (1944) 25 C.2d 561, 563, 565, 154 P.2d 674; *Abrams v. San Francisco* (1941) 48 C.A.2d 1, 5, 119 P.2d 197.) However, in any year in which the assessment ratio is changed, the Legislature is required to adjust the unsecured rate "to maintain equality between property on the secured and unsecured rolls." (Cal. Const., Art. XIII, §12(b).)

Cal. Const., Art. XIII, §12, was not impliedly repealed by Cal. Const., Art. XIII A, §2 (see *infra*, §145), and the provision for assessment of taxes on the unsecured roll at the prior year's rate for the secured roll was still controlling for the 1978-1979 tax year, despite the declaration in Cal. Const., Art. XIII, §2, that the tax on personal property must not be higher than that on real property. (*Board of Supervisors v. Loneragan* (1980) 27 C.3d 855, 862, 866, 868, 167 C.R. 820, 616 P.2d 802; *Roy E. Hanson, Jr. Mfg. v. Los Angeles* (1980) 27 C.3d 870, 872, 167 C.R. 828, 616 P.2d 810.)

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C. Subjects of Local and State Taxation.
1. City and County Taxes.

9 Witkin Sum. Cal. Law Tax § 114

[§ 114] City and County Taxes.

The chief form of local taxation, for the support of local governments, is the general property tax on real property and tangible personal property. The tax is imposed by the local subdivision (county or city or both) in which the property is located. (See *infra*, §163 et seq.; 1 Ehrman 3d, Chap. 1.)

Formerly, public utilities were taxed (by the state) a certain percentage of their gross receipts, in lieu of all other taxes (state, county, and municipal) on their operative property. (See *Southern Calif. Tel. Co. v. Los Angeles* (1931) 212 C. 121, 124, 298 P. 9.) By constitutional amendments in 1935, the state gross receipts tax was repealed, and the property of public utilities became subject to local ad valorem taxation, although the assessment is by the State Board of Equalization. (See *infra*, §240.)

A number of California cities and counties have adopted local sales and use taxes (see *infra*, §315 et seq.), and local license taxes are common (see *infra*, §309 et seq.).

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2. State Taxes.

9 Witkin Sum. Cal. Law Tax § 115

[§ 115] State Taxes.

The following are the principal subjects of state taxation for state purposes:

- (1) Estate taxes, administered by the State Controller. (See *infra*, §328 et seq.)
- (2) Personal income taxes on individuals, administered by the Franchise Tax Board. (See *infra*, §332 et seq.)
- (3) Franchise and net income taxes on banks and corporations, administered by the Franchise Tax Board. (See *infra*, §336 et seq.)
- (4) Taxes on insurance companies, administered by the State Board of Equalization. (See *infra*, §341 et seq.)
- (5) Sales and use taxes, administered by the State Board of Equalization. (See *infra*, §344 et seq.)
- (6) Liquor taxes, administered by the State Board of Equalization. (See *infra*, §377 et seq.)
- (7) Vehicle fuel and license taxes, administered by the State Board of Equalization, the Department of Motor Vehicles, and the Franchise Tax Board. (See *infra*, §380 et seq.)
- (8) Unemployment insurance taxes, administered by the Department of Employment. (See *infra*, §386.)
- (9) Cigarette taxes, administered by the State Board of Equalization. (See *infra*, §387.)

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D. State Tax Liens.

9 Witkin Sum. Cal. Law Tax § 116

[§ 116] State Tax Liens.

(1) *In General.* A uniform system for the creation, perfection, and determination of the priority of state liens was established in 1977 by the amendment and enactment of many sections in the Fish and Game, Public Resources, Revenue and Taxation, and Unemployment Insurance Codes. (See *Pub.Res.C. 3423 et seq.*; *9 Pacific L. J. 381.*) The 1980 Legislature, pursuant to a recommendation of the Law Revision Commission, repealed and amended many sections of the Fish and Game Code, Public Resources Code, Revenue and Taxation Code, and Unemployment Insurance Code, and consolidated their provisions in a new chapter of the Government Code entitled "State Tax Liens." (*Govt.C. 7150 et seq.*; see 15 Cal. Law Rev. Com. Reports, p. 29.) The chapter is a "restatement and continuation" of the former provisions, and all liens created under those provisions continue in effect. (*Govt.C. 7191.*)

(2) *Creation.* The lien is created when a taxpayer fails to pay any amount "due and payable," including penalties, interest, and costs. (*Rev.C. 6757(a).*) It is enforceable on all of the taxpayer's property, real and personal, tangible and intangible, including after-acquired property, located in California. (*Govt.C. 7170(a).*) Under *Rev.C. 6757(b)*, amounts are due and payable on the following dates:

- (a) For amounts disclosed on a return received before it is delinquent, the date the return would have been delinquent.
- (b) For amounts disclosed on a delinquent return, the date it was received.
- (c) For amounts determined in a jeopardy assessment, the date notice of the board's finding is mailed or issued.
- (d) For all other amounts, the date the assessment is final.

The lien does not arise during a period in which the automatic stay provision of the federal bankruptcy code (*11 U.S.C., §362*) applies to the person who has failed to pay. (*Rev.C. 6757.*)

(3) *Perfection.* As to real property, a notice of the lien may be filed in the county of its location. (*Govt.C. 7171(a).*) As to personal property, a notice of the lien may be filed with the Secretary of State. (*Govt.C. 7171(b).*) In addition, a notice may be filed in any pending action in which the taxpayer may become entitled to property or a money judgment. (*Govt.C. 7173(a).*) (On content of notice, see *Govt.C. 7171(c)*; on registration with Secretary of State, see *Govt.C. 7220 et seq.*; on mailed notice to tax debtor of recording of state tax lien against real property, see *C.C. 2885.*)

(4) *Priorities*. As to real property, under *Govt.C. 7170(b)*, the lien is not valid against the following:

- (a) Successors in interest without knowledge.
- (b) Holders of security interests.
- (c) Mechanic's lienholders.
- (d) Judgment lien creditors who acquired or perfected their rights prior to the recording of the notice of state lien.

As to personal property, under *Govt.C. 7170(c)*, the lien is not valid against the following:

- (a) Prior holders of security interests perfected under the Commercial Code.
- (b) Others who acquired an interest without knowledge of the lien or perfected their interest before the notice of the state lien was filed.
- (c) Buyers in the ordinary course of business who would take free of a security interest created by the seller.
- (d) Holders of various specified negotiable instruments.
- (e) Judgment lien creditors who have filed a notice of judgment lien with the Secretary of State before a state tax lien has been filed. (See *Bradbury v. Kaiser* (1992) 3 C.A.4th 1257, 1260, 5 C.R.2d 325 [withholding order under former Rev.C. 18817 (now Rev.C. 18670) is not tax lien subject to *Govt.C. 7170(c)* and has priority over later judgment lien].)

A tax lien on a cause of action or judgment in a pending action or proceeding has priority from the time the notice of lien is filed in the action. (*Govt.C. 7173(a)*.) A state tax lien attaches to a dwelling notwithstanding the prior recording of a homestead declaration. (*Govt.C. 7170(a)*); on declared homesteads, see 8 *Cal. Proc.* (4th), *Enforcement of Judgment*, §220 et seq.) As between competing state tax liens or between a state tax lien and a federal lien, the lien first coming into existence has priority, regardless of recording or filing of a notice of either or both of the liens. (*Govt.C. 7170.5*.)

(5) *Duration*. Unless recorded or filed, the lien does not continue for more than 10 years. (*Govt.C. 7172(c)*.) Otherwise, it continues for 10 years from the date of recording or filing (*Govt.C. 7172(b)*), and may be extended for an additional 10 years by recording or filing a new notice within 10 years of the recording or filing or within 10 years of the last extension (*Govt.C. 7172(c)*). (On release of lien, see *Govt.C. 7174*.)

(6) *Presumption of Payment*. A tax is conclusively presumed paid after 30 years from the time it becomes a lien unless the property has been sold for the payment of the tax. (Cal. Const., Art. XIII, §30.)

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SUPPLEMENT: [This section is current through the latest supplement]

(4) *Priorities.Declared homesteads*:

Cross-Reference: 8 *Cal. Proc.* (5th), *Enforcement of Judgment*, §229 et seq.

(7) *(New) Public Notice of Delinquencies*. The State Board of Equalization and the Franchise Tax Board must make available as a matter of public record each quarter a list of the 250 largest tax delinquencies in excess of \$ 100,000. To be on the list, the amount of the delinquency must have been recorded as a state tax lien under Rev.C. 7150 et seq. (Rev.C. 7063(a), added in 2006; Rev.C. 19195(a), added in 2006.)



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9 Witkin Sum. Cal. Law Tax § 117

[§ 117] In General.

(1) *Constitutional and Statutory Authorization.* Cal. Const., Art. XIII A limits the rate of ad valorem taxation of real property (see *infra*, §126 et seq.), but imposes no limits on expenditures. Cal. Const., Art. XIII B imposes those limits. (For severability clause, see Cal. Const., Art. XIII B, §11.) In fiscal years beginning on or after July 1, 1990, the appropriation limit for each government entity is the limit for fiscal year 1986-87 adjusted for subsequent changes made because of amendments in Article XIII B. (Cal. Const., Art. XIII B, §10.5.) Governmental entities have the burden of proving compliance with Cal. Const., Art. XIII B. (*Oildale Mut. Water Co. v. North of the River Mun. Water Dist.* (1989) 215 C.A.3d 1628, 1634, 264 C.R. 544 [if burden were on taxpayer, taxing entity could gain litigational advantage by maintaining incomplete or misleading records].)

Govt.C. 7900 et seq., entitled "Expenditure Limitations," implement Article XIII B by defining terms and prescribing procedures. (See 12 *Pacific L. J.* 589.)

(2) *Nature of Limitation.* Increases in the size of annual appropriations of the state and local governments are basically limited to increases in the cost of living and in population (Cal. Const., Art. XIII B, §1), although for school districts, average daily attendance is used instead of population growth (Cal. Const., Art. XIII B, §8(f)). (For definition of "cost of living," see Cal. Const., Art. XIII B, §8(e); for definition of "population," see Cal. Const., Art. XIII B, §8(f); for definition of "local government," see Cal. Const., Art. XIII B, §8(d).)

Fifty percent of excess funds received by the state are allocated to the State School Fund under Cal. Const., Art. XVI, §8.5. (Cal. Const., Art. XIII B, §2(a)(1).) Fifty percent of excess funds received by the state and all excess funds received by other government entities are returned to the taxpayers within 2 years in the form of revised tax rates and fee schedules. (Cal. Const., Art. XIII B, §2(a)(2), (b); see *Rider v. San Diego* (1992) 11 C.A.4th 1410, 1417, 14 C.R.2d 885 [Cal. Const., Art. XIII B, §2, applies only to entities that lawfully obtain tax receipts, not to entities without lawful right to tax; redistribution of invalid supplemental sales tax by way of temporary sales tax offset was prohibited]; on procedure for refund of transaction and use taxes later determined to be unconstitutional, see *Rev.C. 7275 et seq.*, *infra*, §321.)

(3) *Adjustments in Limitation.* The appropriations limit must be adjusted when the responsibility for providing services is transferred from one governmental entity to another (Cal. Const., Art. XIII B, §3(a)) or to a private entity

(Cal. Const., Art. XIII B, §3(b)). (See *Huntington Park Redevelopment Agency v. Martin* (1985) 38 C.3d 100, 108, 109, 211 C.R. 133, 695 P.2d 220 [adjustment for transfer between city and city redevelopment agency]; *Santa Barbara County Taxpayers Assn. v. Board of Supervisors* (1989) 209 C.A.3d 940, 947, 257 C.R. 615 [board's use of accepted accounting method to recalculate appropriations limitation was proper].) The appropriations limit must also be adjusted if an appropriation category is added to or removed from appropriations subject to limitation, pursuant to final judgment of a court of competent jurisdiction. (Cal. Const., Art. XIII B, §11.) In addition, emergency overruns are authorized. (Cal. Const., Art. XIII B, §3(c).) The voters may also change the limits, by majority vote, for up to 4 years. (Cal. Const., Art. XIII B, §4.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Constitutional and Statutory Authorization.* Cal. Const., Art. XIII B, §1.5, requires government entities to review, as part of an annual financial audit, the annual calculation of the appropriations limit under Cal. Const., Art. XIII B, but it does not impose a duty on local governments to conduct annual audits of their "proceeds of taxes." (*Barratt Amer. v. Rancho Cucamonga* (2005) 37 C.4th 685, 701, 37 C.R.3d 149, 124 P.3d 719, 12 Summary (10th), *Real Property*, Supp., §818 [city was not required to audit revenues received from building permit and plan review fees to determine whether it had surplus fees that would constitute proceeds of taxes].)



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9 Witkin Sum. Cal. Law Tax § 118

[§ 118] Scope of Limitation.

(1) *Exceptions.* The limitation on spending (*supra*, §117) applies to state and local appropriations with the following exceptions:

- (a) State and local refunds of taxes. (Cal. Const., Art. XIII B, §8(a), (b).)
- (b) State benefit payments from retirement, unemployment insurance, and disability insurance funds. (Cal. Const., Art. XIII B, §8(a).)
- (c) Debt service. (Cal. Const., Art. XIII B, §9(a); for definition of "debt service," see Cal. Const., Art. XIII B, §8(g).) Nothing in Article XIII B is to be construed "to impair the ability of the state or of any local government to meet its obligations with respect to existing or future bonded indebtedness." (Cal. Const., Art. XIII B, §7.)
- (d) Appropriations necessary to comply with judicial or federal mandates that, without discretion, require an expenditure for additional services or that unavoidably make providing existing services more costly. (Cal. Const., Art. XIII B, §9(b); see *Sacramento v. California* (1990) 50 C.3d 51, 74, 266 C.R. 139, 785 P.2d 522, *infra*, §119 ["coercive" effect of federal employment insurance program rendered legislative implementation a federal mandate]; *Hayes v. Commission on State Mandates* (1992) 11 C.A.4th 1564, 1592, 15 C.R.2d 547, *infra*, §120.)
- (e) Appropriations of preexisting special districts that did not levy ad valorem property taxes in excess of a specified maximum for the 1977-78 fiscal year and appropriations of any special districts not funded by the proceeds of taxes. (Cal. Const., Art. XIII B, §9(c); for definition of "proceeds of taxes," see Cal. Const., Art. XIII B, §8(c); *Santa Barbara County Taxpayers Assn. v. Board of Supervisors* (1989) 209 C.A.3d 940, 948, 257 C.R. 615 [franchise fees collected for rights-of-way are not "proceeds of taxes" under Cal. Const., Art. XIII B, §8(c), and need not be included in calculating appropriations limit].)
- (f) Appropriations from the Cigarette and Tobacco Products Surtax Fund (see Rev.C. 30121 et seq., *infra*, §387). (Cal. Const., Art. XIII B, §12.)
- (g) Appropriations for qualified capital outlay projects. (See Cal. Const., Art. XIII B, §9(d).)

(h) Appropriations from excess motor vehicle fuel, sales and use taxes, and weight fees revenue. (See Cal. Const., Art. XIII B, §9(e).)

(2) *Subventions*. The limitation does not apply to state subventions to local governments other than subventions constituting reimbursement for state mandated new programs and increases in service. (Cal. Const., Art. XIII B, §8(a).) The limitation applies to local proceeds of state subventions other than subventions for mandated new programs and increases in service. (Cal. Const., Art. XIII B, §8(b).)

(3) *Contingency, Reserve, and Similar Funds*. Government entities may, subject to the appropriation limit, appropriate funds to contingency, reserve, and similar funds. Transfers between funds, withdrawals from funds, and expenditures of withdrawn amounts are not subject to the appropriation limit. (Cal. Const., Art. XIII B, §5.) Except as otherwise provided by this provision, the appropriations limit does not apply to local agency loan funds or indebtedness funds, state investment funds, or local investment funds in bank or savings and loan accounts or in liquid securities. (Cal. Const., Art. XIII B, §8(i).)

In *San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 C.4th 571, 7 C.R.2d 245, 828 P.2d 147, defendant municipality excluded mandatory retirement contributions in calculating its spending limit. Plaintiff association contended that the contributions were a retirement fund subject to the spending limit under Cal. Const., Art. XIII B, §5. Defendant alleged that the contributions were "debt service" properly excluded from the spending limit under Cal. Const., Art. XIII B, §9(a). *Held*, the retirement contributions were subject to the limitation.

(a) Section 5 expressly refers to "retirement" funds while §9 does not. Under established principles of interpretation, the special provision, §5, controls the general, §9. By its plain meaning, §5 creates an exception to §9. (2 C.4th 577.)

(b) The inclusion of retirement benefits in the spending limit does not render Article XIII B inconsistent with Article XIII A, which authorizes taxes in excess of the maximum rate to satisfy retirement obligations. (2 C.4th 578, citing *Carman v. Alvord* (1982) 31 C.3d 318, 182 C.R. 506, 644 P.2d 192, *infra*, §127.) The purpose of subjecting retirement contributions to the spending limit is not to prevent defendant from satisfying its retirement obligations, but to control the overall growth in appropriations, by reducing other spending if necessary. (2 C.4th 579.)

(c) Likewise, the inclusion of retirement benefits in the spending limit does not operate as a substantial impairment of defendant's contractual obligations. Any impairment would be by a discretionary appropriation, not under the compulsion of Cal. Const., Art. XIII B. (2 C.4th 580.)

(4) *Assessment Districts*. Money derived from special assessments of an assessment district, and from federal grants to a local entity for improvements within the district, are not covered by Cal. Const., Art. XIII B, §8(c). (*Placer v. Corin* (1980) 113 C.A.3d 443, 170 C.R. 232.) "Proceeds of taxes" under that subdivision were chiefly intended to cover tax revenues, excessive regulatory license fees and user charges and fees, investment of tax revenues, and subventions from the state. (113 C.A.3d 448, 451.) Special assessments are not taxes (113 C.A.3d 450, 451, 452), and federal grants made directly to the county, with no state action involved, cannot be regarded as "subventions" from the state (113 C.A.3d 455). (See *City Council v. South* (1983) 146 C.A.3d 320, 334, 194 C.R. 110 [following *Placer v. Corin*].)

(5) *Tax Increment Revenues*. Community redevelopment agencies are authorized to finance redevelopment projects by using tax increment revenues (the increase in annual property taxes attributable to redevelopment improvements) to secure tax allocation bonds. (Cal. Const., Art. XVI, §16.) The allocation and payment of tax increment revenues to a redevelopment agency for paying principal or interest on loans, advances, or indebtedness for redevelopment activity is not deemed "receipt by an agency of proceeds of taxes" for purposes of Cal. Const., Art. XIII B, nor is it deemed "receipt of the proceeds of taxes by, or an appropriation subject to limitation of, any other public body" for purposes of Cal. Const., Art. XIII B, or any implementing statutes. (*Health & Saf.C. 33678*.)

Cases discussing the exemption for tax increment revenues include the following:

Brown v. Community Redevelopment Agency (1985) 168 C.A.3d 1014, 1020, 214 C.R. 626 [Health & Saf.C. 33678 is constitutional; it is reasonable legislative clarification of uncertainty in application of Article XIII B to redevelopment agencies].

Bell Community Redevelopment Agency v. Woosley (1985) 169 C.A.3d 24, 33, 214 C.R. 788 [same].

Redevelopment Agency of San Marcos v. California Com. on State Mandates (1997) 55 C.A.4th 976, 987, 64 C.R.2d 270 [same policies that support exempting tax increment revenues from Cal. Const., Art. XIII B, appropriations limits also support denying reimbursement under Cal. Const., Art. XIII B, §6 (infra, §121), for partial allocation of those revenues to Housing Fund].

Community Redevelopment Agency of Los Angeles v. Los Angeles (2001) 89 C.A.4th 719, 729, 107 C.R.2d 693 [county's procedure of offsetting or withholding administrative costs from tax increment revenue it allocated and paid to redevelopment agency did not violate Cal. Const., Art. XVI, §16; county may charge administrative costs of tax collection on redevelopment project property as long as "it acts with an even hand" with regard to other property].

SUPPLEMENT: [This section is current through the latest supplement]



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E. Limitations on Spending. 3. Reimbursement of Local Costs. a. Requirement.

9 Witkin Sum. Cal. Law Tax § 119

[§ 119] Requirement.

Under Cal. Const., Art. XIII B, §6(a), when the Legislature or a state agency mandates a new program or a "higher level of service" for a local government, the state must reimburse the local government for the increased cost. A subvention is authorized, but not mandatory, for a legislative mandate requested by the local government or for legislation defining a new crime or changing the definition of an existing crime. (Cal. Const., Art. XIII B, §6(a)(1), (a)(2); see *Sacramento v. California* (1984) 156 C.A.3d 182, 193, 203 C.R. 258 [application of Cal. Const., Art. XIII B, §6 to spending mandates effective between operative date and effective date of reimbursement requirement]; *Los Angeles Unified School Dist. v. California* (1991) 229 C.A.3d 552, 555, 280 C.R. 237 [school district was not entitled to reimbursement for costs incurred under pre-1975 Cal/OSHA legislation; under Cal. Const., Art. XIII B, §6, reimbursement is optional for mandates enacted before January 1, 1975].) A mandated new program or higher level of service includes a transfer by the Legislature from the state to a local government of complete or partial financial responsibility for a required program for which the state previously had complete or partial financial responsibility. (Cal. Const., Art. XIII B, §6(c).)

Beginning with the 2005-06 fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the state pursuant to law, the Legislature must either appropriate the full payable amount that has not been previously paid or suspend the operation of the mandate. (Cal. Const., Art. XIII B, §6(b)(1).) Ad valorem property tax revenues must not be used to reimburse a local government for the costs of a new program or higher level of service. (Cal. Const., Art. XIII B, §6(b)(3).)

SUPPLEMENT: [This section is current through the latest supplement]

See *Los Angeles v. Commission on State Mandates* (2007) 150 C.A.4th 898, 919, 58 C.R.3d 762 [Rev.C. 17516(c), which exempts compliance orders issued by state and regional water boards from subvention requirement, is unconstitutional; clear, unequivocal intent of Cal. Const., Art. XIII B, §6, is to require subvention whenever *any* state agency mandates new program or higher level of service].

Cal. Const., Art. XIII B, §6(a), does not create an implied contract between the state and local agencies entitled to reimbursement. Reimbursement rights are constitutional and statutory, not contractual. Thus, counties that seek reimbursement may not plead cause of action for breach of implied contract. (*San Diego v. California* (2008) 164

C.A.4th 580, 603, 79 C.R.3d 489.) Moreover, violation of Cal. Const., Art. XIII B, §6(a), is not a constitutional tort for which local agencies may seek money damages. (*164 C.A.4th 608.*)



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- E. Limitations on Spending.
- 3. Reimbursement of Local Costs.
- b. Reimbursement Required.

9 *Witkin Sum. Cal. Law Tax* § 120

[§ 120] Reimbursement Required.

In *Long Beach Unified School Dist. v. California* (1990) 225 C.A.3d 155, 275 C.R. 449, plaintiff school district complied with regulations of the state Department of Education designed to alleviate racial and ethnic segregation in the public schools and sought reimbursement under Cal. Const., Art. XIII B, §6. *Held*, reimbursement was required.

(a) Although public education is an existing program, the regulations mandate a "higher level of service" within the meaning of §6 because their requirements "go beyond constitutional and case law requirements." While courts have made suggestions designed to alleviate segregation, the regulations require specific actions (e.g., biennial ethnic and racial surveys; mandatory public hearings). (225 C.A.3d 173.)

(b) The regulations constitute a state mandate within the meaning of §6. As used in §6, the term "mandate" applies to agency regulations as well as statutory requirements. The exception in §6(c) for pre-1975 legislative mandates or regulations implementing legislation is narrowly drawn and does not imply that reimbursement is foreclosed where, as here, the mandate takes the form of regulations implementing constitutional or case law requirements, rather than statutory requirements. (225 C.A.3d 175.)

In *Hayes v. Commission on State Mandates* (1992) 11 C.A.4th 1564, 15 C.R.2d 547, plaintiff school districts sought reimbursement for the cost of special education programs under amendments to the Education of the Handicapped Act (20 U.S.C., §1401 et seq.). *Held*, the amendments constitute a federal mandate, but reimbursement is required only to the extent the state implements the act by imposing new programs or higher levels of service.

(a) Under the criteria set forth in *Sacramento v. California* (1990) 50 C.3d 51, 266 C.R. 139, 785 P.2d 522, *infra*, §121, the amendments constitute a federal mandate as far as the state is concerned. (11 C.A.4th 1592.) However, costs mandated by the federal government on local agencies are not mandated by the state, and, to the extent the state has no "true choice" in implementation, do not require reimbursement. (11 C.A.4th 1593.) Thus, "[t]o the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention." (11 C.A.4th 1594.)

(b) On remand, defendant Commission on State Mandates must focus on whether the costs incurred by local school

districts were imposed by federal mandate, or by the state's voluntary choice in its implementation of the federal program. (11 C.A.4th 1595.) (See *San Diego v. California* (1997) 15 C.4th 68, 98, 61 C.R.2d 134, 931 P.2d 312 [Legislature's transfer to counties of responsibility for providing health care for medically indigent adults mandated reimbursable new program, even though county had previously provided reduced level of care and had discretion to refuse to provide care]; *San Diego Unified School District v. Commission on State Mandates* (2004) 33 C.4th 859, 874, 16 C.R.3d 466, 94 P.3d 589 [hearing costs incurred by school district as result of mandatory actions taken under *Educ.C. 48915*, which governs student suspensions and expulsions, are reimbursable].)

SUPPLEMENT: [This section is current through the latest supplement]



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E. Limitations on Spending.
3. Reimbursement of Local Costs.
c. Reimbursement Not Required.

9 *Witkin Sum. Cal. Law Tax* § 121

[§ 121] Reimbursement Not Required.

(1) *No New Program or Higher Level of Service.* In *Los Angeles v. California* (1987) 43 C.3d 46, 233 C.R. 38, 729 P.2d 202, the Legislature increased certain workers' compensation benefit payments paid by employers, including plaintiff counties, which sought reimbursement under Cal. Const., Art. XIII B, §6. *Held*, reimbursement was not required.

(a) In construing §6, the terms "higher level of service" and "new program" must be read together. Thus read, the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing programs. In adopting §6, the electorate had in mind the commonly understood meaning of the term "program," i.e., "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (43 C.3d 56.) "The language of section 6 is far too vague to support an inference that it was intended that each time the Legislature passes a law of general application it must discern the likely effect of local governments and provide an appropriation to pay for any incidental increase in local costs." (43 C.3d 57.) Workers' compensation is not a program administered by local agencies to provide a service to the public, and in providing workers' compensation benefits for employees, local governments are indistinguishable from private employers. Thus, the reimbursement requirement of §6 is not applicable. (43 C.3d 57.)

(b) Cal. Const., Art. XIV, §4, gives the Legislature "plenary power" over workers' compensation. The goals of Article XIII B are to protect residents from excessive taxation and government spending and to preclude a shift in financial responsibility for governmental functions from the state to local agencies. "Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private employers." Thus, §6 "did not effect a pro tanto repeal of the Legislature's otherwise plenary power over workers' compensation." (43 C.3d 61.)

In *Sacramento v. California* (1990) 50 C.3d 51, 266 C.R. 139, 785 P.2d 522, the Legislature, in response to changes in federal law, extended mandatory coverage under the state's unemployment insurance law to state and local government employees. Plaintiff city sought reimbursement, under Cal. Const., Art. XIII B, §6, for the increased cost of the program. *Held*, reimbursement was not required.

(a) *No new program or increased service.* *Los Angeles v. California*, *supra*, is controlling. (50 C.3d 66.) By requiring local governments to provide unemployment compensation protection to local government employees, the state has neither compelled new or increased local service to the public nor imposed a unique requirement on local government. (50 C.3d 67.) By eliminating local government's exemption from requirements imposed on most other employers, the Legislature imposed costs (1) unrelated to the provision of public services and (2) incidental to compliance with general law. (50 C.3d 68.)

(b) *Federal mandate.* The increased costs to local government of extension of the unemployment insurance program constitutes a federal mandate exempt from spending limitations under Cal. Const., Art. XIII B, §9(b) (*supra*, §118). For purposes of §9(b), the term "federal mandates" refers not only to strict legal compulsion by the federal government but also to regulatory schemes, like unemployment compensation, "coercive on the states and localities in every practical sense." (50 C.3d 73.) "Here, the state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses. The alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards." (50 C.3d 74; see 18 *Pepperdine L. Rev.* 750 [*Sacramento v. California*].)

The following additional cases determined that, because no new program or higher level of service was mandated, reimbursement was not required:

San Diego Unified School District v. Commission on State Mandates (2004) 33 C.4th 859, 884, 16 C.R.3d 466, 94 P.3d 589 [hearing costs incurred by school district as result of discretionary actions taken under *Educ.C.* 48915, which governs student suspensions and expulsions, are not reimbursable; to extent that statute makes expulsions discretionary, it does not reflect new program or higher level of service].

Richmond v. Commission on State Mandates (1998) 64 C.A.4th 1190, 75 C.R.2d 754 [statute making local safety members of Public Employees' Retirement System eligible for both PERS and workers' compensation death benefits, instead of merely the former, did not trigger reimbursement; although statute increased cost of providing services, it did not require increased level of service, did not create new program, and did not impose unique requirement on local governments that was not applicable to all private employers].

Sonoma v. Commission on State Mandates (2000) 84 C.A.4th 1264, 1282, 101 C.R.2d 784 [state was not obligated to reimburse local governments after Legislature reduced share of property taxes previously allocated to local governments and simultaneously placed equal amount of property tax revenues into educational revenue augmentation funds for distribution to schools; reallocation did not result in reimbursable costs, and shifting percentage of responsibility for program that was already jointly funded is not imposition of new program or higher level of service].

(2) *No State Mandate.* *Department of Finance v. Commission on State Mandates* (2003) 30 C.4th 727, 134 C.R.2d 237, 68 P.3d 1203, focused on the meaning of "state mandate," rather than on the meaning of "new program" or "increased level of service," as many prior decisions had done. Claimants, two school districts and a county, participated in nine school-related educational programs that required participants to establish school site councils or advisory committees to help administer the programs. In the mid-1990s, *Govt.C.* 54952 (see 9 *Cal. Proc.* (4th), *Administrative Proceedings*, §18) and *Educ.C.* 35147 added the requirement that all councils and committees provide notice of meetings and post meeting agendas. Because compliance with these requirements imposed certain costs on the councils and committees, claimants filed "test claims" with the Commission on State Mandates, contending that the costs were state mandated and reimbursable, under Cal. Const., Art. XIII B, §6. After the Commission agreed that the costs were reimbursable state mandates, the Department of Finance filed this administrative mandamus proceeding challenging the Commission's decision. The trial court denied mandamus, and the Court of Appeal affirmed. *Held*, reversed. The costs were not reimbursable.

(a) Adopting the test enunciated in *Merced v. California* (1984) 153 C.A.3d 777, 200 C.R. 642, that for there to be a "state mandate" under Cal. Const., Art. XIII B, §6, a cost must be legally compelled, claimants argue that the notice and

agenda costs were required by *Govt.C. 54952* and *Educ.C 35147*. "[E]ven if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate." (30 C.4th 736.) "We ... reject claimants' assertion that merely because they participate in one or more of the various education-related funded programs here at issue, the costs they incurred in complying with program conditions have been legally compelled and hence constitute reimbursable state mandates. We instead agree with the Department of Finance, and with *City of Merced* ... that the proper focus under a legal compulsion inquiry is upon the nature of claimants' participation in the underlying programs themselves." (30 C.4th 743.) Here, eight of the nine underlying programs were voluntary. Thus, with respect to these programs, claimants incurred notice and agenda costs only because they elected to participate. Accordingly, no reimbursable state mandate exists with regard to any of these programs based on a theory that the costs were legally compelled. (30 C.4th 745.)

(b) It is assumed, without deciding, that claimants were legally compelled to participate in the Chacon-Moscone Bilingual-Bicultural Education program (*Educ.C. 52160* et seq.). However, the state, in providing program funds to claimants, has already provided funds that may be used to cover the notice and agenda related expenses. A school district is not precluded from using a portion of the funds obtained for the underlying program to pay the associated notice and agenda costs. In fact, *Educ.C. 52168(b)(6)* authorizes school districts to use appropriated funds for "[r]easonable district administrative expenses," which clearly include notice and agenda expenses. If increased compliance costs became so great, or funded programs grants became so diminished, that the compliance costs could not be covered by the appropriated funds, a compulsory program participant likely would be able to prove the existence of a reimbursable state mandate. That is not the case with notice and agenda costs, however, which are quite modest. (30 C.4th 746.)

(c) Claimants contend that even if they have not been legally compelled to participate in the other eight programs and hence have not been legally required to incur notice and agenda costs, they, nevertheless, have been compelled as a practical matter to do so, and that the absence of a reasonable alternative to participation constitutes a de facto mandate. This argument is without merit. Claimants did have a reasonable alternative. They had the freedom to either continue to participate and continue to receive program funding (although the funding would be reduced by the notice and agenda costs) or to decline to participate, in which case no penalty attached. Contrary to the situation in *Sacramento v. California*, *supra*, a claimant that elects to discontinue participation in one of the programs here does not face certain and severe penalties such as double taxation or other draconian consequences, but simply must adjust to the withdrawal of grant money along with the lifting of program obligations. These circumstances do not constitute a reimbursable state mandate for purposes of Cal. Const., Art. XIII B, §6. "We reject the suggestion, implicit in claimants' argument, that the state cannot legally provide school districts with funds for voluntary programs, and then effectively reduce that funding grant by requiring the districts to incur expenses in order to meet conditions of program participation." (30 C.4th 754.)

Several other cases hold that reimbursement is not required, including the following:

Fresno v. Lehman (1991) 229 C.A.3d 340, 347, 280 C.R. 310 [county was not entitled to reimbursement for attorneys' fees paid under C.C.P. 1021.5 (award of fees where case results in public benefit); fee statute is not state-mandated program].

San Jose v. California (1996) 45 C.A.4th 1802, 1810, 53 C.R.2d 521 [*Govt.C. 29550*, which authorizes counties to charge other local entities for costs of booking certain arrested persons in county jails, did not mandate new program or higher level of service under Cal. Const., Art. XIII B, §6; shift in funding was from counties, not state, to local entities and was only authorized, not mandated].

Los Angeles v. Commission on State Mandates (2003) 110 C.A.4th 1176, 1193, 2 C.R.3d 419 [statute requiring local law enforcement officers to participate in two hours of domestic violence training did not mandate increased, reimbursable costs, even though county added two hours to its training program; statute directed reallocation of training resources rather than additional training, and state did not shift cost of program that had been previously administered and funded by state].

(3) *Where Expenses Are Recoverable From Sources Other Than Taxes.* In *Fresno v. California* (1991) 53 C.3d 482, 280 C.R. 92, 808 P.2d 235, plaintiff county was required by *Health & Saf.C. 25500* et seq. (establishing minimum statewide standards relating to the handling and release of hazardous materials) to implement the statutes, and it was authorized to collect fees from those who handle hazardous materials to cover the cost. Without collecting fees, plaintiff sought reimbursement under Cal. Const., Art. XIII B, §6. In denying reimbursement, the state relied on *Govt.C. 17556(d)*, which provides that reimbursement is not required where a local agency has authority to levy charges, fees, and assessments sufficient to pay for a mandated program. *Held, Govt.C. 17556(d)* is facially constitutional under Cal. Const., Art. XIII B, §6.

The language and history of Cal. Const., Art. XIII B, indicate that it was not intended to reach beyond taxation, but was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of these revenues. Thus, subvention is required only when the costs of state-mandated programs can be recovered solely from tax revenues. *Govt.C. 17556(d)* properly construes the term "costs" in Cal. Const., Art. XIII B, §6, as excluding expenses that are recoverable from sources other than taxes. (53 C.3d 487; see 19 *Pepperdine L. Rev.* 228 [*Fresno*].)

Other cases denying reimbursement on this basis include the following:

Redevelopment Agency of San Marcos v. California Com. on State Mandates (1997) 55 C.A.4th 976, 983, 64 C.R.2d 270 [requirement that redevelopment agency deposit 20% of its tax increment revenues into state housing fund did not require reimbursement; no state duty of subvention is triggered unless local agency is required to expend "proceeds of taxes" and under *Health & Saf.C. 33678* (supra, §118), tax increment revenues are not proceeds of taxes].

Connell v. Superior Court (1997) 59 C.A.4th 382, 397, 69 C.R.2d 231 [costs of implementing statewide regulatory amendment that increased level of purity required when reclaimed wastewater is used for certain types of irrigation were not reimbursable; water districts had authority to levy fees to pay for program; citing *Fresno v. California*].

El Monte v. Commission on State Mandates (2000) 83 C.A.4th 266, 277, 99 C.R.2d 333 [legislation requiring local redevelopment agencies to contribute to local educational revenue augmentation fund did not constitute reimbursable state mandate; using local property taxes to support schools and community colleges was not mandated new program; also, subvention is required only when costs can be recovered solely from proceeds of taxes and, under *Health & Saf.C. 33678* (supra, §118), redevelopment agency's tax increment may not be deemed to be proceeds of taxes].

SUPPLEMENT: [This section is current through the latest supplement]

(2) *No State Mandate.*

Govt.C. 54952:

Cross-Reference: 9 Cal. Proc. (5th), *Administrative Proceedings*, §21.



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E. Limitations on Spending.

3. Reimbursement of Local Costs.

d. Local Government's Action To Avoid Expenditure.

9 Witkin Sum. Cal. Law Tax § 122

[§ 122] Local Government's Action To Avoid Expenditure.

(1) *Nature of Action.* *Govt.C. 17612(c)* provides for an action to stay enforcement of further expenditure of mandated costs. It establishes the exclusive remedy for a violation of Cal. Const., Art. XIII B, §6, once the Legislature has deleted funds from a local government claims bill allocated to pay for mandated costs. The date that the Legislature deletes the funds is the date on which a cause of action accrues for reimbursement of costs expended before that date. (*Berkeley Unified School Dist. v. California* (1995) 33 C.A.4th 350, 354, 39 C.R.2d 326 [district waived right to reimbursement for costs of antisegregation program by failing to bring action, under *Govt.C. 17612*, to stay enforcement of further expenditure of mandated costs after Legislature refused to pay them].)

Govt.C. 17581(a)(2) allows a local government to make its own determination not to implement a program, but only if the Legislature has specifically identified the program as a mandate for which no funding is provided. Absent that specific identification, the local government must resolve whether the mandate is unfunded by following the exclusive statutory procedure that includes an action under *Govt.C. 17612*. (*Tri-County Special Education Local Plan Area v. Tuolumne* (2004) 123 C.A.4th 563, 571, 19 C.R.3d 884 [in action to compel county to provide mental health services, county could not assert as defense that its duties were excused by failure of Legislature to fund mandate].)

(2) *Standing To Request Reimbursement.* In *Kinlaw v. California* (1991) 54 C.3d 326, 285 C.R. 66, 814 P.2d 1308, the cost of providing health care for medically indigent adults had been shifted from state to county funding. Plaintiffs, medically indigent adults and taxpayers, sought reimbursement under Cal. Const., Art. XIII B, §6. *Held*, plaintiffs lacked standing.

(a) The comprehensive administrative procedures in *Govt.C. 17500* et seq. are the exclusive procedure for resolution of claims arising out of Cal. Const., Art. XIII B, §6. Under these provisions, only local agencies and school districts are authorized to file reimbursement claims for state-mandated costs. (54 C.3d 333.)

(b) The right to reimbursement under Cal. Const., Art. XIII B, §6, is given to local agencies, not to individuals, either as taxpayers or as recipients of government benefits and services, and the administrative remedy provided by *Govt.C. 17500* et seq. is adequate to fully implement the constitutional provision. (54 C.3d 334.) (See *Redevelopment Agency of San Marcos v. Commission on State Mandates* (1996) 43 C.A.4th 1188, 1194, 51 C.R.2d 100 [Department of

Finance should have been allowed to intervene in proceeding by city's redevelopment agency challenging reimbursement ruling by Commission on State Mandates].)

SUPPLEMENT: [This section is current through the latest supplement]



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F. Taxpayers' Bill of Rights.
1. Statutory Framework.

9 Witkin Sum. Cal. Law Tax § 123

[§ 123] Statutory Framework.

(1) *Primary Statutes.* To improve voluntary taxpayer compliance (Rev.C. 7081, 21002), the 1988 Legislature added two nearly identical statutes:

(a) Rev.C. 7080 et seq., the Harris-Katz California Taxpayers' Bill of Rights, are administered by the State Board of Equalization and are applicable to the Sales and Use Tax Law. (Rev.C. 7080, 7082.)

(b) Rev.C. 21001 et seq., the Katz-Harris Taxpayers' Bill of Rights, are administered by the Franchise Tax Board and are applicable to the Personal Income Tax Law and the Bank and Corporation Tax Law. (Rev.C. 21001, 21003.)

(2) *Additional Statutes.* In 1992, a taxpayers' bill of rights was enacted for each of the following taxes:

(a) Motor vehicle fuel license tax (see Rev.C. 8260 et seq.).

(b) Use fuel tax (see Rev.C. 9260 et seq.).

(c) Cigarette tax (see Rev.C. 30458 et seq.).

(d) Alcoholic beverage tax (see Rev.C. 32460 et seq.).

(e) Energy resources surcharge (see Rev.C. 40200 et seq.).

(f) Emergency telephone users surcharge (see Rev.C. 41160 et seq.).

(g) Hazardous substances tax (see Rev.C. 43511 et seq.).

(h) Integrated waste management fee (see Rev.C. 45856 et seq.).

(i) Underground storage tank maintenance fee (see Rev.C. 50156 et seq.).

(j) Property tax (see Rev.C. 5900 et seq.).

A taxpayers' bill of rights was also included in the Fee Collection Procedures Law (Rev.C. 55001 et seq.), which provides a uniform procedure for collecting fees administered by the State Board of Equalization. (Rev.C. 55301 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



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9 Witkin Sum. Cal. Law Tax § 124

[§ 124] Provisions.

(1) *Advocates.* The Franchise Tax Board and the State Board of Equalization are required to establish taxpayers' rights advocates to facilitate the resolution of consumer complaints. The advocates may stay actions where taxpayers "have suffered or will suffer irreparable loss" as a result of board actions. (Rev.C. 7083, 21004.)

(2) *Education and Information.* The boards are required to develop a taxpayer education and information program (Rev.C. 7084, 21005), and must prepare and publish "brief but comprehensive statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of the board and taxpayers" (Rev.C. 7086, 21007). (On annual report of areas of recurrent taxpayer noncompliance, see Rev.C. 7085, 21006; on evaluation of board officers and employees, see Rev.C. 7087, 7088, 21008, 21009; on plan to speed up resolution of redetermination petitions and refund claims, see Rev.C. 7089, 21010.)

(3) *Protest Hearings.* Protest hearings before board hearing officers must be held at a reasonable time at a board office convenient to the taxpayer. (Rev.C. 7090(a), 21011(a).) A taxpayer is entitled to prior notice and a copy of any recording. (Rev.C. 7090(b), 21011(b).) A taxpayer must be informed that the taxpayer's attorney, accountant, or agent may be present. (Rev.C. 7090(c), 21011(c).) In specified circumstances, a taxpayer is entitled to reimbursement for reasonable fees and expenses related to the hearing (Rev.C. 7091(a), 21013(a)), for bank charges and other reasonable third-party check charges incurred as the direct result of an erroneous levy (Rev.C. 7096(a), 21018(a)), and for bank charges or other reasonable third-party check charges incurred as the result of an erroneous notice to withhold (Rev.C. 7096(a)).

(4) *Investigation and Surveillance.* Investigation or surveillance for purposes not related to tax administration is prohibited. (Rev.C. 7092(a), 21014(a).)

(5) *Settlement.* Tax liability disputes may be settled. (Rev.C. 7093.5.)

(6) *Notice and Review of Levy.* Rev.C. 21015.5 establishes procedures for administrative review as a prerequisite to levying on a taxpayer's property. Before levying a person's property or property right, the Franchise Tax Board must notify the person in writing that he or she has the right to request an administrative review. (Rev.C. 21015.5(a)(1), (a)(3)(C).) The person must be given 30 days before the day of the first levy to seek review. (Rev.C. 21015.5(a)(2),

(a)(3)(C).) The taxpayers' rights advocate must establish the procedures for independent departmental administrative review for taxpayers who request it. (Rev.C. 21015.5(b)(1).) During the review, a taxpayer may raise relevant issues relating to the unpaid tax or the lien, including appropriate spousal defenses, challenges to the appropriateness of collection actions, and offers of collection alternatives. (Rev.C. 21015.5(c)(2).) (On prohibition against levying on principal residence of "innocent investor" and release of lien on property, see Rev.C. 21015.6.)

(7) *Release of Levy.* The boards must release a levy if the expense of the sale process exceeds the liability for which the levy is made. (Rev.C. 7094(a), 21016(a)(1).) The taxpayers' rights advocate may order the release of a levy after finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or the taxpayer's family. (Rev.C. 7094(b), 21016(a)(2).) In the case of levies issued under Rev.C. 18401, the levy must be released if the proceeds from the sale would not result in a reasonable reduction of the debt (Rev.C. 21016(a)(3)), the levy was issued not in accordance with administrative procedures (Rev.C. 21016(a)(4)), the taxpayer has entered into an installment payment agreement to satisfy the tax liability for which the levy was made (Rev.C. 21016(a)(5)), or the release of the levy will facilitate the collection of the tax liability or will be in the best interest of the taxpayer and the state (Rev.C. 21016(a)(6)).

The taxpayer must be notified in writing before the sale of exemptions from levy under *C.C.P. 703.010* et seq. (exemptions from execution of money judgment; see 8 *Cal. Proc. (4th) Enforcement of Judgment*, §159 et seq.). (Rev.C. 7094(c), 21016(b); on adjustment of exemptions to reflect inflation, see Rev.C. 7095, 21017.) Rev.C. 7094 and 21016 do not apply to the seizure of property as a result of a jeopardy assessment. (Rev.C. 7094(d), 21016(c).)

(8) *Filing, Recording, and Release of Liens.* Except with respect to jeopardy assessments or determinations, a taxpayer is entitled to 30 days' prior notice of the filing or recording of liens, specifying the taxpayer's remedies. (Rev.C. 7097(a), (b), 21019(a), (b).) If a lien was filed in error, a release is required as soon as possible, and on request of the taxpayer, a copy must be mailed to major credit reporting companies in the county. (Rev.C. 7097(c), (d), 21019(c).)

(9) *Suspensions.* Suspension of a sales and use tax permit (Rev.C. 7098) or suspension of corporate powers (Rev.C. 21020) requires a 60-day preliminary notice.

(10) *Taxpayer's Action.* A taxpayer aggrieved by the reckless disregard of published procedures by a board officer or employee may bring an action for damages in superior court (Rev.C. 7099(a), 21021(a)), including actual damages and litigation costs (Rev.C. 7099(b), 21021(b)). The court may impose a penalty up to \$ 10,000 if the taxpayer's position is frivolous. (Rev.C. 7099(d), 21021(d).)

The board must release a lien if the lien was not filed or recorded in accordance with administrative procedures (Rev.C. 21019(d)(1)), the taxpayer has entered into an installment payment agreement to satisfy the tax liability for which the lien was filed or recorded, unless the agreement provides for the lien (Rev.C. 21019(d)(2)), or the release of the lien will facilitate the collection of the tax liability or will be in the best interest of the taxpayer and the state (Rev.C. 21019(e)). (See Rev.C. 7097(e) [board "may" release lien for this reason].)

(11) *Reliance on Board's Advice.* In specified circumstances, a taxpayer who fails to make a timely return or payment in "reasonable reliance on written advice" from the relevant board may be relieved of taxes, penalties, and interest under the following statutes:

- (a) Personal income and bank and corporation tax (Rev.C. 21012).
- (b) Motor vehicle fuel license tax (Rev.C. 7657.1(a)).
- (c) Use fuel tax (Rev.C. 8879(a)).
- (d) Private railroad car tax (Rev.C. 11408(a)).

- (e) Cigarette tax (Rev.C. 30284(a)).
- (f) Alcoholic beverage tax (Rev.C. 32257(a)).
- (g) Timber yield tax (Rev.C. 38454(a)).
- (h) Energy resources surcharge (Rev.C. 40104(a)).
- (i) Emergency telephone users surcharge (Rev.C. 41098(a)).
- (j) Hazardous substances tax (Rev.C. 43159(a)).
- (k) Solid waste disposal site cleanup and maintenance fee (Rev.C. 45157(a)).
- (l) Underground storage tax maintenance fee (Rev.C. 50112.5(a)).

SUPPLEMENT: [This section is current through the latest supplement]

(7) *Release of Levy.*

Cross-Reference: 8 Cal. Proc. (5th), *Enforcement of Judgment*, §168 et seq.



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IX. PROPOSITION 13 AND SUBSEQUENT LIMITATIONS ON TAXING POWER
A. Adoption of Proposition 13.

9 Witkin Sum. Cal. Law Tax § 125

[§ 125] Adoption of Proposition 13.

Article XIII A of the California Constitution (Proposition 13) was adopted in the June 1978 primary election and amended in the November 1978 general election (Proposition 8). To implement the new provisions, the Legislature made extensive changes in the real property tax laws. (See *10 Pacific L. J.* 573; *11 Pacific L. J.* 625; on effective date, see Cal. Const., Art. XIII A, §5; for severability clause, see Cal. Const., Art. XIII A, §6.) Commentary on Proposition 13 has been extensive. (See *25 Hastings Const. L. Q.* 197 [impact of fiscal limits on governance]; *23 Loyola L.A. L. Rev.* 829 [apportionment after Proposition 13]; *22 Pacific L. J.* 1333 [financing local government in post-Proposition 13 era]; *24 Pacific L. J.* 1769 [judicial challenges to Proposition 13]; *53 So. Cal. L. Rev.* 77 [legislative response to Proposition 13]; *53 So. Cal. L. Rev.* 283 [impact of Proposition 13 on tax increment financing]; *71 So. Cal. L. Rev.* 183 [implications of Proposition 13 beyond property tax assessment]; *10 Southwestern U. L. Rev.* 795 [local government taxing authority under Proposition 13]; *50 U.C.L.A. L. Rev.* 801 [whether *Serrano v. Priest* (1971) 5 C.3d 584, 96 C.R. 601, 487 P.2d 1241, supra, §54, "caused" adoption of Proposition 13]; *51 U.C.L.A.* 887 [same]; *21 U.S.F. L. Rev.* 1 [impact of Proposition 13 on public school financing]; *22 U.S.F. L. Rev.* 251 [effect of Proposition 13 court decisions on California local government revenue sources]; 1 Ehrman 3d, Chap. 2.)

West's Key Number Digest, Taxation k.25

SUPPLEMENT: [This section is current through the latest supplement]



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Witkin Summary of California Law IX. PROPOSITION 13 AND SUBSEQUENT LIMITATIONS ON TAXING POWER B. Restrictions on Power To Tax Real Property. 1. One Percent of Full Cash Value. a. General Rule.

9 Witkin Sum. Cal. Law Tax § 126

[§ 126] General Rule.

(1) *Constitutional Restrictions.* Cal. Const., Art. XIII A, §1(a), limits ad valorem taxes on real property to one percent of its "full cash value." (For definitions of "full cash value," see *infra*, §145; on purposes for which property tax rate may be imposed, see Rev.C. 96.31; 1 Ehrman 3d, §2:37 et seq.)

In *Ventura Group Ventures v. Ventura Port Dist.* (2001) 24 C.4th 1089, 104 C.R.2d 53, 16 P.3d 717, on a certified question from the Ninth Circuit, the court concluded that Cal. Const., Art. XIII A, §1, prohibits a county from levying property taxes in excess of one percent to pay a money judgment owed by its port district to the district's lessee.

(a) Although Cal. Const., Art. XIII A, §1(b)(1) (*infra*, §127), provides an exception from the one percent limit for taxes assessed to pay "indebtedness approved by the voters prior to July 1, 1978," that exception does not apply here. The district's debt occurred no earlier than 1979, when it executed the lease that eventually led to an action for breach and the resulting money judgment for the lessee. (24 C.4th 1098.)

(b) *Harb. & Nav.C. 6361*, which requires the county board of supervisors to levy a special tax, on all taxable property of the county within the district, sufficient to raise the amount of money the district will need in the coming year, has been superseded by the statutes implementing Cal. Const., Art. XIII A, to the extent that they are inconsistent. A district can no longer expect a county to levy taxes to raise whatever sum the district budget calls for. (24 C.4th 1099.)

(c) The money judgment here was founded in contract. It resulted from two discretionary acts: the district's decision to enter into a lease, and the district's subsequent decision to violate the implied covenant of good faith and fair dealing. Therefore, the judgment is not covered by the statutory exemption for "costs mandated by the courts" set forth in Rev.C. 2205 and 2271, and Govt.C. 970.8 and 971. (24 C.4th 1100.) Because these statutes do not support an exemption, "we need not reach the question whether an exception for judgments resulting from nondiscretionary acts should be read into" Cal. Const., Art. XIII A. (24 C.4th 1100.)

(d) There is no need to exempt judgments from Cal. Const., Art. XIII A, in order to avoid a construction that would permit takings in violation of the Fifth Amendment. *F & L Farm Co. v. City Council of Lindsay* (1998) 65 C.A.4th

1345, 77 C.R.2d 360, which held Cal. Const., Art. XIII A, inapplicable to judgments and allowed a city to levy excess taxes to pay numerous inverse condemnation judgments, is distinguishable on two grounds. First, judgments founded in inverse condemnation are covered by the statutory exemption for "costs mandated by the courts." Second, whereas the court in *F & L Farm Co.* wanted to avoid letting the city walk away from the judgments, the port district has not been permitted to avoid satisfaction of its judgment. On the contrary, the district filed for bankruptcy, and the judgment creditor has received half of the sum owed it from the bankruptcy proceeding. (24 C.4th 1102.) The fact that Cal. Const., Art. XIII A, does not absolutely shield a local public entity from a judgment creditor does not mean that a court can compel a county to levy property taxes in excess of the one percent limit in order to satisfy the judgment. (24 C.4th 1102, 1103.) To the extent it conflicts with the views expressed here, *F & L Farm Co.* is disapproved. (24 C.4th 1104.)

(2) *Reporting Requirements.* Local agencies are required to report annually to the controller about that portion of the property tax rate levied by or on behalf of the agency in excess of the rate limitation provided by Cal. Const., Art. XIII A, §1(a). (Rev.C. 2237.2 et seq.) The purpose of the reporting requirement is to make tax information available to the public, not to "address in any way the constitutionality of any ad valorem property taxes levied at rates in excess of the limitation." (Stats. 1982, Chap. 45, §5.)

SUPPLEMENT: [This section is current through the latest supplement]



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B. Restrictions on Power To Tax Real Property.

1. One Percent of Full Cash Value.

b. Exception for Preapproved Indebtedness.

9 Witkin Sum. Cal. Law Tax § 127

[§ 127] Exception for Preapproved Indebtedness.

The limitation in Cal. Const., Art. XIII A, §1(a), does not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on indebtedness approved by the voters before July 1, 1978. (Cal. Const., Art. XIII A, §1(b)(1).) "Approved by the voters" means that the principal amount of indebtedness was approved before the effective date of Proposition 13, not that the rate of interest on the indebtedness was approved. (*Metropolitan Water Dist. v. Dorff* (1982) 138 C.A.3d 388, 393, 188 C.R. 169 [water district could issue bonds approved before Proposition 13 at interest rate allowed by Govt.C. 53541]; see *Goodman v. Riverside* (1983) 140 C.A.3d 900, 910, 190 C.R. 7 [one percent limitation does not apply to ad valorem real property taxes levied by local water agencies to raise money due under water supply contracts with state; voter approval of Water Resources Development System included approval of amounts necessary to build, maintain, and replace system, to be paid from local property taxes]; *Valentine v. Oakland* (1983) 148 C.A.3d 139, 148, 196 C.R.59 [voters must approve only pension obligations, not specific pension system or tax override, which may be levied by resolution].)

The scope of the exception in Cal. Const., Art. XIII A, §1(b)(1), for an indebtedness approved before July 1, 1978, was explored in *Carmen v. Alvord* (1982) 31 C.3d 318, 182 C.R. 506, 644 P.2d 192, and in *Howard Jarvis Taxpayers Assn. v. Orange* (2003) 110 C.A.4th 1375, 2 C.R.3d 514, which reached opposite conclusions. In *Carman v. Alvord*, the court held that a tax to fund a municipality's pension commitment, approved by the voters before Proposition 13, was exempt from the one percent limitation of §1(b).

(a) The fact that the municipality is authorized to levy and collect the tax annually does not prevent the pension obligation from being "indebtedness approved by the voters." That type of indebtedness includes financial obligations arising from contract, both those that have matured and those that are yet to become due. (31 C.3d 326.)

(b) The phrase "interest and redemption charges" is not limited to bonded indebtedness but "denotes no more or less than the sums from time to time necessary to avoid default on obligations to pay money, including those for pensions." (31 C.3d 328.) (See *Watsonville v. Merrill* (1982) 137 C.A.3d 185, 192, 193, 186 C.R. 857; *Valentine v. Oakland*, *supra*, 148 C.A.3d 147, 148 [property tax override to fund municipality's pension obligations was valid as to two pension funds approved by voters but invalid as to pension fund not approved by voters]; *Fresno v. Superior Court* (1984) 156 C.A.3d 1137, 1148, 202 C.R. 313 [tax override was valid to extent proceeds were to be used to fund level of retirement benefits

approved by voters].)

In *Patton v. Alameda* (1985) 40 C.3d 41, 219 C.R. 1, 706 P.2d 1135, the court held that a tax override to fund a municipality's libraries, required by a charter provision approved by the voters in 1937, was exempt from the one percent limitation. "The city's voters undertook a duty to pay a specified tax for the support of the library long before article XIII A was enacted. This promise is just as much an indebtedness as the obligation in *Carman* and *City of Fresno* to establish and fund a pension system for existing and future employees." (40 C.3d 46.)

In *Howard Jarvis Taxpayers Assn. v. Orange*, the voters of defendant city approved a new charter before July 1, 1978. In addition to mandating defendant's participation in a retirement system and giving defendant discretion to establish appropriate, reasonable compensation and benefits, the new charter provided for an excess tax sufficient to meet all "obligations" of defendant for the retirement system in which it participated. After 1978, defendant added retirement benefits that were funded by the excess tax, as though they were obligations that had been created before July 1, 1978. Plaintiffs, a taxpayers association and one of its members, paid property tax under protest and then sued, seeking a refund of that portion of the excess tax attributable to the retirement system, as well as a declaration prohibiting defendant from levying taxes for benefits not already being provided to employees before July 1, 1978. The trial court ruled for plaintiffs, concluding that, by adopting a new charter before July 1, 1978, defendant's voters did not intend to commit defendant to an indebtedness for future enhancements beyond those to which defendant's employees were entitled at the time of the election. *Held*, affirmed.

(a) Assuming that the phrase "all obligations" of the retirement system included benefits, defendant contends that its voters' approval to pay all obligations merely reflected the fact that retirement obligations, i.e. benefits, change over time. This argument is without merit. The key word is "obligations," and defendant's obligations do not include benefits added after the adoption of Proposition 13. (110 C.A.4th 1382.)

(b) *Carman* upheld only an excess tax for a narrowly defined purpose that necessarily gave rise to payment obligations in the future. Defendant's position, however, is certainly not "narrowly defined." For example, defendant asserted in the trial court that the new charter language gave it the right to levy an excess tax for virtually anything, so long as it was for a retirement-related purpose. Defendant's interpretation would eviscerate Proposition 13 by narrowly construing its requirements and broadly construing the statutory exceptions. Such unfettered taxing power is one of the things that Proposition 13 was designed to prevent. (110 C.A.4th 1383, 1384.)

(c) Defendant's obligation, as authorized by its voters at the time Proposition 13 became effective, was to participate in a retirement system. It was not to provide every benefit requested by defendant's employees or advocated by the city council. If the obligation had been to provide a transportation system for employees, and Toyotas or Buicks had been offered at the time that Proposition 13 was enacted, no one could reasonably say that defendant was later authorized to levy an excess tax to provide Ferraris. Yet that philosophy is what defendant would have the court validate. (110 C.A.4th 1383.)

(d) Defendant misses the mark when it asserts that there was no evidence to support the trial court's finding that the voters intended to freeze the status quo when they adopted the new charter. This argument begs the question, because the issue is not whether the voters expressly intended to limit retirement benefits to those in existence at the time the new charter was enacted. "The voters did not have to specifically intend to limit the benefits; Proposition 13 did that. For any obligations not approved prior to Proposition 13, the tax is automatically capped, regardless of the charter or the voters' intent. Instead, the voters must intend to authorize a tax in excess of the 1 percent limit for a specific obligation. ... Pre-existing obligations are the exception to Proposition 13; therefore, they must be specific, real, and existing. If they are not, the tax is barred." (110 C.A.4th 1384.)

(e) Defendant maintains that the electorate would not have given it discretion to provide new retirement benefits, while at the same time denying it the right to levy an excess tax to pay for them. If the voters' intent were to limit taxing authority, defendant reasoned, they would have specified that limit. But the voters had no opportunity to set a limit.

They did not write the language, nor were they given a choice between provisions with or without limitations. And the voters did not have to intend to or specifically limit the tax; it was limited by Proposition 13. (110 C.A.4th 1385.)

(f) Defendant also argues that the voters must have intended the tax that was enacted to pay for retirement obligations to also fund the "reasonable compensation and fringe benefits" authorized by the new charter. This is a misreading of the quoted language. Although the charter did give defendant the right to provide fringe benefits and compensation; it did not *obligate* it to do so. Instead, the charter stated that defendant had *discretion* to provide these benefits; it just could not fund them using an excess levy. Rather, defendant could provide for the indebtedness in varying ways. (110 C.A.4th 1385.)

(g) The distinction that defendant draws between payments "to" a retirement system and "for" a retirement system (as authorized by the charter) is of no consequence. Contrary to defendant's argument, paying "for" a retirement system is not the equivalent of approval to tax for benefits offered after June 1978. So, too, defendant's interpretation of the charter term "retirement system" as something constantly changing does not translate to voter authorization of a tax to pay for benefits added later. (110 C.A.4th 1386.) (See *Arvin Union School Dist. v. Ross* (1985) 176 C.A.3d 189, 200, 221 C.R. 720 [school district tax override used for general revenue purposes, not for indebtedness purposes, was subject to one percent limitation].)

SUPPLEMENT: [This section is current through the latest supplement]

Correction: Page 186, fourth line from bottom, "*Carmen v. Alvord*" should be "*Carman v. Alford*".



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Witkin Summary of California Law IX. PROPOSITION 13 AND SUBSEQUENT LIMITATIONS ON TAXING POWER B. Restrictions on Power To Tax Real Property. 1. One Percent of Full Cash Value. c. Other Exceptions.

9 Witkin Sum. Cal. Law Tax § 128

[§ 128] Other Exceptions.

(1) *Indebtedness Approved by Supermajority.* The limitation in Cal. Const., Art. XIII A, §1(a), does not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by a two-thirds vote. (Cal. Const., Art. XIII A, §1(b)(2).)

(2) *Indebtedness Incurred by School Districts for Facilities.* The limitation in Cal. Const., Art. XIII A, §1(a), does not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on bonded indebtedness, incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including furnishing or equipping school facilities or acquiring or leasing real property for school facilities. The bonded indebtedness must be approved by a 55% vote on or after November 8, 2000. (Cal. Const., Art. XIII A, §1(b)(3).) In addition, the proposition resulting in the bonded indebtedness must include specified accountability requirements:

(a) It must require that the proceeds from the bonds sale be used only for the purposes stated in Cal. Const., Art. XIII A, §1(b)(3), and not for teacher or administrative salaries or other school operating expenses (Cal. Const., Art. XIII A, §1(b)(3)(A)), and that an annual, independent financial audit be conducted to ensure compliance with this requirement (Cal. Const., Art. XIII A, §1(b)(3)(C)).

(b) It must list the specific school facilities projects to be funded and must certify that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing the list. (Cal. Const., Art. XIII A, §1(b)(3)(B).)

(c) It must require an annual, independent financial audit of the proceeds from the bonds sale until all proceeds have been expended. (Cal. Const., Art. XIII A, §1(b)(3)(D).)

Notwithstanding any other laws or constitutional provisions, school districts, community college districts, and county offices of education may levy a 55% vote ad valorem tax under Cal. Const., Art. XIII A, §1(b). (Cal. Const., Art. XIII A, §1(c).)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Indebtedness Incurred by School Districts for Facilities*. See *Committee for Responsible School Expansion v. Hermosa Beach City School Dist.* (2006) 142 C.A.4th 1178, 1186, 48 C.R.3d 705 [school district satisfied accountability requirements of Cal. Const., Art. XIII A, §1(b)(3)(B), by preparing and making available list of projects to be funded; list did not have to be included on ballot]; *Foothill-De Anza Community College Dist. v. Emerich* (2007) 158 C.A.4th 11, 23, 69 C.R.3d 678 [school district satisfied accountability requirements of Cal. Const., Art. XIII A, §1(b)(3)(B), by identifying types of projects to be funded; list must define projects in manner that clearly appraises voters, auditors, and public oversight committees of types of projects for which money will be used].



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Witkin Summary of California Law IX. PROPOSITION 13 AND SUBSEQUENT LIMITATIONS ON TAXING POWER B. Restrictions on Power To Tax Real Property. 2. Apportionment to Districts.

9 Witkin Sum. Cal. Law Tax § 129

[§ 129] Apportionment to Districts.

(1) *Constitutional Requirement.* The one percent tax is to be "collected by the counties and apportioned according to law to the districts within the counties." (Cal. Const., Art. XIII A, §1(a); for definition of "districts," see Rev.C. 95(b); on allocation of property tax revenues among local districts, see Rev.C. 75.70 et seq., 95 et seq.; on allocation of revenues to community redevelopment agencies, see *Arcadia Redevelopment Agency v. Ikemoto* (1993) 16 C.A.4th 444, 455, 20 C.R.2d 112; *Community Redevelopment Agency of Los Angeles v. Los Angeles* (2001) 89 C.A.4th 719, 729, 107 C.R.2d 693 [citing *Arcadia*; county could offset or withhold administrative costs of collection from tax increment revenue it allocated and paid to redevelopment agency]; on county's right to recoup administrative costs expended in assessment, collection, and allocation of property tax revenues to districts, see *Arbuckle-College City Fire Protection Dist. v. Colusa* (2003) 105 C.A.4th 1155, 1159, 130 C.R.2d 182 [Govt.C. 29142, permitting county to recoup administrative costs only by agreement between county and district, is not controlling and is not necessarily more specific than later enacted Rev.C. 95.3, which did not require agreement].)

(2) *Prohibition Against Future Modifications of Allocation.* The Legislature may not modify the manner in which ad valorem property tax revenues are allocated under Cal. Const., Art. XIII A, §1(a), so as to reduce for any fiscal year the percentage of the total amount of ad valorem property tax revenues in a county that is allocated among all of the local agencies in that county below the percentage of the total amount of those revenues that would be allocated among those agencies for the same fiscal year under the statutes in effect on November 3, 2004. (Cal. Const., Art. XIII, §25.5(a)(1)(A).) After 2007, this prohibition will be subject to suspension for a fiscal year if the governor declares suspension necessary due to a severe state fiscal hardship (Cal. Const., Art. XIII, §25.5(a)(1)(A)(i)), and the Legislature enacts an urgency statute by two-thirds vote (Cal. Const., Art. XIII, §25.5(a)(1)(B)(ii)). However, the Legislature must also provide for the full repayment, within 3 years, to local agencies of the total amount of revenue losses, including interest, resulting from the modification of ad valorem property tax revenue allocations to local agencies. (Cal. Const., Art. XIII, §25.5(a)(1)(B)(iii).) Moreover, the prohibition may not be suspended for more than two fiscal years during a period of 10 consecutive fiscal years, or during a fiscal year in which the full repayment required by Cal. Const., Art. XIII, §25.5(a)(1)(B)(iii), or payments required by Rev.C. 10754.11, has not yet been completed. A suspension of the prohibition must not result in a total ad valorem property tax revenue loss to all local agencies within a county that exceeds 8% of the total amount of ad valorem property tax revenues that were allocated among all local agencies within that county for the fiscal year immediately preceding the fiscal year of the suspension. (Cal. Const., Art. XIII,

§25.5(a)(1)(C).)

(3) *Reallocation of Revenues From Local Districts to School Districts*. Rev.C. 97.02 and 97.035, effective for fiscal year 1993-94, reallocated approximately \$ 2.6 billion of property tax revenues from counties, cities, and special districts, to educational revenue funds for distribution to school districts and community college districts. In *Los Angeles v. Sasaki* (1994) 23 C.A.4th 1442, 29 C.R.2d 103, plaintiff county sought to enjoin the reallocation and to have the revenues disbursed in accordance with a county ordinance instead. The county contended that the reallocation was an unconstitutional way for the state to meet its educational funding responsibilities, impermissibly interfered with the county's home rule rights, and violated Cal. Const., Art. XIII, §24 (supra, §110), which precludes the state from imposing local taxes for local purposes. The trial judge denied the county's requested relief. *Held*, affirmed.

(a) The county lacked standing to challenge the manner in which the state fulfilled its constitutional mandate to support schools. This issue was "of possible concern to the educational entities which are beneficiaries of the constitutional mandate, but not the County." (23 C.A.4th 1449.)

(b) The reallocation did not impermissibly interfere with the county's right to home rule. "[T]here is historical fluidity in the fiscal relationship between local governments and schools." Although this particular measure shifted property tax revenue away from local governments, the Legislature had enacted other measures to ameliorate the effects of the shift. The reallocation did not unduly infringe on the county's discretionary affairs. (23 C.A.4th 1457.)

(c) Cal. Const., Art. XIII, §24, does not preclude the reallocation. Art. XIII A, adopted after Art. XIII, §24, provides that property taxes must be "apportioned according to law." This provision "removed whatever doubt previously may have existed concerning the power of the state to allocate property tax revenue among the entities funded by such revenue." (23 C.A.4th 1457.) (See 115 A.L.R.5th 563 [procedural issues involved in challenging validity of public school funding systems].)

SUPPLEMENT: [This section is current through the latest supplement]



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9 Witkin Sum. Cal. Law Tax § 130

[§ 130] Restrictions on State Taxes.

(1) *Constitutional Prohibitions.* Cal. Const., Art. XIII A, §3, prohibits increases in state taxes, "enacted for the purpose of increasing revenues," unless "passed by not less than two-thirds of all members elected to each of the two houses of the Legislature." It also prohibits any new ad valorem taxes on, or sales or transaction taxes on the sale of, real property.

(2) *Exception for Enactment by Voters.* In *Kennedy Wholesale v. State Bd. of Equalization* (1991) 53 C.3d 245, 279 C.R. 325, 806 P.2d 1360, plaintiff tobacco distributor paid a tobacco surtax pursuant to Rev.C. 30121 et seq. under protest and sought a refund, alleging that the tax violated the two-thirds vote requirement of Cal. Const., Art. XIII A, §3. The statutes imposing the tax had been adopted in the November 1988 general election as an initiative (Proposition 99), by a majority vote. *Held*, the tax is constitutional. Enactment by the voters did not violate the two-thirds requirement.

(a) Cal. Const., Art. XIII A, §3, does not implicitly repeal the power of the voters to raise taxes by statutory initiative. Although §3, if read literally, would implicitly limit the power of initiative reserved to the people by Cal. Const., Art. IV, §1, repeals by implication are to be avoided and doubts must be resolved in favor of the initiative power. "Nothing in the official ballot pamphlet supports the inference that the voters intended to limit their own power to raise taxes in the future by statutory initiative. To the contrary, the arguments in favor of Proposition 13 adopt a populist theme that cannot easily be reconciled with plaintiff's interpretation." (53 C.3d 250.)

(b) The two-thirds requirement of Cal. Const., Art. XIII A, §3, does not implicitly apply to the electorate. This interpretation would be in conflict with Cal. Const., Art. II, §10, which provides that initiative statutes take effect when approved by a majority. (53 C.3d 251.) (See 19 *Pepperdine L. Rev.* 259 [*Kennedy Wholesale*].)

(3) *Distinction Between Regulatory Fees and Taxes.* In *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 C.4th 866, 64 C.R.2d 447, 937 P.2d 1350, plaintiff paint manufacturer sought a refund of fees it had paid under the Childhood Lead Poisoning Prevention Act of 1991 (*Health & Saf.C. 105275 et seq.*), alleging that the fees were "taxes" for the purposes of Cal. Const., Art. XIII A, §3, and that the Act had not been passed by the required two-thirds majority of the members of the Legislature. The trial court and the Court of Appeal agreed. *Held*, reversed.

(a) Although no cases have interpreted the phrase "taxes enacted for the purpose of increasing revenues" as used in Cal. Const., Art. XIII A, §3, cases considering whether various fees are really "special taxes" under Cal. Const., Art. XIII A, §4 (see *infra*, §134 et seq.), are helpful. (15 C.4th 873.) The "special tax" cases have concluded that the following three general categories of fees or assessments are not special taxes: (1) special assessments, in amounts reasonably reflecting the value of the benefits conferred by improvements; (2) development fees, exacted in return for permits or other government privileges, if the amount of the fees bears a reasonable relation to the development's probable costs to the community and benefits to the developer; and (3) regulatory fees, imposed under the police power, rather than the taxing power. (15 C.4th 875.)

(b) The fees imposed here fall squarely in the category of regulatory fees. (15 C.4th 875.) The Act requires manufacturers whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating the adverse health effects their products create in the community. (15 C.4th 877.) Plaintiff did not contend that the fees exceed the reasonable cost of providing the protective services for which the fees are charged, or that the fees were levied for any unrelated revenue purposes. Moreover, plaintiff has not sought to establish that the amount of the fees bears no reasonable relationship to the social or economic "burdens" that plaintiff's operations generated. (15 C.4th 876.)

(c) "The fact that the challenged fees were charged after, rather than before, the product's adverse effects were realized is immaterial to the question whether the measure imposes valid regulatory fees rather than taxes." (15 C.4th 879.) Furthermore, the fact that the fees, like all regulatory fees, were necessarily aimed at raising "revenue" to defray the cost of the regulatory program in question does not automatically render the fees "taxes." Finally, the fact that the Act permits plaintiff and other producers to carry on their operations without specifying any further conditions is inconclusive. (15 C.4th 880.)

In *California Assn. of Professional Scientists v. Department of Fish & Game* (2000) 79 C.A.4th 935, 94 C.R.2d 535, an individual challenged the constitutionality of *Fish & Game C. 711.4*, which imposes a flat fee for each environmental review by the Department of Fish and Game. Plaintiff contended that the fee constitutes an unconstitutional tax because *Fish & Game C. 711.4* was not passed by a two-thirds majority in the Legislature. *Held*, the fee is a valid regulatory fee, not a tax.

(a) The department performs a critical regulatory role in the complex regulatory structure that the Legislature created to safeguard environmental resources. (79 C.A.4th 943.) The department met its burden of showing that the amount of fees generated by *Fish & Game C. 711.4* was far less than the cost of environmental reviews provided. Thus, the fees were not revenue raising; they did not generate income that surpassed the cost of the services provided. (79 C.A.4th 946.)

(b) A flat fee does not become a tax simply because there is no individual correlation between the fee amount and the cost of the benefit or burden. A regulatory fee, to survive as a fee, does not require a precise cost-fee ratio. A regulatory fee is enacted for purposes broader than the privilege to use a service or to obtain a permit. (79 C.A.4th 950.) There is no question that a flat fee will seldom represent the exact cost of providing a service. Nevertheless, a flat fee system may be a reasonable means of allocating the costs of environmental review. (79 C.A.4th 951.)

(c) There is a vast discrepancy between a user fee imposed on an individual and a fee that apportions and distributes the collective costs of a regulation. (79 C.A.4th 952.) Complex regulatory programs involve complex accounting methodologies that render a more conventional user fee assessment impractical or expensive. Here, it is "reasonable to assess a flat fee and thereby reduce the cost and administrative difficulty of accounting for the services provided for each individual project. Moreover, collection of a flat fee at a uniform time eases the administrative burden of collection and provides certainty to those who submit project proposals." (79 C.A.4th 954.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Constitutional Prohibitions.* See *Independent Energy Producers Assn. v. State Bd. of Equalization* (2004) 125

C.A.4th 425, 437, 22 C.R.3d 562 [two-thirds vote requirement of Cal. Const., Art. XIII A, §3, did not apply to passage of Rev.C. 721.5, which authorizes State Board of Equalization to assess certain electric generation facilities; Proposition 13's restrictions on taxation of real property have no application to unit taxation of public utility property under Cal. Const., Art. XIII, §19 (text, §240)].



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9 Witkin Sum. Cal. Law Tax § 131

[§ 131] Constitutional and Statutory Bases for Restrictions.

(1) *Proposition 13*. Cal. Const., Art. XIII A, §4, prohibits cities, counties, and special districts from imposing local ad valorem real property taxes and sales or transaction taxes on the sale of real property. It permits "special taxes" only if approved "by a two-thirds vote of the qualified electors." (See *Pugh v. Sacramento (1981) 119 C.A.3d 485, 488, 491, 174 C.R. 119* [ordinance enacted June 29, 1978, was not affected by Article XIII A, which had effective date of July 1, 1978]; *Northgate Partnership v. Sacramento (1984) 155 C.A.3d 65, 69, 202 C.R. 15* [same; expected loss of revenue from passage of Proposition 13 justified enactment of ordinance as emergency measure]; *Cathedral City v. Riverside (1985) 163 C.A.3d 960, 964, 210 C.R. 60* [city incorporated after effective date of Art. XIII A, §4, was entitled to share in documentary transfer tax revenues collected by county, without prior approval of voters].)

For purposes of Cal. Const., Art. XIII A, "ad valorem tax" means "any source of revenue derived from applying a property tax rate to the assessed value of property." Thus, a special tax imposing a flat rate on all parcels within a zoning classification may be approved by a two-thirds vote, even though the tax is graduated with respect to zoning classifications. (*Heckendorn v. San Marino (1986) 42 C.3d 481, 487, 229 C.R. 324, 723 P.2d 64* [incorporating contemporaneous definition in Rev.C. 2202].)

(2) *Proposition 62*. The imposition of taxes by local governments and districts was further restricted by the 1986 enactment of *Govt.C. 53720* et seq. (Proposition 62), an initiative measure, which includes the following provisions:

(a) "Local government" is broadly defined to include cities, counties, and public or municipal corporations. (*Govt.C. 53720(a)*.) "District" means a state agency formed for the local performance of governmental or proprietary functions within limited boundaries. (*Govt.C. 53720(b)*.)

(b) All taxes are either *special* (imposed for specific purposes) or *general* (imposed for general governmental purposes). (*Govt.C. 53721*.)

(c) General taxes imposed by a local government or district must be approved by a majority vote of the electorate, whether or not the local government or district is authorized to levy a property tax. (*Govt.C. 53723*.)

(d) Special taxes must be approved by a two-thirds vote. (*Govt.C. 53722*; see *infra*, §133 et seq.)

(e) Local governments and districts may not impose a transaction or sales tax or a sales tax on the sale of real property and may not impose ad valorem real property taxes except as permitted by Cal. Const., Art. XIII A, §1. (*Govt.C. 53725(a)*.) Taxes permitted by Cal. Const., Art. XIII A, §1(b), are not subject to the voter requirements of Proposition 62.

(f) These provisions may be changed only by the vote of the electorate. (*Govt.C. 53729*.)

(3) *Proposition 218*. Several of the provisions of *Govt.C. 53720* et seq. (Proposition 62) were challenged as unconstitutional after the initiative was passed in 1986; some of these challenges were successful (see *infra*, §132). However, in 1996, the voters adopted Proposition 218, which added the Right to Vote on Taxes Act (Cal. Const., Arts. XIII C and XIII D) to the California Constitution. Article XIII C reinstates many of the provisions of Proposition 62 by making them part of the Constitution. Article XIII D restricts local power to levy assessments and other fees and charges. (See 29 *McGeorge L. Rev.* 739 [implementing Proposition 218]; 25 *Ecology L. Q.* 519 [history, structure, and impact of Proposition 218]; *infra*, §141 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



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9 Witkin Sum. Cal. Law Tax § 132

[§ 132] Majority Approval for Previously Enacted Taxes.

Govt.C. 53727(b) prohibited the collection of a local tax enacted after July 31, 1985, unless the tax was approved by a majority of the voters by November 4, 1988. In *Westminster v. Orange* (1988) 204 C.A.3d 623, 251 C.R. 511, this "window period" voter approval requirement was held unconstitutional. Proposition 218 subsequently placed a similar "window period" provision into the Constitution. Cal. Const., Art. XIII C, §2(c), requires approval, by a majority of voters, of any general tax imposed, extended, or increased between January 1, 1995, and November 6, 1996, unless that tax received majority approval when imposed. Except in emergencies, the election must be held by November 6, 1998, as part of a regularly scheduled general election for members of the governing body of the local government that imposed the tax. (See *Burbank-Glendale-Pasadena Airport Authority v. Burbank* (1998) 64 C.A.4th 1217, 1226, 76 C.R.2d 297 [charter city's transient parking tax, approved by voters approximately 15 months after it was first imposed, was enforceable from date of imposition; because *Govt.C. 53723*, requiring majority approval of local tax, did not apply to charter cities, city was not obligated to obtain voter approval for tax until passage of Proposition 218]; on use of initiative power to reduce or repeal local tax, assessment, fee, or charge, see Cal. Const., Art. XIII C, §3, 7 *Summary* (10th), *Constitutional Law*, §159; *Rossi v. Brown* (1995) 9 C.4th 688, 703, 704, 38 C.R.2d 363, 889 P.2d 557, 7 *Summary* (10th), *Constitutional Law*, §159 [repeal of chartered city's utility tax by local initiative was not illegal referendum on tax levy; initiative may be used to legislate in areas where voters have no right to referendum].)

SUPPLEMENT: [This section is current through the latest supplement]

Use of initiative power to reduce or repeal local tax, assessment, fee, or charge: See *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 C.4th 205, 211, 217, 46 C.R.3d 73, 138 P.3d 220, 7 *Summary* (10th), *Constitutional Law*, Supp., §159 [Cal. Const., Art. XIII C, §3, grants local voters right to reduce rate that public water district charges for domestic water, but not to impose voter-approval requirement on all future adjustments of water delivery charges; initiative that attempted to do both was properly withheld from ballot].



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1. Rule.

9 *Witkin Sum. Cal. Law Tax* § 133

[§ 133] Rule.

Cal. Const., Art. XIII A, §4, and *Govt.C. 53722* (supra, §131) require approval of special taxes by a two-thirds vote of the electorate. Proposition 218 reiterated this requirement in the Constitution (see Cal. Const., Art. XIII C, §2(d)) and made clear that it also applies to taxes imposed by charter cities (see Cal. Const., Art. XIII C, §1(b)). (See *F & L Farm Co. v. City Council of Lindsay* (1998) 65 C.A.4th 1345, 1349, 77 C.R.2d 360 [city could not avoid paying inverse condemnation judgment on ground that assessment of tax levy has been rendered impossible by voter approval requirements in Cal. Const., Art. XIII A, and Art. XIII C]; *Ventura Group Ventures v. Ventura Port Dist.* (2001) 24 C.4th 1089, 1102, 1104, 104 C.R.2d 53, 16 P.3d 717, supra, §126 [distinguishing and partly disapproving *F & L Farm Co.*; although Cal. Const., Art. XIII A, does not absolutely shield local public entity from judgment creditor, court cannot compel county to levy excess property taxes in order to satisfy judgment].)

Govt.C. 53724(e) provides that revenues from a special tax may be used only for the purpose or service for which the tax was imposed, and for no other purpose whatsoever. However, under *Govt.C. 25252*, a county board of supervisors may transfer money from one fund to another, as the public interest requires. *Govt.C. 53724(e)* merely prevents permanently depriving the intended recipient project or program of funds. (*Auerbach v. Board of Supervisors* (1999) 71 C.A.4th 1427, 1437, 84 C.R.2d 592 [county auditor's practice of transferring money from county trust or agency funds to cover cash flow deficits in county general fund did not violate *Govt.C. 53724(e)*; plaintiffs did not show that transferred money was not ultimately used for purpose for which tax was imposed]; see *White v. California* (2001) 88 C.A.4th 298, 307, 105 C.R.2d 714 [allocating to county general fund tax revenue that had previously been allocated to county's local transportation fund, flood control district and parks fund, and county redevelopment agency did not violate *Govt.C. 53724(e)*; taxes that generated revenue were general rather than special]; *San Francisco v. Flying Dutchman Park* (2004) 122 C.A.4th 74, 89, 18 C.R.3d 532 [city's parking tax, which allocated certain percentage of revenue to senior citizens programs, violated Cal. Const., Art. XIII A, §4, because it was "special tax" that had not received approval of two-thirds of electorate; however, by invoking savings clause in tax ordinance, city could collect tax and place proceeds in general fund].)

An action challenging a special tax levied by a local agency on a per parcel basis must be commenced within 3 years. (*C.C.P. 338(m)*.)

SUPPLEMENT: [This section is current through the latest supplement]

The two-thirds vote requirement applies whenever a local government imposes, extends, or *increases* a special tax. (Cal. Const., Art. XIII C, §2(d).) A special tax is increased when a local agency's decision revises the methodology by which the tax is calculated, if that revision results in an increased amount being levied on a person or parcel. (*Govt.C. 53750(h)(1)(B)*; see *AB Cellular LA, LLC v. Los Angeles* (2007) 150 C.A.4th 747, 760, 59 C.R.3d 295 [city impermissibly increased cell phone tax when it instructed cell phone carriers to include all cell phone calls, not just those that originated or terminated in city, in tax base; instruction implemented revised methodology for calculating tax]; 28 A.L.R.6th 439 [validity of supermajority voting requirements].)



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aa. Levies That Qualify as Special Taxes.

9 Witkin Sum. Cal. Law Tax § 134

[§ 134] Levies That Qualify as Special Taxes.

In *Santa Clara County Local Trans. Authority v. Guardino* (1995) 11 C.4th 220, 45 C.R.2d 207, 902 P.2d 225, a local agency proposed a sales tax to fund certain transportation projects, and the tax was approved by a majority but less than two-thirds of the voters. The agency sought mandamus in the Court of Appeal to validate the tax, contending that the tax does not violate the two-thirds voter approval requirement of either *Govt.C. 53722* or Cal. Const., Art. XIII A, §4 (supra, §133). The Court of Appeal held the tax invalid under §4. *Held*, affirmed on other grounds; the tax is invalid under *Govt.C. 53722*.

(a) *Govt.C. 53722 applies here.*

(1) The proposed sales tax is a *special tax* under *Govt.C. 53722*. It would be imposed for the specific purpose of funding local transportation and maintenance needs and the proceeds would be allotted to the construction, improvement, and operation of local transportation facilities. (11 C.4th 232.)

(2) The agency is a *district* for purposes of the statute, even though it is not authorized to levy a property tax. Proposition 62 applies to any "district," not just to a "special district," and it defines a district as "an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries." The proposition was drafted after the California Supreme Court had construed the narrower term "special district," used in Proposition 13, to mean only districts authorized to levy property tax. The drafters of Proposition 62 chose a broader definition. (11 C.4th 233.)

(b) *Govt.C. 53722 is constitutional.*

(1) The voter approval requirement of the statute is not a referendum, and therefore, does not violate the constitutional prohibition against subjecting tax statutes to a referendum or the constitutional declaration that a referendum needs only a simply majority to pass. (11 C.4th 239.)

First, voter approval under *Govt.C. 53722* is a condition precedent to enactment of a *proposed* statute, whereas a referendum may be invoked only after a statute has been enacted. Furthermore, a statute subject to *Govt.C. 53722* does not become law until the legislative body submits it to the voters and they approve it, whereas a statute subject to referendum automatically becomes law unless the voters take the initiative and petition to disapprove it. (11 C.4th 240.)

Second, the policy underlying the constitutional prohibition against referendums on tax matters does not apply here. In planning and administering a budget, a legislative body must rely on the receipt of tax revenues from its enacted measures and cannot have the viability of those measures continually placed in doubt by the possibility of a referendum. However, because the legislative body knows about a voter approval requirement in advance, it is aware that it lacks the power to impose a particular tax until voter approval has been obtained, and thus it will not include the anticipated revenue in its budget prematurely. (11 C.4th 245.)

Third, the Constitution authorizes the Legislature to grant taxing power to local governments and to prescribe the terms and conditions under which that power may be exercised. (11 C.4th 248.) The voter approval requirement is simply a condition on the exercise of local taxing power (11 C.4th 250, 252), and the fact that the electorate by initiative, and not the Legislature itself, imposed the condition does not make it invalid. By approving Proposition 62, the electorate adopted a statute that the Legislature itself could have enacted. *Govt.C. 53722* is therefore within the scope of the initiative power. (11 C.4th 253.)

(2) The voter approval requirement of the statute does not deny proponents of special taxes equal protection of the law. (11 C.4th 254.) In *Gordon v. Lance* (1971) 403 U.S. 1, 91 S.Ct. 1889, 29 L.Ed.2d 273, 7 Summary (10th), *Constitutional Law*, §308, the United States Supreme Court approved a 60% vote requirement in bond elections, holding that the equal protection guaranty is not violated by provisions requiring a supermajority so long as they do not discriminate against or authorize discrimination against any identifiable class. That holding was not limited to bond elections, but applies to tax elections as well. (11 C.4th 257, 258, citing *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22 C.3d 208, 149 C.R. 239, 583 P.2d 1281, *infra*, §146.) Although a provision requiring unanimity or giving a veto power to a very small group might be unconstitutional, a group composed of one-third plus one of those voting (the size of the group that can defeat a tax under *Govt.C. 53722*) is not a small group. (11 C.4th 259.)

Concerned about the decision's possible "devastating effect on local district financing of long-awaited projects and improvements," two justices dissented. They argued that *Govt.C. 53722* violates the policy, if not the letter, of the constitutional prohibition against tax referenda. (11 C.4th 262.) (See *Pub.Util.C. 799*, *infra*, §322 [clarifying, in wake of *Guardino*, responsibilities of public utilities to collect taxes imposed on their customers by local jurisdictions]; *Hoogasian Flowers v. State Bd. of Equalization* (1994) 23 C.A.4th 1264, 1284, 28 C.R.2d 686, *infra*, §139 [sales tax imposed by educational financing authority was "special tax" because it was levied to fund education, a specific government program]; 24 *Pepperdine L. Rev.* 1096 [*Guardino*].)

SUPPLEMENT: [This section is current through the latest supplement]



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bb. Levies That Do Not Qualify as Special Taxes.

9 Witkin Sum. Cal. Law Tax § 135

[§ 135] Levies That Do Not Qualify as Special Taxes.

(1) *Valid Levies*. As used in Cal. Const., Art. XIII A, §4, "special taxes" means taxes levied for a specific purpose rather than a levy placed in the general fund and used for general governmental purposes. (*San Francisco v. Farrell* (1982) 32 C.3d 47, 57, 184 C.R. 713, 648 P.2d 935 [increase in municipal payroll and gross receipts tax did not require two-thirds approval of voters]; see *Terminal Plaza Corp. v. San Francisco* (1986) 177 C.A.3d 892, 907, 223 C.R. 379 [ordinance conditioning permit for demolition or conversion of residential hotels on payment of fees to assist dislocated residents did not impose "special tax"; though imposed for special purpose, fees were not compulsory in nature, were not imposed on land, and were limited to reasonable cost of housing replacement; hence ordinance was not revenue measure]; on assessments that do not qualify as special taxes, see *infra*, §140.)

In *Fielder v. Los Angeles* (1993) 14 C.A.4th 137, 17 C.R.2d 630, plaintiff homeowners challenged defendant city's documentary transfer tax imposed when they sold their homes, contending that the tax violated Cal. Const., Art. XIII A, §4, and was preempted by Govt.C. 53725(a) (*supra*, §131). *Held*, the tax was valid.

(a) The exceptions in Cal. Const., Art. XIII A, §4, for ad valorem property taxes and transaction and sales tax on the sale of real property prohibit those taxes that are special taxes. Thus, the enactment or increase of a general transfer tax is not prohibited. (14 C.A.4th 142, following *Cohn v. Oakland* (1990) 223 C.A.3d 261, 272 C.R. 714.)

(b) Govt.C. 53725(a) does not preempt the ordinance imposing the tax. Defendant, a charter city, has sovereign power over municipal affairs, and the transfer tax is not a matter of statewide concern. (14 C.A.4th 143.) (See *Fisher v. Alameda* (1993) 20 C.A.4th 120, 124, 130, 24 C.R.2d 384 [as general tax, city's real estate transfer tax did not violate Cal. Const., Art. XIII A, §4; tax did conflict with Govt.C. 53725(a), but subject of statute is not of statewide concern and thus conflicting tax was municipal affair; citing *Fielder*].)

In *Neecke v. Mill Valley* (1995) 39 C.A.4th 946, 46 C.R.2d 266, plaintiff property owner sought a refund of property taxes paid under defendant city's ordinance, which levied a "municipal services tax" on the privilege of occupying real property in the city. The tax was collected by the county tax collector in conjunction with real property taxes, and the

proceeds were paid into the city's general fund to be used for "any and all municipal purposes." The tax had been approved by a bare majority of voters. The trial judge held that the tax was a special tax, requiring two-thirds approval under Cal. Const., Art. XIII A, §4. *Held*, reversed.

(a) Independent review is the appropriate standard to be applied to the question whether the tax is a special tax. The application of a tax statute to essentially undisputed facts presents a question of law and the court is not bound by the findings of the trial judge. (39 C.A.4th 953.)

(b) The tax is not a special tax. Under *San Francisco v. Farrell*, *supra*, a tax levied by a general purpose agency and placed in that agency's general fund for general municipal purposes is not a special tax. (39 C.A.4th 954.) *Rider v. San Diego* (1991) 1 C.4th 1, 2 C.R.2d 490, 820 P.2d 1000, *infra*, §139, did not overrule *Farrell*, but simply refused to extend its rationale to limited purpose agencies. (39 C.A.4th 955, 956.) *Farrell* remains viable and applies here. (39 C.A.4th 959.)

Other cases that validated levies on the grounds that they were not special taxes and did not require two-thirds voter approval include the following:

Alamo Rent-A-Car v. Board of Supervisors (1990) 221 C.A.3d 198, 205, 272 C.R. 19 [airport maintenance fee imposed on off-premises rental car companies and based on gross receipts was not "special tax" requiring voter approval; fee was neither compulsory nor imposed on district within meaning of Cal. Const., Art. XIII A, §4].

Garrick Dev. Co. v. Hayward Unified School Dist. (1992) 3 C.A.4th 320, 329, 4 C.R.2d 897 [school facilities fee imposed on new residential development did not exceed reasonable cost of new school construction and thus was not "special tax" requiring voter approval].

Kern County Farm Bureau v. Kern (1993) 19 C.A.4th 1416, 1425, 23 C.R.2d 910 [landfill charges assessed on parcels according to land use of parcel constituted valid service or user fees, not "special taxes" subject to two-thirds voter approval requirement; following *Russ Bldg. Partnership v. San Francisco* (1987) 199 C.A.3d 1496, 246 C.R. 21, *infra*, §140].

Brydon v. East Bay Mun. Util. Dist. (1994) 24 C.A.4th 178, 190, 29 C.R.2d 128 [inclining block rate structure adopted by municipal utility district in response to state-mandated water conservation requirements was not "special tax" requiring two-thirds voter approval].

(2) *Invalid Levies*. In *California Bldg. Industry Assn. v. Governing Bd. of the Newhall School Dist. of Los Angeles* (1988) 206 C.A.3d 212, 253 C.R. 497, defendant school districts imposed "development taxes" to finance the construction of new schools. The taxes were approved by a two-thirds vote of qualified electors and were levied on persons receiving residential building permits within the districts. *Held*, mandamus issued to prevent imposition of the taxes.

(a) Cal. Const., Art. XIII A, §4, is not self-executing, but requires enabling legislation, i.e., it is a restriction on the imposition of taxes, not a grant of taxing power. Thus, because defendant districts lacked statutory authority to impose special taxes, the taxes at issue are invalid. (206 C.A.3d 232, 233.)

(b) The exactions here are not compulsory in nature, but are triggered by the voluntary decision to develop residential property. They bear the traditional characteristics of "development fees" under former Govt.C. 53080 rather than "special taxes" under Cal. Const., Art. XIII A, §4. As development fees, they are subject to a statutory maximum under Govt.C. 65995, which cannot be circumvented by calling them "special taxes." (206 C.A.3d 235, 236.)

(c) Cal. Const., Art. XIII A, §4, provides for the imposition of special taxes "on such district." This language precludes taxes which, like the development fees here, are imposed by the electorate on others and not directly or indirectly on themselves. (206 C.A.3d 237.)

In *Grupe Dev. Co. v. Superior Court* (1993) 4 C.4th 911, 16 C.R.2d 226, 844 P.2d 545, plaintiff developer sought a refund of a special tax imposed by a school district on all new residential construction in the district to fund new school construction. Plaintiff asserted that the measure imposing the tax was preempted by Govt.C. 65995, which authorizes school districts to impose a fee on new residential developments for the construction of school facilities and places a cap on the amount of this fee. The trial court entered an order against the developer, which the Court of Appeal vacated. *Held*, affirmed. The "special tax" was preempted by Govt.C. 65995.

(a) In enacting Govt.C. 65995, the Legislature intended to impose statewide uniformity on the process of financing new school construction and to authorize school districts to impose development charges themselves rather than depending on local governments to do so for them. It would upset this intent to allow school districts to collect special taxes in addition to collecting the maximum amount under the statute. (4 C.4th 919.)

(b) Govt.C. 65995 expressly prohibits levying a "fee, charge, dedication, or other requirement," other than the one authorized by the statute, against a development project for school construction. A "special tax" is either a "charge," or an "other requirement" for issuance of a building permit within the meaning of the statute. (4 C.4th 920.)

(c) The statute specifically allows the imposition of special taxes levied under the Mello-Roos Community Facilities Act of 1982 (Govt.C. 53311 et seq.), thus indicating that all other special taxes are preempted. (4 C.4th 921.) (See 21 *Pepperdine L. Rev.* 1502 [*Grupe*].)

SUPPLEMENT: [This section is current through the latest supplement]



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9 Witkin Sum. Cal. Law Tax § 136

[§ 136] Definition of Special Taxes After Proposition 218.

(1) *Definition of "Special Taxes" in Proposition 218.* For purposes of imposing limitations on the taxing authority of local governments, Proposition 218 (supra, §131) defines "special tax" as any tax "imposed for specific purposes," including one the proceeds of which are placed into a general fund. (Cal. Const., Art. XIII C, §1(d).) General taxes are any taxes "imposed for general governmental purposes." (Cal. Const., Art. XIII C, §1(a).) All taxes imposed by any local government, which means a county, city, charter city, special district, or other local or regional governmental entity (Cal. Const., Art. XIII C, §1(b)), are either general or special taxes. (Cal. Const., Art. XIII C, §2(a).) Two-thirds approval by the electorate is required for the imposition, extension, or increase of a special tax. (Cal. Const., Art. XIII C, §2(d); see supra, §133.)

(2) *Cases Defining "Special Taxes" After Proposition 218.* The following are among the cases, after the passage of Proposition 218, that have discussed whether a particular levy or tax is a special tax:

Coleman v. Santa Clara (1998) 64 C.A.4th 662, 669, 75 C.R.2d 516 [sales tax measure approved by simple majority created general tax, "indistinguishable" from tax in *Neecke v. Mill Valley* (1995) 39 C.A.4th 946, 46 C.R.2d 266, supra, §135; existence of second measure, which expressed voters' preference for how new tax revenue should be spent, did not render sales tax measure a special tax].

Townzen v. El Dorado (1998) 64 C.A.4th 1350, 1359, 76 C.R.2d 281 [fee imposed by Govt.C. 26826(a) on defendants for filing first responsive pleading is permissible user fee, not special tax].

Isaac v. Los Angeles (1998) 66 C.A.4th 586, 595, 77 C.R.2d 752 [lien imposed by city on master-metered apartment buildings for collection of past due and estimated future bills for water and electric power was not special tax; there was no evidence that funds collected were earmarked for special purpose].

Howard Jarvis Taxpayers Assn. v. San Diego (1999) 72 C.A.4th 230, 238, 84 C.R.2d 804 [city's business improvement district assessment imposed on businesses was not special tax under Proposition 218].

Howard Jarvis Taxpayers Assn. v. Roseville (2003) 106 C.A.4th 1178, 1185, 132 C.R.2d 1 [measure ratifying existing tax, but proposing significant changes, such as placing tax beyond city council's control by incorporating it into city charter and restricting use of revenue generated to specific purposes, was special tax].

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Cases Defining "Special Taxes" After Proposition 218.*

Townzen case: Govt.C. 26826 was renumbered Govt.C. 70612 in 2005.

See *Bay Area Cellular Tel. Co. v. Union City* (2008) 162 C.A.4th 686, 695, 75 C.R.3d 839 [fee imposed on telephone lines by city to fund 911 emergency communication system was special tax under Cal. Const., Art. XIII C, §1(d); fee inured to benefit of public as whole, and fee was charged for access to system, not for use of it].



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CHAPTER XI - Taxation

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IX. PROPOSITION 13 AND SUBSEQUENT LIMITATIONS ON TAXING POWER
B. Restrictions on Power To Tax Real Property.
4. Restrictions on Local Taxes.
d. Majority Approval for Local General Taxes.
1. Rule.

9 Witkin Sum. Cal. Law Tax § 137

[§ 137] Rule.

(1) *Development of Rule.* Govt.C. 53723 prohibits a local government from imposing a general tax unless and until the tax is submitted to the electorate for approval by majority vote. Govt.C. 53724 sets forth the procedure by which this ratification process must occur. (See *infra*, §138.) Govt.C. 53728 authorizes the withholding of a local government's share of property taxes as a penalty for failure to comply with the voter approval requirement. These three provisions were declared unconstitutional in *Woodlake v. Logan* (1991) 230 C.A.3d 1058, 1064, 1069, 282 C.R. 27, on the ground that they imposed an impermissible referendum requirement on the taxing power of local government. However, the California Supreme Court disapproved *Woodlake's* reasoning and result in *Santa Clara County Local Trans. Authority v. Guardino* (1995) 11 C.4th 220, 45 C.R.2d 207, 902 P.2d 225, *supra*, §134. Subsequently, Proposition 218 placed the requirement that general taxes be approved by a majority vote of the electorate into the Constitution (see Cal. Const., Art. XIII C, §2(b)) and made clear that it also applies to taxes imposed by charter cities (see Cal. Const., Art. XIII C, §1(b)). (See *Howard Jarvis Taxpayers Assn. v. San Diego* (2004) 120 C.A.4th 374, 390, 15 C.R.3d 457 [municipal proposition requiring supermajority two-thirds vote for approval of new general tax conflicted with Cal. Const., Art. XIII C, §2(b) and was therefore invalid].)

The interrelation of Proposition 62 (which includes Govt.C. 53723 et seq.), Proposition 218, and *Guardino* was discussed in *McBrearty v. Brawley* (1997) 59 C.A.4th 1441, 69 C.R.2d 862. Defendant city, without voter approval, passed an ordinance in 1991 establishing a general utility tax payable into the general fund. In 1996, plaintiff filed a petition for a writ of mandamus, alleging that defendant was required by Proposition 62 to submit the tax to a public vote, and seeking to enjoin defendant from collecting the tax pending the vote. The trial court ordered defendant to submit the tax to a vote. *Held*, affirmed. Defendant must either submit the tax to a vote or discontinue collecting it.

(a) *Plaintiff's action is not barred by the statute of limitations.* A 3-year statute of limitations applies here. Plaintiff's claim did not begin to run in 1991, when defendant adopted the tax ordinance, but rather in 1995, when *Guardino* validated the provisions of Proposition 62 and thus established defendant's duty to conduct an election. (59 C.A.4th 1447.)

(b) *Proposition 62 is constitutional.* Defendant contends that the voter approval requirement is neither an initiative

nor a referendum and thus is an unconstitutional mechanism for involving the electorate in the legislative process. However, according to *Guardino*, the voter approval required under *Govt.C. 53723* is not an exercise of legislative power, but is instead a permissible condition placed on the exercise of local taxing authority. (59 C.A.4th 1448.)

(c) *Guardino applies retroactively to require a vote on the tax here.* Although requiring defendant to conduct an election may ultimately have an impact on its ability to collect the utility tax and thus on its financial condition, "this was precisely what was intended by the electorate in passing Proposition 62." (59 C.A.4th 1449.) Defendant has not established that conditioning the *future* collectibility of the utility tax on voter approval will create substantial inequitable results or cause undue financial hardship apart from those the challenged tax was intended to alleviate. (59 C.A.4th 1449.)

(d) *Proposition 218 does not directly apply to the utility tax here.* Defendant's utility tax was not "imposed, extended or increased" during the window period (January 1, 1995 to November 5, 1996) created by Proposition 218. Simply collecting the tax does not constitute extending or increasing it, and to so hold would require a local government to annually resubmit taxes previously approved by the voters, even in the absence of any change in the amount or duration of those taxes, an "absurd" result that the voters could not have intended. On the other hand, the inclusion of a window period in Proposition 218 was not intended to protect taxes adopted prior to that time from challenge. (59 C.A.4th 1450.) (See *Howard Jarvis Taxpayers Assn. v. La Habra* (2001) 25 C.4th 809, 815, 107 C.R.2d 369, 23 P.3d 601, 3 Cal. Proc. (4th), Actions, Supp., §410 [disapproving holding in *McBrearty* that 3-year statute of limitations for challenge to general tax was tolled until *Guardino* validated Proposition 62; nevertheless, city's imposition and collection of challenged tax are ongoing violations and limitations period begins anew with each collection].)

(2) *Extensions and Increases.* Extensions and increases in general taxes must be approved by majority vote as well. Except in emergencies, the election must be held as part of a regularly scheduled general election for members of the governing body of the local government that is imposing the tax. (Cal. Const., Art. XIII C, §2(b); see *Howard Jarvis Taxpayers Assn. v. San Diego*, *supra* [municipal proposition requiring supermajority two-thirds vote for increase in existing general tax conflicted with Cal. Const., Art. XIII C, §2(b) and was therefore invalid].)

An ordinance or resolution presented for voter approval under Cal. Const., Art. XIII C, may state a range of rates or amounts of tax, and if the ordinance or resolution is approved, the governing body may impose the tax within that range without resubmitting increases to the voters for approval. (*Govt.C. 53739(a)*.) Similarly, if the voters approve a formula for inflation adjustment, the governing body may make the adjustment without another vote. (*Govt.C. 53739(b)*.) (On restrictions imposed by Proposition 218 on special assessments and other fees and charges, see *infra*, §141 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Development of Rule.*

Penalty for failure to comply with rule: See *Barratt Amer. v. Rancho Cucamonga* (2005) 37 C.4th 685, 700, 37 C.R.3d 149, 124 P.3d 719, 12 Summary (10th), *Real Property*, Supp., §818 [remedy under *Govt.C. 53728* did not apply to developer's claim that city's building permit and plan review fees were excessive; excess fees were not unauthorized special taxes subject to dollar-for-dollar penalty provided by *Govt.C. 53728*, and *Govt.C. 66016* provided exclusive remedy for overcharges]. *Howard Jarvis Taxpayers Assn. case:*

Cross-Reference: 3 Cal. Proc. (5th), Actions, §437.



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B. Restrictions on Power To Tax Real Property.

4. Restrictions on Local Taxes.

d. Majority Approval for Local General Taxes.

2. Procedure.

9 Witkin Sum. Cal. Law Tax § 138

[§ 138] Procedure.

A tax subject to the vote requirement prescribed by *Govt.C. 53723* cannot be presented at an election unless the ordinance or resolution proposing the tax has been approved by a two-thirds vote of all members of the legislative body of the local government or district. (*Govt.C. 53724(b)*.) This rule came into conflict with a chartered city's procedures in *Traders Sports v. San Leandro* (2001) 93 C.A.4th 37, 112 C.R.2d 677. Defendant city imposed a 3% gross receipts tax on businesses that sell concealable firearms and ammunition for concealable firearms. Before imposing the tax, defendant's council had voted, by a simple majority of four to three, to submit the tax to the voters, a majority of whom subsequently voted to impose the tax. Plaintiffs sued, alleging that although defendant's procedure of placing the measure before the voters was prescribed by defendant's charter and municipal code, it violated *Govt.C. 53724(b)*. The trial court sustained defendant's demurrer. *Held*, affirmed. Insofar as *Govt.C. 53724(b)* requires a two-thirds vote of the governing body before a tax measure can be put on the ballot, it cannot override inconsistent provisions of the defendant's charter and municipal code.

(a) The California Constitution reserves to charter cities the right to adopt and enforce ordinances that conflict with general state laws, provided the subject of the regulation is a "municipal affair" rather than one of "statewide concern." (93 C.A.4th 45.) The procedure for putting a municipal tax measure on the ballot is more properly characterized as a municipal affair than as a matter of statewide concern. The conduct of city elections is one of the few core areas of autonomy for home-rule cities specifically enumerated by the *California Constitution*. (93 C.A.4th 46.) "A statute purporting to define the number of votes required for putting a local tax measure on the ballot contravenes this explicit constitutional grant of authority to charter cities, such as [defendant], over the conduct of its municipal elections." (93 C.A.4th 46.) Even if the procedure for putting a local measure on the ballot is not a core area of municipal concern under the California Constitution, it lies squarely within four areas that have long been considered municipal affairs: (1) the procedures for conducting municipal elections; (2) the procedures for enacting municipal ordinances; (3) the levy of municipal taxes; and (4) the local exercise of the initiative power. (93 C.A.4th 47.)

(b) Although the desire to increase voters' control of local taxation may qualify as a matter of statewide concern, "we emphasize that the voters in [defendant city] were given the right to vote on the tax increase." (93 C.A.4th 48.) The two-thirds vote requirement in *Govt.C. 53724* merely implicates a procedural step in the local legislative process before

the tax is submitted to the voters. Thus, the application of the two-thirds requirement is not narrowly calculated to address the purpose of Proposition 62 (voter control over the imposition of new taxes), while at the same time it invades the right of a charter city to conduct local elections. (93 C.A.4th 48.)

(c) *Govt.C. 53720(a)* defines "local governments," for purposes of implementing Proposition 62, to include chartered cities. Nevertheless, the ballot analyses for Proposition 62 clearly informed the voters that its provisions could not constitutionally be applied to charter cities. (93 C.A.4th 48.) "We are entitled to presume that these ballot materials reflect the voters' intent in enacting Proposition 62." (93 C.A.4th 49.) Moreover, although Proposition 218 does apply to charter cities, nothing in Proposition 218 requires a two-thirds vote of a local legislative body to place a general or a special tax on the ballot for voter approval. (93 C.A.4th 49, footnote 3.)

SUPPLEMENT: [This section is current through the latest supplement]



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B. Restrictions on Power To Tax Real Property.

4. Restrictions on Local Taxes.

e. Applicability to Special Districts.

9 Witkin Sum. Cal. Law Tax § 139

[§ 139] Applicability to Special Districts.

(1) *Districts That Are Not Special Districts.* Special districts may not impose local ad valorem real property taxes, or sales or transaction taxes on the sale of real property. (Cal. Const., Art. XIII A, §4, supra, §131.) In *Los Angeles County Trans. Com. v. Richmond* (1982) 31 C.3d 197, 182 C.R. 324, 643 P.2d 941, a county transportation commission imposed a one-half percent local sales tax to be used for transit purposes. The tax was approved by a majority but less than two-thirds of county voters, and the commission's director refused to implement it. *Held*, mandamus issued to compel implementation.

(a) "The fact 'special districts' are prohibited, even with the consent of two-thirds of the voters, from levying 'ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property' implies that the 'special districts' referred to are those which may levy a tax on real property." (31 C.3d 205.)

(b) Because the transportation commission had no authority to levy property tax, it was not a special district, and the sales tax at issue was not subject to the two-thirds limitation. (31 C.3d 201, 202.) (See *Huntington Park Redevelopment Agency v. Martin* (1985) 38 C.3d 100, 105, 211 C.R. 133, 695 P.2d 220 [redevelopment agency, which may share in city's sales and use tax but is not authorized to levy property tax, is not special district for purposes of two-thirds requirement]; *Brydon v. East Bay Mun. Util. Dist.* (1994) 24 C.A.4th 178, 190, 29 C.R.2d 128 [municipal utility district that was formed before passage of Proposition 13 and that was not empowered to levy real property taxes was not "special district"; following *Richmond* and *Rider v. San Diego* (1991) 1 C.4th 1, 2 C.R.2d 490, 820 P.2d 1000]; 17 Loyola L.A. L. Rev. 937 [Richmond].)

(2) *Districts That Are Special Districts.* School districts are special districts for purposes of Cal. Const., Art. XIII A, §4, and the enactment of Art. XIII A repealed by implication Educ.C. 42244, authorizing school districts to impose property taxes by means of tax override elections. (*Arvin Union School Dist. v. Ross* (1985) 176 C.A.3d 189, 199, 221 C.R. 720.) Library districts are also special districts for purposes of Cal. Const., Art. XIII A, §4. (*Altadena Library Dist. v. Bloodgood* (1987) 192 C.A.3d 585, 589, 237 C.R. 649.)

In *Rider v. San Diego*, supra, a local agency created by statute was authorized to impose an additional one-half percent sales tax in San Diego County to construct justice facilities. The agency had no other taxing power. As required

by the statute, the tax was approved by a simple majority of the county voters. Plaintiff taxpayers contended that the tax violated the two-thirds requirement of Cal. Const., Art. XIII A, §4. *Held*, the tax was invalid for lack of a two-thirds vote.

(a) *Special district*. The agency is a special district despite its lack of power to levy a tax on real property. Unlike the district in *Richmond*, supra, the district here was created after the passage of Proposition 13 for the purpose of circumventing the two-thirds requirement. To extend *Richmond* to districts created after Proposition 13 would nullify the reference to "special districts" in Cal. Const., Art. XIII A, §4 and frustrate the intent of the voters who adopted Proposition 13. Therefore, for purposes of Cal. Const., Art. XIII A, §4, a "special district" includes "any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of Proposition 13." (1 C.4th 11.)

(b) *Presumption in future cases that district is "special district."* While there is strong evidence here that the agency was created to circumvent Proposition 13, marshalling such evidence in future cases may be difficult. Thus, courts may infer that intent where a new agency is *essentially controlled* by cities or counties that would otherwise have to satisfy the two-thirds requirement. Relevant considerations include substantial municipal control of the agency's operation or funds, ownership or control of the agency's property or facilities, coterminous physical boundaries, overlapping governing boards, municipal involvement in forming the agency, and functions customarily performed by municipalities and financed through property tax. (1 C.4th 11, 12.)

(c) *Special tax*. The tax here is a special tax even though collected for the general purposes of the agency; revenues are being collected for the limited purpose of constructing and operating the county's justice facilities. The suggestion in *San Francisco v. Farrell* (1982) 32 C.3d 47, 184 C.R. 713, 648 P.2d 935, supra, §135, that a tax is general if deposited in the general fund for general expenditures does not extend to the limited purpose agencies such as the one here. (1 C.4th 14.) Had the county adopted the tax, earmarking the revenues for the limited purpose of financing justice facilities, the tax would have been a special tax under *Farrell*; it would be anomalous if the special tax of one agency could so readily become the general tax of another. (1 C.4th 15.)

Two justices dissented, arguing that the majority effectively overruled the *Richmond* and *Farrell* decisions. (See 19 *Pepperdine L. Rev.* 1596 [Rider]; 29 *San Diego L. Rev.* 829 [same]; on refund procedure, see *Rider v. San Diego* (1992) 11 C.A.4th 1410, 1417, 14 C.R.2d 885 [trial court lacks power to authorize redistribution of invalidly collected supplemental sales tax by way of temporary sales tax offset].)

In *Monterey Peninsula Taxpayers Assn. v. Monterey* (1992) 8 C.A.4th 1520, 11 C.R.2d 188, defendant county created a local improvement agency, and the agency's sales tax ordinance was approved by a simple majority. Plaintiff taxpayers contended that the tax violated the two-thirds requirement of Cal. Const., Art. XIII A, §4. *Held*, the tax was invalid for lack of a two-thirds vote.

(a) *Special district*. Under the "essential control" test articulated in *Rider v. San Diego*, supra, the agency is essentially controlled by the county and, thus, is a special district for purposes of Cal. Const., Art. XIII A, §4. The agency has no power over its own identity and destiny. It is the county's surrogate tax collector and "exists solely to do the supervisors' bidding." (8 C.A.4th 1533.)

(b) *Special tax*. The tax is a special tax even though it is designed to benefit numerous improvements. The agency lacks broad discretion and cannot determine what projects to complete or the level of funding. "A single tax with certain amounts earmarked for specific projects is categorically different from revenues that are deposited in the general fund and available for expenditure for any and all governmental purposes." (8 C.A.4th 1535.)

(c) *Rider retroactive*. The *Rider* decision may be retroactively applied to the agency here. It did not overrule the *Richmond* decision, supra, or reverse a well-settled rule of law, but merely answered a question left open in *Richmond*. (8 C.A.4th 1537.) Defendant's belief that the agency was not a special district "was based more on hopeful legal

speculation than a settled and clearly applicable judicial definition." (8 C.A.4th 1539.) In addition, defendant has not substantially and materially relied on the tax, and invalidation will not disrupt major construction in progress or interfere with contractual obligations. (8 C.A.4th 1543.)

In *Hoogasian Flowers v. State Bd. of Equalization* (1994) 23 C.A.4th 1264, 28 C.R.2d 686, retailers sought a refund of a tax imposed by an educational financing authority, contending that imposition of the tax was subject to the supermajority voter approval requirements of Cal. Const., Art. XIII A, §4. *Held*, the tax was invalid for lack of a two-thirds vote.

(a) *Rider retroactive*. The "essential control" test articulated in *Rider* may be applied retroactively to this case. No hardship was shown that would preclude retroactive application. (23 C.A.4th 1281, following *Monterey Peninsula Taxpayers Assn. v. Monterey, supra*.)

(b) *School districts, and agencies controlled by them, are "special districts."* The educational financing authority was a "special district" for purposes of Proposition 13 because it was essentially controlled by a school district and a community college district. To trigger the two-thirds vote requirement, it is not necessary that an agency be controlled by a city or county, only that it be controlled by an entity subject to that requirement. (23 C.A.4th 1273.) School districts are "special districts" subject to the requirement. (23 C.A.4th 1279.) (See *Howard Jarvis Taxpayers' Assn. v. State Bd. of Equalization* (1993) 20 C.A.4th 1598, 1604, 25 C.R.2d 330 [regional justice facilities commission and regional justice facilities financing agencies were special districts because they were created to raise revenue for construction and operation of jails and courthouses, activities that are normally performed by municipalities and financed with property taxes; applying *Rider* criteria for "essential control"].)

(3) *Legislative Response to Rider Case*. In response to *Rider*, the 1992 Legislature added *Pub.Util.C. 99550*, effectively rendering *Rider* prospective only with respect to transit taxes. *Richmond*, not *Rider*, applies to any action involving the validity of a retail transactions and use tax if the ordinance imposing the tax was adopted by a transportation agency before December 19, 1991, the date of the *Rider* decision. (*Pub.Util.C. 99550*; see 24 *Pacific L. J.* 1033; for legislative findings, see Stats. 1992, Chap. 1233, §1.) The 1993 Legislature repealed the statute creating the local agency that imposed the tax in *Rider* and added *Rev.C. 7275 et seq.*, authorizing the refund of transaction and use taxes later determined to be unconstitutional. (See *infra*, §321.)

(4) *Definition of "Special District" in Proposition 218*. For purposes of imposing limitations on the taxing authority of local governments, Proposition 218 (*supra*, §131) defines a "special district" as an agency of the state, formed under general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries. Special districts include school districts and redevelopment agencies. (Cal. Const., Art. XIII C, §1(c).) Special purpose districts and agencies, including school districts, have no power to levy general taxes. (Cal. Const., Art. XIII C, §2(a).)

SUPPLEMENT: [This section is current through the latest supplement]



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CHAPTER XI - Taxation

Witkin Summary of California Law IX. PROPOSITION 13 AND SUBSEQUENT LIMITATIONS ON TAXING POWER B. Restrictions on Power To Tax Real Property. 5. Restrictions on Assessments. a. Proposition 13 Is Not Applicable.

9 Witkin Sum. Cal. Law Tax § 140

[§ 140] Proposition 13 Is Not Applicable.

(1) *Special Assessments. Fresno v. Malmstrom* (1979) 94 C.A.3d 974, 156 C.R. 777, held that assessments under the Improvement Act of 1911 (Sts. & H.C. 5000 et seq.) and the Municipal Improvement Act of 1913 (Sts. & H.C. 10000 et seq.) were not subject to either the one percent limitation of Cal. Const., Art. XIII A, §1(a) (supra, §126) or the two-thirds vote requirements of Cal. Const., Art. XIII A, §4 (supra, §133).

(a) *Special assessments are not ad valorem taxes.* Article XIII A is addressed to ad valorem taxes on real property. (94 C.A.3d 980.) The fact that existing special assessments are exempted by Cal. Const., Art. XIII A, §1(b) does not require the conclusion that they are inferentially covered under Cal. Const., Art. XIII A, §1(a). This construction would produce the illogical and impractical result that local governments could not fund construction of major improvements for particular areas. (94 C.A.3d 981.)

(b) *Special assessments are not special taxes.* "Special taxes" are those earmarked for special purposes and not placed in the general fund. Special assessments, in contrast, are charged for benefits provided particular property from local improvements, and may not exceed the value of the benefits. Hence, the local election requirement of Cal. Const., Art. XIII A, §4 is inapplicable. (94 C.A.3d 983, 986.)

In *Solvang Mun. Imp. Dist. v. Board of Supervisors* (1980) 112 C.A.3d 545, 169 C.R. 391, the court examined incongruous provisions in Cal. Const., Art. XIII A, §1: Subdivision (a) provides that "any *ad valorem tax* on real property" must not exceed one percent of the full cash value, and subdivision (b) provides that the one percent limitation does not apply to "*ad valorem taxes or special assessments*" to pay interest and redemption charges on indebtedness approved by voters prior to the effective date of the section. (112 C.A.3d 550.) The opinion, stressing the basic distinction between ad valorem taxes and special assessments (112 C.A.3d 552; see supra, §5), concludes that the limitation does not apply to ad valorem taxes to pay prior voter-approved indebtedness. "Under this construction governmental entities which undertake local public improvements to benefit specified real property can finance such improvements by special assessments levied on the benefited property, without regard to the 1 percent limitation." (112 C.A.3d 557.) (See *American River Flood Control Dist. v. Sayre* (1982) 136 C.A.3d 347, 353, 186 C.R. 202 [following *Solvang*; ad valorem special assessment of flood control district and special benefit assessment by state water agencies are not subject to one percent limitation]; *City Council v. South* (1983) 146 C.A.3d 320, 330, 194 C.R. 110 [following

Fresno and Solvang; maintenance district assessment based on "estimated benefit" each parcel would receive was neither ad valorem tax nor special tax]; *J.W. Jones Cos. v. San Diego* (1984) 157 C.A.3d 745, 203 C.R. 580 [special assessment to pay for public improvements is not tax, and thus is not subject to the two-thirds vote requirement of Cal. Const., Art. XIII A, §4]; 16 U.S.F. L. Rev. 781 [police and fire service special assessments].)

In *Knox v. Orland* (1992) 4 C.4th 132, 14 C.R.2d 159, 841 P.2d 144, defendant city formed a special assessment district under the Landscaping and Lighting Act (Sts. & H.C. 22500 et seq.). The district levied an assessment on each dwelling unit in the district for the maintenance of five existing parks in the district. Plaintiff property owners challenged the assessment, contending that it was a special tax requiring a two-thirds vote under Cal. Const., Art. XIII A, §4. *Held*, the assessment was valid.

(a) A special assessment, like a special tax, is, in a sense, levied for a specific purpose, but a critical distinction between the two public financing mechanisms is that "a special assessment must confer a special benefit upon the property assessed beyond that conferred generally." A tax, on the other hand, is levied without reference to particular benefits to particular individuals or property. (4 C.4th 142.) Plaintiffs' argument that parks, by their nature, do not provide special benefits to property is unconvincing. California has a lengthy history of legislative and judicial recognition that parks, including the maintenance of existing parks, are proper subjects for special assessment. (4 C.4th 144.)

(b) While parks within the district may be used by persons from outside, residential owners within the district are "uniquely benefited by the proximity of these facilities to their properties." (4 C.4th 149.) The desirability of the assessed properties is enhanced by the presence and wide assortment of public recreational facilities. The record fails to establish that (1) the assessment is not proportional to the benefit bestowed, or that (2) no benefits accrue to the assessed property. In the absence of contradictory evidence, defendant's determination of benefit in the resolution approving the district must be deemed conclusive. (4 C.4th 149.) (See *Howard Jarvis Taxpayers Assn. v. Whittier Union High School Dist.* (1993) 15 C.A.4th 730, 737, 19 C.R.2d 109 [following *Knox*]; *Kern County Farm Bureau v. Kern* (1993) 19 C.A.4th 1416, 1425, 23 C.R.2d 910 [landfill charges assessed on parcels according to land use of parcel constituted valid special assessment not subject to two-thirds voter approval requirement; following *Knox*]; 22 *Pepperdine L. Rev.* 323 [*Knox*].)

A special assessment must provide a benefit to specific property that is financed through public credit. (*Isaac v. Los Angeles* (1998) 66 C.A.4th 586, 595, 77 C.R.2d 752 [lien imposed by city on master-metered apartment buildings for collection of past due and estimated future bills for water and electric power was not special assessment; no special benefit was conferred on properties through physical improvement to real property].)

(2) *Regulatory Fees*. Regulatory fees are distinguishable. Cal. Const., Art. XIII A, §4, does not apply to fees for land-use regulatory activities, such as processing subdivision, zoning, or other land-use applications, where the amount charged does not exceed the reasonable cost of the activities and the fees are not levied for unrelated revenue purposes. (*Mills v. Trinity* (1980) 108 C.A.3d 656, 663, 166 C.R. 674; see *Govt.C. 50076*; *Carlsbad Mun. Water Dist. v. QLC Corp.* (1992) 2 C.A.4th 479, 489, 3 C.R.2d 318 [water district resolution imposing fee on new development properly limited use of fees to pay for services generated by new development; *Bixel Associates v. Los Angeles* (1989) 216 C.A.3d 1208, 265 C.R. 347, distinguished]; *Ehrlich v. Culver City* (1993) 15 C.A.4th 1737, 1752, 19 C.R.2d 468 [fee on one developer to mitigate loss of recreational facilities caused by development was not special tax].)

The burden of proof that the fee does not exceed the reasonable cost of the service for which it is charged is on the local entity. (See *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 C.A.3d 227, 235, 211 C.R. 567 [water district failed to show that "facilities fee" payable on application for water connection did not exceed reasonable cost of providing hookup; fee was special tax]; *San Diego Gas & Elec. Co. v. San Diego County Air Pollution Control Dist.* (1988) 203 C.A.3d 1132, 1146, 250 C.R. 420 [air pollution control district's permit fee, apportioning indirect costs among permit holders on basis of emissions, did not exceed district's reasonable costs and was not special tax].) In *Bixel Associates v. Los Angeles*, *supra*, a municipal fire hydrant fee imposed on new

developments violated Cal. Const., Art. XIII A, §4. Defendant city failed to demonstrate (a) that the fee, based on the "average annual cost" of fire hydrant and water main replacement, bore a fair and reasonable relation to benefits accruing to new developments, or (b) that the fee was limited to installations and repairs required by new development. (216 C.A.3d 1219, following *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.*)

In *Russ Bldg. Partnership v. San Francisco* (1987) 199 C.A.3d 1496, 246 C.R. 21, a municipal transit impact development fee imposed on owners of commercial buildings a fixed dollar amount per square foot of new office space as a condition of occupancy. The fee was intended to offset increased costs incurred by the municipal transit system arising from new riders generated by the construction of new office space. *Held*, the fee was not a special tax subject to Cal. Const., Arts. XIII A and XIII B.

(a) *Article XIII A.* (1) A special tax levies a fee to replace revenue lost as a result of Art. XIII A. That is not the case here; the transit fee is directly tied to an increase in ridership that new construction might generate. (199 C.A.3d 1505.) (2) The fee is limited to the estimated costs of serving increased ridership, is not earmarked for general revenue purposes, and is not compulsory, but is exacted only if a developer voluntarily chooses to create new office space. Thus, it is not a special tax as defined in *Terminal Plaza Corp. v. San Francisco* (1986) 177 C.A.3d 892, 223 C.R. 379. (199 C.A.3d 1505.) (3) Under the reasoning of *Beaumont Investors*, *supra*, the fee is reasonable. "[T]he charge levied is directly related and limited to the cost of increased municipal transportation services engendered by the particular development." (199 C.A.3d 1506.)

(b) *Article XIII B.* The transit fee is not a "proceed of taxes" within the meaning of Art. XIII B, §8(c) (proceeds from "regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the costs reasonably borne ... in providing the regulation, product, or service"). Because the fee is not a special tax for purposes of Art. XIII A, it is not the type of revenue intended to be controlled by Art. XIII B. In addition, it is imposed as a condition of development, which is not a regulatory license, user fee, or charge. (199 C.A.3d 1507.) (On Cal. Const., Art. XIII B, see *supra*, §117.)

(3) *Business Improvement District Fee.* In *Evans v. San Jose* (1992) 3 C.A.4th 728, 4 C.R.2d 601, defendant municipality formed a business improvement district under *Sts. & H.C. 36500* et seq. (see 12 *Summary* (10th), *Real Property*, §827) and assessed businesses in the district with a fee to cover the cost of decorations, public events, and music in the downtown area. Plaintiff apartment owner challenged the fee as a special tax imposed without the required two-thirds vote. *Held*, the fee was not a special tax.

(a) The improvement district fee is neither a true special assessment nor a true regulatory fee. It is not a charge on real property and does not pay for permanent improvements specifically benefitting assessed property. (3 C.A.4th 737.)

(b) Nevertheless, the fee is not a special tax. Downtown businesses benefit from the district and the funds raised by the fee. Like a special assessment or a regulatory fee, the improvement district fee imposes a financial burden for a special benefit on the person or entity receiving the benefit. Where the burden of expenditures is borne by the group specifically benefitted by them, Proposition 13 is not applicable. (3 C.A.4th 738.) (See *Howard Jarvis Taxpayers Assn. v. San Diego* (1999) 72 C.A.4th 230, 238, 84 C.R.2d 804 [citing *Evans* and *Knox*; city's business improvement district assessment imposed on businesses was not special tax].)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Regulatory Fees.* See *Collier v. San Francisco* (2007) 151 C.A.4th 1326, 1337, 60 C.R.3d 698 [city's transfer of building permit revenues from building inspection department to planning and fire departments did not violate Cal. Const., Art. XIII D, §4, or *Govt.C. 50076*; transferred revenues were used to cover actual costs incurred by transferee departments in performing regulatory activities related to building permit process; relying on *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 C.4th 866, 64 C.R.2d 447, 937 P.2d 1350, text, §130].



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CHAPTER XI - Taxation

Witkin Summary of California Law IX. PROPOSITION 13 AND SUBSEQUENT LIMITATIONS ON TAXING POWER

B. Restrictions on Power To Tax Real Property.

5. Restrictions on Assessments.

b. Effect of Proposition 218.

1. In General.

9 Witkin Sum. Cal. Law Tax § 141

[§ 141] In General.

(1) *Adoption of Proposition 218.* Cal. Const., XIII D (part of Proposition 218, supra, §131), restricts local government use of special assessments to fund infrastructure. Existing, new, and increased assessments must comply with Article XIII D. (Cal. Const., Art. XIII D, §5; *Barratt Amer. v. San Diego* (2004) 117 C.A.4th 809, 814, 12 C.R.3d 132 [developer's challenge to local resolution establishing facilities benefit assessment was barred by 30-day limitations period of C.C.P. 329.5; Proposition 218 does not abrogate, repeal, or invalidate bar of C.C.P. 329.5].)

(2) *Definitions.* An "assessment" is any levy or charge on real property by a local government for a "special benefit conferred upon the real property." (Cal. Const., Art. XIII D, §2(b); for definition of "local government," see Cal. Const., Art. XIII C, §1(b).) A "special benefit" is a particular and distinct benefit over and above general benefits conferred on real property located in the assessment district or to the public at large. General enhancement of property does not constitute "special benefit." (Cal. Const., Art. XIII D, §2(i).) (For additional definitions, see *Govt.C. 53750*; and see *Richmond v. Shasta Community Services Dist.* (2004) 32 C.4th 409, 418, 9 C.R.3d 121, 83 P.3d 518 [capacity charge imposed as condition for making new connection to water system was not assessment within meaning of Cal. Const., Art. XIII D; assessment must be imposed on identifiable parcels of real property]; *Isaac v. Los Angeles* (1998) 66 C.A.4th 586, 595, 77 C.R.2d 752, supra, §136; *Howard Jarvis Taxpayers Assn. v. San Diego* (1999) 72 C.A.4th 230, 235, 84 C.R.2d 804 [city's business improvement district assessment imposed on businesses was not assessment within meaning of Proposition 218; definition of "assessment" unambiguously applies only to levies on real property, and assessment here was imposed on businesses, not real property].)

(3) *Permissible Assessments.* An assessment imposed on a parcel cannot exceed the reasonable cost of the proportional special benefit conferred on that parcel. (Cal. Const., Art. XIII D, §4(a).) In *Ventura Group Ventures v. Ventura Port Dist.* (2001) 24 C.4th 1089, 1104, 104 C.R.2d 53, 16 P.3d 717, supra, §126, on a certified question from the Ninth Circuit, the court concluded that, although a port district created under *Harb. & Nav.C. 6210* has independent authority to impose assessments under *Harb. & Nav.C. 6365(d)(2)* to raise funds to satisfy a judgment against it, the assessments must satisfy applicable statutory and constitutional requirements, including the requirement of Cal. Const., Art. XIII D, §4, that the assessment specially benefit the parcels on which it would be imposed.

(4) *Burden of Proof*. In a legal action contesting an assessment, the local government has the burden of proving that the assessment confers a special benefit on the property over and above the benefits conferred on the public at large and that the amount of the assessment is proportional to, and no greater than, the benefit conferred on the property. (Cal. Const., Art. XIII D, §4(f).)

In *Not About Water Committee v. Board of Supervisors* (2002) 95 C.A.4th 982, 116 C.R.2d 526, a water district was formed after a majority of the included landowners voted for it. Subsequently, the county board of supervisors voted to establish a "benefit assessment district," comprised of two zones. The first zone consisted of the properties within the water district, which would receive water hookups at a cost of \$ 20,000 per parcel. The second zone consisted of the properties within the first zone and some from outside the water district, with the outside properties receiving fire protection services at a cost of \$ 2,400 per parcel. Balloting on the formation of the proposed assessment district was by weighted vote, meaning that votes were allotted in proportion to the financial obligations to be imposed on landowners within the proposed assessment district. As a result, the zone one residents exercised about eight times the voting power of the zone two residents, who would receive only fire protection services if the assessment district were formed. After the assessment district was approved by the voters and an assessment was levied, a group of zone two landowners petitioned for mandamus, asserting that the voting scheme violated due process. The trial court denied the petition for mandamus. *Held*, affirmed.

(a) "A court will not declare the assessment void unless it can plainly see from the face of the record, or from facts judicially known, that the assessment so finally confirmed is not proportional to the benefits, or that no benefits could accrue to the property assessed, or that the agency has failed to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large." (95 C.A.4th 994.) This is a modification, required by Cal. Const., Art. XIII D, §4(f), of the standard of review originally set forth in *Dawson v. Los Altos Hills* (1976) 16 C.3d 676, 129 C.R. 97, 547 P.2d 1377, and affirmed by *Knox v. Orland* (1992) 4 C.4th 132, 14 C.R.2d 159, 841 P.2d 144, *supra*, §140. Although the water district bears the burden of proving the existence of a special benefit, case law decided before the passage of Proposition 218, under which legislative-like determinations by public improvement agencies are reviewed under an abuse of discretion standard, continues to apply. (95 C.A.4th 994.)

(b) Defendants met their burden of proving the existence of a special benefit flowing to zone two properties by the formation of the assessment district. These benefits included potential increases in property values from the presence of a reliable public water supply for fire suppression, a potential reduction in fire insurance rates from the positioning of fire hydrants, and enhanced security and safety from the ability to suppress building, grass, and brush fires. (95 C.A.4th 995.)

(5) *Public Agencies*. Public agencies and school districts are no longer exempt from paying assessments, unless they can demonstrate that their parcels in fact receive no benefit. (Cal. Const., Art. XIII D, §4(a).)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Definitions*. See *Silicon Valley Taxpayers' Assn. v. Santa Clara County Open Space Authority* (2008) 44 C.4th 431, 450, 79 C.R.3d 312, 187 P.3d 37 [countywide assessment to fund program to acquire and maintain unspecified open space lands in county did not provide "special benefit" under Cal. Const., Art. XIII D, §2(i); program's projected benefits, such as enhanced recreational activities, scenic protection, and improved quality of life, would be shared by everyone living in assessment district, and there would be no distinct benefits to particular properties above those enjoyed by general public using open space]; *Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 C.A.4th 1364, 1381, 59 C.R.3d 484 [groundwater augmentation charge was not assessment under Cal. Const., Art. XIII D, §2(b); charge was imposed on activity (extraction of groundwater), not on real property].

(3) *Permissible Assessments*. See *Silicon Valley Taxpayers' Assn. v. Santa Clara County Open Space Authority*, *supra*, 44 C.4th 456 [countywide assessment to fund program to acquire and maintain unspecified open space lands in county did not satisfy proportionality requirement of Cal. Const., Art. XIII D, §4(a); assessment was based on district's projected annual budget for program and on amount per parcel that surveyed property owners had expressed willingness

to pay, rather than on amount of permanent public improvement that assessment would finance and proportionate benefits that specific assessed properties would receive].

(4) *Burden of Proof.* Courts should exercise independent judgment in reviewing local agency determinations whether benefits are special and whether assessments are proportional to special benefits. (*Silicon Valley Taxpayers' Assn. v. Santa Clara County Open Space Authority, supra*, 44 C.4th 443.)



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B. Restrictions on Power To Tax Real Property.

5. Restrictions on Assessments.

b. Effect of Proposition 218.

2. Voter Approval Requirements.

9 *Witkin Sum. Cal. Law Tax* § 142

[§ 142] Voter Approval Requirements.

(1) *In General.* Local governments must hold elections by mail for new or increased assessments and for existing assessments that are not exempt under Cal. Const., Art. XIII D, §5 (infra, this section). The record owner of each parcel must be given written notice of the assessment and a ballot to register support or opposition. (Cal. Const., Art. XIII D, §4(c) and (d).) Ballots must be counted at a public hearing not less than 45 days after notice of the assessment is mailed. Ballots must be weighted according to the proportional financial obligation of the affected property. The assessment may not be imposed if there is a "majority protest," i.e., more ballots submitted in opposition than in support of the assessment. (Cal. Const., Art. XIII D, §4(e); see *Richmond v. Shasta Community Services Dist.* (2004) 32 C.4th 409, 418, 9 C.R.3d 121, 83 P.3d 518 [capacity charge imposed as condition for making new connection to water system was not subject to voter approval requirements of Cal. Const., Art. XIII D; water district would not be able to identify specific parcels for which new connections applications would be made and thus compliance with voter approval requirements would be impossible]; *Consolidated Fire Protection Dist. of Los Angeles v. Howard Jarvis Taxpayers' Assn.* (1998) 63 C.A.4th 211, 219, 225, 73 C.R.2d 586 [district's ordinance authorizing annual assessment for fire protection services conflicted with voter approval requirement and was thus invalid; Proposition 218, as applied to assessment, is not unconstitutional impairment of contract or unconstitutional referendum]; *Not About Water Committee v. Board of Supervisors* (2002) 95 C.A.4th 982, 1001, 116 C.R.2d 526, supra, §141 [Cal. Const., Art. XIII D, §4(e), required use of weighted voting scheme to authorize assessment for water hookups and fire protection]; 29 *McGeorge L. Rev.* 845 [Proposition 218 and "one-person, one-vote" doctrine].)

The Proposition 218 Omnibus Implementation Act (*Govt.C.* 53750 et seq.) helps local jurisdictions comply with Proposition 218. Among other things, the Act details the procedures for determining voter approval of new or increased assessments, including notice and hearing requirements. (See *Govt.C.* 53753(b).) The notice, protest, and hearing requirements imposed by *Govt.C.* 53753 supersede any other statutory provision applicable to the levy of new or increased assessments, regardless of whether the provision conflicts with the Act. (*Govt.C.* 53753(a).)

An ordinance or resolution presented for voter approval under Cal. Const., Art. XIII D, may state a range of rates or amounts of assessment, and if the ordinance or resolution is approved, the governing body may impose the assessment within that range without resubmitting increases to the voters for approval. (*Govt.C.* 53739(a).) Similarly, if the voters

approve a formula for inflation adjustment, the governing body may make the adjustment without another vote. (*Govt.C. 53739(b).*)

(2) *Exemptions.* The following assessments existing on or before November 6, 1996, are exempt from the voter approval requirements, although increases in these assessments are not:

(a) Assessments imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems, or vector control. (Cal. Const., Art. XIII D, §5(a); *Govt.C. 53753.5(b)(1)*; see *Howard Jarvis Taxpayers Assn. v. Riverside* (1999) 73 C.A.4th 679, 684, 86 C.R.2d 592 [preexisting streetlight assessment was exempt under Cal. Const., Art. XIII D, §5(a); streetlights are necessary to operate streets]; *Keller v. Chowchilla Water Dist.* (2000) 80 C.A.4th 1006, 1010, 96 C.R.2d 246 [preexisting standby charge imposed by water district for purchase of water was exempt; purchasing water was cost of replacement necessary to properly operate structures that comprised district's permanent public improvements and was therefore maintenance and operation expense].)

(b) Assessments imposed pursuant to a petition signed by the owners of all the parcels subject to the assessment at the time the assessment is initially imposed. (Cal. Const., Art. XIII D, §5(b); *Govt.C. 53753.5(b)(2).*)

(c) Assessments producing proceeds that are exclusively used to repay bonded indebtedness, where failure to pay would violate the Contract Impairment Clause of the United States Constitution. (Cal. Const., Art. XIII D, §5(c); *Govt.C. 53753.5(b)(3).*)

(d) Assessments that have already received majority voter approval. (Cal. Const., Art. XIII D, §5(d); *Govt.C. 53753.5(b)(4).*)

SUPPLEMENT: [This section is current through the latest supplement]



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CHAPTER XI - Taxation

Witkin Summary of California Law IX. PROPOSITION 13 AND SUBSEQUENT LIMITATIONS ON TAXING POWER B. Restrictions on Power To Tax Real Property. 6. Restrictions on Other Local Fees and Charges. a. In General.

9 Witkin Sum. Cal. Law Tax § 143

[§ 143] In General.

(1) *Adoption of Proposition 218.* Cal. Const., Art. XIII D (part of Proposition 218), restricts local government use of fees and charges to fund infrastructure. All fees and charges must comply with Article XIII D beginning July 1, 1997. (Cal. Const., Art. XIII D, §6(d).) (See 35 U.S.F. L. Rev. 385 [uncertainty created by Proposition 218].)

(2) *Definitions and Applicability.* A "fee" or "charge" is any levy other than an ad valorem tax, a special tax, or an assessment, imposed by a local government on a parcel or a person as an incident of property ownership. It includes a user fee or charge for a property-related service. (Cal. Const., Art. XIII D, §2(e); for additional definitions, see *Govt.C.* 53750.) However, fees for providing gas or electrical service are not fees or charges imposed as an incident of property ownership (Cal. Const., Art. XIII D, §3(b)) and thus are exempt from the numerous restrictions of Proposition 218. Furthermore, those restrictions do not apply to fees or charges imposed "as a condition of property development" (Cal. Const., Art. XIII D, §1(b)), such as park fees imposed on developers as a condition to land use approval. (See 48 *Hastings L. J.* 1059 [interpretation of "property-related fee"].)

In *Apartment Assn. of Los Angeles County v. Los Angeles* (2001) 24 C.4th 830, 102 C.R.2d 719, 14 P.3d 930, defendant city adopted a "systematic code enforcement program fee" that required private, residential landlords to pay a service fee of \$ 12 per unit per year, which was used to finance defendant's rental housing inspection program. Plaintiff association challenged the fee as unenforceable because defendant enacted it without complying with Cal. Const., Art. XIII D, §6. The trial court entered judgment for defendant, but the Court of Appeal reversed. *Held*, judgment of Court of Appeal reversed. The fee is valid.

Under Cal. Const., Art. XIII D, §2(e), a fee or charge is subject to Proposition 218 if it is imposed on a parcel or on a person "as an incident of property ownership." This means that a fee may not be imposed on a property owner in its capacity as property owner, unless the fee meets the constitutional prerequisites. Here, however, the fee is imposed on landlords not in their capacity as landowners, but in their capacity as business owners. It is imposed only on those landowners who choose to engage in the residential rental business, and only while they are operating the business. (24 C.4th 840.)

Other cases discussing when a fee or charge is subject to Cal. Const., Art. XIII D include the following:

Richmond v. Shasta Community Services Dist. (2004) 32 C.4th 409, 425, 9 C.R.3d 121, 83 P.3d 518 [fire suppression fee imposed as condition for making new connection to water system was not property related fee or charge under Cal. Const., Art. XIII D; fee for making new connection results from owner's voluntary decision to apply for connection and thus is not imposed as incident of property ownership].

Howard Jarvis Taxpayers Assn. v. Los Angeles (2000) 85 C.A.4th 79, 83, 101 C.R.2d 905 [charges imposed for water services were commodity charges, not "fees" under Cal. Const., Art. XIII D, §2(e) or Art. XIII D, §2(h); supply and delivery of water do not require that person own or rent property where water is delivered, and charges were based primarily on amount of water consumed and were not incident to, or directly related to, property ownership].

Howard Jarvis Taxpayers Assn. v. Roseville (2002) 97 C.A.4th 637, 640, 119 C.R.2d 91 ["in-lieu franchise fee" of 4% that was imposed by city on annual budgets of city's water, sewer, and refuse collection utilities, paid by utility ratepayers, and transferred to city's general fund, was subject to Proposition 218 under Cal. Const., Art. XIII D, §2(e); distinguishing *Apartment Assn. of Los Angeles County v. Los Angeles* and *Howard Jarvis Taxpayers Assn. v. Los Angeles*].

Howard Jarvis Taxpayers Assn. v. Salinas (2002) 98 C.A.4th 1351, 1354, 121 C.R.2d 228 [storm drainage fee imposed on "each and every developed parcel of land" within city was fee for property-related service under Cal. Const., Art. XIII D, §2(e) and Art. XIII D, §2(h); fee was not directly based on or measured by use].

(3) *Permissible Fees and Charges.* Under Cal. Const., Art. XIII D, §6(b), a fee or charge that is extended, imposed, or increased by an agency must meet all of the following requirements:

(a) Revenues derived from the fee or charge must be less than or equal to the funds required to provide the property-related service, and must not be used for any purpose other than that for which the fee or charge was imposed.

(b) The amount of the fee or charge imposed as an incident of property ownership must not exceed the proportional cost of the service attributable to the parcel.

(c) The service for which the fee or charge is imposed must be actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges are classified as assessments and must comply with Cal. Const., Art. XIII D, §4.

(d) The fee or charge may not be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. (See *Howard Jarvis Taxpayers Assn. v. Roseville*, *supra*, 97 C.A.4th 640 ["in-lieu franchise fee" of 4% that was imposed by city on annual budgets of city's water, sewer, and refuse collection utilities, paid by utility ratepayers, and transferred to city's general fund, violated Cal. Const., Art. XIII D, §6(b); city did not show that flat fee reasonably represented street, alley, and right-of-way costs attributed to utilities].)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Adoption of Proposition 218.* See *Howard Jarvis Taxpayers Assn. v. Fresno* (2005) 127 C.A.4th 914, 923, 26 C.R.3d 153 [Cal. Const., Art. XIII D, §6(d), clearly requires that local governments conform existing fees to requirements of Cal. Const., Art. XIII D, §6(b), by July 1, 1997; city's fee imposed on its own utilities in lieu of property tax, although existing before Proposition 218, had to comply with requirements].

(2) *Definitions and Applicability.* Cases discussing when fee or charge is subject to Cal. Const., Art. XIII D: See *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 C.4th 205, 217, 46 C.R.3d 73, 138 P.3d 220 [water delivery charges fell within Cal. Const., Art. XIII D]; *Howard Jarvis Taxpayers Assn. v. Fresno*, *supra*, 127 C.A.4th 925 [city's fee imposed on its own utilities in lieu of property tax and passed through to ratepayers was not tax on consumers of utilities, but instead was fee subject to Cal. Const., Art. XIII D; citing *Howard Jarvis Taxpayers Assn. v. Roseville* (2002) 97 C.A.4th 637, 119 C.R.2d 91, text, p. 221]; *Pajaro Valley Water Management Agency v. Amrhein* (2007) 150

C.A.4th 1364, 1384, 59 C.R.3d 484 [groundwater augmentation charge, assessed against all extractors of groundwater and billed to owners of land on which wells appear, was fee subject to Cal. Const., Art. XIII D, §2(e); relying on *Bighorn-Desert View Water Agency*].(3) *Permissible Fees and Charges*. See *Howard Jarvis Taxpayers Assn. v. Fresno*, *supra*, 127 *C.A.4th* 921 [city could not collect fee imposed on its own utilities in lieu of property tax; if city wished to recover utilities' costs from user fees, it would have to determine unbudgeted costs of utilities enterprises and recover costs through rates proportional to cost of providing service to each parcel, as required by Cal. Const., Art. XIII D, §6(b); citing *Howard Jarvis Taxpayers Assn. v. Roseville*, *supra*].

(*New*) *Automatic adjustments to water, sewer, or refuse collection service*: *Govt.C. 53756*, added in 2008, allows an agency that provides water, sewer, or refuse collection service to adopt a schedule of fees or charges authorizing automatic adjustments. The adjustments may be for inflation or to pass through increases in wholesale charges for water. The agency must comply with all of the following conditions:

(a) The agency must adopt a schedule of fees or charges for a property-related service for no more than 5 years in accordance with *Govt.C. 53755*. (*Govt.C. 53756(a)*.)

(b) The schedule of fees or charges may include a schedule of adjustments, including a clearly defined formula for adjusting for inflation. Inflation adjustments may not exceed the cost of providing the service. (*Govt.C. 53756(b)*.)

(c) The schedule of fees or charges for an agency that purchases wholesale water from a public agency may provide for automatic adjustments that pass through the adopted increases or decreases in the wholesale charges for water established by the other agency. (*Govt.C. 53756(c)*.)

(d) Notice of a scheduled adjustment must be given under *Govt.C. 53755(a)* , not less than 30 days before the effective date of the adjustment. (*Govt.C. 53756(d)*.)



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9 Witkin Sum. Cal. Law Tax § 144

[§ 144] Voter Approval Requirements.

New or increased fees and charges are subject to voter approval at two stages. First, local governments must notify record owners of parcels for which the fee or charge is proposed and conduct a public hearing not less than 45 days after mailing the notice. If a majority of owners present written protests against the proposed fee or charge at the hearing, the fee or charge cannot be imposed. (Cal. Const., Art. XIII D, §6(a).) Second, except for fees or charges for sewer, water, and refuse collection services, a proposed fee or charge must be submitted and approved by a majority of the affected property owners or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election must be conducted not less than 45 days after the public hearing. It may be conducted using the mail-in election procedures applicable to assessments. (Cal. Const., Art. XIII D, §6(c); see *Howard Jarvis Taxpayers Assn. v. Salinas* (2002) 98 C.A.4th 1351, 1356, 121 C.R.2d 228 ["sewer services" exception in Cal. Const., Art. XIII D, §6(c), is ambiguous and must be narrowly construed; storm drainage fee was not "sewer service" and should have been submitted to property owners or area residents for approval].)

An ordinance or resolution presented for voter approval under Cal. Const., Art. XIII D, may state a range of rates or amounts of a fee or charge, and if the ordinance or resolution is approved, the governing body may impose the fee or charge within that range without resubmitting increases to the voters for approval. (*Govt.C. 53739(a)*.) Similarly, if the voters approve a formula for inflation adjustment, the governing body may make the adjustment without another vote. (*Govt.C. 53739(b)*.)

SUPPLEMENT: [This section is current through the latest supplement]

On methods of giving notice required by Cal. Const., Art. XIII D, §6(a), see *Govt.C. 53755*, added in 2007.



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Witkin Summary of California Law IX. PROPOSITION 13 AND SUBSEQUENT LIMITATIONS ON TAXING POWER C. Acquisition Value as Full Cash Value. 1. In General.

9 Witkin Sum. Cal. Law Tax § 145

[§ 145] In General.

(1) *Full Cash Value.* Another fundamental change effected by Proposition 13 was to reject current market value as the base value for purposes of taxation and substitute the value of the property when acquired. Cal. Const., Art. XIII A, §2(a), defines "full cash value" as "the county assessor's valuation of real property as shown on the 1975-1976 tax bill ... or, thereafter, the appraised value ... when purchased, newly constructed, or a change of ownership has occurred after the 1975 assessment." Under Rev.C. 110.1(a), "full cash value" means the fair market value determined under Rev.C. 110 on the valuation date. (See *infra*, §214.) This value is known as the "base year value." (Rev.C. 110.1(b).) (On effect of purchase and change of ownership on base year value, see *infra*, §147 et seq.; on effect of new construction on base year value, see *infra*, §156; on effect of other events on base year value, see *infra*, §157 et seq.)

(2) *Valuation Date.* The valuation date is (a) the 1975 lien date, (b) the date of a subsequent purchase or change of ownership, or (c) the date on which new construction is completed or a subsequent lien date if new construction is in progress. (Rev.C. 110.1(a); see *Schoderbek v. Carlson* (1984) 152 C.A.3d 1027, 1034, 199 C.R. 874 ["full cash value" is determined by separate appraisal as of actual date of purchase; lien date value is not controlling].) The value is entered on the assessment roll "for the lien date next succeeding" the date of purchase, change in ownership, or new construction. (Rev.C. 50; see *Vacu-Dry Co. v. Sonoma* (1987) 190 C.A.3d 947, 951, 235 C.R. 712 [Rev.C. 50 is constitutional; Cal. Const., Art. XIII A, does not require entry of new value on assessment roll before succeeding lien date].) (On supplemental assessment to shorten time within which changes in value are recognized, see *infra*, §162.)

(3) *Establishing Value.* The procedure for reducing base year value assessment or establishing correct base year value is set forth in Rev.C. 80 and 81. The procedure for correcting an error or omission in base year value is set forth in Rev.C. 51.5. (See *Oscro Drug v. Orange* (1990) 221 C.A.3d 189, 194, 272 C.R. 14 [under Rev.C. 80, reduction in assessment arising from reduction in base year value applies to assessment year in which appeal is taken and prospectively; taxpayer who applied for reduction in 1984 assessment arising from reduction in 1981 base year value was entitled to refund for 1984, not for 1981 to 1983]; *Sea World v. San Diego* (1994) 27 C.A.4th 1390, 1403, 33 C.R.2d 194 [procedure, under Rev.C. 51.5, for correction of errors in base year values does not override proscription against retroactive application of base year value reduction provided by Rev.C. 80]; *Sunrise Retirement Villa v. Dear* (1997) 58 C.A.4th 948, 960, 68 C.R.2d 416 [under Rev.C. 51.5, nonjudgmental errors in determining base year value are correctable at any time; thus, property owners were not precluded by 4-year limitations period of Rev.C. 80(a)(3) from obtaining review of county assessor's allegedly erroneous determination that there had been change in ownership]

triggering new base year]; *Metropolitan Culinary Services v. Los Angeles* (1998) 61 C.A.4th 935, 946, 71 C.R.2d 859 [although taxpayer filed timely applications for reduction of base year value under Rev.C. 51.5, its claims for refunds were not timely; under Rev.C. 80(a)(5), taxpayer could receive refund only for assessment year in which appeal under Rev.C. 80 was taken and taxpayer's claims for refund were for several years earlier; following *Sea World*]; *Plaza Hollister Ltd. Partnership v. San Benito* (1999) 72 C.A.4th 1, 28, 84 C.R.2d 715 [citing *Osco Drug*; stipulated judgment was void to extent that it retroactively applied reduction in base year value resulting from assessment appeal to assessment years predating assessment appeal].)

(4) *Scope of Base Year Valuation*. Base year valuation is applicable to locally assessed property, not to public utility property assessed by the State Board of Equalization under the principle of unit taxation (see *infra*, §240). (*ITT World Communications v. San Francisco* (1985) 37 C.3d 859, 210 C.R. 226, 693 P.2d 811, *infra*, §242.)

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Establishing Value*. Rev.C. 51.5(b), which requires correction to a base year value within 4 years after an assessor exercises judgment as to that value, does not violate due process or equal protection. (*Kuperman v. San Diego County Assessment App. Bd. No. 1* (2006) 137 C.A.4th 918, 923, 930, 40 C.R.3d 703 [taxpayer's application for reduction in base year value, filed when taxpayer discovered utility easement on property but more than 4 years after assessor valued property, was untimely; Rev.C. 51.5(b) applied because assessor exercised judgment in valuing property, and assessor and taxpayer had constructive notice of recorded easement when assessor valued property]; see *Little v. Los Angeles County Assessment App. Bd.* (2007) 155 C.A.4th 915, 925, 66 C.R.3d 401 [assessor's determination of base year value involved exercise of judgment and had to be challenged within 4 years under Rev.C. 51.5(b); citing *Kuperman*].)



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9 Witkin Sum. Cal. Law Tax § 146

[§ 146] Constitutionality of Base Year Valuation.

Despite the disparity in treatment of property owned prior to the 1975 lien date and property sold or developed after that date, Cal. Const., Art. XIII A, §2(a), has been upheld against equal protection challenges. (*Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22 C.3d 208, 233, 149 C.R. 239, 583 P.2d 1281; see *Allegheny Pittsburgh Coal Co. v. County Com. of Webster County, West Virginia* (1989) 488 U.S. 336, 109 S.Ct. 633, 638, footnote 4, 102 L.Ed.2d 688, 698, supra, §39 [system is grounded on belief that taxes should be based on original cost of property rather than on unrealized paper gains in property value].) Property that has not already been assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. (Cal. Const., Art. XIII A, §2(a); on reassessment to 1975-76 full cash value, see Rev.C. 110.1(c), (d), (e); *Shellenberger v. State Bd. of Equalization* (1983) 147 C.A.3d 510, 516, 195 C.R. 168 [reassessment of enforceably restricted agricultural land, at time restriction terminated, to reflect unrestricted 1975 fair market value]; *Swicegood v. Rush* (1986) 178 C.A.3d 119, 128, 223 C.R. 627; 1 Ehrman 3d, §2:4.)

The constitutionality of assessment based on acquisition value was reaffirmed against an equal protection challenge in *Nordlinger v. Lynch* (1990) 225 C.A.3d 1259, 275 C.R. 684. Plaintiff taxpayer contended that defendant assessor's use of acquisition value in assessing real property violated equal protection requirements expressed in *Allegheny Pittsburgh Coal Co. Held*, Proposition 13 was constitutional.

(a) The California Supreme Court upheld Proposition 13 against multiple constitutional challenges, including equal protection arguments, in *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization*. The court in *Amador* found no requirement that property of equal current value be taxed equally, regardless of original cost. It held that the acquisition value approach, by which property tax liability bears a reasonable relation to the acquisition cost of the property, is neither wholly arbitrary nor irrational, and thus meets the demands of the *Equal Protection Clause*. (225 C.A.3d 1272, 1273.) The *Amador* decision is not rendered invalid by the fact that expected disparities generated by Proposition 13 have materialized or by any unfairness that has developed from the acquisition value system. "*Amador's* failure to perceive any potential unfairness of an acquisition value approach does not permit this court to depart from that decision." (225 C.A.3d 1275.)

(b) In *Allegheny*, a county assessor valued recently purchased property on the basis of purchase price, but made only minor changes in the assessment of other property. This arbitrary practice was held to deny equal protection under

West Virginia law. The decision is inapposite here. (225 C.A.3d 1277.) *Allegheny* does not hold that large disparities in the assessment of properties with similar current market values are unconstitutional per se. It "reiterates the principle that intentional undervaluation by state officials of other property *in the same class* contravenes the equal protection clause." (225 C.A.3d 1278.) West Virginia law mandates a current market value assessment method and *Allegheny* strikes down arbitrary enforcement of that method. California law, in contrast, provides for an acquisition value assessment method. Thus, reliance on *Allegheny* is misplaced. (225 C.A.3d 1278.) "California does not discriminate against similarly situated property owners because each owner's assessment is based on acquisition cost." (225 C.A.3d 1279.) "Today, as when it was adopted, Proposition 13 can be upheld 'on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property.'" (225 C.A.3d 1279, quoting *Allegheny*.)

The United States Supreme Court affirmed *Nordlinger v. Lynch*, *supra*, in *Nordlinger v. Hahn* (1992) 505 U.S. 1, 112 S.Ct. 2326, 2332, 120 L.Ed.2d 1, 13, distinguishing *Allegheny Pittsburgh Coal Co.* Under the rational basis test, the Court found two reasonable state interests justifying the distinction between new and existing property owners: (a) local neighborhood preservation, continuity, and stability, and (b) greater expectation and reliance interests in existing owners, warranting protection against higher taxes. (112 S.Ct. 2332, 120 L.Ed.2d 13.) In addition, exemptions for two special classes of new owners, children who acquire property from their parents and persons over 55 who exchange personal residences, promote legitimate state interests in (a) furthering family and neighborhood continuity and stability and (b) preserving the residential choices of older persons. (112 S.Ct. 2335, 120 L.Ed.2d 17.)

Acquisition value assessment was also upheld against equal protection and commerce clause challenges in *R.H. Macy & Co. v. Contra Costa County* (1990) 226 C.A.3d 352, 276 C.R. 530. A change of ownership triggered by a corporate restructuring resulted in assessment of plaintiff's department store at 21/2 times the value of similar stores in the same shopping mall. *Held*, the reassessment was constitutional.

(a) The *Amador* decision is dispositive. The court in *Amador* recognized the "serious and substantial" possibility that Proposition 13 could result in properties of the same current market value having markedly different assessed valuations. (226 C.A.3d 361.) In doing so, it considered and approved a disparity in tax rates similar to that faced by plaintiff. (226 C.A.3d 362.)

(b) *Amador* applies to commercial as well as residential property. The policy factors stated by *Amador* to justify the reasonableness of Proposition 13 and its legitimate state objectives are equally applicable to residential and commercial property. (226 C.A.3d 362.)

(c) The *Allegheny* case is factually distinguishable and expressly refused to rule on the constitutionality of Proposition 13. Thus, the precedential force of *Amador* is unaffected. (226 C.A.3d 363.)

(d) Proposition 13 does not place an undue burden on interstate commerce by giving a competitive edge to established property owners. It taxes only real property within the state, not the flow of goods and services between states or the privilege of doing business within the state. (226 C.A.3d 369.) (See *Northwest Financial v. State Bd. of Equalization* (1991) 229 C.A.3d 198, 204, 280 C.R. 24 [following *Amador*, *Nordlinger*, and *R.H. Macy & Co.*].)

SUPPLEMENT: [This section is current through the latest supplement]



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9 Witkin Sum. Cal. Law Tax § 147

[§ 147] In General.

(1) *Change in Ownership*. Real property is reassessed when purchased or when a change of ownership occurs. (Cal. Const., Art. XIII A, §2(a).) (On effective lien date for new values triggered by purchase or change of ownership, see Rev.C. 50.) A "change in ownership" is "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." (Rev.C. 60; see *Cal-Amer. Income Property Fund II v. Los Angeles* (1989) 208 C.A.3d 109, 114, 256 C.R. 21 [transfer in fee simple subject to all-inclusive deed of trust was "change of ownership" under Rev.C. 60, notwithstanding minimal downpayment, management agreement with seller's affiliate, and subsequent foreclosure by seller]; *Munkdale v. Giannini* (1995) 35 C.A.4th 1104, 1111, 41 C.R.2d 805, *infra*, §150 [transfer of partnership property to individual partners on dissolution of partnership was change in ownership under Rev.C. 60]; 1 Ehrman 3d, §2:11 *et seq.*; for transactions included within definition, see *infra*, §148 *et seq.*; for exclusions, see §151 *et seq.*) A "purchase" is a change of ownership for consideration. (Rev.C. 67.)

A change in ownership must be reported to the assessor. (Rev.C. 90, 480 *et seq.*; see *infra*, §229.)

(2) *Reappraisal on Change of Ownership of Partial Interest*. Generally, where an interest in a portion of real property is purchased or changes ownership, only the interest or portion transferred is reappraised. (Rev.C. 65.1(a).) For example, if a unit or lot in a cooperative housing corporation, community apartment project, condominium, planned unit development, shopping center, industrial park, or other residential, commercial, or industrial land subdivision complex with common areas or facilities is purchased or changes ownership, only the unit or lot transferred and its share of the common areas are reappraised. (Rev.C. 65.1(b).) If the value of an interest transferred is less than \$ 10,000 and is less than 5% of the value of the total property, the interest is not reassessed, although transfers of this type during the same assessment year are cumulated. (Rev.C. 65.1(a).) (See *Zapara v. Orange* (1994) 26 C.A.4th 464, 470, 31 C.R.2d 555.)

(3) *Reappraisal on Change of Ownership of Joint Tenancy Interest*. On a change of ownership of a joint tenancy interest, only the interest or portion transferred from one owner to another is reappraised. (Rev.C. 65(a).) Joint tenancy interests previously excluded from reappraisal (because an original transferor remains as a joint tenant) are reappraised when the interest of the last surviving joint tenant terminates. (Rev.C. 65(c).)

West's Key Number Digest, Taxation k.79

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(1) *Change in Ownership*. See *Auerbach v. Assessment App. Bd. No. 1 for Los Angeles* (2006) 39 C.4th 153, 160, 45 C.R.3d 774, 137 P.3d 951 [under Rev.C. 60, change in ownership of land subject to 20-year lease was also change in ownership of building on land, even though building had been constructed by lessee after lease commenced; lease provided that lessee would be required to surrender building to lessor when lease ended, that lessor had authority to eject lessee from possession for breach of lease, that lessor retained right to sell land and building, and that any eminent domain proceeds belonged to lessor, all of which indicated that lessor had present interest in, and beneficial use of, both land and building]; *Reilly v. San Francisco* (2006) 142 C.A.4th 480, 489, 48 C.R.3d 291 [change in ownership in real property held by testamentary trust occurred when trust's first income beneficiary died and was succeeded by another income beneficiary; for purposes of Rev.C. 60, successor acquired present interest in property, beneficial use of it through receipt of income, and equivalent of value of fee interest in it].



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9 Witkin Sum. Cal. Law Tax § 148

[§ 148] In General.

The following transactions are included within the meaning of "change of ownership":

(1) The creation, renewal, sublease, assignment, or other transfer of certain oil, gas, and mineral rights. (Rev.C. 61(a).)

(2) The creation, renewal, extension, or assignment of a taxable possessory interest in tax-exempt real property. Renewal does not include the grant of an option to lengthen the term of possession in an existing agreement. (Rev.C. 61(b).) If a possessory interest is renewed or extended during the term of possession estimated by the assessor in establishing the value of the interest, the renewal or extension is not a change in ownership until the end of the estimated term. (Rev.C. 61(b)(2).)

(3) The creation, termination, or transfer of a leasehold interest with a term of at least 35 years. (Rev.C. 61(c).) (See *E. Gottschalk & Co. v. Merced* (1987) 196 C.A.3d 1378, 1385, 242 C.R. 526 [Rev.C. 61(c) is reasonable and constitutional interpretation of "change of ownership"]; *Industrial Indem. Co. v. San Francisco* (1990) 218 C.A.3d 999, 267 C.R. 445, *infra*, §149 [sale and leaseback was change of ownership]; *United Air Lines v. San Diego* (1991) 1 C.A.4th 418, 434, 2 C.R.2d 212, *infra*, §167 [upholding distinction between leases of private property (change of ownership under Rev.C. 61(c) only if term of lease exceeds 35 years) and public property (change of ownership under Rev.C. 61(b) without regard to duration of possessory interest)].)

(4) The creation, transfer, or termination of joint tenancy interests, except interspousal transfers and transfers in which the original transferor is a joint tenant after the transfer. (Rev.C. 61(e), 65(a).)

(5) The creation, transfer, or termination of tenancy-in-common interests, except interspousal transfers and transfers that do not change the proportional interest of the coowners. (Rev.C. 61(f).)

(6) The vesting of possession or enjoyment of a reversionary or remainder interest on the termination of a precedent property interest, with the exception of interspousal transfers and certain transactions involving trusts. (Rev.C. 61(g); see Rev.C. 62(e).)

(7) The vesting of an interest in real property in a person other than the trustee or the trustee's spouse when a revocable trust becomes irrevocable. (Rev.C. 61(h); see *Empire Properties v. Los Angeles* (1996) 44 C.A.4th 781, 785, 52 C.R.2d 69 [change in ownership occurred when revocable family trust became irrevocable].)

(8) A transfer of stock in a cooperative housing corporation that conveys the exclusive right to occupancy. (Rev.C. 61(i).)

(9) The transfer of a life estate to a nonspouse third party, as opposed to a life estate retained by the transferor. (*Leckie v. Orange* (1998) 65 C.A.4th 334, 339, 76 C.R.2d 426 [citing *Pacific Southwest Realty Co. v. Los Angeles* (1991) 1 C.4th 155, 2 C.R.2d 536, 820 P.2d 1046, *infra*, §149; transferee receives present interest in property, beneficial use of property, and primary interest under value equivalency test].)

(10) The transfer of transferable development rights, which allow the owner to exceed building density limitations. (*Mitsui Fudosan (U.S.A.) v. Los Angeles* (1990) 219 C.A.3d 525, 530, 268 C.R. 356 [transferable development rights constitute taxable real property interests].)

(11) The following transactions involving tax-exempt real property:

(a) The sublease of a taxable possessory interest in tax-exempt real property for a term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options. (Rev.C. 61(d)(1)(A).)

(b) The termination of a sublease of a taxable possessory interest in tax-exempt property with an original term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options. (Rev.C. 61(d)(1)(B).)

(c) A transfer of a sublessee's interest with a remaining term, including renewal options, that exceeds half of the remaining term of the leasehold. (Rev.C. 61(d)(1)(C).)

(d) A transfer of a possessory interest in tax-exempt real property subject to a sublease with a remaining term, including renewal options, that does not exceed half the remaining term of the leasehold, including renewal options. (Rev.C. 61(d)(2).)

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9 Witkin Sum. Cal. Law Tax § 149

[§ 149] Sale and Leaseback.

A true sale and leaseback transaction, i.e., one that is not a financing transaction, is a change of ownership under Rev.C. 60. (*Pacific Southwest Realty Co. v. Los Angeles* (1991) 1 C.4th 155, 162, 2 C.R.2d 536, 820 P.2d 1046; *Industrial Indem. Co. v. San Francisco* (1990) 218 C.A.3d 999, 1004, 267 C.R. 445.)

In *Industrial Indem. Co.*, plaintiff conveyed fee title to a piece of real property conditioned on a leaseback for a period, including renewal options, of 50 years. Under the terms of the lease, plaintiff was required to pay property taxes. Defendant city and county treated the transaction as a change of ownership and reassessed the property. Plaintiff challenged the reassessment in a refund action. *Held*, judgment for defendant affirmed. The transaction constituted a change of ownership.

(a) *Sale as change of ownership*. The original sale satisfies the three-prong definition of "change of ownership" established by Rev.C. 60. The sale was a transfer of a present interest, as evidenced by the purchaser's immediate right to possession. That the purchaser by contract agreed to accept the financial value of its right of possession rather than physical possession of the property "does not transform a present interest in real property into a future interest." Moreover, the sale was a transfer of the beneficial use of the property. The fact that the lease prevents the purchaser from occupying the property "does not deprive it of its right to enjoy the value of its property represented by the rent." Finally, the sale was a transfer of value substantially equal to the value of the fee, because the fee title itself was transferred. (218 C.A.3d 1005.)

(b) *Leaseback as change of ownership*. The leaseback, for a period of 50 years, was a "change of ownership" pursuant to Rev.C. 61(c) (*supra*, §148), under which the creation of a leasehold with a term of at least 35 years is treated as a change of ownership. (218 C.A.3d 1006.)

(c) *Transaction not reservation of estate for years*. The transfer was not a reservation of an estate for years, excluded from the definition of a "change of ownership" by Rev.C. 62(e) (*infra*, §151). To treat a lease as an estate for years in the context of a sale and leaseback would be inconsistent with the legislative intent of Rev.C. 60, because the transaction satisfied the three requirements of that statute. (218 C.A.3d 1006.)

In *Pacific Southwest Realty Co. v. Los Angeles*, *supra*, a commercial office building was reassessed after plaintiff sold the underlying fee and acquired a 60-year leasehold to a substantial portion of the property. *Held*, the transaction was a change of ownership.

(a) The transaction met the three-part test of Rev.C. 60. Like the sale and leaseback in *Industrial Indem. Co. v. San Francisco*, plaintiff transferred a present, freehold interest in the property, the purchaser acquired the entire beneficial use, and the value transferred was substantially equal to the value of the fee. (1 C.4th 162.)

(b) The transaction was not exempt under Rev.C. 62. Rev.C. 62(g) (*infra*, §151), exempting a transfer of a lessor's interest subject to a lease of 35 years or more, is inapplicable. There was no existing lease; the parties created new interests and changed their economic positions. (1 C.4th 167, 168.) Moreover, Rev.C. 62(e) (*infra*, §151), exempting a transfer reserving a term or life estate, must be read in harmony with Rev.C. 60. It provides an exemption from the general rule of Rev.C. 60 when the transfer retains the beneficial use of the property during the transferor's life or for years. Here, plaintiff did not retain the beneficial use, despite language in the deed "excepting and reserving" an estate for years. (1 C.4th 169, 170.) (See 20 *Pepperdine L. Rev* 389 [*Pacific Southwest*].)

In *Shuwa Inv. Corp. v. Los Angeles* (1991) 1 C.A.4th 1635, 2 C.R.2d 783, ARCO and Bank of America each owned 50% of a partnership that in turn owned the ARCO Plaza office complex in Los Angeles. Plaintiff Shuwa purchased ARCO Plaza in a three-step transaction: (1) ARCO sold its partnership interest to Shuwa; (2) Shuwa and Bank of America liquidated the partnership, receiving undivided interests in the property; and (3) Bank of America sold its interest in the property to Shuwa. In a refund action, plaintiff challenged defendant county's 100% reassessment, contending that the first two steps were exempt transfers and that the third resulted in a 50% reassessment. *Held*, under the step transaction doctrine, the three steps constituted one transaction, and 100% reassessment was proper.

(a) *Step-transaction doctrine is applicable.* Under the step-transaction doctrine, largely developed by the federal courts, the individual steps of a transaction may be disregarded and the transaction treated as a whole. (1 C.A.4th 1648.) Three tests have been developed to determine whether the doctrine should apply. Under the "end result test," separate steps are amalgamated if they form part of a single transaction intended from the onset to reach the ultimate result. (1 C.A.4th 1650.) Under the "interdependence test," separate steps are amalgamated if the objective facts are so interdependent that the legal relations created by each step would be fruitless without completion. (1 C.A.4th 1651.) Under the "binding commitment test," separate steps are amalgamated if there is a binding commitment to take the later steps. (1 C.A.4th 1652.) Under all three tests, the transactions here should be stepped together. (1 C.A.4th 1653.)

(b) *No independent business considerations.* Neither ARCO's desire to limit federal income tax nor plaintiff's desire to limit partnership liability is a sufficient independent business consideration to override the step transaction doctrine. Potential partnership liability could have been avoided by numerous alternative measures. (1 C.A.4th 1656.) "To allow this brand of tax planning would encourage partnerships, corporations and other legal entities to escape reassessment in perpetuity by the mere expedient of transferring partial interests in a series of transactions on the weakest of alleged economic motivations." This would subvert the intent of Proposition 13 and its implementing statutes. (1 C.A.4th 1657.) (See *Crow Winthrop Operating Partnership v. Orange* (1992) 10 C.A.4th 1848, 1857, 13 C.R.2d 696 [reassessment following step transaction equivalent to sale and leaseback; following *Pacific Southwest Realty Co.* and *Shuwa Inv. Corp.*]; *McMillin-BCED/Miramar Ranch North v. San Diego* (1995) 31 C.A.4th 545, 560, 37 C.R.2d 472 [interdependence test was satisfied and step transaction doctrine applied to four-step transaction between parent corporation, its subsidiary, and developer; citing *Shuwa Inv. Corp.*].)

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9 Witkin Sum. Cal. Law Tax § 150

[§ 150] Transactions Between Legal Entities.

(1) *General Rule.* The transfer of an interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or other person is a change in ownership. (Rev.C. 61(j).)

In *Munkdale v. Giannini* (1995) 35 C.A.4th 1104, 41 C.R.2d 805, plaintiff and his brother had been partners in a partnership that owned 11 parcels of real property. When the brothers dissolved the partnership, five parcels were deeded to plaintiff, five to his brother, and one to both brothers as tenants in common. Defendant county assessor reassessed 100% of each of the 10 parcels conveyed to the brothers as individuals, rejecting plaintiff's claim that, because he had owned 50% of the property as a partner before the transfer, there could only have been a 50% transfer upon dissolution. Plaintiff paid the tax on the reassessed value and filed for a refund. The trial judge denied the refund. *Held*, affirmed.

(a) *The transfers constituted a change in ownership.* Former Rev.C. 61(i) (now Rev.C. 61(j)) clearly applies to the transfers here. The partnership owned a fee interest in each of the properties and then transferred a fee interest to the former partners as individuals. (35 C.A.4th 1109.)

(b) *The transfers involved a transfer of beneficial use.* The beneficial use of the partnership properties underwent a significant, comprehensive change when they were transferred to plaintiff and his brother as fee simple owners. Before the transfer, most of the normal incidents of ownership were held by the partnership as a group rather than by the individual partners. When the partnership deeded the property to plaintiff, by contrast, he obtained the absolute and exclusive rights to possess, use, enjoy, and dispose of the entire fee interest in the property without limitation or condition. (35 C.A.4th 1111, distinguishing *Allen v. Sutter County Bd. of Equalization* (1983) 139 C.A.3d 887, 189 C.R. 101, *infra*, §151.)

(c) *The result would be the same if the transfer had been structured in two steps.* Plaintiff claimed that, under the exemption provided in Rev.C. 62(a)(2), the partnership could have conveyed the parcels to the partners as tenants in common, without triggering reassessment, and then one of the tenants in common could have conveyed his interests to the other, resulting in only a 50% reassessment of the parcels. (35 C.A.4th 1112.) However, under the "step transaction doctrine," this hypothetical two-step transfer procedure would have produced the same tax outcome as the actual

transaction because the two steps would have been viewed as parts of a single transaction intended to result in the individual partners acquiring all the transferred property from the partnership. (35 C.A.4th 1113, citing *Shuwa Inv. Corp. v. Los Angeles* (1991) 1 C.A.4th 1635, 2 C.R.2d 783, supra, §149.)

(d) *Reassessment did not violate the state equal protection clause (Cal. Const., Art. I, §7(a)).* It is neither arbitrary nor unreasonable to differentiate between real property transfers from legally recognized entities such as corporations and partnerships, on the one hand, and nonentities such as joint tenancies and tenancies in common, on the other. (35 C.A.4th 1114.)

(2) *Transfer of Real Property From Corporation to Shareholders Where Proportional Interest in Parcel Changes.* In *Kern v. Imperial* (1990) 226 C.A.3d 391, 276 C.R. 524, under the terms of a corporate liquidation agreement, 15 parcels of real property owned by the corporation were distributed among three groups of shareholders. *Held*, the liquidation was a change of ownership.

(a) At the time of transfer in 1982, Rev.C. 62(a) (see *infra*, §151) exempted from the definition of a change of ownership a real property transaction "in which the proportional interests of the transferors and transferees ... remain the same after the transfer." Before the transfer, 17 persons and entities had corporate equity interests in each of 15 parcels. After the transfer, groups of four, six, and eight persons had fee interests in different parcels. Although the division was proportional to their corporate interests, the proportional interest of each shareholder in each parcel changed at the time of transfer. Thus, the transfer was not exempt under the wording of Rev.C. 62(a) in 1982. (226 C.A.3d 396.)

(b) Rev.C. 62(a) was amended after the date of the transfer to restrict the exemption to transactions in which proportional interests in each parcel remain the same. Under the revised language, the transaction here is not exempt. Plaintiff shareholders argue that the amendment was a change in the law and that "this type of transaction must have fallen within the exemption provisions of the statute before it was amended." On the contrary, the 1982 amendment was a clarification of existing law, particularly the notion of "proportional interests," and was consistent with the preexisting administrative interpretation set forth in regulations of the *State Board of Equalization*. (226 C.A.3d 399.) In addition, the legislative history of the amendment shows it to be a legislative construction of the statute, not a change in the law. (226 C.A.3d 400, 401.)

SUPPLEMENT: [This section is current through the latest supplement]



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D. Purchase or Change in Ownership After 1975 Lien Date.
3. Excluded Transactions.
a. In General.

9 Witkin Sum. Cal. Law Tax § 151

[§ 151] In General.

The following transactions are excluded from the meaning of "change of ownership":

- (1) Interspousal transfers. (Cal. Const., Art. XIII A, §2(g); Rev.C. 63.)
- (2) The creation, vesting, transfer, distribution, or termination of an interest in an employee benefit plan, a contribution of real property to the plan, or the acquisition of a controlling interest in the employer by the plan. (Rev.C. 66.)
- (3) The transfer of a mobilehome park, directly or indirectly, to an entity formed by the tenants to purchase the park. (Rev.C. 62.1, 62.2.)
- (4) A transfer between coowners that changes the method of holding title but does not change the proportional interest of the coowners, such as the partition of a tenancy in common. (Rev.C. 62(a); see *Kern v. Imperial* (1990) 226 C.A.3d 391, 276 C.R. 524, supra, §150 [1982 amendment of Rev.C. 62(a) was legislative construction, not change in law].)
- (5) A transfer for the purpose of perfecting title. (Rev.C. 62(b).)
- (6) The creation, assignment, termination, or reconveyance of a security interest, or the substitution of a trustee under a security interest. (Rev.C. 62(c).)
- (7) A transfer reserving a term or life estate. (Rev.C. 62(e).)
- (8) The creation or transfer of a joint tenancy interest if, after the transaction, the transferor is a joint tenant. (Rev.C. 62(f), 65(b).)
- (9) The transfer of a lessor's interest in taxable real property subject to a lease with a remaining term of 35 years or more. (Rev.C. 62(g).)

(10) Transactions involving shares of a collective investment fund established for a financial institution. (Rev.C. 62(h).)

(11) Certain transfers involving low income housing cooperatives. (Rev.C. 62(i).)

(12) Transfers between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation, provided that the transferor and transferee are regulated by the same religious denomination. (Rev.C. 62(k).)

(13) Transfers to correct or reform a deed, provided that the original relationship between the grantor and grantee is not changed. (Rev.C. 62(l).)

(14) Intrafamily transfers of certain dwelling units. (Rev.C. 62(m), (n).)

(15) The transfer of a possessory interest in tax-exempt real property subject to a sublease with a remaining term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options. (Rev.C. 62(o).)

(16) The acquisition of real property to replace comparable property acquired by a public entity or taken in eminent domain or by inverse condemnation. (Cal. Const., Art. XIII A, §2(d); Rev.C. 68 [adjusted base year value of property].)

(17) The following transfers involving trusts:

(a) A transfer by the trustor, the trustor's spouse, or both, into a trust for so long as (1) the transferor is the present beneficiary of the trust or (2) the trust is revocable. (Rev.C. 62(d).)

(b) A transfer by the trustee of a trust described in Rev.C. 62(d), clause (1) or (2) (above), back to the trustor. (Rev.C. 62(d).)

(c) The creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years' duration. (Rev.C. 62(d).)

(d) Termination of an irrevocable trust on real property by transfer of legal title to the beneficiaries holding equitable title. (*Allen v. Sutter County Bd. of Equalization* (1983) 139 C.A.3d 887, 890, 189 C.R. 101 [change occurred at creation of trust].)

SUPPLEMENT: [This section is current through the latest supplement]

(17) *Transfers involving trusts:*

(a) *Transfers into trust when transferor is present beneficiary or when trust is revocable:* Rev.C. 62(d)(1) was amended in 2007 to include transfers by the trustor's registered domestic partner.

(18) *(New) Transfers between registered domestic partners:* Commencing on January 1, 2000, transfers between registered domestic partners, as defined in *Family C. 297*, are excluded from the meaning of "change of ownership." The transfers include, but are not limited to, the following:

(a) Transfers to a trustee for the beneficial use of a registered domestic partner, or the surviving registered domestic partner of a deceased transferor, or by a trustee of such a trust to the registered domestic partner of the trustor. (Rev.C. 62(p)(1)(A), added in 2005 and amended in 2007.)

(b) Transfers that take effect on the death of a registered domestic partner. (Rev.C. 62(p)(1)(B), added in 2005 and amended in 2007.)

(c) Transfers to a registered domestic partner or former registered domestic partner in connection with a property settlement agreement or decree of dissolution of a registered domestic partnership or legal separation. (Rev.C. 62(p)(1)(C), added in 2005 and amended in 2007.)

(d) The creation, transfer, or termination, solely between registered domestic partners, of a coowner's interest. (Rev.C. 62(p)(1)(D), added in 2005 and amended in 2007.)

(e) The distribution of a legal entity's property to a registered domestic partner or former registered domestic partner in exchange for the interest of the registered domestic partner in the legal entity in connection with a property settlement agreement or a decree of dissolution of a registered domestic partnership or legal separation. (Rev.C. 62(p)(1)(E), added in 2005 and amended in 2007.)

See *Strong v. State Bd. of Equalization* (2007) 155 C.A.4th 1182, 1190, 66 C.R.3d 657 [enactment of Rev.C. 62(p) did not violate Constitution; Rev.C. 62(p) ratified earlier rule of State Board of Equalization that excluded transfers between registered domestic partners through intestate succession from definition of change in ownership]; 37 *McGeorge L. Rev.* 345 [removing reassessment of value when property is transferred between registered domestic partners].

Rev.C. 62(p)(2), added in 2007, establishes a procedure for obtaining reversal of a reassessment made in contravention of Rev.C. 62(p) for a transfer occurring between January 1, 2001, and January 1, 2006.

(19) *(New) Property sold subject to right of redemption:* "Change in ownership" does not include the recording of a certificate of sale under C.C.P. 729.040(a), relating to property sold subject to the right of redemption, for the period in which the right of redemption exists. (Rev.C. 62.11, added in 2007.)



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D. Purchase or Change in Ownership After 1975 Lien Date.

3. Excluded Transactions.

b. Transfer Between Parent and Child.

1. Scope of Exclusion.

9 Witkin Sum. Cal. Law Tax § 152

[§ 152] Scope of Exclusion.

(1) *Constitutional Authorization.* The transfer of specified property between parents and children, "as defined by the Legislature," is excluded from "change of ownership." (Cal. Const., Art. XIII A, §2(h); Rev.C. 63.1; see 1 Ehrman 3d, §2:23; on operation prospectively from 1987, see Cal. Const., Art. XIII A, §2(i); Rev.C. 63.1(h).)

(2) *Excluded Transactions.* A change of ownership does not include the purchase or transfer of the principal residence or the first \$ 1 million of full cash value of other real property of an eligible transferor in a transaction between parents and their children. (Cal. Const., Art. XIII A, §2(h); Rev.C. 63.1(a)(1) and (a)(2); for definition of "principal residence," see Rev.C. 63.1(b)(1).) The exclusion applies to voluntary transfers and to transfers resulting from a court order or judicial decree (Cal. Const., Art. XIII A, §2(h); Rev.C. 63.1(g)) and to transfers through the medium of an inter vivos or testamentary trust (Rev.C. 63.1(c)(9)). Nothing in Rev.C. 63.1(g) may be construed as conflicting with Rev.C. 63.1(c)(1) or the "general principle that transfers by reason of death occur at the time of death." (Rev.C. 63.1(g).) The \$ 1 million exclusion applies separately to each eligible transferor, but the exclusions of multiple transferors may be combined in a single transaction, provided that the value of property of a transferor excluded under the election may not exceed his separate unused exclusion on the date of the joint transfer. (Rev.C. 63.1(b)(2).)

(3) *Eligible Parties.* The exclusion applies to transfers from a parent or parents to a child or children and transfers from a child or children to a parent or parents. (Rev.C. 63.1(c)(1).) "Children" includes (a) natural children, except those adopted by others, (b) stepchildren, while the relationship of stepparent and stepchild exists, (c) adopted children, except those adopted as adults, and (d) the spouses of children, while the in-law relationship exists. (Rev.C. 63.1(c)(3).)

In *Penner v. Santa Barbara* (1995) 37 C.A.4th 1672, 44 C.R.2d 606, plaintiff taxpayer transferred her real property to a partnership owned by herself and her adult children and assigned a small percentage of her partnership interests to each child. Defendant county then substantially increased the property's assessed value. Plaintiff paid the additional taxes and brought an action for a refund. Plaintiff contended that the transfer was exempt under Cal. Const., Art. XIII A, §2(h). *Held*, summary judgment for defendant affirmed.

(a) The exemption was inapplicable because the transfer was to a partnership rather than to plaintiff's children. The

plain language of Art. XIII A, §2(h), applies only to natural persons and there is nothing in the language of the exemption to indicate that the voters intended to extend it to partnerships in which family members invest their real property. (37 C.A.4th 1677.)

(b) Rev.C. 63.1 properly limits the exemption by defining "children" as natural persons, which is consistent with the exemption's plain language. (37 C.A.4th 1678.)

(c) The reassessment did not violate the "step transaction" doctrine, even though the exemption would have been applicable had plaintiff transferred the property to herself and her children first and then to the partnership. The step transaction doctrine treats a series of nominally separate transactional steps as a single transaction if the steps are, in substance, interdependent and focused toward a particular result. However, the doctrine allows certain steps actually taken to be ignored; it does not allow a taxpayer to invent steps that never existed. (37 C.A.4th 1679.)

(d) The plain meaning of Cal. Const., Art. XIII A, § 2(h), and Rev.C. 63.1 makes it relatively simple to determine whether a transfer will qualify for the parent/child exemption. Plaintiff's reading of those provisions, however, would require an examination of the identity of the natural persons who own the partnerships involved, their degree of control over the partnerships, and their familial relationship to the other natural persons involved. There is no reason to judicially impose "yet another layer of complexity to the already Byzantine structure of California property taxes." (37 C.A.4th 1680.)

(4) *Date of Transfer*. For purposes of Cal. Const., Art. XIII A, §2(h), a change of ownership resulting from acquisition of property in a probate proceeding occurs at the date of the decree of distribution, not the date of the decedent's death. (*Larson v. Duca* (1989) 213 C.A.3d 324, 329, 261 C.R. 559 [no reassessment of property distributed under probate decree dated after effective date of constitutional amendment, even though death occurred before that date].) For transfers between parents and children under a will or by intestacy, the date of transfer is the date of the decedent's death. (Rev.C. 63.1(c)(1).)

(5) *Liberal Construction*. It is the intent of the Legislature that Rev.C. 63.1 be liberally construed to carry out the intent of the constitutional amendment. Thus, a transfer from a corporation, partnership, trust, or other legal entity to a transferor who owns the entity or beneficially owns the property for the sole purpose of an immediate retransfer under Rev.C. 63.1 "shall be fully recognized and shall not be ignored or given less than full recognition under a substance-over-form or step-transaction doctrine." Eligible transfers must also be fully recognized when immediately followed by transfer to an entity owned by the transferee or holding property owned beneficially by the transferee. (Stats. 1987, Chap. 48, §2.)

West's Key Number Digest, Taxation k.84

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Excluded Transactions*. Rev.C. 63.1(a)(1) was further subdivided in 2007. The exclusion for a principal residence is now prescribed by Rev.C. 63.1(a)(1)(A). Rev.C. 63.1(a)(1)(B), added in 2007, provides that a purchase or transfer of a principal residence from a foster child to the child's biological parent will not be excluded under Rev.C. 63.1(a)(1)(A), if the transferor child received that principal residence, or an interest in it, from a foster parent through a purchase or transfer that was excluded under Rev.C. 63.1(a)(1)(A). (3) *Eligible Parties*. Rev.C. 63.1(c)(3) was amended in 2007 to add specified foster children to the definition of "children." Eligible foster children are those who, because of a legal barrier, were not adopted by their state-licensed foster parents before they "aged out" of the foster care system. (Rev.C. 63.1(c)(3)(E).)



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b. Transfer Between Parent and Child.

2. Filing Claim for Exclusion.

9 *Witkin Sum. Cal. Law Tax* § 153

[§ 153] Filing Claim for Exclusion.

(1) *Who Files.* The transferee or the transferee's legal representative, executor, or administrator may file the claim. The person who files must provide written certification of the relationship between the transferee and the transferor. The certification must be signed under penalty of perjury. (Rev.C. 63.1(d)(1)(A).) The transferor must certify that the transferor is seeking the exclusion under Rev.C. 63.1 and will not file a claim to transfer the base year value of the property under Rev.C. 69.5 (*infra*, §160). (Rev.C. 63.1(d)(1)(B).) If there are multiple transferees, any one of them may make the certification, as long as that transferee has actual knowledge, and states in the certification that all of the transferees are eligible transferees within the meaning of Rev.C. 63.1. The certification must be signed by the transferee as a true statement made under penalty of perjury. (Rev.C. 63.1(d)(1)(D).)

(2) *Timing of Filing.* For transfers before September 30, 1990, the claim had to be filed within 3 years after the date of purchase or transfer. (Rev.C. 63.1(e)(1)(A).) For transfers on or after September 30, 1990, the claim must be filed prior to transfer to a third party or within 3 years after the date of purchase or transfer, whichever is earlier. (Rev.C. 63.1(e)(1)(B); see *Empire Properties v. Los Angeles* (1996) 44 C.A.4th 781, 789, 52 C.R.2d 69 [claim for exemption of transfer involving revocable family trust that became irrevocable on death of beneficiaries' father, filed more than 3 years after father's death, was untimely].) However, a claim is deemed to be timely if filed within 6 months after the date of mailing of a notice of a supplemental or escape assessment issued as a result of the purchase or transfer of the property for which the claim is filed. (Rev.C. 63.1(e)(1)(C); on consideration of untimely claims, see Rev.C. 63.1(e)(2).)

Rev.C. 63.1(e)(3)(A) makes the 6-month time limit of Rev.C. 63.1(e)(1)(C) applicable to purchases or transfers of real property that occurred on or after November 6, 1986. In *Scott v. State Bd. of Equalization* (1996) 50 C.A.4th 1597, 58 C.R.2d 376, this provision was challenged by plaintiff county assessor as unconstitutional under the annual waiver provision mandated by Cal. Const., Art. XIII, §6 (*infra*, §235), and under the prohibition against gifts of public funds set forth in Cal. Const., Art. XVI, §6 (*supra*, §17). *Held*, the provision is constitutional.

(a) *No violation of Cal. Const., Art. XIII, §6.*

(1) Cal. Const., Art. XIII, §6, mandates that the failure "in any year" to claim an exemption or classification that reduces property tax waives that exemption or classification "for that year." The provision covers traditional kinds of exemptions in which the taxpayer must meet annual filing requirements in order to maintain the exemption from year to year. (50 C.A.4th 1601.) Because it twice refers to annual filings, the provision does not apply to the parent-child exclusion, which is claimed only once. (50 C.A.4th 1603.)

(2) *Copren v. State Bd. of Equalization* (1988) 200 C.A.3d 828, 246 C.R. 361, which invalidated a tax relief statute that had enabled a delinquent claim for a welfare exemption, is distinguishable. The statute in *Copren* was a "classic" example of legislation that violates Cal. Const., Art. XIII, §6. It granted retrospective tax relief by allowing an exemption that had been waived as a matter of constitutional law, thereby compelling local governments to refund taxes for years in which exemptions had been waived. (50 C.A.4th 1603.) The scope of Cal. Const., Art. XIII, §6, does not include the filing of a one-time exclusion that is expressly provided by a different section of the *Constitution*. (50 C.A.4th 1603, 1604.)

(b) *No violation of Cal. Const., Art. XVI, §6.* Former Rev.C. 63.1(e)(4) (now Rev.C. 63.1(e)(3)(A)) does not make a gift of public funds. Although in general the Legislature cannot provide relief for taxes that have become fixed and vested, it may do so for a public purpose. (50 C.A.4th 1604.) Although not expressly stated, the purpose underlying former Rev.C. 63.1(e)(4) is clear from the legislative history: the Legislature intended to rectify flaws in earlier claims procedures that caused taxpayers to inadvertently lose their parent-child exclusion. Relief of hardship to a taxpayer is a valid public purpose. (50 C.A.4th 1605.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Who Files.* When the transfer is between a foster parent and foster child, the claim must include a certified copy of the court decision regarding the foster child status of the individual and a certified statement from the appropriate county agency that the foster child was not, because of a legal barrier, adopted by the foster parent. The county assessor may request further legal substantiation of these matters. (Rev.C. 63.1(d)(1)(E), added in 2007.)(3) *(New) Public Inspection of Claim.* A claim filed under Rev.C. 63.1 is not a public document and is not subject to public inspection. The claim must, however, be available for inspection by the transferee and the transferor and their spouses, legal representatives, executors, and administrators. (Rev.C. 63.1(i), added in 2005.)

(4) *(New) Notice of Potential Eligibility.* If the assessor notifies the transferee in writing of potential eligibility for exclusion under Rev.C. 63.1, a certified claim for exclusion must be filed with the assessor within 45 days of the notice's date. If a claim is not filed within 45 days, the assessor may send a second notice, advising the transferee that reassessment of the property will commence unless a certified claim is filed within 60 days of the date of the second notice. (Rev.C. 63.1(j)(1), added in 2008.) A claim filed after the 60-day period may be subject to a processing fee. (Rev.C. 63.1(j)(2), added in 2008.) Failure to file a certified claim within the filing periods specified in Rev.C. 63.1(j) will not limit an exclusion from being granted as a result of a claim filed within the filing periods specified by Rev.C. 63.1(e). (Rev.C. 63.1(j)(3), added in 2008.)



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9 Witkin Sum. Cal. Law Tax § 154

[§ 154] Transfer From Grandparent to Grandchild.

In 1996, the change in ownership exclusion applicable to parents and their children (*supra*, §152) was extended to property transferred from grandparents to grandchildren, if the intervening generation is deceased as of the purchase or transfer date. (Cal. Const., Art. XIII A, §2(h)(2); Rev.C. 63.1(a)(3).) The exclusion applies to purchases and transfers occurring on or after March 27, 1996. (Rev.C. 63.1(h)(2); Cal. Const., Art. XIII A, §2(h)(2).) Unlike the exclusion for transfers between parents and children, the exclusion in Rev.C. 63.1(a)(3) applies only to transfers *from* grandparents *to* grandchildren. (Rev.C. 63.1(c)(2).) (See 1 Ehrman 3d §2:23.50; on definition of "grandchildren," see Rev.C. 63.1(c)(4); on effect of grandchildren having already received excluded property from their parents, see Cal. Const., Art. XIII A, §2(h)(2)(B); Rev.C. 63.1(a)(3)(B).)

SUPPLEMENT: [This section is current through the latest supplement]

For the purpose of determining whether the intervening generation is deceased, a son-in-law or daughter-in-law of the grand- parent, who is also a stepparent to the grandchild, need not be deceased on the transfer date. (Rev.C. 63.1(a)(3)(A), (c)(2), amended in 2005.)



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9 Witkin Sum. Cal. Law Tax § 155

[§ 155] Purchase or Transfer of Ownership Interest in Legal Entity.

(1) *No Change in Ownership.* Generally, the purchase or transfer of an ownership interest in a legal entity, such as corporate stock or partnership or limited liability company interests, is not a transfer of the real property of the entity, and hence is not a change of ownership. (Rev.C. 64(a); see *Parkmerced Co. v. San Francisco* (1983) 149 C.A.3d 1091, 1096, 197 C.R. 401 [transfer of bare legal title to partnership property held by corporate partner as nominee of partnership to successor of that partner after merger was not change of ownership].) Rev.C. 64(a) is applicable to the purchase or transfer of ownership interests in a partnership without regard to whether it is a continuing or a dissolved partnership. (Rev.C. 64(a); see *Zapara v. Orange* (1994) 26 C.A.4th 464, 469, 31 C.R.2d 555 [distinguishing between continuing and dissolved partnerships before amendment of Rev.C. 64(a) to present form].)

When a majority partner obtains all of the remaining ownership interests in the partnership or otherwise becomes the sole partner, the purchase or transfer of the minority interests, subject to the appropriate application of the step-transaction doctrine, is not a change in ownership of the partnership's real property. (Rev.C. 64(c)(2) [prospectively overruling result in *Zapara v. Orange*]; on step-transaction doctrine, see *supra*, §149.)

Under Rev.C. 64(b), the following transactions are also not deemed changes of ownership:

- (a) A reorganization of farm credit organizations.
- (b) A nontaxable corporate reorganization of members of an affiliated group.
- (c) A transfer of real property between members of an affiliated group.

To qualify as a reorganization excluded from reassessment, Rev.C. 64(b) requires "affiliation" from the beginning until the end of the transaction. (*Pueblos Del Rio South v. San Diego* (1989) 209 C.A.3d 893, 899, 907, 257 C.R. 578 [Rev.C. 64(b) is inapplicable to reorganization under 26 U.S.C., §368(a)(1)(D), involving transfer of real property to and severance of ties with wholly owned subsidiary].)

(2) *Change in Ownership.* Where a person or entity obtains control of an entity by a purchase or transfer of an ownership interest, the purchase or transfer is a change of ownership of property owned by the controlled entity. (Rev.C. 64(c)(1); see *Sav-On Drugs v. Orange* (1987) 190 C.A.3d 1611, 1620, 236 C.R. 100 [merger of corporations not

in affiliated group was change of ownership of property owned by subsidiary of controlled corporation; Rev.C. 64(c) is constitutional].) Likewise, a change of ownership occurs when ownership interests representing cumulatively more than 50% of the total interest in an entity are transferred by the original coowners "in one or more transactions." (Rev.C. 64(d).) (See 1 Ehrman 3d, §2:15.)

Under Rev.C. 64(c), the purchase by one corporation of all the shares of stock of another corporation requires reassessment of real property owned by a wholly owned subsidiary of the corporation whose stock has been purchased. (*Title Ins. & Trust Co. v. Riverside* (1989) 48 C.3d 84, 89, 255 C.R. 670, 767 P.2d 1148; see *Pueblos Del Rio South v. San Diego*, *supra* [property was properly reassessed under Rev.C. 64(c); discussing *Sav-On Drugs v. Orange*]; *Kraft v. Orange* (1990) 219 C.A.3d 1104, 1109, 268 C.R. 643 [corporate reorganization in which new parent corporation owned two formerly separate corporations was change in ownership of merged corporation requiring reassessment even though shareholders of merged corporation became majority shareholders of parent; following *Title Ins. & Trust Co.*]; *Twentieth Century Fox Film Corp. v. Los Angeles* (1990) 223 C.A.3d 1158, 1162, 273 C.R. 76 [acquisition of one corporation by another was change of ownership, even though no single investor in parent owned more than 50%; following *Kraft*].)

SUPPLEMENT: [This section is current through the latest supplement]



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9 Witkin Sum. Cal. Law Tax § 156

[§ 156] New Construction After 1975 Lien Date.

(1) *General Definition.* Real property is reassessed when newly constructed. (Cal. Const., Art. XIII A, §2(a); on effective lien date for new values triggered by new construction, see Rev.C. 50.) "Newly constructed" and "new construction" mean an addition to real property (land, improvements, or fixtures) or an alteration of real property that constitutes a major rehabilitation or that converts the property to a different use. (Rev.C. 70(a).) A rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture is a major rehabilitation. (Rev.C. 70(b).) (See 1 Ehrman 3d, §§2:29, 2:30; on supplemental assessment following new construction, see *infra*, §162.)

(2) *Disaster Reconstruction.* "Newly constructed" does not include real property reconstructed after a disaster declared by the Governor, where the fair market value of the reconstructed property is comparable to the fair market value before the disaster. (Cal. Const., Art. XIII A, §2(a).) Likewise excluded is timely reconstruction after property is damaged or destroyed by calamity or misfortune. Reconstruction that is not substantially equivalent is deemed to be new construction, and only the portion of the reconstructed property that exceeds substantially equivalent reconstruction is reassessed. (Rev.C. 70(c).) (See 1 Ehrman 3d, §11:2; on transfer of base year value of damaged or destroyed property to replacement property, see *infra*, §158.)

(3) *Seismic Safety Reconstruction.* "Newly constructed" does not include the reconstruction or improvement of unreinforced masonry buildings necessary to comply with local seismic safety ordinances. The exclusion is applicable for 15 years following reconstruction or improvement, unless the property is purchased or changes ownership within that time. (Cal. Const., Art. XIII A, §2(a); Rev.C. 70(d)(1).)

The construction or installation of "seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies" is also excluded from "new construction." (Cal. Const., Art. XIII A, §2(c)(4); Rev.C. 74.5(a).) The exclusion does not apply to seismic safety reconstruction that qualifies for exclusion under Cal. Const., Art. XIII A, §2(a). (Rev.C. 74.5(e).) The exclusion applies only to improvements constructed or installed in existing buildings completed after December 31, 1990.

(4) *Solar Energy Systems.* The Legislature may exclude the construction or addition of active solar energy systems from the term "newly constructed." (Cal. Const., Art. XIII A, §2(c)(1).) Rev.C. 73 provides this exclusion through the 2004-2005 fiscal year. (Rev.C. 73(d).)

(5) *Fire Safety Systems.* The Legislature may exclude the construction or installation of fire safety systems from the term "newly constructed." (Cal. Const., Art. XIII A, §2(c)(2).) Rev.C. 74 excludes fire sprinkler systems, other fire extinguishing systems, fire detection systems, and fire-related egress improvements constructed or installed in an existing building.

(6) *Construction To Aid Disabled Persons.* The construction, installation, or modification of a portion or structural element of a single- or multiple-family dwelling eligible for the homeowner's exemption (see *infra*, §207) is excluded from new construction, if the change is for the purpose of making the dwelling more accessible to severely and permanently disabled persons. (Cal. Const., Art. XIII A, §2(c)(3); Rev.C. 74.3(a); for definition of "severely and permanently disabled person," see Rev.C. 74.3(b); for definition of "accessible," see Rev.C. 74.3(c); on form and content of claim, see Rev.C. 74.3(f).)

The exclusion only applies to improvements specially adapted to severely and permanently disabled persons, not to incidental improvements. (Rev.C. 74.3(d).) It does not apply to the construction of an entirely new dwelling. (Rev.C. 74.3(e).) However, the exclusion does apply to the construction of an addition, such as a bedroom or bathroom, that duplicates existing facilities not otherwise available to the disabled person because of the disability. (Rev.C. 74.3(c); on transfer of base year value of disabled person's original property to replacement property, see *infra*, §160.)

Moreover, the construction, installation, removal, or modification of a portion or structural component of an existing building is not new construction, if the change is for the purpose of making the building more accessible to, or more usable by, a disabled person. (Cal. Const., Art. XIII A, §2(c)(5); Rev.C. 74.6(a); for definition of "disabled person," see Rev.C. 74.6(b).)

(7) *Construction To Improve Underground Storage Tank.* Improving, upgrading, or replacing an underground storage tank to comply with government regulations is not "new construction" and is considered normal maintenance and repair. (Rev.C. 70(e)(1).) Similarly, timely reconstruction of a structure as a consequence of compliance work performed on an underground storage tank is considered normal maintenance and repair, as long as the reconstructed structure is substantially equivalent to the prior structure in size, utility, and function. (Rev.C. 70(e)(2).)

(8) *Reassessment and New Base Year Value.* The assessor determines a new base year value of the portion of real property that is newly constructed. The existing base year value of the portion that is not newly constructed is not changed. New construction in progress on the lien date is appraised on each lien date until completion. (Rev.C. 71.)

A local entity that issues a building permit, or a certificate of occupancy, or other document that shows the date of completion of new construction, must transmit a copy to the county assessor. (Rev.C. 72(a) and (b).) An assessee filing approved building plans must also file a scale copy of the floor plan, sufficiently detailed to allow the assessor to determine the square footage and, for residential buildings, the intended use of each room. The local entity must transmit the scale plan to the assessor once final plans are approved. (Rev.C. 72(c).) A local agency that approves or places conditions on tentative maps may be required to submit copies of the maps to the county assessor as soon as possible after the maps are filed. (Rev.C. 72(d).)

SUPPLEMENT: [This section is current through the latest supplement]

(4) *Solar Energy Systems.* Rev.C. 73(d) was amended in 2005 to extend the exclusion for active solar energy systems through the 2008-09 fiscal year. Rev.C. 73(f), added in 2008, extends the exclusion through the 2015-2016 fiscal year.



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9 Witkin Sum. Cal. Law Tax § 157

[§ 157] In General.

In addition to adjustments for purchases and changes of ownership (*supra*, §147 et seq.) and new construction (*supra*, §156), the following changes in base year value are authorized:

(1) *Inflation*. An annual increase in the base year value, not to exceed 2%, is authorized to reflect inflation. (Cal. Const., Art. XIII A, §2(b).) (On determination of inflation adjustment, see Rev.C. 51(a), 75.18, 110.1(f); *Armstrong v. San Mateo* (1983) 146 C.A.3d 597, 615, 194 C.R. 294 [inflation adjustment for lien dates in 1976, 1977, and 1978]; *Orange v. Bezaire* (2004) 117 C.A.4th 121, 126, 11 C.R.3d 478 [base value on which inflation is calculated is original purchase price or assessment at time of new construction, rather than reduced base resulting from reassessment following decline in value].)

(2) *Decline in Value*. Full cash value may be reduced "to reflect substantial damage, destruction or other factors causing a decline in value." (Cal. Const., Art. XIII A, §2(b).)

(3) *Disaster Relief*. The base year value of certain property damaged or destroyed by a disaster may be transferred to replacement property. (Cal. Const., Art. XIII A, §2(e); Rev.C. 69; see *infra*, §158.)

(4) *New Residence of Seniors and Severely Disabled Persons*. The base year value of residential property of persons over 55 years of age and severely disabled persons may be transferred to replacement property. (Cal. Const., Art. XIII A, §2(a); Rev.C. 69.5; see *infra*, §160.)

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SUPPLEMENT: [This section is current through the latest supplement]



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Witkin Summary of California Law IX. PROPOSITION 13 AND SUBSEQUENT LIMITATIONS ON TAXING POWER F. Other Changes in Base Year Value. 2. Replacement Property Following Disaster.

9 Witkin Sum. Cal. Law Tax § 158

[§ 158] Replacement Property Following Disaster.

(1) *Authorization.* The base year value of certain property damaged or destroyed by a disaster may be transferred to replacement property. (Cal. Const., Art. XIII A, §2(e)(1); Rev.C. 69; see Cal. Const., Art. XIII A, §2(e)(2), Rev.C. 69(d) [transfer applies to replacement property acquired or constructed after July 1, 1985].) (See 1 Ehrman 3d, §11:2.)

(2) *Property Requirements.* The original property must be "substantially damaged or destroyed by a disaster, as declared by the Governor." The replacement property must be comparable property in the same county as the damaged property, acquired or newly constructed as a replacement within 3 years. (Rev.C. 69(a).) (On what constitutes substantial damage or destruction, see Cal. Const., Art. XIII A, §2(f)(1); Rev.C. 69(c)(1); on what constitutes comparable property, see Cal. Const., Art. XIII A, §2(f)(2); Rev.C. 69(c)(2); on what constitutes disaster, see Rev.C. 69(c)(3); on special 5-year acquisition time for replacement of property damaged by Northridge earthquake, see Rev.C. 69(a).)

A county may adopt an ordinance allowing the transfer of base year value of property outside the county to comparable replacement property within the county. (Cal. Const., Art. XIII A, §2(e)(3); Rev.C. 69.3.) The replacement property must be of equal or lesser value and must be acquired or newly constructed within 3 years after the damage or destruction of the original property. (Rev.C. 69.3(a)(1).)

(3) *Ownership Restriction.* Relief is available only to owners (including individuals, partnerships, corporations, other legal entities, or a combination of them) of damaged or destroyed property who obtain title to replacement property. Acquisition of an ownership interest in a legal entity that owns real property is not acquisition of comparable property. (Rev.C. 69(e).)

(4) *Computation of Replacement Base Year Value.* If the full cash value of the replacement property does not exceed 120% of the full cash value of the original property immediately before it was damaged or destroyed, the adjusted base year value of the original property is transferred to the replacement property as the replacement base year value. If the full cash value of the replacement property exceeds 120% of the full cash value of the original property, the excess is added to the adjusted base year value of the original property. If the full cash value of the replacement property is less than the full cash value of the original property, the lower value is the replacement base year value. (Rev.C. 69(b).)

(5) *Reassessment of Property Damaged or Destroyed.* At the time the base year value of the substantially damaged or destroyed property is transferred to the replacement property, the substantially damaged or destroyed property must be reassessed at its full cash value. However, the substantially damaged or destroyed property retains its base year value notwithstanding the transfer authorized by Rev.C. 69. (Rev.C. 69(a).)

(6) *Other Relief Is Not Available.* An owner of damaged or destroyed property who receives property tax relief under Rev.C. 69 is not eligible for property tax relief under Rev.C. 70(c) (new construction does not include reconstruction of property damaged or destroyed by misfortune or calamity; see *supra*, §156). (Rev.C. 69(a).)

SUPPLEMENT: [This section is current through the latest supplement]



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Witkin Summary of California Law IX. PROPOSITION 13 AND SUBSEQUENT LIMITATIONS ON TAXING POWER F. Other Changes in Base Year Value. 3. Replacement of Contaminated Property.

9 Witkin Sum. Cal. Law Tax § 159

[§ 159] Replacement of Contaminated Property.

(1) *Authorization.* A property owner may transfer the base year value of qualified contaminated property to a comparable replacement property within the same county. The fair market value of the replacement property must be equal to or less than the fair market value of the contaminated property if that property were not contaminated. (Cal. Const., Art. XIII A, §2(i)(1)(A)(i); Rev.C. 69.4(a)(1); for definitions, see Rev.C. 69.4(e); on transfer to replacement property in other county, see Rev.C. 69.4(a)(2).) The replacement property must be acquired or newly constructed within 5 years after the sale or transfer of the contaminated property. (Cal. Const., Art. XIII A, §2(i)(1)(A)(ii); Rev.C. 69.4(b).)

Similarly, when remediation of contaminated property destroys or substantially damages a structure on the property, the structure may be repaired or replaced without being "new construction," as long as the repaired or replaced structure is similar in size, utility, and function to the original structure. (Cal. Const., Art. XIII A, §2(i)(1)(B); Rev.C. 74.7(a); for definitions, see Rev.C. 74.7(b).) Owners of replacement property who receive relief under Rev.C. 74.7 are not eligible to receive relief under Rev.C. 69.4. (Rev.C. 69.4(d)(1).)

(2) *Qualified Property.* Cal. Const., Art. XIII A, §2(i), applies only to replacement property that is acquired or constructed on or after January 1, 1995, and to property repairs performed on or after that date. (Cal. Const., Art. XIII A, §2(i)(4); Rev.C. 69.4(h), 74.7(e).) Qualified contaminated property is residential or nonresidential real property that has been rendered uninhabitable or unusable as the result of either environmental problems or the remediation of those problems, except where the existence of the problems was known to the owner or a related individual or entity at the time the property was acquired or constructed. (Cal. Const., Art. XIII A, §2(i)(2)(A).) The owner of the property must not have participated or acquiesced in an act or omission that rendered the property uninhabitable or unusable. (Cal. Const., Art. XIII A, §2(i)(2)(D); Rev.C. 69.4(f)(2)(A), 74.7(d)(1); on rebuttable presumption of participation or acquiescence for owner who is related to individual or entity that committed act or omission, see Cal. Const., Art. XIII A, §2(i)(3).)

To qualify, the contaminated property must be located on a site that has been designated as a toxic or environmental hazard or as an environmental cleanup site by a state or federal agency. (Cal. Const., Art. XIII A, §2(i)(2)(B); Rev.C. 69.4(f)(2)(B), 74.7(d)(2).) It must contain a structure that is substantially damaged or destroyed as a result of environmental cleanup activities. (Cal. Const., Art. XIII A, §2(i)(2)(C).)

(3) *Time for Claim.* To obtain the property tax relief provided by Rev.C. 69.4, a claimant must file a claim within 3 years of the date the replacement property was purchased or the new construction of the replacement property was completed. (Rev.C. 69.4(f)(1).) To receive the exclusion provided by Rev.C. 74.7, the property owner must notify the assessor in writing that he or she intends to claim the exclusion prior to, or within 30 days of, completion of a qualified project. The property owner must file all documents necessary to support the exclusion with the assessor not later than 6 months after the completion of the property. (Rev.C. 74.7(d).)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Authorization.* See 36 *McGeorge L. Rev.* 781 [statutory tax relief for qualified contaminated property].



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F. Other Changes in Base Year Value.
4. Replacement Property for Seniors and Severely Disabled Homeowners.

9 Witkin Sum. Cal. Law Tax § 160

[§ 160] Replacement Property for Seniors and Severely Disabled Homeowners.

(1) *Authorization.* A person over 55 years of age, or a severely and permanently disabled person, may transfer the base year value of residential property to replacement property. (Cal. Const., Art. XIII A, §2(a); Rev.C. 69.5(a)(1); see 1 Ehrman 3d, §11:11; Cal. Const., Art. XIII A, §2(a); on applicability dates, see Rev.C. 69.5(j).)

(2) *One Time Benefit.* A claimant is entitled to the benefit of Rev.C. 69.5 on the basis of age only once, although a person who has been granted the benefit of Rev.C. 69.5 on the basis of age, and who subsequently becomes severely and permanently disabled, may then claim the benefit on the basis of disability. (Rev.C. 69.5(b)(7).) (On form and content of claim, see Rev.C. 69.5(f).) A claim under Rev.C. 69.5 may be rescinded. (Rev.C. 69.5(i).)

(3) *Qualifying Conditions.* Where the claimant's principal residence is sold and a replacement principal residence is purchased or newly constructed, the base year value of the original property may be transferred to the replacement property if the following conditions are met:

(a) At the time of the sale, the claimant or the claimant's spouse must be at least 55 years of age or severely and permanently disabled. (Rev.C. 69.5(b)(3); for definition of severely and permanently disabled, see Rev.C. 69.5(g)(12), 74.3(b).)

(b) The original property must be sold within 2 years of the purchase or construction of the replacement dwelling. (Rev.C. 69.5(a), 69.5(b)(5).) (For definition of "original property," see Rev.C. 69.5(g)(4); for definition of "replacement dwelling," see Rev.C. 69.5(g)(3).)

(c) The replacement property must be located in the same county as the original property, unless the county in which the replacement property is located adopts an ordinance incorporating the provisions of Rev.C. 69.5(a). (Rev.C. 69.5(a), (b)(6).) The applicable date of an ordinance authorizing the intercounty transfer of the base year value may be a date earlier than the date the county adopts the ordinance. (Rev.C. 69.5(a)(2).)

(d) The replacement property must be of equal or lesser value. (Rev.C. 69.5(a).) (For definition of "equal or lesser value" authorizing 5% increase in value for replacement within 1 year after sale and 10% increase for replacement within 2 years, see Rev.C. 69.5(g)(5).)

(e) At the time of the sale, or at the time when the original property was substantially damaged or destroyed by misfortune or calamity, or within 2 years of the purchase or construction of the replacement property, the claimant must be the owner and a resident of the original property eligible for the homeowner's exemption as the result of that ownership and occupation. (Rev.C. 69.5(b)(1), (b)(2).) At the time of the claim, the claimant must be the owner and a resident of replacement property eligible for the homeowner's exemption as the result of that ownership and occupation. (Rev.C. 69.5(b)(4); on prospective applicability of Rev.C. 69.5(b), see Rev.C. 69.5(m).)

(f) Special rules apply where either the original property or the replacement property is a manufactured home or an interest in a condominium, a community apartment project, a cooperative housing corporation, or a planned unit development. (See Rev.C. 69.5(c).) Additional limitations apply where the claimant's interest is held as community property, joint tenancy property, or cotenancy property. (See Rev.C. 69.5(d).)

(4) *Timing of Value Readjustments.* The base year value of the original property is determined under Rev.C. 110.1 and includes an inflation adjustment if the replacement property is purchased or constructed after the original property is transferred. Where the original property has been substantially damaged or destroyed by misfortune or calamity and the owner does not rebuild on the original property, the base year value is determined as of the date immediately before the misfortune or calamity. (Rev.C. 69.5(g)(2); on definition of "substantially damaged or destroyed by misfortune or calamity," see Rev.C. 69.5(g)(13).) The base year value may not be transferred to the replacement property until the original property is sold. (Rev.C. 69.5(a).) At that time, the original property is reassessed, whether or not replacement property is later purchased or constructed. (Rev.C. 69.5(e).) The base year value of the replacement property is adjusted when the original property is sold, the replacement property is purchased, or new construction is completed, whichever is later. (Rev.C. 69.5(h).)

SUPPLEMENT: [This section is current through the latest supplement]

(5) *(New) Public Inspection of Claim.* A claim filed under Rev.C. 69.5 is not a public document and is not subject to public inspection. The claim must, however, be available for inspection by the claimant or the claimant's spouse, the legal representative of the claimant or the spouse, the trustee of a trust in which the claimant or the spouse is a present beneficiary, and the executor or administrator of the estate of the claimant or the spouse. (Rev.C. 69.5(n), added in 2005 and amended in 2007.)



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9 Witkin Sum. Cal. Law Tax § 161

[§ 161] Computation of Taxable Value.

(1) *In General.* The taxable value of the property is the lesser of the following:

(a) The base year value with subsequent inflation adjustments. (Rev.C. 51(a)(1).)

(b) The full cash value, as defined by Rev.C. 110, "taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value." (Rev.C. 51(a)(2); see *El Dorado Palm Springs, Ltd. v. Board of Supervisors* (2002) 104 C.A.4th 1262, 1269, 128 C.R.2d 891 [no authority prevents later appraisal from being used to support timely imposed assessment; taxpayer was not entitled to refund for 1996, 1997, and 1998, even though in 1997, appeals board had determined that taxpayer was entitled to assessment reduction for 1993 under Rev.C. 51(a)(2), where reappraisals in 1998 and 2000 showed that enrolled value was less than fair market value for 1996, 1997, and 1998, thus justifying amount of assessment for those years].)

(c) If property is damaged or destroyed by disaster, misfortune, or calamity and the county has adopted a disaster relief ordinance under Rev.C. 170, the assessed value computed under Rev.C. 170. (Rev.C. 51(c).)

(d) If property is damaged or destroyed and the county has not adopted a disaster relief ordinance or if property is voluntarily removed by the taxpayer, the lesser of the inflation-adjusted base year value or the damage-adjusted full cash value plus the lesser of the inflation-adjusted base year value of improvements or the damage-adjusted full cash value of improvements. (Rev.C. 51(b).) The value determined under Rev.C. 51(b) becomes the base year value of the real property until that property is restored, repaired, or reconstructed, or until some other provision of law requires establishment of a new base year value. In applying Rev.C. 51(b), the base year value of the real property does not include that portion of the property's previous base year value that was attributable to a portion of the property that has been destroyed or removed. (Rev.C. 51(b).)

(2) *Need for Reappraisal.* Nothing in Rev.C. 51 requires an annual reappraisal of all assessable property. However, for each lien date after a property's value is reduced under Rev.C. 51(a)(2), the value must be annually reappraised at its full cash value until it exceeds the value determined under Rev.C. 51(a)(1). (Rev.C. 51(e).) Rev.C. 51(e) requires the assessor to reappraise the property of a taxpayer who has been granted reduction under Rev.C. 51, even if the taxpayer has not filed an assessment appeal. The assessor cannot make filing an assessment appeal a condition of reappraisal. (*El Dorado Palm Springs, Ltd. v. Board of Supervisors, supra*, 104 C.A.4th 1268.)

(3) *Exceptions.* The following property is not subject to these ordinary valuation rules:

(a) Enforceably restricted open space lands are valued under Rev.C. 421 et seq. (Rev.C. 52(a); see *infra*, §§223, 224; on reassessment when restriction terminates, see *supra*, §146.)

(b) Enforceably restricted historic property is valued under Rev.C. 439 et seq. (Rev.C. 52(a); see *infra*, §226.)

(c) Restricted timberland is valued under Rev.C. 431. (Rev.C. 52(b); see *infra*, §225.)

(d) Nonprofit golf courses are valued under Cal. Const., Art. XIII, §10. (Rev.C. 52(c); see *infra*, §227.)

(e) Local government real property is valued under Cal. Const., Art. XIII, §11. (Rev.C. 52(d); see *infra*, §177 et seq.)

(f) Fruit and nut trees and grapevines are valued after the tax-free period provided by Cal. Const., Art. XIII, §3(i). (Rev.C. 53(a); see *infra*, §204.)

(4) *Oil and Gas Interests.* Oil and gas interests are taxable real property interests subject to a special valuation rule (using a modified capitalization-of-income method) adopted by the State Board of Equalization. Additions to proved reserves due to changed physical or economic conditions are treated as additions to the real property interest and are thereafter "frozen" in value, subject to the inflationary increase authorized by Cal. Const., Art. XIII A. Thus, at each annual reassessment, the value of the interest is reduced by depletions from the prior year's production, adjusted for inflation, and increased by the current value of new proved reserves. This rule was upheld in *Lynch v. State Bd. of Equalization* (1985) 164 C.A.3d 94, 210 C.R. 335, as follows:

(a) Article XIII A applies to oil and gas interests, which have long been treated as taxable real property. It was clearly intended to apply to commercial real estate and should not be construed to exclude oil and gas interests in the absence of an affirmative indication of intent to do so. (164 C.A.3d 113.)

(b) Article XIII A converts California to an acquisition value method of taxation, a method which is "problematical in relation to oil and gas interests." (164 C.A.3d 113.) The rule here is "an appropriate interpretation" of the application of Article XIII A to oil and gas interests, which "simply have no real parallel with other types of real property." (164 C.A.3d 114, 115.) (See *Tenneco West v. Kern* (1987) 194 C.A.3d 596, 608, 239 C.R. 612 [following *Lynch*; gas storage rights properly recognized and valued on lien date following their discovery]; *Phillips Petroleum Co. v. Lake* (1993) 15 C.A.4th 180, 192, 18 C.R.2d 765 [oil and gas valuation rules upheld in *Lynch* also apply to local assessment of geothermal resources]; *Exxon Mobil Corp. v. Santa Barbara* (2001) 92 C.A.4th 1347, 1355, 112 C.R.2d 751 [Board of Equalization erred in not applying special valuation methodology for oil and gas interests set forth in board's rule]; 2 Ehrman 3d, Chap. 21.)

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SUPPLEMENT: [This section is current through the latest supplement]

(4) *Oil and Gas Interests.* See *California Minerals, L.P. v. Kern* (2007) 152 C.A.4th 1016, 1023, 62 C.R.3d 1 [assessor properly determined base year value of property with probable, but not yet proved, oil and gas reserves to be purchase price of property].



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9 Witkin Sum. Cal. Law Tax § 162

[§ 162] Supplemental Assessment.

(1) *Nature of Requirement.* Real property is generally assessed on the lien date. (See *infra*, §228.) However, when the assessed value changes because of a change in ownership or the completion of new construction after the lien date (*supra*, §§147, 156), Rev.C. 75 et seq. require counties to prepare supplemental assessment rolls and collect supplemental taxes in order to shorten the time within which changes in value are recognized. (See Rev.C. 75.) The revenues from supplemental assessments are used to reimburse additional county costs (Rev.C. 75.60 et seq.) and for allocations to local districts (Rev.C. 75.70).

The supplemental assessment applies only to property subject to the assessment limitations of Cal. Const., Art. XIII A. (Rev.C. 75.14.) A supplemental assessment does not affect an exemption granted on the current roll or the roll being prepared. (Rev.C. 75.20.) (On application of exemptions to amount of supplemental assessment, see Rev.C. 75.21, 75.22.)

(2) *Valuation.* Property changing ownership and new construction resulting from "actual physical new construction" (including removal of a structure from land or discovery of oil or gas reserves) are appraised at full cash value on the date the change of ownership occurs or the new construction is completed. The assessed value is the new base year value for the property. (Rev.C. 75.10(a); on base year value of property from which structure is removed, see Rev.C. 51(b), 75.10(b); for supplemental assessment of fixtures, see Rev.C. 75.15; on deemed completion date of new construction, see Rev.C. 75.12; see also *Pope v. State Bd. of Equalization* (1983) 146 C.A.3d 1132, 1138, 1139, 194 C.R. 883 [newly constructed unit in multiple unit structure is appraised at time unit is capable of being occupied or utilized, regardless of completion of other units or installation of tenant improvements].)

(3) *Time of Supplemental Assessment.* The timing of the change in ownership or new construction determines the time of the supplemental assessment:

(a) Where the change or construction is completed between January 1 and May 31, two supplemental assessments are placed on the supplemental roll. The first is "the difference between the new base year value and the taxable value on the current roll." The second varies with the property involved. For new construction, the second assessment is "the value change due to the new construction." For a change in ownership of the full interest in property, the second assessment is "the difference between the new base year value and the taxable value to be enrolled on the roll being prepared." For a change of ownership of a partial interest, the second assessment is the difference between the sum of

the new base year value of the portion transferred plus the taxable value of the remainder of the property on the roll being prepared and the taxable value of the whole property on the roll being prepared. (Rev.C. 75.11(a).)

(b) Where the change or construction is completed between June 1 and March 1, one supplemental assessment is made for the "difference between the new base year value and the taxable value on the current roll." (Rev.C. 75.11(b).) (On net supplemental assessment in the event of multiple changes of ownership or completion of new construction in the same year, see Rev.C. 75.11(c).)

A supplemental assessment must ordinarily be placed on the assessment roll within 4 years after July 1 of the assessment year in which the event giving rise to the supplemental assessment occurred. (Rev.C. 75.11(d)(1).) The time is extended an additional 4 years if the assessment includes a penalty for wilful concealment or misrepresentation under Rev.C. 504. (Rev.C. 75.11(d)(2).) A supplemental assessment must be placed on the assessment roll within 8 years after July 1 of the assessment year in which the reassessment event occurred if the change in ownership was unrecorded and a change in ownership statement (required by Rev.C. 480) or preliminary change in ownership report (required by Rev.C. 480.3) was not timely filed. (Rev.C. 75.11(d)(3).) The time may be extended by written agreement between the taxpayer and the assessor. (Rev.C. 75.11(e).) There is no limitations period for a supplemental assessment that includes a penalty for fraud under Rev.C. 503. (Rev.C. 75.11(d)(4).) (See *Montgomery Ward & Co. v. Santa Clara* (1996) 47 C.A.4th 1122, 1132, 55 C.R.2d 261, *infra*, §232 [Rev.C. 75.11(d) barred county from levying, in April 1993, supplemental assessments for 1988-1989 assessment year, based on change in ownership that occurred in June 1988].)

(4) *Assessment Procedure*. Assessors are required to notify assessees when new base year values are determined (Rev.C. 75.31), but failure to receive the notice does not affect the validity of the assessment or the tax (Rev.C. 75.32). (On transmittal of supplemental assessments to auditor, see Rev.C. 75.40 *et seq.*; on computation of tax, see Rev.C. 75.41; on refunds, see Rev.C. 75.43.)

(5) *Payment and Delinquency*. The tax collector prepares a supplemental tax bill that is sent to the assessee. (Rev.C. 75.50, 75.51.) Supplemental bills sent from July to October are delinquent in two installments: December 10 and April 10. Supplemental bills sent from November to June are also delinquent in two installments: the last day of the month following mailing and the last day of the fifth month following mailing. (Rev.C. 75.52(a).) A 10% penalty attaches to delinquent amounts. (Rev.C. 75.52(b).) If a delinquent date falls on a Saturday, Sunday, or legal holiday, the supplemental bill becomes delinquent on the next business day, either at 5 p.m. or at the close of business, whichever is later. (Rev.C. 75.52(d); on lien for delinquent supplemental taxes, see Rev.C. 75.54; on declaration of default for unpaid delinquent amounts, see Rev.C. 75.53.)

(6) *Constitutionality*. The supplemental assessment statutes were upheld in *Shafer v. State Bd. of Equalization* (1985) 174 C.A.3d 423, 220 C.R. 59, in which county tax assessors challenged the provisions on a variety of constitutional grounds.

(a) *Voter approval is not required*. Supplemental assessment does not impose new ad valorem taxes in violation of Cal. Const., Art. XIII A, §§3, 4 (*supra*, §§130, 131), requiring voter approval of property tax increases. "The supplemental assessment provision imposes a new *timing mechanism* for valuation and collection. It does not alter the tax rate or impose new taxes. Nor is property taxed which was not taxed in the past. Rather, property owners are simply paying taxes based on the value closer to the time of a change in ownership or the completion of new construction." (174 C.A.3d 427, 428.) "There is nothing unconstitutional about modifying the lien date," and this approach is consistent with the purpose of Cal. Const., Art. XIII A, to value property at full cash value as reflected by new construction or a change in ownership. (174 C.A.3d 428.)

(b) *Deemed completion of new construction*. Under Rev.C. 75.12, new construction held for sale or other change of possession is not added to the supplemental roll until the change of ownership or possession occurs. Thus, for newly built homes levy of the supplemental assessment is delayed until the time of sale. This special treatment for new construction property is constitutionally permissible. (174 C.A.3d 429.)

(1) Rev.C. 75.12 does not violate Cal. Const., Art. XIII, §1 (infra, §213), the uniformity of assessment requirement. (174 C.A.3d 429, 430.) "[T]he unsold property held in inventory is not exempt from taxation nor is it taxed at a rate different from other residential real estate. The supplemental assessment and levy is merely *deferred* until the actual sale. When it is sold, the full cash value of the property is taxed at the same rate as other residential property." (174 C.A.3d 430.)

(2) Rev.C. 75.12 does not violate constitutional guarantees of equal protection. It promotes administrative efficiency by eliminating the need for interim assessment at the time of completion (174 C.A.3d 431), and is rationally related to the state's legitimate interest in providing affordable housing (174 C.A.3d 432).

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Nature of Requirement.* On application of exemptions to amount of supplemental assessment for qualified organizations, see Rev.C. 75.24, added in 2008.(2) *Valuation.* See *Georgiev v. Santa Clara* (2007) 151 C.A.4th 1428, 1436, 60 C.R.3d 752 [assessment appeals board properly determined completion date of new addition under Rev.C. 75.12; although building inspector gave "final o.k." to addition in July 1995, addition was not available for use at that time due to lack of functionality and need for significant repairs].(5) *Payment and Delinquency.*

(*New*) *Cancellation of penalties:* The penalty imposed for delinquent taxes under Rev.C. 75.50 et seq. must be cancelled if the assessee or fee owner demonstrates to the tax collector that the delinquency is due to the tax collector's failure to mail or electronically transmit the tax bill to the address provided on the tax roll or the electronic address provided and authorized by the taxpayer or fee owner. Penalties may be cancelled if the board of supervisors authorizes the tax collector to establish, and the tax collector establishes, specified procedures for the consideration of penalty cancellations. (Rev.C. 75.52(e)(1), added in 2007.) With respect to a late, amended, or corrected tax bill, the penalties imposed for delinquent taxes must be cancelled if the tax amount is paid within 30 days following the date that bill is mailed or electronically transmitted. (Rev.C. 75.52(e)(2), added in 2007.) Under no circumstance will a taxpayer have fewer than 30 days to pay without penalty. (Rev.C. 75.52(e)(3), added in 2007.)



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1. In General.

9 Witkin Sum. Cal. Law Tax § 163

[§ 163] In General.

Taxation is the rule, and exemption is the exception. Unless otherwise provided by the California Constitution or by federal law, all property is taxable and must be taxed in proportion to its full value. (Cal. Const., Art. XIII, §1; see Rev.C. 201; *Bigge Crane Rental Co. v. Alameda* (1972) 7 C.3d 414, 416, 102 C.R. 513, 498 P.2d 193; 71 Am.Jur.2d (2001 ed.), *State and Local Taxation* §130 et seq.) This theory is carried out by broad definition and classification of taxable property, and by express specification of exemptions. Property includes "all matters and things, real, personal, and mixed, capable of private ownership." (Rev.C. 103; see *North Kern Water Storage Dist. v. Kern* (1960) 179 C.A.2d 268, 278, 3 C.R. 636, infra, §178 [*Water C. 43508*, purporting to exempt all water rights of water storage district from taxation, was unconstitutional]; 18 *Pacific L. J.* 943 [exemptions, exclusions, immunities, and restrictions as limitation on full value assessment requirement].)

A municipality and a private party may make a valid agreement that, in consideration of services to be rendered by the private party, the municipality will pay the taxes levied on the private party's property. An agreement of this type does not violate the constitutional requirement of taxation of all property not expressly made exempt. (*Cane v. San Francisco* (1978) 78 C.A.3d 654, 659, 144 C.R. 316.)

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SUPPLEMENT: [This section is current through the latest supplement]



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9 *Witkin Sum. Cal. Law Tax* § 164

[§ 164] In General.

(1) *Land and Improvements.* For tax purposes, "real property" (or "real estate") includes the "possession of, claim to, ownership of, or right to the possession of land" (Rev.C. 104(a)) and improvements (Rev.C. 104(c)). (See 56 *A.L.R.3d* 1300 [separate assessment and taxation of air rights]; on improvements, see *infra*, §165; on possessory interests, see *infra*, §§166, 167; on taxable real property generally, see 1 Ehrman 3d, Chap. 3.)

(2) *Mining and Timber Rights.* Real property includes all mines, minerals, and quarries in the land, all standing timber whether or not belonging to the owner of the land, and all appurtenant rights and privileges. (Rev.C. 104(b); on oil leases as taxable real property, see *infra*, §175.)

(3) *Water Rights.* Water rights are real property for tax purposes, and an assessment of riparian land ordinarily includes the riparian rights in the waters. (*Spring Valley Water Co. v. Alameda* (1927) 88 C.A. 157, 163, 263 P. 318.) The right to divert water for nonriparian uses may be separately assessed and taxed. (*San Francisco v. Alameda* (1936) 5 C.2d 243, 247, 54 P.2d 462; *North Kern Water Storage Dist. v. Kern* (1960) 179 C.A.2d 268, 279, 3 C.R. 636, *infra*, §178; *Tuolumne v. State Bd. of Equalization* (1962) 206 C.A.2d 352, 358, 24 C.R. 113, *infra*, §178; *Jurupa Ditch Co. v. San Bernardino* (1967) 256 C.A.2d 35, 40, 63 C.R. 764; *Faix v. Los Angeles* (1976) 54 C.A.3d 992, 998, 127 C.R. 182.)

(4) *Floating Homes.* Floating homes are assessed in the same manner as real property. (Rev.C. 229(a).) (On valuation, see Rev.C. 229(b); on assessment and collection, see Rev.C. 2189.7; on issuance of tax clearance certificate, see Rev.C. 2189.8.) A floating home is a floating structure without power of its own, (a) built or modified as a stationary waterborne residential dwelling and (b) permanently linked to utilities and a sewage system on shore. It does not include a vessel. (Rev.C. 229(c).)

(5) *Transferable Development Rights.* Transferable development rights (which allow the owner to exceed building density limitations) constitute real property interests the value of which may be assessed on transfer. (*Mitsui Fudosan (U.S.A.) v. Los Angeles* (1990) 219 C.A.3d 525, 529, 268 C.R. 356.)

West's Key Number Digest, Taxation k.88

SUPPLEMENT: [This section is current through the latest supplement]



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9 *Witkin Sum. Cal. Law Tax* § 165

[§ 165] Improvements.

Improvements are taxable as real property (Rev.C. 104(c)), but land and improvements must be assessed separately (Cal. Const., Art. XIII, §13). Improvements include all "buildings, structures, fixtures, and fences erected on or affixed to the land," and all "fruit, nut bearing, or ornamental trees and vines, not of natural growth, and not exempt from taxation," except date palms under 8 years of age. (Rev.C. 105; see *Southern Calif. Tel. Co. v. State Bd. of Equalization* (1938) 12 C.2d 127, 137, 82 P.2d 422 [central office equipment of telephone company located in specially constructed building]; *San Diego Trust & Savings Bank v. San Diego* (1940) 16 C.2d 142, 153, 105 P.2d 94 [bank vault doors and similar installations]; *Trabue Pittman Corp. v. Los Angeles* (1946) 29 C.2d 385, 401, 175 P.2d 512 [bank vault doors and tellers' cages]; *Collins Elec. Co. v. Shasta* (1972) 24 C.A.3d 864, 868, 101 C.R. 285 [electric power transmission line substation]; *Tele-View Systems v. Contra Costa* (1972) 25 C.A.3d 340, 343, 101 C.R. 789 [cable television equipment installed in subscribers' homes]; *Specialty Restaurants Corp. v. Los Angeles* (1977) 67 C.A.3d 924, 136 C.R. 904, 13 Summary (10th), *Personal Property*, §107 [vessel used as tourist attraction]; *Seatrains of Calif. v. Alameda* (1978) 83 C.A.3d 69, 74, 147 C.R. 578 [cargo crane on rail in wharf]; *Morse Signal Devices v. Los Angeles* (1984) 161 C.A.3d 570, 579, 207 C.R. 742 [burglar alarm equipment installed in subscribers' homes]; 1 Ehrman 3d, §3:3; on fixtures taxable as real property, see 13 Summary (10th), *Personal Property*, §105 et seq.; on computer components and systems as real or personal property, see 13 Summary (10th), *Personal Property*, §106.)

Mobilehomes have been classified as taxable real property in other jurisdictions. (See 7 A.L.R.4th 1016 [classification, as real estate or personal property, of mobilehomes or trailers for purposes of state or local taxation].) In California, they were originally subject to vehicle license fees and exempt from property taxation. Presently, mobilehomes are generally taxed as personal property, but may instead be subject to vehicle license fees in certain circumstances. (See *infra*, §171.)

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9 *Witkin Sum. Cal. Law Tax* § 166

[§ 166] In General.

Taxable real property includes possessory interests as well as those in complete ownership. (Rev.C. 104(a); see *L.E. White Lumber Co. v. Mendocino* (1918) 177 C. 710, 712, 171 P. 799 [equitable interest in government land was taxable, though right and title were involved in litigation]; *Kaiser Co. v. Reid* (1947) 30 C.2d 610, 622, 184 P.2d 879; *De Luz Homes v. San Diego* (1955) 45 C.2d 546, 562, 290 P.2d 544, *infra*, §221; 19 U.S.F. L. Rev. 159 [limiting California's possessory interest tax]; 25 *Santa Clara L. Rev.* 65 [Possessory Interests: A Tax Without a Test?]; 1 Ehrman 3d, §3:7 et seq.; for examples of taxable possessory interests, see *Board of Supervisors v. Lonergan* (1980) 27 C.3d 855, 860, footnote 5, 167 C.R. 820, 616 P.2d 802; *Scott-Free River Expeditions v. El Dorado* (1988) 203 C.A.3d 896, 903, footnote 1, 250 C.R. 504; on taxability of leases and leasehold interests, see *infra*, §§175, 176; on valuation of possessory interests, see *infra*, §§220, 221.)

A "possessory interest" is the possession, or a claim or right to possession, of land or improvements, that is (a) independent, durable, and exclusive of rights held by others in the property, and (b) not coupled with ownership of the land or improvements in the same person. (Rev.C. 107(a).) "Independent" means the ability to exercise authority and exert control over the management or operation of the property, separate from the policies and rules of the property's public owner. A possession or use is independent if the possessor is sufficiently autonomous to constitute more than a mere agency. (Rev.C. 107(a)(1); on applicability of independence requirement to lease-leaseback of publicly owned property, see Rev.C. 107.8.) "Durable" is defined as a determinable period with a reasonable certainty that the use, possession, or claim will continue for that period. (Rev.C. 107(a)(2).) "Exclusive" means the enjoyment of a beneficial use of the property and the ability to legally exclude others who may interfere with that enjoyment. (Rev.C. 107(a)(3) [listing examples of exclusive use].) Possessory interests also include improvements on tax-exempt land. (Rev.C. 107(b).)

A contract of the state or a local public entity that creates a possessory interest subject to taxation must include a statement to that effect. (Rev.C. 107.6.)

West's Key Number Digest, Taxation k.88

SUPPLEMENT: [This section is current through the latest supplement]



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- 2. Exempt and Public Property.

9 Witkin Sum. Cal. Law Tax § 167

[§ 167] Exempt and Public Property.

(1) *Possessory Interests in Exempt Property.* Where property is exempt from taxation under either the welfare exemption (*infra*, §187 *et seq.*) or the college exemption (*infra*, §185), an individual's property interest that is incidental to or reasonably necessary for the tax-exempt purpose is not a taxable possessory interest. (*English v. Alameda* (1977) 70 C.A.3d 226, 240, 138 C.R. 634, *infra*, §188.)

(2) *Publicly Owned Possessory Interests.* Publicly owned property interests are generally exempt from property taxation. (See *infra*, §180 *et seq.*) Likewise, possessory interests of state agents are not taxable. (*Pacific Grove-Asilomar Operating Corp. v. Monterey* (1974) 43 C.A.3d 675, 690, 117 C.R. 874 [following *General Dynamics Corp. v. Los Angeles* (1958) 51 C.2d 59, 64, 65, 330 P.2d 794, *infra*, §202, and distinguishing *Rand Corp. v. Los Angeles* (1966) 241 C.A.2d 585, 50 C.R. 698, and *Board of Supervisors v. Archer* (1971) 18 C.A.3d 717, 96 C.R. 379, on basis of evidence showing agency].) However, possessory interests acquired by or for the California Pollution Control Financing Authority are taxable. (Rev.C. 201.5(a).)

(3) *Possessory Interests in Public Property.* In *Rand Corp. v. Los Angeles*, *supra*, Rand Corp., a nonprofit corporation engaged in research for the United States, owned its building but used equipment that was government property. *Held*: (a) Rand's possessory interest in equipment which had become attached to the land and therefore real property for tax purposes was subject to tax. (b) Its possessory interest in personal property not attached to the realty was not taxable (see *infra*, §202). (241 C.A.2d 594.)

In *Board of Supervisors v. Archer*, *supra*, persons holding grazing permits and agricultural leases on federal land contended that, because these interests could be terminated by the government at any time, they were merely licenses, not possessory interests. *Held*, the interests had value and were therefore taxable. (18 C.A.3d 724.)

Archer was followed in *Dressler v. Alpine* (1976) 64 C.A.3d 557, 134 C.R. 554, dealing with grazing rights on federal land, despite the fact that because the land was snowbound until June, no permit was issued until after the lien date. "Plaintiffs' expectation on March 1 that their grazing permits would be issued later in the season endowed them with a 'claim to possession' in the sense that their application would receive its customary, annual recognition by the

Forest Service." (64 C.A.3d 565.) (See 17 *Santa Clara L. Rev.* 827 [development of possessory interest in California].)

A contractual right to sell to members of the public who use public property may, when relatively exclusive, independent, and durable, be a possessory interest taxable under Rev.C. 107. (*Wells Nat. Services Corp. v. Santa Clara* (1976) 54 C.A.3d 579, 583, 126 C.R. 715 [TV sets rented to patients in public hospital]; *Stadium Concessions v. Los Angeles* (1976) 60 C.A.3d 215, 223, 131 C.R. 442 [concessions at public sports stadium and arena]; *Freeman v. Fresno* (1981) 126 C.A.3d 459, 178 C.R. 764 [amusement machines at airport terminal and other public places].)

In *Cox Cable San Diego v. San Diego* (1986) 185 C.A.3d 368, 229 C.R. 839, plaintiff taxpayer paid a franchise fee to operate a cable television system, in part using the public right-of-way. Defendant assessed and plaintiff paid under protest a property tax on plaintiff's interest in the right-of-way. *Held*, the tax was proper.

(a) Plaintiff's interest was a possessory interest under Rev.C. 107: a claim or right to possession of land not coupled with ownership of the land. (185 C.A.3d 376.) Either an easement holder or a mere licensee or permittee may hold a possessory interest (185 C.A.3d 377), and franchises to use public highways for electric power lines have long been considered property interests (185 C.A.3d 378). Plaintiff's interest is substantially the same. (185 C.A.3d 378.)

(b) Plaintiff's franchise confers use and possession of the public right-of-way not shared by the general public for a reasonably determinable period and generates a valuable private benefit. Thus, it is a taxable possessory interest under the criteria of *Archer*, *Wells*, *Stadium Concessions*, and *Freeman*, in which "the focus has been on the belief that the holder of a valuable use of public property that is tax exempt should contribute taxes to the public entity which makes its possession possible and provides a certain amount of exclusivity." (185 C.A.3d 382, quoting *Freeman*.)

(c) Plaintiff's use and possession of the public right-of-way is separate from the franchise itself and is not covered by its franchise fee. "The fact that for other purposes such as local assessment there is a degree of inseparability between a franchise and its right to use the streets and take tolls by reason of their use does not require the conclusion those possessory interests are not separately assessable and taxable. No case so holds." (185 C.A.3d 386.) (For legislative response to *Cox Cable*, see Rev.C. 107.7, *infra*, §220.)

In *Scott-Free River Expeditions v. El Dorado* (1988) 203 C.A.3d 896, 250 C.R. 504, plaintiffs were commercial rafting outfitters operating on the American River under a permit system that created a special class of users who enjoy exclusive commercial use of the river. *Held*, their possessory right was subject to taxation.

(a) Although the flow of water is not "property," the tax is not on the flow but on the use of the water, and the right to use the water is a possessory interest that may be taxed. (203 C.A.3d 904.)

(b) Although the use of navigable water is a constitutionally protected right, there is no constitutional right to the exclusive commercial use of the river without payment of the possessory interest tax. (203 C.A.3d 905.)

(c) In order to levy a possessory interest tax, it must be shown that the right of possession or exclusive use is independent, durable, and exclusive. All elements are present in this case. (203 C.A.3d 908.)

In *United Air Lines v. San Diego* (1991) 1 C.A.4th 418, 2 C.R.2d 212, defendant county assessed a property tax on plaintiff commercial airline's possessory interest in publicly owned landing facilities at the San Diego airport. Plaintiff challenged the assessment in a refund action. *Held*, the interest was taxable.

(a) For a possessory tax to be valid, the right to possession must have a degree of exclusivity sufficient to give the user something more than a right common with others. However, shared use with others does not, in itself, defeat the exclusivity requirement, and there may be "multiple exclusive concurrent yet independent users of the same property." (1 C.A.4th 427, following *Scott-Free River Expeditions v. El Dorado*.) Here, plaintiff's ability to use the common landing area to accommodate its air transportation business carried on at the airport segregates it from the general aviation public whose landing rights are concurrent. (1 C.A.4th 428.)

(b) The assessment is not preempted by former 49 U.S.C. Appx., §1513 (now 49 U.S.C., §40116(b)), which prohibits state air commerce taxes based on gross receipts, the carriage of passengers, or the sale of air transportation. The property tax here is computed under a formula based on annual landing fees (determined by maximum landing weight of aircraft, not number of passengers) consistent with the statute. (1 C.A.4th 430, 431.) (See *Euro-Pac. v. Alameda* (1992) 11 C.A.4th 891, 898, 14 C.R.2d 583 [vessel owner's contractual right to use public container facility constituted taxable possessory interest, even though other vessels had concurrent right to use facility]; *San Jose v. Carlson* (1997) 57 C.A.4th 1348, 1352, 67 C.R.2d 719 [short-term users of city's convention and cultural facilities, who obtained use permits on more than one occasion, had taxable, possessory interests in facilities].)

The taxable possessory interest of airlines in landing facilities at publicly owned airports has since been established by statute. (See Rev.C. 107.9; for method for valuation, see Rev.C. 107.9(b).)

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Possessory Interests in Public Property*. See *Korean Air Lines Co., Ltd. v. Los Angeles* (2008) 162 C.A.4th 552, 558, 76 C.R.3d 26 [commercial airline's possessory interest in federal inspection service area of airport was sufficiently independent, exclusive, and durable to be taxable under Rev.C. 107; airline was not mere agent of governmental entities that controlled area, and governmental control of area was ultimate, but not absolute; citing *Scott-Free River Expeditions v. El Dorado* (1988) 203 C.A.3d 896, 250 C.R. 504, text, p. 258, and *San Jose v. Carlson* (1997) 57 C.A.4th 1348, 67 C.R.2d 719, text, p. 259].



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d. Condominiums and Common Interest Developments.

9 Witkin Sum. Cal. Law Tax § 168

[§ 168] Condominiums and Common Interest Developments.

If a condominium is owned in fee, it is separately assessed to the owner, and the tax is a lien solely on that condominium. (Rev.C. 2188.3(a).) If it is not owned in fee, the assessor may enter into an agreement to separately assess the condominium as if it were owned in fee, either to the owner of the condominium or the owner of the fee or both. The tax is a lien solely on the interest of the owner of the fee in the real property included in the condominium and on the condominium. The agreement must be recorded, and is binding on the assessor as long as the project continues to be divided into condominiums in the same manner. (Rev.C. 2188.3(b).) (See Hanna, Common Interest Developments, §23:52 et seq.; 15A Am.Jur.2d (2000 ed.), *Condominiums and Cooperative Apartments* §48 et seq.; 71 A.L.R.3d 952 [real estate taxation of condominiums]; 12 San Diego L. Rev. 778 [taxation of owners' association].)

Unless a request for exemption has been recorded under Rev.C. 2188.6(d), before the creation of a condominium, the county assessor may separately assess each individual unit that is shown on the condominium plan of a proposed condominium project when all of the specified documents have been recorded. (Rev.C. 2188.6(a).) The tax due on each individual unit will constitute a lien solely on that unit. (Rev.C. 2188.6(b).) A record owner may record with the condominium plan a request that the property be exempt from separate assessment under Rev.C. 2188.6, in which case assessment must be only under Rev.C. 2188.3. (Rev.C. 2188.6(d).) (See *Metric Institutional Co-Inv. Partners II v. Golden Eagle Ins. Co.* (1994) 29 C.A.4th 1610, 1618, 1619, 35 C.R.2d 233 [county was not entitled to recover on subdivision tax bond, where individual units described in tract map had not been separately assessed].)

Individual interests in cooperative housing and community apartment projects may also be separately assessed. (See Rev.C. 2188.7; on assessment of interests in planned developments, see Rev.C. 2188.5.)

SUPPLEMENT: [This section is current through the latest supplement]



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3. Tangible Personal Property.
a. In General.

9 *Witkin Sum. Cal. Law Tax* § 169

[§ 169] In General.

(1) *Rule Favoring Taxation.* As a general rule, all forms of tangible personal property are taxable. (Cal. Const., Art. XIII, §2; see Rev.C. 106 [personal property includes "all property except real estate"]; 1 Ehrman 3d, Chap. 4; on situs of tangible personal property for tax purposes, see *supra*, §§33, 34.)

(2) *Distinctions.* Intangible personal property is exempt from taxation (see *infra*, §201), but an intangible interest may be indirectly reached by a tax levied on related tangible personal property. (See *Michael Todd Co. v. Los Angeles* (1962) 57 C.2d 684, 691, 21 C.R. 604, 371 P.2d 340, *infra*, §201; on taxation of computer programs, see *infra*, §201.) A possessory interest in personal property is likewise exempt. (See *infra*, §202.)

Although money is considered tangible personal property and may be taxed (see *Beery v. Los Angeles* (1953) 116 C.A.2d 290, 297, 299, 253 P.2d 1005), money kept on hand for use in the ordinary course of a trade, profession, or business is exempt. (Rev.C. 212.)

Many other types of tangible personal property are exempt, or partially exempt, including the following:

- (a) Certain kinds of vessels. (See *infra*, §205.)
- (b) Art works or property brought into the state for exhibition. (See *infra*, §206.)
- (c) Personal property belonging to a veterans' organization. (See *infra*, §200.)
- (d) Business inventories. (See *infra*, §208.)

(3) *Vehicles.* Most vehicles are subject to license fees under Rev.C. 10701 et seq. (see *infra*, §383) and are exempt from property taxation (see *infra*, §210). Vehicles that are not subject to license fees are taxable. (See *Bigge Crane Rental Co. v. Alameda* (1972) 7 C.3d 414, 417, 102 C.R. 513, 498 P.2d 193; Rev.C. 994 [taxation of special construction and mobile equipment]; on aircraft, see *infra*, §170; on mobilehomes, see *infra*, §171; on racehorses, see *infra*, §210.)

(4) *Classification by Legislature.* By a two-thirds vote of both houses, the Legislature may classify personal property for differential taxation or for exemption. (Cal. Const., Art. XIII, §2.) The state must reimburse counties for the tax loss attributable to the exemption. (Rev.C. 2229.)

SUPPLEMENT: [This section is current through the latest supplement]



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b. Aircraft.

9 Witkin Sum. Cal. Law Tax § 170

[§ 170] Aircraft.

(1) *In General.* Noncommercial aircraft are assessed and taxed under separate Revenue Code provisions (Rev.C. 5301 et seq.), which provide a "uniform countywide system of ad valorem taxation of all aircraft" in California, regardless of where the aircraft is based in California. (Rev.C. 5301.) Aircraft is assessed in the county where it is "habitually situated" at its market value. (Rev.C. 5362.) The tax rate is the same as that for other personal property (Rev.C. 5391), and the tax is collected in the same manner as the tax on other personal property (Rev.C. 5392). (On aircraft exempted from property tax, see *infra*, §205.)

(2) *Commercial Aircraft.* "Certificated aircraft" (i.e., aircraft operated by a foreign or domestic air carrier under a certificate or permit issued by the Civil Aeronautics Board or the Public Utilities Commission) and "air taxis" are not covered by Rev.C. 5301 et seq. (Rev.C. 5303(b)(2), (b)(3).) The assessment of certified aircraft and scheduled air taxis must be allocated in accordance with the formula contained in Rev.C. 1152. Unscheduled air taxis are assessed and taxed in the same manner as other personal property. (Rev.C. 1151 [certified aircraft], Rev.C. 1154 [air taxis]; see *supra*, §78; on procedure for valuing certificated aircraft, see Rev.C. 401.15.)

In *American Airlines v. San Mateo* (1996) 12 C.4th 1110, 51 C.R.2d 251, 912 P.2d 1198, ten commercial airlines sought a partial refund of ad valorem personal property taxes from 18 counties. Plaintiffs alleged that, in collecting the tax, the counties had violated former 49 U.S.C. Appx., §1513(d) (now 49 U.S.C., §40116) of the Airport and Airway Improvement Act of 1982 (AAIA) by assessing airline property at its market value, or higher, whereas other commercial and industrial property was assessed substantially below true market value. The trial judge granted summary judgment for defendants, ruling that the AAIA did not provide a private right of action and that plaintiffs could not state a cause of action for discrimination under the AAIA. The Court of Appeals affirmed. *Held*, reversed.

(a) AAIA gives plaintiffs a private right of action. Former 49 U.S.C. Appx., §1513(d) was intended to protect a particular class (those who own air carrier transportation property) from particular conduct (discriminatory taxation). (12 C.4th 1129.) Similar statutes governing railroads and motor carriers grant a private right of action, and the relevant statutory language in the AAIA is virtually identical to the language in those two acts, indicating that Congress intended the same judicial redress for each statute. (12 C.4th 1129.) Furthermore, enabling airlines to bring an action challenging an allegedly discriminatory ad valorem tax furthers the legislative goal of prohibiting property tax discrimination

against airlines. (12 C.4th 1130.) Even though property taxation is traditionally a state concern, a federal cause of action is not inappropriate. In enacting the statute, Congress intended to interfere with state taxation. (12 C.4th 1130.) Congress could have expressly provided that the statute be enforced administratively, but did not do so. (12 C.4th 1131.)

(b) Plaintiffs stated a claim of de facto discrimination by alleging that their property is assessed differently with regard to its true market value than other commercial or industrial property. No showing of discriminatory intent is necessary, but plaintiffs must demonstrate some unreasonably disparate impact or effect on the assessment of their property, as compared to other commercial or industrial property, that results from the assessor's action or inaction. (12 C.4th 1136.)

(c) Plaintiffs did not state a claim of de facto discrimination by alleging that their property is assessed differently with regard to its true market value than railroad property. Former section former 49 U.S.C. Appx., §1513(d) prohibited disparate assessments of airline property and "other commercial and industrial property," but expressly excluded "transportation property" from the definition of "other commercial and industrial property." (12 C.4th 1137.) Railroad property is transportation property within the meaning of the statute. (12 C.4th 1139.) (See 24 Pepperdine L. Rev. 1442 [American Airlines v. San Mateo].)

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(2) *Commercial Aircraft*. On formula to determine fair market value of certificated aircraft of commercial air carrier, see Rev.C. 401.17, added in 2005.



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9 Witkin Sum. Cal. Law Tax § 171

[§ 171] Manufactured Homes.

The Manufactured Home Property Tax Law (Rev.C. 5800 et seq.) contains detailed provisions on the determination of the taxable value of manufactured homes and the collection of manufactured home taxes. Except as otherwise provided in the law, mobilehomes are subject to a property tax "in the same manner and to the same extent" as other personal property. (Rev.C. 5810.)

The law applies to manufactured homes sold new on or after July 1, 1980 (Rev.C. 5801(a)), but excludes manufactured homes that have been affixed to land and are taxed as real property (Rev.C. 5801). (See 7 *A.L.R.4th* 1016 [classification of mobilehomes as real or personal property for tax purposes]; on taxation of mobilehome accessories, see Rev.C. 5805; 15 *Pacific L. J.* 683.) The owner of a mobilehome may, on request, become subject to taxation under the law. (Rev.C. 5801(a)(2).)

Relief from local property taxation is available for manufactured homes destroyed in a disaster. (See Rev.C. 172, 172.1.) (On senior citizens manufactured home property tax postponement law, see *infra*, §303.)

Mobilehomes subject to registration under the Vehicle Code are generally subject to vehicle license fees (see Rev.C. 10701 et seq.). However, mobilehomes installed on a foundation system or installed for occupancy are exempt and are instead subject to local property taxation. (Rev.C. 10784, 10785.) A mobilehome installed for occupancy as a residence and subject to local property tax is a qualified dwelling for purposes of the homeowners' exemption. (Stats. 1979, Chap. 1180, §14.)

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a. Owner.

9 Witkin Sum. Cal. Law Tax § 172

[§ 172] Owner.

(1) *In General.* Taxable property is assessed to the person owning, claiming, possessing, or controlling it on the lien date, although property on the secured roll may be assessed to the person owning, claiming, possessing, or controlling it for the ensuing fiscal year. (Rev.C. 405(a); on assessment against person in possession, see *infra*, §173.)

Ordinarily, the assessment is against the person holding legal title. (See *Estate of Backesto* (1923) 63 C.A. 265, 269, 218 P. 597 [vendor was liable for taxes that became alien before conveyance]; *Miller & Lux v. Sparkman* (1932) 128 C.A. 449, 454, 457, 17 P.2d 772 [purchaser was liable for taxes accruing after delivery in escrow under doctrine of relation back of title]; *Three G Distillery Corp. v. Los Angeles* (1941) 46 C.A.2d 498, 502, 116 P.2d 143 [ownership of liquor]; *Morse Signal Devices v. Los Angeles* (1984) 161 C.A.3d 570, 579, 207 C.R. 742 [fixtures owned or controlled by supplier of burglar alarm system were taxable to supplier, even though permanently attached to real property of homeowners subscribing to system]; 8 A.L.R.4th 643 [effect of commencement or termination of life estate on duty to pay taxes]; on assessment of condominiums, planned developments, community apartments and cooperative housing projects, see *supra*, §168; on assessment of time share interests and projects, see Rev.C. 2188.8, 2188.9; 44 Cal. L. Rev. 866 [conflicting conceptions of ownership]; and see generally 12 *Summary* (10th), *Real Property*, §3; 13 *Summary* (10th), *Personal Property*, §1 et seq.; 1 Ehrman 3d, §8:2.)

The general principle was applied to unusual facts in *Ohrbach's v. Los Angeles* (1961) 190 C.A.2d 575, 12 C.R. 132, and *Rothman v. Los Angeles* (1961) 193 C.A.2d 522, 14 C.R. 427. In each case, a private owner of real property leased to the government (state, county). The leasehold interest was exempt from taxation, but the assessor assessed the entire fee, and the owner was taxed on its full value, without any deduction for the tax-exempt leasehold. The opinions upheld the assessor's action, without extended discussion, on the simple proposition that, for purposes of taxation, the owner of the fee is deemed the owner of the entire estate. (190 C.A.2d 580; 193 C.A.2d 524.) (See *Sacramento v. Assessment App. Bd. No. 2* (1973) 32 C.A.3d 654, 665, 108 C.R. 434 [following *Ohrbach's* and *Rothman*]; 35 So. Cal. L. Rev. 361 [criticism of *Ohrbach's* and *Rothman*]; 55 A.L.R.3d 430 [exemption of property leased by and used for purposes of tax-exempt body].)

(2) *Title Reserved for Security.* Where title to personal property is reserved for security only, the buyer, as the beneficial owner, is alone subject to the property tax on the goods. (*San Diego v. Davis* (1934) 1 C.2d 145, 146, 33 P.2d

827; see *Sacramento v. Assessment App. Bd.*, *supra*, 32 C.A.3d 663.) Where land is sold under an executory installment contract, the purchaser is the "beneficial" or "equitable" owner, and the land may be assessed to the purchaser although the vendor retains legal title for security. (See *Eisley v. Mohan* (1948) 31 C.2d 637, 643, 192 P.2d 5.)

In *Parr-Richmond Industrial Corp. v. Boyd* (1954) 43 C.2d 157, 272 P.2d 16, plaintiff was the successful bidder on government war surplus real property, but his bid was conditional on the clearing of an unmerchantable title. *Held*, the government's acceptance of this conditional bid did not vest legal or equitable title in him, and he was only liable for a tax on his possessory interest under Rev.C. 107. (43 C.2d 168.) On the other hand, in *Burhans v. Kern* (1959) 170 C.A.2d 218, 221, 338 P.2d 546, where plaintiff pledged or mortgaged a barley crop with the federal Commodity Credit Corporation, title remained in him and the ad valorem tax was upheld.

In *Los Angeles Dodgers v. Los Angeles* (1967) 256 C.A.2d 918, 64 C.R. 465, defendant city transferred land to a baseball team, retaining legal title only to secure performance of the agreement. Although the team never took physical possession, the city did not possess or use the land. Hence, the team received equitable and beneficial ownership, and was properly taxed. (256 C.A.2d 924.)

(3) *Interest in Homestead*. Although the homestead is an "exemption" rather than an "estate," the wife to whom a homestead is assigned for life by a divorce decree may be treated as an owner for tax purposes. Thus, in *Morrison v. Barham* (1960) 184 C.A.2d 267, 7 C.R. 442, the ex-husband paid the taxes until his death. Thereafter plaintiff, devisee of the fee, contended, and the court held, that the wife was liable for the taxes. (a) The divorce court could have ordered the husband to pay them as part of its general award of support, but it did not. If it had, the order would have been one for alimony, terminable on death of the husband. (b) Technically, the homestead exemption merely creates a right of occupancy. Hence, the wife did not acquire an estate for life but merely a possessory interest. But the homestead assignment carries with it rights of possession and enjoyment similar to those of the holder of a life estate; e.g., the wife here rented the property and received the income. Hence, "the obligation of defendant to pay the taxes on the homestead property is the same as that of the owner of an estate for life." (184 C.A.2d 275.)

(4) *Unknown Owner*. If the name of the owner is unknown, the assessment may be made to "unknown owners." (See Rev.C. 611; Rev.C. 460 [assessor may estimate value].) But if a bailee, agent, or trustee of property refuses or fails to disclose the name of the true owner, the assessment will be made against the possessor. (*S.W. Straus & Co. v. Los Angeles* (1932) 128 C.A. 386, 391, 17 P.2d 757; *S. & G. Gump Co. v. San Francisco* (1941) 18 C.2d 129, 131, 114 P.2d 346.)

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9 Witkin Sum. Cal. Law Tax § 173

[§ 173] Person in Possession.

The tax may be assessed to the possessor, i.e., the person in lawful possession of the property. (Rev.C. 405(a); see *S. & G. Gump Co. v. San Francisco* (1941) 18 C.2d 129, 131, 114 P.2d 346 [bailee, agent, or trustee for unknown owners]; *RCA Photophone v. Huffman* (1935) 5 C.A.2d 401, 404, 42 P.2d 1059 [lessee of personal property]; *Thompson v. Board of Supervisors of Fresno* (1936) 13 C.A.2d 134, 137, 56 P.2d 571 [surviving partner in possession of partnership property]; *Tilden v. Orange* (1949) 89 C.A.2d 586, 588, 201 P.2d 86, *infra*, §176; *General Dynamics Corp. v. Los Angeles* (1958) 51 C.2d 59, 65, 330 P.2d 794, *infra*, §202 [distinction between assessment to possessor and tax on possessory interest]; 1 Ehrman 3d, §8:3.)

Property in litigation is taxed to the officer in possession, e.g., receiver, county clerk, or treasurer. (Rev.C. 983; see *Bessolo v. Los Angeles* (1917) 176 C. 597, 599, 169 P. 372.)

Returnable soft drink containers are taxed to the person in possession on the lien date, unless the person is under "a legally enforceable duty to return the containers for reuse." (Rev.C. 996; but see *Westinghouse Beverage Group v. San Diego* (1988) 203 C.A.3d 1442, 1445, 250 C.R. 784 [containers of syrup and carbon dioxide used to prepare soft drinks were not soft drink containers under Rev.C. 996].)

Rev.C. 989 makes an exception for unredeemed pledged goods in the possession of a pawnbroker, but not owned by the pawnbroker, to hold and dispose of as the pawnbroker's property. The goods are not assessed to the pawnbroker.

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c. Representative.

9 *Witkin Sum. Cal. Law Tax* § 174

[§ 174] Representative.

A person may be assessed as an agent, trustee, bailee, guardian, conservator, executor, or administrator, with the representative designation added to the representative's name. The assessment is entered separately from the person's individual assessment. (Rev.C. 612; see *S. & G. Gump Co. v. San Francisco* (1941) 18 C.2d 129, 130, 114 P.2d 346; *Los Angeles v. Morrison* (1940) 15 C.2d 368, 372, 101 P.2d 470 [executor liable for taxes and penalties on decedent's property, but only in official capacity].) In the case of a decedent's estate, the assessment may be made either against the representatives or the heirs, and payment by any one binds each of the others for a proportionate share. (Rev.C. 982.) (See 1 Ehrman 3d, §§8:6, 8:7.)

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a. In General.

9 *Witkin Sum. Cal. Law Tax* § 175

[§ 175] In General.

(1) *Assessment to Owner.* Although a leasehold estate may be separately taxed, the general practice is to make one assessment of the entire estate, leasehold and reversion, to the owner of the land. The lessor and lessee may then, in their contract, make any provision for payment that they choose. (See *Hammond Lumber Co. v. Los Angeles* (1930) 104 C.A. 235, 239, 285 P. 896; *De Luz Homes v. San Diego* (1955) 45 C.2d 546, 563, 290 P.2d 544.)

(2) *Exceptions.* There are several exceptions to the general practice.

(a) A leasehold is separately assessed when the reversion is exempt from taxation. (See *infra*, §176.)

(b) The exclusive right of a lessee to extract oil or minerals is so valuable that it may be separately assessed to the lessee. (See *Graciosa Oil Co. v. Santa Barbara* (1909) 155 C. 140, 145, 99 P. 483; *Texas Co. v. Moynier* (1933) 129 C.A. 738, 740, 19 P.2d 280; *Atlantic Oil Co. v. Los Angeles* (1968) 69 C.2d 585, 595, 72 C.R. 886, 446 P.2d 1006; *Picchi v. Montgomery* (1968) 261 C.A.2d 246, 251, 67 C.R. 880.) However, a single assessment of both the land and the oil rights may be made solely against the owner of the land. (*McCracken v. Hummel* (1941) 43 C.A.2d 302, 304, 110 P.2d 700.)

(c) A county tax assessor may assess property on the unsecured roll jointly to both the lessor and the lessee. (Rev.C. 405(b).) Notice of a joint assessment must be mailed to both the lessor and the lessee. (Rev.C. 405(c).)

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9 Witkin Sum. Cal. Law Tax § 176

[§ 176] Where Reversion Is Exempt.

If the owner of the reversion is exempt from taxation (e.g., if it is a governmental agency), the leasehold is separately assessed as a possessory interest, and is taxed to the lessee, in order to prevent escape of the interest from all taxation. (See *San Pedro, Los Angeles & Salt Lake R. Co. v. Los Angeles* (1919) 180 C. 18, 22, 179 P. 393 [lessee of state tidelands]; *Kaiser Co. v. Reid* (1947) 30 C.2d 610, 618, 184 P.2d 879 [land leased by federal government to shipbuilding contractor; leasehold was taxable despite contention that cancellation clause made it a mere license]; *De Luz Homes v. San Diego* (1955) 45 C.2d 546, 563, 290 P.2d 544, *infra*, §221; *El Tejon Cattle Co. v. San Diego* (1966) 64 C.2d 428, 431, 50 C.R. 546, 413 P.2d 146 [land owned by irrigation district, leased for grazing]; *Riverside v. Palm-Ramon Dev. Co.* (1965) 63 C.2d 534, 538, 47 C.R. 377, 407 P.2d 289, *infra*, §220 [Palm Springs land owned by Indians with United States as trustee, leased to defendants for development and subleasing]; *Hammond Lumber Co. v. Los Angeles* (1930) 104 C.A. 235, 240, 285 P. 896 [lessee of city harbor lands]; *Palm Springs Spa v. Riverside* (1971) 18 C.A.3d 372, 375, 95 C.R. 879 [Palm Springs land owned by Indians with United States as trustee, leased to defendants for development and subleasing]; *Desert Hot Springs v. Riverside* (1979) 91 C.A.3d 441, 449, 453, 154 C.R. 297 [lease and leaseback]; *Service America Corp. v. San Diego* (1993) 15 C.A.4th 1232, 1235, 19 C.R.2d 165, citing the text; 59 Cal. L. Rev. 1293 [taxability of possessory interest in Indian land]; 54 A.L.R.3d 402 [whether lessee can claim exemption where lessor is exempt]; 57 A.L.R.4th 950 [effect of tax exempt lessor's reversionary interest on valuation of nonexempt lessee's interest]; for requirement that redevelopment agency notify assessor when agency property is leased for redevelopment, see *Health & Saf.C.* 33673.1.)

The leasehold itself may also be exempt if it is used for an exempt purpose. (*Tri-Cities Children's Center v. Board of Supervisors* (1985) 166 C.A.3d 589, 592, 212 C.R. 541 [nonprofit charitable nursery school operating on property leased from public school district was exempt under welfare exemption (*infra*, §187)].)

Rules of property law do not necessarily govern liability for taxes in these situations. In *Tilden v. Orange* (1949) 89 C.A.2d 586, 201 P.2d 86, land was owned by a city and therefore exempt. It was leased to B, and B subleased to plaintiffs. *Held*, an assessment against plaintiffs was valid. As between the landlord (sublessor B) and tenants (plaintiff sublessees), in the absence of other agreement, the landlord must pay the taxes. Because the possessory interests of persons occupying the land are taxable, however, the assessor was not required to pass on the condition of the title or the respective interests involved. (89 C.A.2d 588.)

In *United States v. Fresno* (1975) 50 C.A.3d 633, 123 C.R. 548, the federal government maintained dwelling units in national forests. Plaintiffs, federal employees, occupied the premises as tenants at normal rentals, and defendant county assessor assessed the possessory interests. Plaintiffs challenged the assessment mainly on the ground that the governmental restrictions placed on their occupancy (their right of possession was nontransferable and terminable at will; their supervisor maintained the right to enter; some governmental business was transacted there) made the characterization of possessory interest improper as a matter of law. *Held*, the assessment was valid. Plaintiffs had more than "a naked possession or use." Until the Forest Service chose to exercise its right to terminate, plaintiffs had the exclusive use of residential premises for themselves and their families. Thus, their right to occupy and use "subserved, primarily, an independent, private purpose," and they had taxable possessory interests in the government owned property. (50 C.A.3d 639.)

The Court of Appeal decision was affirmed in *United States v. Fresno* (1977) 429 U.S. 452, 97 S.Ct. 699, 50 L.Ed.2d 683, holding that the tax did not violate the federal Government's immunity from state taxation inherent in the Supremacy Clause. The tax was not on the federal Government or federal property, but was imposed solely on private citizens in a nondiscriminatory manner. (97 S.Ct. 705, 50 L.Ed.2d 693.)

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a. In General.

9 Witkin Sum. Cal. Law Tax § 177

[§ 177] In General.

(1) *Nature and Purpose of Tax.* Lands owned by a local government that are outside its boundaries, including rights to use or divert water surface or underground sources and other interests in lands, are taxable if they were taxable when acquired by the local government. Improvements owned by a local government that are outside its boundaries are taxable if they were taxable when acquired or were constructed by the local government to replace improvements that were taxable when acquired. (Cal. Const., Art. XIII, §11(a).) The object of this provision is to protect the smaller counties from the substantial loss of tax revenues that might otherwise result. (See *Pasadena v. Los Angeles* (1920) 182 C. 171, 174, 187 P. 418; *San Francisco v. San Mateo* (1941) 17 C.2d 814, 818, 112 P.2d 595; *San Francisco v. San Mateo* (1950) 36 C.2d 196, 199, 222 P.2d 860; 1 Ehrman 3d, §6:11; on special rules for assessment and taxation of lands in Inyo or Mono County, see Cal. Const., Art. XIII, §11(b), (c); on taxation of taxable interests of others in land owned by local governments and subject to taxation under Cal. Const., Art. XIII, §11(a), see Cal. Const., Art. XIII, §11(f).)

(2) *"Municipal Corporation."* The original constitutional provision referred to counties and municipal corporations. Several earlier cases construed the term "municipal corporation" so strictly that it did not cover a water district. (See *Turlock Irr. Dist. v. White* (1921) 186 C. 183, 187, 198 P. 1060; *Laguna Beach County Water Dist. v. Orange* (1939) 30 C.A.2d 740, 745, 87 P.2d 46.) These cases were later overruled, and water and irrigation districts were held liable for taxes. (See *Metropolitan Water Dist. of Southern Calif. v. Riverside* (1943) 21 C.2d 640, 644, 134 P.2d 249; *Rock Creek Water Dist. v. Calaveras* (1946) 29 C.2d 7, 12, 172 P.2d 863 [following *Metropolitan*]; *Imperial Irr. Dist. v. Riverside* (1950) 96 C.A.2d 402, 405, 215 P.2d 518; *Waterford Irr. Dist. v. Stanislaus* (1951) 102 C.A.2d 839, 841, 228 P.2d 341.) Cal. Const., Art. XIII, §11 refers to "a local government."

(3) *Previously Subject to Taxation.* The predecessor to Cal. Const., Art. XIII, §11, provided that the lands were taxable if they were "subject to taxation at the time of the acquisition of the same" by the city or county. This provision was construed in *Barnett v. Alhambra* (1964) 227 C.A.2d 411, 38 C.R. 706. In 1888, Pasadena acquired real property outside its boundaries and within Los Angeles County. It was then, under the original constitutional language, public property exempt from taxation, but was taxable by four special governmental districts (school and road districts). In 1914, the provision was amended to create the present exception, allowing taxation of outside lands that were subject to taxation when acquired. In 1944, the city of Alhambra annexed the area. *Held*, the city of Alhambra and Los Angeles

County could both tax the land. Although the purpose of the 1914 amendment was to preserve a local county's revenues where some other county acquired land within it, and Alhambra never lost any revenue there, the language of the amendment was broad enough to bring this case within its terms. Moreover, Alhambra, forced to give municipal services, would suffer financial detriment if not allowed to tax, and Alhambra's right to tax the possessory interest of Pasadena's lessees was not a substitute for the right to tax the lands. (227 C.A.2d 417.) (See *Los Angeles v. State Bd. of Equalization* (2003) 105 C.A.4th 1, 16, 129 C.R.2d 209 ["taxable when acquired" requirement was not satisfied; property was taxable as nonunitary rail transportation property when acquired by local government, but, after sale, was held nontaxable by federal decision].)

(4) *Annexation by Municipal Corporation.* A municipal corporation may avoid the constitutional provision by annexing outside land, thus bringing the area within its own boundaries, and making it exempt from county taxation. (*Mariposa v. Merced Irr. Dist.* (1948) 32 C.2d 467, 473, 196 P.2d 920 [annexation by irrigation district]; see *Long Beach v. Board of Supervisors of Los Angeles* (1958) 50 C.2d 674, 676, 328 P.2d 964 [annexation by city]; *Oakdale Irr. Dist. v. Calaveras* (1955) 133 C.A.2d 127, 132, 283 P.2d 732 [following *Mariposa*, where two districts jointly acted to include land within boundaries of both].)

(5) *No Welfare Exemption.* In *Los Angeles v. Los Angeles* (1971) 19 C.A.3d 968, 97 C.R. 294, defendant county taxed plaintiff city's land used as a youth camp outside the city's boundaries. The city sought to avoid the obviously applicable tax by claiming the welfare exemption. *Held*, assuming that a city might be entitled to the exemption under some circumstances, plaintiff was not an organization with exclusively charitable purposes, and could not qualify as a tax-exempt organization under the federal and state statutes (*infra*, §191). (19 C.A.3d 972.)

(6) *Effect of Article XIII A.* Local government property is valued pursuant to Cal. Const., Art. XIII, §11, notwithstanding the legislation implementing Cal. Const., Art. XIII A (Proposition 13; see *supra*, §125 et seq.). (Rev.C. 52(d).)

In *San Francisco v. San Mateo* (1995) 10 C.4th 554, 41 C.R.2d 888, 896 P.2d 181, the city of San Francisco owned lands in San Mateo and Alameda counties. Those counties refused to apply the valuation limitation of Cal. Const., Art. XIII A (see *supra*, §126), to the taxation of San Francisco's lands and instead applied one of the two alternative valuation limitations of Cal. Const., Art. XIII, §11. The city filed actions against the counties seeking a partial refund of the property taxes assessed against its extraterritorial land for a series of years. The trial judge consolidated the actions and ruled that the valuation limitation of Cal. Const., Art. XIII A, did not apply to the city's lands because to do so would conflict with Cal. Const., Art. XIII, §11. *Held*, reversed.

(a) *Cal. Const., Art. XIII A, does not exclude property owned by local governments from its valuation limitation.* Cal. Const., Art. XIII A, does not expressly exclude any class of property from its scope. Instead, it limits ad valorem taxes on real property to one percent of the property's full cash value (see *supra*, §126). (10 C.4th 564.) Furthermore, the use of the term "full cash value" does not limit the scope of the provision to real property whose method of valuation before Art. XIII A was "fair market value." It encompasses valuations based on other methods, such as those set forth in Cal. Const., Art. XIII, §11. (10 C.4th 565, 566.)

(b) *Both Cal. Const., Art. XIII, §11, and Art. XIII A, may be applied to extraterritorial properties of local governments without conflict.*

(1) The two provisions do not present any conflict on their faces: both merely set an *upper* limit on the valuation and taxation of real property. (10 C.4th 567.) Nor do the two provisions conflict in their application. If the full cash value of the city's lands under Cal. Const., Art. XIII A, is lower than either of the two alternative valuation limitations of Cal. Const., Art. XIII, §11, using the Article XIII A valuation would be permissible because the lower of the other two limitations would not be exceeded. Similarly, if one or both of the alternative valuation limitations are lower than the valuation under Article XIII A, the lower valuation under Cal. Const., Art. XIII, §11, could be used, because the valuation limitation of Article XIII A is only a ceiling. (10 C.4th 567.)

(2) There is no conflict between the purposes of the two provisions. The purpose of Cal. Const., Art. XIII, §11, is to ensure comparable taxation of extraterritorial lands owned by local governments and privately owned real property. (10 C.4th 568, 569.) The purpose of Cal. Const., Art. XIII A is to restrict the taxation of real property generally by limiting the growth in valuation of real property and by limiting the maximum tax rate imposed. (10 C.4th 569.) "It is thus consistent with article XIII A's purpose of limiting real property taxation generally to apply its valuation limitation to extraterritorial lands in addition to other types of real property. It is likewise consistent with section 11's purpose of taxing extraterritorial lands comparably to other taxable real property to apply article XIII A to extraterritorial lands as well as to other types of real property. Applying article XIII A to taxable lands owned by local governments and located outside their boundaries thus gives the fullest possible effect to both article XIII A and section 11." (10 C.4th 570.)

(c) *Rev.C. 52(d) does not prohibit the application of Cal. Const., Art. XIII A, to extraterritorial lands.* Because Cal. Const., Art. XIII, §11, merely sets a ceiling for the valuation of extraterritorial lands, any valuation below its limits, including a valuation provided by Cal. Const., Art. XIII A, accords with §11. (10 C.4th 572.) (See *CCPA No. 1 v. Sonoma* (2004) 122 C.A.4th 1614, 1618, 19 C.R.3d 713 [board correctly valued leasehold interests in geothermal mineral rights, along with related personalty and improvements, in accordance with Cal. Const., Art. XIII, §11, even though valuation using that method was lower than valuation under Cal. Const., Art. XIII A].)

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9 Witkin Sum. Cal. Law Tax § 178

[§ 178] Water Rights.

For purposes of Cal. Const., Art. XIII, §11, "lands" includes "rights to use or divert water from surface or underground sources and any other interests in lands." (Cal. Const., Art. XIII, §11(a).) The provision encompasses both riparian and appropriative rights. (*Waterford Irr. Dist. v. Stanislaus* (1951) 102 C.A.2d 839, 847, 228 P.2d 341 [appropriation right that district purchased from private power company in county were subject to tax]; *Amador v. State Bd. of Equalization* (1966) 240 C.A.2d 205, 209, 49 C.R. 448.)

A right to divert water for nonriparian use, although subject to various contractual restrictions on the place of use, is real property subject to taxation. It is taxable where the place of diversion is outside the municipality, even though the water taken may, under the contract, be used only within its boundaries; i.e., the situs of the right for tax purposes is the place of diversion, not the place of use. (*North Kern Water Storage Dist. v. Kern* (1960) 179 C.A.2d 268, 278, 3 C.R. 636 [following *Waterford Irr. Dist.*]; *Jurupa Ditch Co. v. San Bernardino* (1967) 256 C.A.2d 35, 40, 63 C.R. 764.)

The provision authorizing the tax is applicable to property "taxable when acquired by the local government." (Cal. Const., Art. XIII, §11(a).) In *Tuolumne v. State Bd. of Equalization* (1962) 206 C.A.2d 352, 24 C.R. 113, San Francisco, at the time of acquiring land in Tuolumne County, had acquired filing rights that had not yet ripened into an appropriative right. *Held*, the filing created an interest in land, and the resulting appropriation right was taxable by *Tuolumne*. (206 C.A.2d 359.)

Other than those authorized by Cal. Const., Art. XIII, §11(a) to (d), taxes, assessments, and levies based on use or consumption of water outside the boundaries of the taxing jurisdiction may not be imposed by one local government on another. (Cal. Const., Art. XIII, §11(e).)

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9 Witkin Sum. Cal. Law Tax § 179

[§ 179] Improvements.

To carry out the object of the constitutional provision (supra, §177), both the land and its existing improvements are taxable. Taxable existing improvements include later substitutes or replacements. (*San Francisco v. San Mateo* (1941) 17 C.2d 814, 819, 112 P.2d 595 [concrete flume replacing existing wooden flume]; *Pasadena v. Los Angeles* (1951) 37 C.2d 129, 132, 230 P.2d 801; *Los Angeles v. Mono* (1959) 51 C.2d 843, 848, 337 P.2d 465.)

The original constitutional provision specifically exempted new improvements. Thus, a fill that raised the level of San Mateo land used as a San Francisco municipal airport was exempt. (*San Francisco v. San Mateo* (1950) 36 C.2d 196, 200, 222 P.2d 860.) The present provision is silent on new improvements but, by its terms, is applicable to existing and replacement improvements only.

Formerly, a replacement was taxable in full irrespective of its valuation; i.e., the fact that it was greater in value than the existing improvement did not make the excess valuation exempt. (*Pasadena v. Los Angeles*, supra, 37 C.2d 133; *Sacramento Mun. Util. Dist. v. El Dorado* (1970) 5 C.A.3d 26, 33, 84 C.R. 748.) This rule was changed by a 1968 constitutional amendment. Any substitute or replacement improvement made after March 1954, cannot be assessed at a value higher than the highest value ever assessed on the improvement that was replaced. (Cal. Const., Art. XIII, §11(d).)

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a. In General.

9 Witkin Sum. Cal. Law Tax § 180

[§ 180] In General.

The most important exemption from local property taxation is for public property. (See 4 West L.A. L. Rev. 20, 28 [exempt and immune public property]; 71 *Am.Jur.2d* (2001 ed.), *State and Local Taxation* §§158 et seq., 267 et seq.) This includes:

(1) Property of a foreign government, if a treaty with the United States provides for exemption. (See *Brownell v. San Francisco* (1954) 126 C.A.2d 102, 271 P.2d 974.)

(2) Property of the United States. (See *infra*, §181.)

(3) State property. (See *infra*, §181.)

(4) County and municipal property. (See *infra*, §182.)

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b. Federal and State Property.

9 Witkin Sum. Cal. Law Tax § 181

[§ 181] Federal and State Property.

(1) *Property of United States*. This is exempt except where the federal exemption is waived. (See Cal. Const., Art. XIII, §1; Rev.C. 254.2 [property used for migratory water fowl refuges, etc., is exempt]; *Rohr Aircraft Corp. v. San Diego* (1960) 362 U.S. 628, 80 S.Ct. 1050, 1053, 4 L.Ed.2d 1002, 1006 [interpreting waiver statute, and reversing *Rohr Aircraft Corp. v. County of San Diego* (1959) 51 C.2d 759, 336 P.2d 521]; *Gottstein v. Adams* (1927) 202 C. 581, 584, 262 P. 314 [interest of homesteader in federal land, before issuance of patent, was assessable only as possessory interest; assessment on land itself was void]; *Los Angeles v. Board of Supervisors of Mono* (1930) 108 C.A. 655, 663, 292 P. 539; *Douglas Aircraft Co. v. Byram* (1943) 57 C.A.2d 311, 314, 134 P.2d 15 [tax assessed to manufacturer of planes and parts was void where title to property was vested in federal government]; 13 *Pacific L. J.* 207 [taxation and immunity of military housing]; 4 Santa Clara Lawyer 166 [taxing possession of federal property]; on constitutional basis for immunity, see *supra*, §6.)

(2) *Distinction: No Immunity for Property Owned by Federal Contractor*. An ad valorem property tax may be constitutionally imposed on "overhead" property, belonging to a federal contractor, such as paper, pencils, office supplies, toilet paper, janitorial supplies, stationery, and low-value office and plant equipment. (*TRW Space & Defense Sector v. Los Angeles* (1996) 50 C.A.4th 1703, 1710, 1715, 1717, 58 C.R.2d 602 [cost reimbursement contract that vested title in federal Government to property purchased by contractor if costs were reimbursable did not apply to property for which Government made partial, advance, or progress payments; similarly, fixed price contract that vested title for "materials and inventory" did not apply to common staples of any ongoing business]; see *Hughes Aircraft Co. v. Orange* (2002) 96 C.A.4th 540, 545, 117 C.R.2d 601 [title to defense contractor's overhead property vested in federal Government and thus was not subject to tax; property was accounted for as indirect cost items allocated among all then pending contracts, rather than allocated directly to particular contracts, contractor was reimbursed by federal Government to extent it used property to complete contracts, and after completion of contract work, remaining property was sold and proceeds were credited to federal Government].)

(3) *Property of State of California*. State property is also exempt. (Cal. Const., Art. XIII, §3(a); Rev.C. 202(a)(4); see *State Land Settlement Bd. v. Henderson* (1925) 197 C. 470, 479, 241 P. 560 [state lands held by public corporation for settlement by veterans]; *Mayhew Tech Center, Phase II v. Sacramento* (1992) 4 C.A.4th 497, 505, 5 C.R.2d 702 [property beneficially owned by state under lease-purchase agreement was exempt]; 114 A.L.R.5th 561 [relationship

between "public use" of property owned by state or local government and property tax exemption]; 1 Ehrman 3d, §§6:8, 6:9.) No distinction is made between "operative" and "nonoperative" property, nor between property held in a governmental and a proprietary capacity. (See *Turlock Irr. Dist. v. White* (1921) 186 C. 183, 189, 198 P. 1060; *Anderson-Cottonwood Irr. Dist. v. Klukkert* (1939) 13 C.2d 191, 193, 88 P.2d 685; *Glenn-Colusa Irr. Dist. v. Ohrt* (1939) 31 C.A.2d 619, 624, 88 P.2d 763; *Health & Saf.C. 44556* [property of California Pollution Control Financing Authority is exempt]; but see Rev.C. 202(a)(4) [property of State Compensation Insurance Fund is not state property].)

The state's exemption is lost, however, when it sells land under an executory contract to a private person, and the retention of legal title as security does not continue the exemption. (*Eisley v. Mohan* (1948) 31 C.2d 637, 642, 192 P.2d 5.)

The express constitutional exemption of state and local government property from property taxation also makes that property exempt from special assessments. (*Regents of Univ. of Calif. v. Los Angeles* (1979) 100 C.A.3d 547, 549, 160 C.R. 925; *Regents of Univ. of Calif. v. Los Angeles* (1983) 148 C.A.3d 451, 455, 196 C.R. 14.)

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(2) *Distinction: No Immunity for Property Owned by Federal Contractor.* See *Northrop Grumman Corp. v. Los Angeles* (2005) 134 C.A.4th 424, 431, 36 C.R.3d 71 [personal property, including overhead property, allocated by military contractor to federal Government as part of fixed-price contracts was federal property in accordance with progress payment clauses; following *Hughes Aircraft Co. v. Orange* (2002) 96 C.A.4th 540, 117 C.R.2d 601, text, p. 275, and declining to follow *TRW Space & Defense Sector v. Los Angeles* (1996) 50 C.A.4th 1703, 58 C.R.2d 602, text, p. 275].(3) *Property of State of California.*

Special assessments exemption: In response to *San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 C.3d 154, 228 C.R. 47, 720 P.2d 935, text, §182, the Legislature enacted Govt.C. 54999 et seq., which authorize public utilities to impose capital facilities fees on other public entities (Govt.C. 54999.2), thereby removing the public entity exemption as to those fees. However, the fees are subject to statutory restrictions. (See Govt.C. 54999.4; *Regents of Univ. of Calif. v. East Bay Mun. Util. Dist.* (2005) 130 C.A.4th 1361, 1383, 31 C.R.3d 278 [capital component of water district's water rate was capital facilities fee subject to restrictions of Govt.C. 54999.4; proper remedy for district's overcharge in violation of restrictions was refund to public university].)

See *Marina v. Board of Trustees of Calif. State University* (2006) 39 C.4th 341, 356, 46 C.R.3d 355, 138 P.3d 692, 12 Summary (10th), *Real Property*, Supp., §854 [Cal. Const., Art. XIII, §3, did not prevent state university from making voluntary payments to governmental entity that was charged with overseeing redevelopment of former army base; payments would be in mitigation of environmental effects caused by university's expansion and would not be special assessments imposed by redevelopment entity without legislative authority].



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c. County and Municipal Property.

9 *Witkin Sum. Cal. Law Tax* § 182

[§ 182] County and Municipal Property.

(1) *In General.* Property of counties and municipalities is exempt. (Cal. Const., Art. XIII, §3(b); Rev.C. 202(a)(4); see *Housing Authority of Los Angeles v. Dockweiler* (1939) 14 C.2d 437, 454, 94 P.2d 794; *Gaspard v. Edwin M. LeBaron* (1951) 107 C.A.2d 356, 360, 237 P.2d 278 [public road]; *Sacramento Mun. Util. Dist. v. Sonoma* (1991) 235 C.A.3d 726, 732, 1 C.R.2d 99 [purported excise tax on privilege of generating electricity from geothermal steam, applicable only to entities exempt from property tax, was impermissible substitute for property tax on public property prohibited by Cal. Const., Art. XIII, §3]; 1 Ehrman 3d, §6:10.) However, property acquired outside the city or county boundaries may be taxed. (See *supra*, §177.)

(2) *Special Assessment.* Where lands, although owned by a public agency, are not used for governmental functions, but are held in a proprietary capacity, they may be subject to special assessments. (See *Conley v. Hawley* (1934) 2 C.2d 23, 25, 38 P.2d 408 [property acquired through delinquent tax sale].) County property actually devoted to a public use, however, is exempt from special assessments. (*Santa Barbara v. Santa Barbara* (1976) 59 C.A.3d 364, 369, 130 C.R. 615; see *San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 C.3d 154, 163, 228 C.R. 47, 720 P.2d 935 ["sewer capacity right fee" used by local water district for capital improvements was special assessment from which public school district was exempt]; *supra*, §181.)

(3) *Use by Nonprofit Entity.* If a transit development board has sole ownership interest in a nonprofit entity, property of the entity is exempt to the extent it is within the boundaries of the board and is used for public purposes. (Rev.C. 201.1.) County property used or possessed by a nonprofit corporation for an agricultural fair is also exempt. (Rev.C. 201.2.)

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(1) *In General.* See *L & B Real Estate v. Housing Authority of Los Angeles* (2007) 149 C.A.4th 950, 956, 57 C.R.3d 298 [tax deed purporting to convey property owned by county was void; county did not waive property's tax-exempt status and did not have to do anything to claim and preserve it].

(2) *Special Assessment*. In response to *San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 C.3d 154, 228 C.R. 47, 720 P.2d 935, text, p. 276, the Legislature enacted Govt.C. 54999 et seq., which authorize public utilities to impose capital facilities fees on other public entities (Govt.C. 54999.2), thereby removing the public entity exemption as to those fees. However, the fees are subject to statutory restrictions. (See Govt.C. 54999.4.)

See *San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 C.A.4th 86, 105, 45 C.R.3d 674 [community college's obligation, under California Environmental Quality Act (CEQA), to mitigate significant adverse off-campus traffic impacts of construction project was not prohibited special assessment; distinguishing *San Marcos*, which did not involve CEQA].



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2. Schools and Colleges.

a. Religious, Charitable, and Hospital Schools.

9 *Witkin Sum. Cal. Law Tax* § 183

[§ 183] Religious, Charitable, and Hospital Schools.

Property used exclusively for religious, hospital, or charitable purposes is covered by the welfare exemption (Cal. Const., Art. XIII, §4(b); Rev.C. 214 et seq.; see *infra*, §187 et seq.). Moreover, property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, limited liability companies, or corporations is within the welfare exemption. (Rev.C. 214(b); see Rev.C. 214.4 [definition of school "less than collegiate level"]; *Lundberg v. Alameda* (1956) 46 C.2d 644, 649, 298 P.2d 1 [statutory authorization of educational purpose met constitutional requirement of charitable purpose].) The exemption extends to licensed nursery schools (Rev.C. 214(c), 221) and to schools that combine collegiate and less than collegiate grades (Rev.C. 214.5(a)). But both Rev.C. 214 and 214.5 state that they are not to be construed so as to extend the college exemption (*infra*, §185). Thus, a school that offers only collegiate level classes does not come within this exemption. (See *California College of Mortuary Science v. Los Angeles* (1972) 23 C.A.3d 702, 704, 100 C.R. 558.)

The exemption granted to religious schools does not violate the First Amendment Establishment Clause (see 7 *Summary* (10th), *Constitutional Law*, §505). It promotes the general welfare by encouraging education of the young. Because it is available also to nonreligious charitable schools, it does not favor religion. It conforms to a long established American practice of granting tax exemptions to religious sects. (*Lundberg v. Alameda, supra*, 46 C.2d 654; see *Walz v. Tax Com. of New York* (1970) 397 U.S. 664, 90 S.Ct. 1409, 25 L.Ed.2d 697, *infra*, §186.)

In 1981, claims of exemption related to church schools were streamlined by the addition of the religious exemption. (See *infra*, §186.) Property owned and operated by a church and used for "preschool purposes, nursery school purposes, kindergarten purposes, school purposes of less than collegiate grade, or for purposes of both schools of collegiate grade and less than collegiate grade" falls within the religious exemption. Property used solely for purposes of schools of collegiate grade does not. (Rev.C. 207.) The religious exemption allows a church operating a church school to file a single exemption for the entire property, and negates the former practice of filing a church exemption for the church property and a welfare exemption for the school property. (Stats. 1981, Chap. 542, §1.)

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b. Public Schools and Colleges.

9 *Witkin Sum. Cal. Law Tax* § 184

[§ 184] Public Schools and Colleges.

(1) *Authorization for Exemption.* Property used exclusively for public schools, community colleges, state colleges, and state universities, including the University of California, is exempt. (Cal. Const., Art. XIII, §3(d); Rev.C. 202(a)(3); see *Regents of Univ. of Calif. v. State Bd. of Equalization* (1977) 73 C.A.3d 660, 668, 140 C.R. 857 ["state universities" in Cal. Const., Art. XIII, §3(d), included University of California, even before Rev.C. 202(a)(3) so provided]; *Mann v. Alameda* (1978) 85 C.A.3d 505, 507, 509, 149 C.R. 552 [following *Regents*; possessory interests of students in university owned housing were exempt under reasoning of *Church Divinity School of Pac. v. Alameda* (1957) 152 C.A.2d 496, 314 P.2d 209, and *English v. Alameda* (1977) 70 C.A.3d 226, 138 C.R. 634, *infra*, §188]; 1 Ehrman 3d, §6:12.) The exemption extends to off-campus facilities owned or leased by an apprenticeship program sponsor if they are used exclusively by the public schools for classes for apprentices and trainees conducted by the schools. (Rev.C. 202(b).)

The statutes broadly define the exemption to include personal property used in certain activities authorized by the Education Code, whether by the school, an auxiliary nonprofit corporation, or a student body organization. (Rev.C. 202.5 [state colleges]; Rev.C. 202.6 [student body organization in any school]; see 15 A.L.R.3d 847 [exemption of public school property from local assessments].) Public school property may also be exempt as state-owned property. (See Rev.C. 202.7 [personal property owned or used by student governments of University of California or nonprofit corporations operating bookstores of affiliated colleges].)

(2) *Possessory Interests.* In *Connolly v. Orange* (1992) 1 C.4th 1105, 4 C.R.2d 857, 824 P.2d 663, employees of a public university owned homes built on university land subleased to the homeowners under 99-year leases to the campus housing authority. Defendant county assessed the homeowners' possessory interest in the property. Plaintiff university and the homeowners sought mandamus and a declaratory judgment that the possessory interests were exempt under Cal. Const., Art. XIII, §3(d), exempting property "used exclusively" for public schools and colleges. *Held*, the possessory interests were taxable.

(a) In the absence of an exemption, privately held possessory interests in public property are subject to taxation. (1 C.4th 1118, 1119.) However, possessory interests are "property" within the meaning of Cal. Const., Art. XIII, §3(d), and may be exempt if the holder of the lease uses the property exclusively for school purposes. (1 C.4th 1125.)

(b) *English v. Alameda, Mann v. Alameda, and Cedars of Lebanon Hosp. v. Los Angeles* (1950) 35 C.2d 729, 221 P.2d 31, *infra*, §192, are not controlling here. *English* properly held that occupancy of property owned by a charity whose purpose is to provide housing is a use exclusively for the charitable purpose that qualified the owner for the welfare exemption. *Mann* involved university-owned student housing. (1 C.4th 1127.) *Cedars of Lebanon* and following cases construed the phrase "used exclusively" in the welfare exemption to encompass housing incidental to the charity's purpose. (1 C.4th 1128.)

(c) "[I]t does not follow that simply because a hospital or private college may be entitled to a tax exemption for portions of its property on which it has built student dormitories or faculty housing, a faculty member is similarly entitled to a tax exemption when he or she uses a long-term leasehold interest in property leased from a university to build or maintain a *privately owned residence for his or her own use*." (1 C.4th 1129.) Property used exclusively for charitable or educational purposes does not have the same meaning in two distinct situations: (1) where the property is owned by a private person who will benefit personally from the proposed use, and (2) where the property is owned by the charity or college for the benefit of which the exemption was created. (1 C.4th 1129.) (See 20 *Pepperdine L. Rev.* 859 [Connolly].)

(3) *Use Limitation*. The use limitation was applied in *Honeywell Information Systems v. Sonoma* (1974) 44 C.A.3d 23, 118 C.R. 422. Plaintiff leased an electronic computer system to defendant county for use in its schools. Defendant's personnel operated it mainly for its own school programs, but also contracted to furnish service to parochial schools and private businesses. The total time devoted to the outside uses was less than 4%, but it brought in substantial revenue used by the county for its general purposes. Under the lease, plaintiff was required to pay personal property taxes, and it sought a refund. *Held*, plaintiff was not entitled to the exemption.

(a) Under the rule of strict but reasonable construction (*supra*, §4), the term "exclusively used" in other statutes has been interpreted to include incidental use only if directly connected with, reasonably necessary for, and in furtherance of, the primary use. (44 C.A.3d 28, citing *Cedars of Lebanon Hosp.* and *Church Divinity School*.)

(b) Here, the incidental use for parochial schools and private businesses was not reasonably necessary to further the primary purpose of the public schools. It was merely a revenue-generating device, and even though that revenue had the ultimate effect of reducing the rental cost of the computer to the county, "it is the use of the property which renders it exempt or nonexempt, not the use of the income derived from it." (44 C.A.3d 29, citing *Y.M.C.A. of Los Angeles v. Los Angeles* (1950) 35 C.2d 760, 221 P.2d 47, *infra*, §195.) (See *Ytrup Homes v. Sacramento* (1977) 73 C.A.3d 279, 284, 140 C.R. 680 [citing *Honeywell*, but holding that properties were used exclusively for public schools and libraries]; *Oates v. Sacramento* (1978) 78 C.A.3d 745, 751, 143 C.R. 337 [building space leased to county superintendent of schools for administrative offices was exempt]; on reduction of rent where property is rented for exempt use, see *infra*, §211.)

(4) *Bookstores*. To the extent that property is (a) owned by an educational institution of collegiate grade or used by a nonprofit corporation operating an affiliated student bookstore, and (b) devoted to a use that produces unrelated business taxable income of a bookstore, it is subject to property tax. The tax may be imposed on no greater portion of the property than that represented by the ratio of unrelated business taxable income to gross income. It is imposed without prejudice to the right to assert an exemption otherwise available for state property or for public or nonprofit educational institutions. (Rev.C. 202(c), 203(d).)

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9 Witkin Sum. Cal. Law Tax § 185

[§ 185] Nonprofit Colleges.

(1) *General Rule of Exemption.* "Buildings, land, equipment, and securities used exclusively for educational purposes by a nonprofit institution of higher education" are exempt. (Cal. Const., Art. XIII, §3(e); see Rev.C. 203(a); *California Institute of Technology v. Johnson* (1942) 55 C.A.2d 856, 859, 132 P.2d 61 [college was exempt only from property tax and remained liable for use tax on equipment purchased outside state]; *Loyola Marymount University v. Los Angeles Unified School Dist.* (1996) 45 C.A.4th 1256, 1267, 53 C.R.2d 424 [school facilities fees under Govt.C. 65970 et seq. are not ad valorem property taxes and thus may be imposed on nonprofit educational institution, despite institution's exemption from taxation under Cal. Const., Art. XIII, §3(e)]; Ehrman 3d, §6:13; on reduction of rent where property is rented for exempt use, see *infra*, §211.) The exemption applies "to buildings under construction, land required for their convenient use, and equipment in them if the intended use would qualify the property for exemption." (Cal. Const., Art. XIII, §5.)

(2) *Construction of Limitation to Institution of Higher Education.* Legislative and judicial interpretation of the constitutional classification--"institution of higher education"--has been liberal. (See broad definition in Rev.C. 203(b); *Pasadena Playhouse Assn. v. Los Angeles* (1945) 69 C.A.2d 611, 614, 159 P.2d 679 [school of drama was within definition]; *Church Divinity School of Pac. v. Alameda* (1957) 152 C.A.2d 496, 498, 501, 314 P.2d 209 [church school giving graduate courses in theology]; 34 A.L.R.4th 698 [educational institutions or schools within state property tax exemption provisions].)

To qualify for the college exemption, the institution must offer at least one academic or professional degree, based on (a) a course of at least 1 year in flight test technology or flight test science, for which the master's degree program has been approved by specified agencies, or (b) a course of at least 2 years in liberal arts and sciences, or (c) a course of at least 3 years in professional studies. (Rev.C. 203(b); see *California College of Mortuary Science v. Los Angeles* (1972) 23 C.A.3d 702, 704, 100 C.R. 558 [junior college did not qualify under former Rev.C. 203, requiring degree based on 4-year course in liberal arts and sciences].) Property owned by the California School of Mechanical Arts or Cogswell Polytechnic College, or their successors, is specifically exempt from property taxation. (Cal. Const., Art. XIII, §4(c); Rev.C. 203.5.)

(3) *Construction of Limitation to Educational Uses.* The limitation-- "used exclusively for educational

purposes"--was given an equally liberal interpretation corresponding to the similar interpretation of the welfare and religious exemptions (infra, §186 et seq.). Exempt property includes facilities that are "reasonably necessary for the fulfillment of a generally recognized function of a complete modern college." (*Church Divinity School v. Alameda*, *supra*, 152 C.A.2d 502 [applying exemption to residences of faculty members and married students and to parking lot]; see Rev.C. 203.1 [personal property owned or used by nonprofit corporation operating bookstore affiliated with educational institution is exempt]; *Board of Trustees v. Santa Clara* (1978) 86 C.A.3d 79, 85, 150 C.R. 109 [property used by Stanford University as golf course was integral part of physical education and recreation programs and was exempt]; 66 A.L.R.2d 904 [college fraternity or sorority house]; 33 A.L.R.3d 942 [garage or parking lot]; 55 A.L.R.3d 485 [property used by personnel as living quarters]; on taxation of property generating unrelated business taxable income of bookstores affiliated with exempt educational institutions, see Rev.C. 202(c), 203(d), *supra*, §184.)

Although the language of the Constitution and the statute providing for the college exemption is not identical to the language governing the welfare exemption, "the all-important criterion of the privilege, namely that the specified property be used exclusively for the exempt purpose, is the same." Hence, the stipulated private uses of the property were held not taxable; they were reasonably necessary for fulfillment of the recognized functions of a modern college. (*English v. Alameda* (1977) 70 C.A.3d 226, 243, 244, 138 C.R. 634, *infra*, §188.)

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SUPPLEMENT: [This section is current through the latest supplement]



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B. Exemptions.
3. Church and Religious Exemption.

9 Witkin Sum. Cal. Law Tax § 186

[§ 186] Church and Religious Exemption.

(1) *Worship*. "Buildings, land on which they are situated, and equipment used exclusively for religious worship" are exempt. (Cal. Const., Art. XIII, §3(f); Rev.C. 206; see *Watchtower Bible & Tract Soc. v. Los Angeles* (1947) 30 C.2d 426, 428, 182 P.2d 178 [buildings and land alone were exempt; religious literature may be subjected to property tax]; 4 West L.A. L. Rev. 20, 25; 64 So. Cal. L. Rev. 363 [examining rationale behind exemption of church property]; 28 A.L.R.4th 344 [what constitutes church, religious society, or institution for purposes of property tax exemption]; 1 Ehrman 3d, §6:15 et seq.; on rent reduction where property is rented for this exempt use, see *infra*, §211.) The exemption applies to "buildings under construction, land required for their convenient use, and equipment in them if the intended use would qualify the property for exemption." (Cal. Const., Art. XIII, §5; see *First Baptist Church of San Fernando v. Los Angeles* (1952) 113 C.A.2d 392, 394, 248 P.2d 101 [building in course of construction was not exempt before 1954 amendment].)

The constitutional limitation to property used "exclusively" for religious worship is broadly defined by statute, and is liberally interpreted in the same manner as the school and welfare exemptions (*supra*, §183 et seq.; *infra*, §187 et seq.). (See *Fellowship of Humanity v. Alameda* (1957) 153 C.A.2d 673, 698, 315 P.2d 394 [incidental use of property by other organizations and for discussion meetings and social purposes does not remove it from exemption].)

(2) *Belief in God Is Not Required*. *Fellowship of Humanity v. Alameda*, *supra*, presented a difficult question whether "religious worship" should be given its normally accepted implication of belief in a Supreme Being. Plaintiff nonprofit corporation, a humanist society without creed (and assumed to be without belief in God), was held entitled to the exemption after a lengthy examination of legal and nonlegal authorities.

(a) Dictionary and scholarly definitions of the term recognized its permissible extension to any system of faith or doctrine. (153 C.A.2d 684 et seq.) Although a strict interpretation of the tax exemption provision would call for the traditional definition, as in the federal Military Training and Service Act, this would be contrary to the principle and policy of separation of church and state and would cast doubt on the constitutional validity of the church exemption. (153 C.A.2d 691 et seq., 693 et seq.)

(b) "[T]he proper interpretation of the terms 'religion' or 'religious' in tax exemption laws should not include any reference to whether the beliefs involved are theistic or nontheistic. Religion simply includes: (1) a belief, not

necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets of belief." (153 C.A.2d 693.)

(3) *Parking*. Parking used in connection with religious activities and not for commercial purposes is exempt. (Rev.C. 206.1; see Cal. Const., Art. XIII, §4(d) [Legislature may exempt noncommercial real property "reasonably and necessarily required for parking vehicles of persons worshipping" on exempt property]; 75 A.L.R.2d 1106 [church parking lots as entitled to tax exemptions]; 1 Ehrman 3d, §6:18.)

(4) *Religious Purposes*. "Property used exclusively for religious purposes" is exempt. (Rev.C. 207; see Cal. Const., Art. XIII, §4(b).) This exemption is known as the "religious exemption." (Rev.C. 207; see Rev.C. 257 [affidavit for exemption], Rev.C. 257.1 [assessor's notice to holders of religious exemption].) For purposes of the religious exemption, property owned and operated by a church and used exclusively for religious worship or for a variety of school purposes is deemed to be used exclusively for religious purposes. (Rev.C. 207; on use for school purposes, see *supra*, §183.) Personal property leased to a church and used exclusively for the purposes described in Rev.C. 207 is exempt under that section. (Rev.C. 207.1.)

Exemption of church property is the practice in all the states, and it does not violate the Establishment Clause of the First Amendment. (*Walz v. Tax Com. of New York* (1970) 397 U.S. 664, 90 S.Ct. 1409, 1417, 25 L.Ed.2d 697, 708; see *Committee for Public Education & Religious Liberty v. Nyquist* (1973) 413 U.S. 756, 93 S.Ct. 2955, 2976, 37 L.Ed.2d 948, 974, 7 Summary (10th), *Constitutional Law*, §546 [Walz distinguished; tax relief to parents whose children attend private church-run schools was unconstitutional]; 13 Southwestern U. L. Rev. 129 [analysis and criticism of Walz].)

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B. Exemptions.

4. Welfare Exemption.

a. In General.

1. Nature, Purpose, and Scope.

9 Witkin Sum. Cal. Law Tax § 187

[§ 187] Nature, Purpose, and Scope.

(1) *Constitutional Provision.* Under Cal. Const., Art. XIII, §4(b), the Legislature may exempt from property taxation, in whole or in part, property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities that satisfy the following requirements:

- (a) The entity is organized and operating for these purposes.
- (b) The entity is nonprofit.
- (c) No part of the entity's net earnings inures to the benefit of any private shareholder or individual.

Cal. Const., Art. XIII, §4(b), unlike most of the other constitutional exemption provisions, is not self-executing, and its implementation is in Rev.C. 214 et seq. Rev.C. 214(a) refers to the exemption as the "welfare exemption," and sets forth in considerable detail the tests and conditions of the exemption. (See *Cedars of Lebanon Hosp. v. Los Angeles* (1950) 35 C.2d 729, 734, 221 P.2d 31; *Sutter Hosp. of Sacramento v. Sacramento* (1952) 39 C.2d 33, 35, 244 P.2d 390; *Lundberg v. Alameda* (1956) 46 C.2d 644, 649, 298 P.2d 1; *Stockton Civic Theatre v. Board of Supervisors of San Joaquin* (1967) 66 C.2d 13, 20, 56 C.R. 658, 423 P.2d 810, *infra*, §197; *San Francisco Boys' Club v. Mendocino* (1967) 254 C.A.2d 548, 552, 62 C.R. 294; *Mission Housing Dev. Co. v. San Francisco* (1997) 59 C.A.4th 55, 82, 69 C.R.2d 185, *infra*, §247 [limitations period of Rev.C. 1604(c) does not result in creation of partial tax exemption in violation of Cal. Const., Art. XIII, §4]; 41 So. Cal. L. Rev. 844 [California welfare exemption]; 13 U.C.L.A. L. Rev. 933 et seq. [philanthropic foundations]; 61 A.L.R.2d 1031 [legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution]; 94 A.L.R.2d 626 [property held in trust for tax-exempt organization]; 71 Am.Jur.2d (2001 ed.), *State and Local Taxation* §296 et seq.; 1 Ehrman 3d, §6:21 et seq.; on requirement that property be made available as election polling place, see Rev.C. 213.5; on procedure for filing organizational clearance certificate in order to claim welfare exemption, see Rev.C. 254.6.)

Charitable purposes include educational purposes. (Rev.C. 214; for definition of educational purposes, see Rev.C. 214(j).)

(2) *Revenue Code*. Supplementing the general constitutional authorization of exemption of property used exclusively for religious, hospital, or charitable purposes, the Revenue Code makes the welfare exemption applicable to the following:

- (a) Volunteer fire department property. (Rev.C. 213.7.)
- (b) Property used for "scientific" purposes. (Rev.C. 214(a).)
- (c) Property used for school purposes "of less than collegiate grade," including nursery school purposes. (See *supra*, §183; *Southern Calif. Assn. of Seventh-Day Adventists v. Franchise Tax Bd.* (1975) 47 C.A.3d 207, 215, 120 C.R. 622, *supra*, §44.)
- (d) Property used for noncommercial educational radio broadcast or television stations. (Rev.C. 214(d), 215.5, 225.5.)
- (e) Certain federally financed housing and related facilities for elderly or handicapped families and low income rental housing property owned by exempt entities. (Rev.C. 214(f), (g); see *Martin Luther Homes v. Los Angeles* (1970) 12 C.A.3d 205, 213, 90 C.R. 524 [nonprofit corporation providing rental housing to elderly persons was not exempt; housing was not federally financed]; on exemption for low income rental housing owned by federally designated Indian tribe, see Rev.C. 237.)
- (f) Buildings and real property owned by certain veterans' organizations and used exclusively for charitable purposes. (See *infra*, §200.)
- (g) Personal property belonging to zoological societies. (Rev.C. 222, 222.5.)
- (h) Certain property owned by nonprofit corporations and leased to governmental entities. (Rev.C. 214.6, 231.)
- (i) Property owned and operated by qualifying entities and used exclusively for emergency or temporary shelter and related facilities for the homeless. (Rev.C. 214(h).)
- (j) Property owned and operated by qualifying entities and used exclusively for housing and related facilities for employees of qualifying entities to the extent "residential use of the property is institutionally necessary for the operation of the organization." (Rev.C. 214(i).)
- (k) The fee interest and the possessory interest in property leased for a term of 35 years or more, used exclusively for rental housing and related facilities for low income tenants, and operated by exempt entities in accordance with their exempt purposes. (Rev.C. 236.)
- (l) Property owned and operated by a qualifying entity, open to the public, and used exclusively for the preservation of native plants, native animals, biotic communities, and geographical features or for recreational and scenic open space. (Rev.C. 214.02(a).) The exemption is operative until the lien date in 2012. (Rev.C. 214.02(d).)
- (m) Property owned and operated by a qualifying nonprofit corporation that is organized and operated for the specific and primary purpose of building and rehabilitating single or multifamily residences for sale at cost to low income families, with financing in the form of a zero interest rate loan and without regard to religion, race, national origin, or the sex of the head of the household. (Rev.C. 214.15(a).)

(3) *Special Assessments Distinguished*. The exemption is only from property tax. Under the general rule of construction that a property tax exemption does not by implication extend to special assessments levied on the basis of equivalent benefit (*supra*, §4), the welfare exemption does not apply to a special assessment. (*Cedars of Lebanon Hosp. v. Los Angeles*, *supra*, 35 C.2d 748 [county flood control district assessment].)

(4) *Exemption Applicable to Leased Property.* Rev.C. 214 does not require ownership and operation of property by the same legal entity. (*Christ The Good Shepherd Lutheran Church v. Mathiesen* (1978) 81 C.A.3d 355, 363, 146 C.R. 321 [exemption remained where plaintiff nonprofit exempt organization leased real property to another similarly exempt organization]; see *Tri-Cities Children's Center v. Board of Supervisors* (1985) 166 C.A.3d 589, 592, 212 C.R. 541 [nonprofit charitable nursery school operating on property leased from public school district was exempt under Rev.C. 214].)

(5) *Other Exemptions Are Available.* The welfare exemption is in addition to other exemptions and may apply to library and museum property despite the existence of the library and museum exemption (*infra*, §206). It does not enlarge the college exemption (*supra*, §185). (Rev.C. 214(a).)

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a. In General.

2. Property Used Exclusively for Specified Purpose.

9 *Witkin Sum. Cal. Law Tax* § 188

[§ 188] Property Used Exclusively for Specified Purpose.

(1) *General Requirement.* Under Cal. Const., Art. XIII, §4(b), and Rev.C. 214, the property must be "used exclusively" for one of the specified purposes. (See Rev.C. 214(a)(5) [property cannot be used for fraternal, lodge, or social club purposes, except where use is "clearly incidental" to exempt purpose]; Rev.C. 215.2 [use of property for bingo games does not preclude exemption as long as proceeds are used exclusively for charitable purposes].)

This condition was liberally interpreted to include property "reasonably necessary" for the purposes of the organization. (See *Cedars of Lebanon Hosp. v. Los Angeles* (1950) 35 C.2d 729, 735, 221 P.2d 31, *infra*, §192; *San Francisco Boys' Club v. Mendocino* (1967) 254 C.A. 2d 548, 559, 62 C.R. 294 [logging operation of boys' camp did not cause loss of exemption; it was incidental use of prudent management]; *Santa Catalina Island Conservancy v. Los Angeles* (1981) 126 C.A.3d 221, 243, 244, 178 C.R. 708 [recreational hunting to control overgrazing "incidental to and reasonably necessary for" purposes of ecological preservation]; 54 A.L.R.3d 9 [prospective use for tax-exempt purposes as entitling property to tax exemption].) But Rev.C. 214(a)(3) was amended in 1968 to provide that the amount of exempt property must not exceed that "reasonably necessary to the accomplishment of the exempt purpose." (See Rev.C. 254.5(b)(1)(B) [board must consider this matter in determining claim].)

In *English v. Alameda* (1977) 70 C.A.3d 226, 138 C.R. 634, taxpayers sought mandamus to compel assessment (as private possessory interests) of the use and occupancy (by employees and beneficiaries) of property otherwise qualified for the welfare exemption. It was stipulated that the private uses were incidental to and reasonably necessary for accomplishment of various designated charitable purposes. *Held*, the writ was properly denied.

(a) Rev.C. 214, pursuant to constitutional authority, exempts "property" used exclusively for charitable purposes. The lesser included possessory interest is necessarily exempted. (70 C.A.3d 235, 236.)

(b) The liberal construction of "exclusive use" also dictates that for the purposes of property taxation, the stipulated uses are equivalent to the exclusive use required by law. (70 C.A.3d 236, 237.)

(c) The cases upholding taxation of possessory interests in publicly owned land (*supra*, §167) are distinguishable.

(1) The public land exemption is based on ownership, while the welfare exemption is based on use. (70 C.A.3d 239.) (2) To defeat the welfare exemption for incidental and necessary uses of the exempt property would deprive the public of the ultimate charitable benefits for which the exemption is granted. (70 C.A.3d 239, 240.) (3) Long established administrative practice confines taxable possessory interests to those on land held by tax-exempt public agencies. (70 C.A.3d 240.)

(d) *United States v. Fresno* (1975) 50 C.A.3d 633, 123 C.R. 548, supra, §176, is also distinguishable on the ground that there was no public purpose served by the private use of the public property. (70 C.A.3d 241, 242.)

(2) *Applicable to Buildings, Land, and Equipment.* The welfare exemption applies to "buildings under construction, land required for their convenient use, and equipment in them if the intended use would qualify the property for exemption." (Cal. Const., Art. XIII, §5; see Rev.C. 214.1 [exemption applies to facilities in course of construction]; Rev.C. 214.2(a) ["course of construction" includes demolition of building with intent to replace it with exempt facilities]; Rev.C. 214.13 [exemption applies to property developed under Community Redevelopment Law and required to be conveyed within 3 years of completion to entity qualifying for welfare exemption]; *J. Paul Getty Museum v. Los Angeles* (1983) 148 C.A.3d 600, 606, 195 C.R. 916 [charitable trust operating free museum was entitled to welfare exemption for museum building during period of construction]; 1 Ehrman 3d, §6:38.)

(3) *Use of Property for Meetings of Other Entities.* In determining whether property is used for the actual operation of the exempt activity, use of the property for meetings of other organizations is not considered if the following requirements from Rev.C. 214(a)(3)(D) are met:

(a) The meetings are incidental to the other organization's primary activities and are not fundraising activities.

(b) The meetings are held not more than once a week.

(c) The organization and its use of the property meet all the requirements of the welfare exemption.

(d) The owner of the other organization files with the assessor a valid organizational clearance certificate (see Rev.C. 254.6).

(4) *Unrelated Business Income.* Under Rev.C. 214.05(a), property of an organization granted a welfare exemption is deemed to be used exclusively for the organization's exempt purposes. However, to the extent that income derived from the organization's use of property is unrelated business taxable income under 26 U.S.C., §§511, 512, only a partial welfare exemption is authorized. The following rules govern the extent of the exemption:

(a) If the use of the property involves activities that produce both exempt and taxable income and the activities are attributable to a reasonably ascertainable portion of the entire property, that portion is entitled to a partial exemption equal to that part of the value of the ascertainable portion determined by the ratio that exempt income from that portion bears to total income from that portion. (Rev.C. 214.05(b)(1).) If those activities cannot be attributed to a reasonably ascertainable portion of the property, the entire property is entitled to a partial exemption equal to that part of the value of the entire property determined by the ratio that exempt income from the entire property bears to total income from the entire property. (Rev.C. 214.05(b)(3).)

(b) If use of the property involves activities, some of which are exempt for property tax purposes and produce no income and some of which produce taxable income or both exempt and taxable income, and if the activities are attributable to a reasonably ascertainable portion of the entire property, that portion is entitled to a partial exemption equal to that part of the value of the ascertainable portion determined by the ratio that time devoted to exempt, nonincome-producing activities attributable to that portion bears to total time devoted to all activities attributable to that portion. (Rev.C. 214.05(b)(2).) If those activities cannot be attributed to a reasonably ascertainable portion of the property, the entire property is entitled to a partial exemption equal to that part of the value of the entire property determined by the ratio that time devoted to exempt, nonincome-producing activities attributable to the entire property

bears to total time devoted to all activities attributable to the entire property. (Rev.C. 214.05(b)(3).)

(c) If more than 75% of income is attributable to exempt property but is not specifically related to use of particular property, the property is entitled to a partial exemption equal to that part of the value of the entire property determined by the ratio that exempt income from activities in California bears to total income from activities in California. (Rev.C. 214.05(c).)

(d) If property for which a welfare exemption claim is made produces unrelated business taxable income, the claimant is required to file federal tax returns and other information relating to computation of a partial exemption. (Rev.C. 214.05(d).)

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Use of Property for Meetings of Other Entities.*(d) *Requirement of valid organizational clearance certificate:* Rev.C. 214(a)(3)(D) was amended in 2006 to provide that the owner or the other organization must file with the assessor a copy of a valid, unrevoked letter or ruling from the Internal Revenue Service or the Franchise Tax Board stating that the other organization, or the national organization of which it is a local chapter or affiliate, qualifies as an exempt organization under the specified statutes.



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3. Property Irrevocably Dedicated to Specified Purpose.

9 Witkin Sum. Cal. Law Tax § 189

[§ 189] Property Irrevocably Dedicated to Specified Purpose.

The property must be "irrevocably dedicated" to one of the specified purposes, so that on the liquidation, dissolution, or abandonment of the owner, it will not inure to private benefit. (Rev.C. 214(a)(6); see *Pasadena Hosp. Assn. v. Los Angeles* (1950) 35 C.2d 779, 785, 221 P.2d 62; *Moody Institute of Science v. Los Angeles* (1951) 105 C.A.2d 107, 109, 233 P.2d 51; on dedication requirement applicable to educational institutions of collegiate grade, see Rev.C. 214(e).) However, if the property has been used solely for charitable or hospital purposes for 30 years, the exemption exists "irrespective of any reversionary provisions in the title of the property respecting liquidation, dissolution or abandonment." (Rev.C. 214.3; see 1 Ehrman 3d, §§6:33, 6:34.)

The statement of irrevocable dedication must be in the articles, bylaws, or other basic regulations, but, on notification by the Board of Equalization of failure in this respect, the claimant has until the next lien date to amend the relevant documents to correct the defect. (Rev.C. 214.01(b).)

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a. In General.

4. Nonprofit Organization.

9 *Witkin Sum. Cal. Law Tax* § 190

[§ 190] Nonprofit Organization.

(1) *Not Organized or Operated for Profit.* Cal. Const., Article XIII, §4(b), authorizes the welfare exemption for "nonprofit" organizations. Rev.C. 214(a)(1) states this condition as "not organized or operated for profit." (See *Saint Germain Foundation v. Siskiyou* (1963) 212 C.A.2d 911, 916, 28 C.R. 393; *Christ The Good Shepherd Lutheran Church v. Mathiesen* (1978) 81 C.A.3d 355, 365, 366, 146 C.R. 321 [fact that rental income may exceed operating expenses in particular year will not disqualify tax-exempt lessor where lease is not intentionally profit-making or commercial in nature]; 1 Ehrman 3d, §§6:31, 6:32.)

(2) *No Private Benefit.* To qualify as a nonprofit entity, no part of the net earnings of the owner may inure to the benefit of a private shareholder or individual. (Cal. Const., Article XIII, §4(b); Rev.C. 214(a)(2).) The exempt property cannot be used to benefit an individual through distribution of profits or payment of excessive charges or compensation, or by conferring a business or professional advantage. (Rev.C. 214(a)(4).)

The condition provided in Rev.C. 214(a)(4) was construed in *Scripps Clinic & Research Foundation v. San Diego* (1997) 53 C.A.4th 402, 61 C.R.2d 756. Plaintiff taxpayer, a nonprofit research institute engaged in "basic" scientific research, granted a private company licenses to develop and market applications of plaintiff's basic research, in exchange for annual contributions to fund the basic research. Defendant county reasoned that, as a result of the agreements, plaintiff's property was used to benefit the private company in the "more advantageous pursuit" of its business, which disqualified the property under Rev.C. 214(a)(4). Plaintiff paid the tax and filed an action for refund. The trial court entered judgment for plaintiff. *Held*, affirmed.

(a) Rev.C. 214(a)(4) provides that, to qualify for the exemption, a taxpayer's property must not be used to benefit a company through the more advantageous pursuit of its business. "The meaning of this statutory language is not self-evident" (53 C.A.4th 409), but it appears that the Legislature intended to preclude persons from obtaining an excessive benefit or a benefit better than a person might obtain through arm's-length negotiation, in other words, a benefit more favorable than fair market value (53 C.A.4th 410). Defendant has not produced evidence that the agreements here contain terms or conditions giving the private company a benefit or advantage in excess of that which would result from arm's-length negotiations by plaintiff with other companies. (53 C.A.4th 414.)

(b) The possibility that the licensing rights to plaintiff's research products may ultimately be worth hundreds of millions of dollars in sales for the private company does not disqualify plaintiff from the exemption. It is also possible that plaintiff's research products may be worth far less than the funding that the private company contributes to plaintiff. "By entering into the ... agreements, [plaintiff] effectively reduced the risk of the future marketable value of its research and also obtained immediate, substantial research funding. We do not conclude that to qualify for the exemption a charitable or scientific organization must undertake the substantial financial risk that its research may ultimately be worth little or nothing on the market." (53 C.A.4th 414.)

(3) *Property Used for Actual Operation of Exempt Activity.* As originally enacted, Rev.C. 214(a)(3) contained a third condition, that the property "not be used or operated ... for profit regardless of the purposes to which the profit is devoted." Thus, property of an organization otherwise qualified could be denied the welfare exemption if it produced a profit, even though the profit was devoted to the exempt activity. (See *Sutter Hosp. of Sacramento v. Sacramento* (1952) 39 C.2d 33, 39, 244 P.2d 390.) This provision was deleted in 1953 and the following substituted: "The property is used for the actual operation of the exempt activity." (See *San Francisco Boys' Club v. Mendocino* (1967) 254 C.A.2d 548, 556, 62 C.R. 294; on profit limitation applied to hospitals, see *infra*, §193.)

In determining whether property is used for the actual operation of an exempt activity under Rev.C. 214(a)(3), occasional use of the property for fundraising (whether by the owner of the property or by another organization) is not considered provided that (a) proceeds from fundraising activities are not unrelated business taxable income under 26 U.S.C., §512, (b) the proceeds are used to further the exempt activity, (c) the user of the property qualifies as an exempt organization under 26 U.S.C., §501(c)(3), and (d) the user files with the assessor copies of qualifying documents and federal income tax returns. "Occasional use" means irregular or intermittent use of the property incidental to the primary activities of the user. (Rev.C. 214(a)(3).)

(4) *Hospitals.* Rev.C. 214(a)(1) provides a test for nonprofit status specifically for hospitals. A hospital is not deemed to be for profit if, in the preceding fiscal year, the excess of operating revenues (excluding gifts, endowments, and grants) over operating expenses (including depreciation and amortization of indebtedness) does not exceed 10% of operating expenses. (On additional requirements for hospitals seeking welfare exemption, see *infra*, §192 et seq.)

Rev.C. 214(a)(1) was construed in *Rideout Hosp. Foundation v. Yuba* (1992) 8 C.A.4th 214, 10 C.R.2d 141. Defendant county denied plaintiff hospital's application for the welfare exemption, contending that its net operating revenues exceeded the 10% limitation of Rev.C. 214(a)(1). *Held*, exceeding the limit is not a bar to the welfare exemption.

(a) The language of Rev.C. 214(a)(1) does not automatically exclude nonprofit hospitals earning more than 10% surplus revenues from the welfare exemption, but the double negative in the provision raises ambiguities. (8 C.A.4th 220, 221.) However, the urgency clause in the chapter adding the limitation to Rev.C. 214 expressly states the Legislature's intent that an organization may use the income from property devoted to an exempt activity for debt retirement, expansion of facilities, and a contingency reserve without losing the tax exempt status of the property. (8 C.A.4th 223.)

(b) While ineligibility under Rev.C. 214(a)(1) is not automatic, a nonprofit hospital earning over 10% is no longer deemed to meet the condition. It must prove it is not organized or operated for profit under the general rule of Rev.C. 214(a)(1). (8 C.A.4th 225, 226.)

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a. In General.

5. Qualification as Tax-Exempt Organization.

9 *Witkin Sum. Cal. Law Tax* § 191

[§ 191] Qualification as Tax-Exempt Organization.

(1) *Statutory Authorization.* In order to obtain the welfare exemption, organizations must qualify as tax-exempt under one of the following federal or state income tax laws:

(a) Volunteer fire departments must qualify under Rev.C. 23701d or 23701f, or 26 *U.S.C.*, §501(c)(3) or §501(c)(4). (Rev.C. 213.7.)

(b) Veterans' organizations must qualify under Rev.C. 23701f or 23701w, or 26 *U.S.C.*, §501(c)(4) or §501(c)(19). (Rev.C. 214.8(a).)

(c) Nonprofit corporations leasing property to governmental entities must qualify under Rev.C. 23701f or 23701u, or 26 *U.S.C.*, §501(c)(4). (Rev.C. 231(d).)

(d) All other organizations must qualify under Rev.C. 23701d or 26 *U.S.C.*, §501(c)(3). (Rev.C. 214.8(a); see *Los Angeles v. Los Angeles* (1971) 19 *C.A.3d* 968, 973, 97 *C.R.* 294, *supra*, §177 [claimant has to satisfy both federal and state sections]; see 1 *Ehrman 3d*, §6:40.)

(2) *Effect of Government Funding.* Nonprofit corporations organized for the advancement of education and improvement of social conditions and job opportunities of the low income, unemployed, and underemployed, which otherwise meet the requirements of Rev.C. 214, are not disqualified to receive the welfare exemption solely because they receive all their funds from governmental agencies. (Rev.C. 214.10.)

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b. Hospitals.

1. Nonprofit Facilities and Activities.

9 *Witkin Sum. Cal. Law Tax* § 192

[§ 192] Nonprofit Facilities and Activities.

In *Cedars of Lebanon Hosp. v. Los Angeles* (1950) 35 C.2d 729, 221 P.2d 31, the court interpreted the "used exclusively" condition (*supra*, §188) as contemplating a modern hospital plant rather than the minimum facilities found in earlier hospitals. Hence, the language includes property that is used exclusively for a facility that is "incidental to and reasonably necessary for the accomplishment of hospital purposes." (35 C.2d 736.) Accordingly, the following were exempt: (a) A school for training nurses. (35 C.2d 737.) (b) A nurses' home. (35 C.2d 738.) (c) Housing facilities for interns, resident doctors, superintendents, and other members of the hospital staff. (35 C.2d 740.) (d) A tennis court for hospital employees--student nurses, interns, and residents, regardless of whether or not it was also used to meet recreational needs of patients. (35 C.2d 744.) (See 15 A.L.R.2d 1064 [property used by personnel as living quarters or for recreation purposes as within tax exemptions extended to property of religious, educational, charitable, or hospital organizations]; 61 A.L.R.4th 1105 [exemption from real-property taxation of residential facilities maintained by hospital for patients, staff, or others]; 34 A.L.R.5th 529 [nursing home exemption]; 1 Ehrman 3d, §6:23; on hospital schools, see Rev.C. 214.5, *supra*, §183.)

A "hospital" includes an "outpatient clinic" furnishing psychiatric services for emotionally disturbed children and a nonprofit multispecialty clinic. (Rev.C. 214.9.)

Property otherwise qualifying for exemption under Rev.C. 214 is deemed to be exclusively used for hospital purposes as long as the property is exclusively used to meet the needs of hospitals, which themselves qualify for a property tax exemption under Rev.C. 214, a federal law, or any other California law. "Needs of hospitals" includes any use incidental to and reasonably necessary for the functioning of a full hospital operation. (Rev.C. 214.11.)

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b. Hospitals.

2. Activities Resulting in Profit.

9 *Witkin Sum. Cal. Law Tax* § 193

[§ 193] Activities Resulting in Profit.

Under the former law, facilities operated for profit were not within the exemption even though the profits were devoted to an exempt purpose. (See *Cedars of Lebanon Hosp. v. Los Angeles* (1950) 35 C.2d 729, 745, 221 P.2d 31 [thrift shop selling donated clothing and devoting profits to children's clinic]; *Sutter Hosp. of Sacramento v. Sacramento* (1952) 39 C.2d 33, 39, 244 P.2d 390 [nonprofit corporation acquired hospital assets by giving bonds, and produced profit to retire bonds and expand facilities]; supra, §190.) Amendments in 1953 and 1955 abrogated this rule. (See Rev.C. 214(a)(3), supra, §190; Rev.C. 214.7 [neither use of hospital property nor receipt of compensation by a licensed physician will be grounds for denial of exemption except where portion of hospital is leased for office].)

In *St. Francis Memorial Hosp. v. San Francisco* (1955) 137 C.A.2d 321, 290 P.2d 275, plaintiff had a year's surplus of \$ 130,400 from operations of its pharmacy, parking lot, and coffee shop (for which facilities it claimed no exemption). *Held*, it was entitled to exemption of its general facilities, for its annual budget was nearly \$ 3 million, and the profit was thus only about 4.4%. (137 C.A.2d 325.) Rev.C. 214(a)(1) (supra, §190) now covers this situation by providing that a hospital will be deemed nonprofit if its profit is not over 10%.

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c. Religious Organizations and Activities.

9 Witkin Sum. Cal. Law Tax § 194

[§ 194] Religious Organizations and Activities.

The church exemption covers buildings used exclusively for religious worship (*supra*, §186). Other religious or charitable organizations and facilities may come within the broader welfare exemption if they meet the test of *Cedars of Lebanon Hosp. v. Los Angeles* (1950) 35 C.2d 729, 221 P.2d 31, *supra*, §192. Specifically, property of the religious or charitable entity that is used exclusively for a facility that is incidental to and reasonably necessary for the accomplishment of religious or charitable purposes is exempt. (*Serra Retreat v. Los Angeles* (1950) 35 C.2d 755, 758, 221 P.2d 59; see *Saint Germain Foundation v. Siskiyou* (1963) 212 C.A.2d 911, 916, 28 C.R. 393; on charitable activities, see *infra*, §195 et seq.) In addition, property used for religious purposes may also be exempt under the religious exemption (Rev.C. 207, *supra*, §186).

In *Serra Retreat v. Los Angeles*, *supra*, a religious corporation maintained a two-story retreat house with accommodations for retreatants, priests and lay-brothers, and service quarters. Defendant county gave only a 78% exemption, denying it to the part used to house the retreat personnel, on the theory that a parsonage or rectory is a mere residential convenience. *Held*, on demurrer, the allegation that the presence of the priests and lay-brothers is essential to the conduct of the religious activities brought the case within the welfare exemption. (35 C.2d 758.) (See 55 A.L.R.3d 356 [parsonage or residence of church personnel]; 28 A.L.R.4th 344 [what constitutes church, religious society, or institution for purposes of property tax exemption].)

In *House of Rest of the Presbyterian Church v. Los Angeles* (1957) 151 C.A.2d 523, 312 P.2d 392, plaintiff nonprofit corporation operated an apartment building furnishing rooms at below cost to missionaries on furlough. The county contended that a furlough was a vacation and that consequently the property was used for ordinary residence and not religious purposes. The lower court found, however, that the furlough program was designed mainly to reestablish family and church relationships, create greater missionary interest, and prepare for better work in the field. *Held*, the property was exempt. (151 C.A.2d 536.)

In *Christward Ministry v. San Diego* (1969) 271 C.A.2d 805, 76 C.R. 854, plaintiff was a nonprofit corporation organized and operated for religious purposes. It owned 640 acres known as Questhaven, used for religious retreats for thousands of people. Its main concept was finding God through nature, and most of the land was kept in its natural state except for trails. The county assessor granted the exemption to only 40 acres: 31 consisting of the central improved

area, and 9 of the small shrines and trails in the rest of the land. The trial judge upheld this determination on the theory that the other property was not physically used for religious purposes but was maintained in its raw natural state mainly as a buffer to keep out other influences. *Held*, reversed, for trial of the crucial issue of fact.

(a) The property need not be indispensable to the religious purposes, nor is it required that there be "physical" use for religious purposes. (271 C.A.2d 810.)

(b) Whether a use is incidental to and reasonably necessary is a question of fact, and unless use of part of the property as a buffer zone is reasonably necessary to ensure use of the remainder as a retreat, it would not be incidental to religious purpose. The trial judge must consider this issue without applying the erroneous test of physical use. (271 C.A.2d 811.)

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 - 1. Exempt.

9 Witkin Sum. Cal. Law Tax § 195

[§ 195] Exempt.

(1) *Homes for the Aged*. In *Fredericka Home for the Aged v. San Diego* (1950) 35 C.2d 789, 221 P.2d 68, plaintiff was a nonprofit corporation operating a home for elderly people on a life care contract basis. *Held*, it was entitled to the exemption, even though it did not extend free service to the poor and applicants were charged an entry fee of \$ 5,500. The evidence showed that only 65% of its income came from fees, with the remaining 35% coming from an endowment fund and donations. "Accordingly, it is our conclusion that where, as here, the payments made by the elderly residents are within the reach of persons of limited means, where such payments are not commensurate with the benefits derived, where there is no element of private gain, and where all the income of the institution--including that received from residents and the substantial portion received from gifts and other sources--is devoted exclusively to affording a reasonable standard of care to such elderly persons for the balance of their lives, the concept of charity in its ordinary sense, as well as under a strict but reasonable construction of the welfare exemption law, is met." (35 C.2d 795.) (See *Pacific Home v. Los Angeles* (1953) 41 C.2d 844, 850, 264 P.2d 539 [similar organization; contract terms were fixed to break even on operation]; *Solheim Lutheran Home v. Los Angeles* (1957) 152 C.A.2d 775, 778, 313 P.2d 185 [similar]; *Samarkand of Santa Barbara v. Santa Barbara* (1963) 216 C.A.2d 341, 346, 31 C.R. 151 [similar]; 37 A.L.R.3d 565 [homes for the aged as exempt from property taxation]; 37 A.L.R.3d 1191 [receipt of pay from beneficiaries as affecting tax exemption of charitable institutions]; 39 A.L.R.3d 665 [fraternal or benevolent society use].)

The welfare exemption claim for a large group of homes for the aged was challenged in *Fifield Manor v. Los Angeles* (1961) 188 C.A.2d 1, 10 C.R. 242. The county contended that certain language in *Fredericka Home* established the conditions of (a) "payments ... within the reach of persons of limited means," and (b) "affording a reasonable standard of care." Accordingly plaintiff, which offered life care at below cost, but in "luxury" apartment homes not necessarily within the reach of persons of moderate means, was denied the exemption. *Held*, reversed. Plaintiff was a charitable corporation entitled to the exemption. The true test is not the financial ability of the recipient, but the recipient's needs, and charity is not confined to relief of the poor, but may extend to the rich where they are unable to care for themselves. (188 C.A.2d 11, 17.) A home for the aged that "caters to wealthy persons and furnishes them those services and care needed by the old and infirm, rich or poor, does not cease to be a charitable institution so long as its charges do not yield more than actual cost of operation." (188 C.A.2d 20.)

(2) *Community Health Clubs*. In *Clubs of Calif. for Fair Competition v. Kroger* (1992) 7 C.A.4th 709, 9 C.R.2d 247, plaintiffs, entities representing the owners of private health clubs, petitioned for mandamus to compel defendant tax assessor of Alameda County to assess the facilities of the new Oakland YMCA, which replaced facilities that had been exempt under the welfare exemption. Plaintiffs contended that the new facility was primarily a health club for adults, competing with private health clubs. *Held*, summary judgment for defendant affirmed; the facilities continued to be exempt.

(a) A charitable activity must either serve the community as a whole or an indefinite and unascertainable portion of it, but may do so by performing a service that government would otherwise be required to perform. Two variables are significant: (1) the nature of the use of the property, and (2) the degree to which the use is open to the community as a whole. "If an institution serves an interest historically regarded as being closely tied to the public welfare, the courts may require no more than indirect public benefit, such as possible tax savings. But if the institution's purpose has received relatively little recognition in judicial decisions and governmental programs, the court will require a more direct and demonstrable benefit to the community at large." (7 C.A.4th 716.)

(b) Various charitable programs take place at the YMCA, including activities for youth and senior citizens and the use of the facility for educational, philanthropic, and civic organizations. The adult athletic and health facilities not only benefit the participants but improve the quality of life of the community, serving a purpose similar to the civic theater held exempt in *Stockton Civic Theatre v. Board of Supervisors of San Joaquin* (1967) 66 C.2d 13, 56 C.R. 658, 423 P.2d 810, *infra*, §197. "It would be arbitrary to say that art deserves more support than sports." (7 C.A.4th 718.) Further, the recreational value of exempt activity has been recognized as an additional benefit. (7 C.A.4th 719.)

(c) It would be unrealistic to analyze the degree of community benefit of each category of activity offered by the YMCA. Activities share the same building, staff, equipment, overhead, and sources of financial support, and there is no compelling reason to distinguish among them. All have some potentially valid charitable purpose, although some concern a more vital social interest than others, and some display more community outreach than others. (7 C.A.4th 720.) It is most practical and fair to consider the community benefit offered by the entire complex of facilities. "Viewing the New Oakland YMCA as a single complex and giving appropriate weight to its admirable youth programs, we hold that it satisfies the standard implicit in the statutory term 'charitable purposes.' It is immaterial under California law that some YMCA facilities compete with private health clubs." (7 C.A.4th 721.)

(3) *Low Rent Dormitories*. In *Y.M.C.A. of Los Angeles v. Los Angeles* (1950) 35 C.2d 760, 221 P.2d 47, plaintiff furnished low rent dormitory accommodations for young men and boys of moderate earning capacity, pursuant to its general religious and charitable purposes. *Held*, the exemption applied. The charge was immaterial in view of the purposes. (35 C.2d 767.)

(4) *Schools and Museums*. Nonprofit schools are within the charitable exemption. (See *Lundberg v. Alameda* (1956) 46 C.2d 644, 651, 298 P.2d 1, *supra*, §183.) The exemption also applies to free museums. (See *J. Paul Getty Museum v. Los Angeles* (1983) 148 C.A.3d 600, 606, 195 C.R. 916.)

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9 Witkin Sum. Cal. Law Tax § 196

[§ 196] Not Exempt.

(1) *Dining and Recreational Facilities*. In *Y.M.C.A. of Los Angeles v. Los Angeles* (1950) 35 C.2d 760, 221 P.2d 47, supra, §195, plaintiff maintained a restaurant, barber shop, valet shop, gym store, and meeting hall, all available to the public, charging standard prices, in competition with other commercial enterprises, and not integrated into the education and training program of the organization. *Held*, these activities are not exempt, even though they promote plaintiff's general service plan, serve primarily the members of the organization, and may be maintained at a net loss. The test for the welfare exemption is not the number of good purposes, but whether the property is exclusively used for the exempt purposes. (35 C.2d 772.) (See *Peninsula Covenant Church v. San Mateo* (1979) 94 C.A.3d 382, 400, 156 C.R. 431 [church providing recreational facilities--swimming and tennis--for substantial membership fee]; 72 A.L.R.2d 521 [property used as dining rooms or restaurants].)

(2) *Housing for Seniors*. In *Martin Luther Homes v. Los Angeles* (1970) 12 C.A.3d 205, 90 C.R. 524, plaintiff, a nonprofit corporation, sought to provide low-cost rental housing for persons over 60. However, the rentals charged were the market price for the housing, and the only services provided were recreational, social, and cultural activities conducted at a public community center. *Held*, the exemption was properly denied. "When plaintiff's operation is viewed as a whole, the service it actually rendered was to assemble a congenial group of persons over 60 years of age in an area where low-rental housing was available, in the vicinity of a Lutheran community center. This service, and the activities incidental to it, could just as well have been offered to adults or any age group, or to persons of all ages. This is not what is meant in the cases which talk about the charitable purpose of providing the services especially required by the elderly." (12 C.A.3d 213.)

(3) *Educational Programs*. In *California College of Mortuary Science v. Los Angeles* (1972) 23 C.A.3d 702, 100 C.R. 558, the taxpayer was a nonprofit junior college offering courses in "mortuary science" (embalming and the work of funeral directors). It did not qualify for the college exemption or for that of a religious, charitable, or hospital school (see supra, §183), but it claimed to be a charitable "educational" organization under *Stockton Civic Theatre v. Board of Supervisors of San Joaquin* (1967) 66 C.2d 13, 56 C.R. 658, 423 P.2d 810, infra, §197. *Held*, the claim was without substance. A charitable activity must benefit the community as a whole or some unascertainable and indefinite part of it. This educational program benefited a particular segment of the community: the funeral service industry. (23 C.A.3d

705.)

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d. Charitable Activities.

3. Civic Theatre as Charitable Activity.

9 *Witkin Sum. Cal. Law Tax* § 197

[§ 197] Civic Theatre as Charitable Activity.

Stockton Civic Theatre v. Board of Supervisors of San Joaquin (1967) 66 C.2d 13, 56 C.R. 658, 423 P.2d 810, was a far-reaching decision that greatly broadened the welfare exemption. Plaintiff was a nonprofit corporation. Its articles stated the purposes of fostering interest in drama and music by the production of plays and musicals, and the study and dissemination of information on playwriting and production. No profits could go to any member, and on dissolution they were to be distributed to "any charitable or civic institution or organization in the sole discretion of the directors." Membership was open to anyone buying a low-priced season ticket. Plays and musicals were produced exclusively by amateurs, and productions were financed by revenues from tickets and gifts. Plaintiff acquired a theatre in the city of Stockton. The assessor assessed the land and improvements at \$ 5,515, and plaintiff paid its tax under protest and brought this action for recovery and for declaratory relief. The trial judge denied relief, on a finding that the property was used for "entertainment," despite the undoubted incidental educational value. The Court of Appeal, affirming, warned against giving the word "education" its broad meaning, to include all human experience and unduly extend tax exemption. The Supreme Court disagreed and upheld the exemption.

(a) The crucial term "charitable purposes" (see *supra*, §187) encompasses a wide range of activities beneficial to the community, including education. Furtherance of the dramatic arts is an educational purpose. (66 C.2d 20.) The Revenue Code provisions on particular schools do not disclose a legislative intent to narrowly limit the charitable exemption for educational activities. (66 C.2d 22.)

(b) The exemption would not be unduly extended to nearly all nonprofit corporations. It is for charitable, not merely educational, purposes. There must be a benefit to the community or some indefinite portion of it, and nonprofit corporations that exist primarily for the benefit of their members would not qualify. (66 C.2d 22.)

(c) The requirement of irrevocable dedication (see *supra*, §189) is satisfied by the articles, which make it clear that plaintiff's assets are impressed with a charitable trust. The failure to name a successor corporation is immaterial. (66 C.2d 22.) "Any successor would be required to devote the assets to charitable purposes." (66 C.2d 23.) (See 42 A.L.R.4th 614 [exemption of nonprofit theatre or concert hall].)

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5. Veterans' Exemptions.

a. Honorably Discharged Veteran.

9 Witkin Sum. Cal. Law Tax § 198

[§ 198] Honorably Discharged Veteran.

The property of an honorably discharged or released war veteran who is a California resident, to the amount of \$ 1,000, is exempt. If a married veteran does not own property eligible for the full exemption, the unused balance may be applied to the property of the veteran's spouse. The exemption is not available to an unmarried veteran who owns property worth \$ 5,000 or more, or to a married veteran who, with a spouse, owns property worth \$ 10,000 or more. (Cal. Const., Art. XIII, §3(o); see *Ingels v. Riley* (1936) 5 C.2d 154, 159, 53 P.2d 939 [no exemption from motor vehicle license taxes, which are excise, not property, taxes]; *Chesney v. Byram* (1940) 15 C.2d 460, 463, 101 P.2d 1106 [constitutional provision is self-executing, but exemption must be claimed]; *Lockhart v. Wolden* (1941) 17 C.2d 628, 630, 111 P.2d 319 [woman who had been honorably discharged from Army Nurse Corps was entitled to exemption]; *Baumbaugh v. San Diego* (1941) 44 C.A.2d 898, 902, 113 P.2d 218 [provision was applicable to one honorably discharged for disability resulting from peacetime service in armed forces]; on wars that qualify, see Rev.C. 205; 4 West L.A. L. Rev. 20, 32; 1 Ehrman 3d, §§6:44, 6:46.)

If the veteran is dead, the \$ 1,000 exemption is available to a resident unmarried spouse who does not own property worth more than \$ 10,000 (Cal. Const., Art. XIII, §3(p)), and to a resident parent who receives a pension because of the veteran's service (Cal. Const., Art. XIII, §3(q)). The parent's exemption is not available to an unmarried claimant who owns property worth \$ 5,000 or more or a married claimant who, with a spouse, owns property worth \$ 10,000 or more. (Cal. Const., Art. XIII, §3(q); see Cal. Const., Art. XIII, §3(r) [eligibility under former constitutional provision preserved].)

The nature of the exemption where the veteran purchases land on executory installment contracts was considered in *Eisley v. Mohan* (1948) 31 C.2d 637, 192 P.2d 5. Property was assessed to the veteran purchaser as beneficial owner, and the court rejected his contention that only a possessory interest (determined by the percentage of purchase price paid to date) should be assessed to him. (31 C.2d 647.)

On the other hand, in *Sherman v. Quinn* (1948) 31 C.2d 661, 192 P.2d 17, the assessment had been made to the vendor, and the veteran purchaser sought to compel a change in order to avail himself of his veteran's exemption. *Held*, he was entitled to the exemption irrespective of the form of the assessment, and a veteran may claim the exemption whether the veteran holds legal or equitable title. (31 C.2d 664.)

The limitation on the amount of property that may be owned by the veteran or the veteran's spouse includes both taxable and exempt property. But taxable property is valued at its assessed value, while nontaxable property is valued at its market value. (*Bates v. State Bd. of Equalization* (1969) 275 C.A.2d 388, 393, 395, 79 C.R. 837.)

In any year in which the assessment ratio is changed, the Legislature must adjust the valuation of assessable property described in Cal. Const., Article XIII, §3(o), Article XIII, §3(p), and Article XIII, §3(q) "to maintain the same proportionate values of such property." (Cal. Const., Article XIII, §3.5.) This provision made effective legislation enacted contingently in 1978, which changes, with fiscal year 1981-82, the assessment ratio from 25% of assessed value to 100% of full value of the property. (See Stats. 1978, Chap. 1207, §§29, 30.)

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5. Veterans' Exemptions.

b. Disabled or Blind Veteran.

9 *Witkin Sum. Cal. Law Tax* § 199

[§ 199] Disabled or Blind Veteran.

(1) *Authorization for Exemption.* The Legislature may exempt from property taxation the home of a person or a person's spouse, including an unmarried surviving spouse, if the person, because of injury incurred in military service, is blind in both eyes, has lost the use of two or more limbs, or is totally disabled, or if the person has, as a result of a service-connected injury or disease, died while on active duty in military service. The exemption is not available if the home is receiving another real property exemption. (Cal. Const., Art. XIII, §4(a).) Rev.C. 205.5(a) accordingly provides that property that constitutes the principal place of residence of a veteran and is owned by the veteran, the veteran's spouse, or the veteran and the veteran's spouse jointly is partially exempted from taxation. (See 1 Ehrman 3d, §6:45; on disabled veterans' exemption from mobilehome license fees, see Rev.C. 10788.)

Under Rev.C. 205.5(d), the exemption applies to the following:

(a) Property owned by the veteran and the veteran's spouse as a joint tenancy, a tenancy in common, or community property or by either as separate property.

(b) Property owned jointly with others to the extent of the interest of the veteran or spouse.

(c) Property held by the veteran or spouse as a share in a corporation.

Property is deemed to be the principal residence of a qualifying veteran confined to a hospital or other care facility, if (a) that property would be that veteran's principal residence were it not for the confinement and (b) the residence is not rented or leased to a third party. A family member that resides at the residence is not considered to be a third party. (Rev.C. 205.5(b)(2).)

(2) *Limitations on Exemption.* The limitations on the exemption are as follows:

(a) The veteran must qualify for the exemption under Cal. Const., Art. XIII, §3(o) (*supra*, §198), without regard to the property value limitation. (Rev.C. 205.5(b)(1)(A).) Eligible veterans include a person who would qualify as a veteran under Rev.C. 205.5(b)(1), except that he or she has, as a result of a service-connected injury or disease, died while on active duty in military service. The United States Department of Veterans Affairs determines whether an injury

or disease is service connected. (Rev.C. 205.5(b)(1)(B).)

(b) The exemption is in lieu of the veterans' exemption provided by Cal. Const., Art. XIII, §3 (supra, §198) and any other real property exemptions. (Rev.C. 205.5(f); see Rev.C. 218 [homeowners' exemption (infra, §207) does not apply to property on which owner receives veterans' exemption].)

(c) No other person may claim an exemption with respect to the same residence. However, if two qualified veterans coown property, each is entitled to the exemption to the extent of his or her interest. (Rev.C. 205.5(f).)

(d) The unmarried surviving spouse of a deceased veteran is entitled to the exemption if the veteran qualified or would have qualified for the exemption or if the veteran died from a service-connected disease. (Rev.C. 205.5(c)(1).)

(3) *Amount of Exemption.* The exemption applies to the part of the full value of the residence that does not exceed \$ 100,000 "if the veteran is blind in both eyes, has lost the use of two or more limbs, or if the veteran is totally disabled as a result of injury or disease incurred in military service." The exemption is increased to \$ 150,000 in the case of an eligible veteran whose household income does not exceed \$ 40,000, as adjusted for the relevant assessment year in accordance with Rev.C. 205.5(g). (Rev.C. 205.5(a); on method for adjusting income, see Rev.C. 205.5(g); on adjustment of exemption amount for inflation, see Rev.C. 205.5(h); for definitions of blindness, loss of limbs, and total disability, see Rev.C. 205.5(e).)

The unmarried surviving spouse's exemption is also \$ 100,000, or \$ 150,000 if the spouse's household income does not exceed \$ 40,000, with both the exemption and the household income amount subject to annual adjustment under Rev.C. 205.5(g) and (h). (Rev.C. 205.5(c)(1).) Under Rev.C. 205.5(c)(2), the \$ 100,000/\$ 150,000 exemption applies to the unmarried surviving spouse of a person who would qualify as a veteran except that he or she died as a result of a service-connected injury or disease while on active duty.

(4) *Exemption Ceases on Sale or Nonuse of Property.* When property receiving a disabled veterans' exemption is sold or otherwise transferred to a person who is not eligible for the exemption, the exemption ceases on the sale or transfer date. (Rev.C. 276.3(a).) If an exemption claimant no longer uses the property as his or her principal place of residence, the exemption ceases on the date the claimant terminates residency. (Rev.C. 276.3(b).) Termination of the exemption under Rev.C. 276.3 will result in an escape assessment under Rev.C. 531.1 (infra, §231). (Rev.C. 276.3(c).)

SUPPLEMENT: [This section is current through the latest supplement]



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5. Veterans' Exemptions.
c. Veterans' Organizations.

9 Witkin Sum. Cal. Law Tax § 200

[§ 200] Veterans' Organizations.

Personal property, owned by nonprofit veterans' organizations chartered by Congress and used solely and exclusively for the purposes of the organization, is exempt. (Rev.C. 215.) Real property and buildings "used exclusively for charitable purposes" are exempt under the welfare exemption, as long as the organization meets the requirements of Cal. Const., Art. XIII, §4(b), and Rev.C. 214(a)(1)-(a)(7) (see *supra*, §187 et seq.). (Rev.C. 215.1.) This is known as the "veterans' organization exemption." (See Rev.C. 214.8, 215.1; see also 1 Ehrman 3d, §6:27.) Low-income rental housing owned by veterans' organizations that satisfies the requirements of the welfare exemption (see *supra*, §187 et seq.) is also exempt. (Rev.C. 214(g).)

The use of property for conducting bingo games does not preclude the exemptions under Rev.C. 215 and 215.1, as long as the proceeds are used exclusively for charitable purposes. (Rev.C. 215.2.)

SUPPLEMENT: [This section is current through the latest supplement]

Rev.C. 215.1 was amended and subdivided in 2007. An organization that files a claim for the veterans' organization exemption must file with the assessor a valid organizational clearance certificate issued under Rev.C. 254.6. (Rev.C. 215.1(c), added in 2007.)



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6. Intangibles.

9 Witkin Sum. Cal. Law Tax § 201

[§ 201] Intangibles.

(1) *Former Law.* Former Cal. Const., Art. XIII, §14, listed certain intangibles that could be subjected to taxation: "all notes, debentures, shares of capital stock, bonds, solvent credits, deeds of trust, mortgages." By implication, intangibles not listed were exempt (*Roehm v. Orange* (1948) 32 C.2d 280, 285, 196 P.2d 550), and Rev.C. 212 exempted all but solvent credits (solvent unsecured debts owing to the assessee, except notes, bonds and debentures).

(2) *Present Law.* Debts secured by land are exempt. (Cal. Const., Art. XIII, §3(n).) Under Cal. Const., Art. XIII, §2, the Legislature may provide for property taxation of "shares of capital stock, evidences of indebtedness, and any legal or equitable interest therein" not otherwise exempt under Article XIII of the Constitution. However, Rev.C. 212(a) exempts notes, debentures, shares of capital stock, solvent credits, bonds, deeds of trust, mortgages, and any interest in that property. (See 1 Ehrman 3d, §4:4; for constitutional restriction on tax rate applicable to those intangibles, see Cal. Const., Art. XIII, §2.) Intangible assets and rights are exempt from taxation, and the value of intangible assets and rights must not enhance or be reflected in the value of taxable property. However, taxable property may be assessed and valued by assuming the presence of intangible assets or rights necessary to put the taxable property to beneficial or productive use. (Rev.C. 212(c); on inclusion of intangibles in full cash value assessment under Rev.C. 110, see *infra*, §214.)

(3) *Attempt To Tax Intangibles Indirectly.* In *Michael Todd Co. v. Los Angeles* (1962) 57 C.2d 684, 21 C.R. 604, 371 P.2d 340, plaintiff was a Delaware corporation making motion pictures in California. It owned, in Los Angeles County, the copyright and negatives of a successful picture. Los Angeles assessed them as taxable property of the value of \$ 1,526,900, practically all attributable to the intangible copyright interest. *Held*, the tax was valid. The copyright was immune from taxation as such under California law. But the negatives were properly valued for tax purposes by including the nontaxable intangible value of the copyright in a reasonable and nondiscriminatory manner, taking into consideration pertinent factors involved in the production and distribution of the prints. (57 C.2d 696.) (See 15 *Stanf. L. Rev.* 372 [criticism of *Michael Todd*]; Rev.C. 988 [nullifying holding in *Michael Todd*, by providing that full value of motion pictures, including negatives and prints, is full value of only tangible materials on which motion pictures are recorded]; Rev.C. 986 [full value of work of art, still owned by artist who created it and not sold or exhibited for profit, is full value of materials].)

In *Western Title Guaranty Co. v. Stanislaus* (1974) 41 C.A.3d 733, 116 C.R. 351, plaintiff created a "title plant,"

consolidating the title records of property within the county, thereby facilitating title searching. The county assessed it, using the "cost approach" (see *infra*, §215). *Held*, the tax was valid. The records were essentially intangible property, and only a minimal value could be given to the tangible part--the paper. However, as in *Michael Todd*, the taxing authorities, in valuing taxable property, may take into consideration earnings derived from intangible rights. "If we apply the principle of production value or earning value to the information contained in appellant's title records upon which it bases an opinion as to the condition of the title of a parcel of real property, which opinion in turn supports the issuance of a certificate of title insurance, we see little difference between this case and the *Todd* case." (41 C.A.3d 738.)

The court took note of Rev.C. 997, enacted during the pendency of the appeal, which nullifies the holding: "The cash value of records of persons engaged in a business or profession ... is the cash value only of the tangible material ... without inclusion of or consideration of the intangible value of the information or data so recorded." The implication of this section, with its additional provision for reimbursement by the state to local entities for loss of revenue, is that, prior to the statute, the records were taxable. (41 C.A.3d 738.)

In *Stanislaus v. Assessment App. Bd.* (1989) 213 C.A.3d 1445, 262 C.R. 439, defendant assessment appeals board found that cable television franchises were intangibles exempt from property taxation. Plaintiff county petitioned for mandamus to set aside the board's decision. *Held*, denial of petition reversed.

(a) The franchisee's authority to use and occupy public rights-of-way is a taxable property interest. (213 C.A.3d 1452, citing *Cox Cable San Diego v. San Diego* (1986) 185 C.A.3d 368, 229 C.R. 839, *supra*, §167.)

(b) The right to engage in the cable television business is not part of the real property possessory interest. It is an intangible asset exempt from tax under Cal. Const., Art. XIII, §2. (213 C.A.3d 1454.)

(c) Under *Roehm v. Orange*, *supra*, and *Western Title Guaranty Co. v. Stanislaus*, *supra*, the value of the franchisee's intangible rights may be considered in assessing the value of the taxable possessory interest. (213 C.A.3d 1454.)

The court took note of consistent legislation enacted after the date of assessment at issue. (See Rev.C. 107.7(d), *infra*, §220.) (See *Shubat v. Sutter County Assessment App. Bd. No. 1* (1993) 13 C.A.4th 794, 805, 17 C.R.2d 1 [assessment appeals board properly considered nontaxable intangibles in valuing cable television system's possessory interest but was not required to impute entire value of nontaxable right to do business to taxable possessory interest]; *Los Angeles SMSA Ltd. Partnership v. State Bd. of Equalization* (1992) 11 C.A.4th 768, 776, 14 C.R.2d 522, *infra*, §242; *American Sheds v. Los Angeles* (1998) 66 C.A.4th 384, 392, 78 C.R.2d 58 [in valuing landfill property, board permissibly considered existence of governmental permits authorizing operation of landfill; that consideration was necessary to appraise property at beneficial and productive use].)

(4) *Computer Software*. "Storage media" (e.g., punched cards, tapes, discs, or drums) for computer programs must be valued as though the media contained only basic operational programs. Otherwise, computer programs must not be valued for the purpose of property taxation. (Rev.C. 995.) In other words, a "basic operational program" is taxable as part of the value of the storage media, but other computer programs are not. Rev.C. 995.2 defines "basic operational program." (See *Hahn v. State Bd. of Equalization* (1999) 73 C.A.4th 985, 996, 87 C.R.2d 282 [board's rule defining "basic operational program" as "control program" (defined in Rev.C. 995.2) that is included in sale or lease price of computer equipment did not grant unlawful property tax exemption; rule clarified Legislature's intent that property taxes may not be assessed for "unbundled" computer programs, i.e., software programs that were not included in price of hardware]; 4 *Pacific L. J.* 655; 82 A.L.R.3d 606 [property taxation of computer software].)

SUPPLEMENT: [This section is current through the latest supplement]

(4) *Computer Software*. See *Cardinal Health 301 v. Orange* (2008) 167 C.A.4th 219, 226, 84 C.R.3d 59 [application software for computer-operated medication dispensing station should not have been included in station's taxable value,

even though software was embedded or bundled in station, without possibility for customer to decline it; bundling is necessary condition for taxation, but is not sufficient on its own].



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7. Possessory Interest in Personal Property.

9 Witkin Sum. Cal. Law Tax § 202

[§ 202] Possessory Interest in Personal Property.

Under our constitutional and statutory scheme, possessory interests in real property are taxed separately from its ownership (see *supra*, §§166, 167, 175, 176), but possessory interests in personal property are not. There is one assessment of personal property at its full cash value, ordinarily against the owner, although in some cases the assessment may be made against a possessor. (*General Dynamics Corp. v. Los Angeles* (1958) 51 C.2d 59, 64, 65, 330 P.2d 794; *Burhans v. Kern* (1959) 170 C.A.2d 218, 224, 338 P.2d 546; see 1 Ehrman 3d, §4:03.)

In *General Dynamics*, defendant city sought to collect personal property taxes on tools and equipment used by a government contractor but owned by the United States. The property was exempt (*supra*, §181), but the city contended that the economic benefits received by the contractor from its use could be taxed. *Held*, the assessment was invalid. "Although in any given case the impact of a use tax and a property tax might appear identical, they are not the same thing, and we cannot sustain a property tax here on the ground that the Legislature could constitutionally provide for the levy of a tax of equal amount under a different scheme. To be valid a use or possession tax would have to apply to all tax exempt property so as not to discriminate against the private use of possession of property owned by the United States, and it is for the Legislature, not the court, to determine whether such a nondiscriminatory tax on possessory interests in tax exempt personal property should be adopted and to determine the measure of such a tax." (51 C.2d 67.) (See *Pacific Grove-Asilomar Operating Corp. v. Monterey* (1974) 43 C.A.3d 675, 683, 117 C.R. 874 [following *General Dynamics*].) The attempt in a former version of Rev.C. 107.1 to declare the possessory interest in a lease to be "personal property" within the meaning of former Cal. Const., Art. XIII, §14, was held invalid in *Forster Shipbuilding Co. v. Los Angeles* (1960) 54 C.2d 450, 455, 6 C.R. 24, 353 P.2d 736. However, the legislative object of relief to certain lessees was accomplished by the rest of the section. (See *infra*, §221.)

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8. Burial Property.

9 Witkin Sum. Cal. Law Tax § 203

[§ 203] Burial Property.

Property used or held exclusively for burial or for the care and maintenance of burial property and not used or held for profit is exempt from property taxation and special assessment. (Cal. Const., Art. XIII, §3(g); Rev.C. 204; see *Cypress Lawn Cemetery Assn. v. San Francisco* (1931) 211 C. 387, 391, 295 P. 813 [hotel property of cemetery association was taxable even though income was devoted exclusively to cemetery purposes]; *San Gabriel Cemetery Assn. v. Los Angeles* (1942) 49 C.A.2d 624, 626, 122 P.2d 330 ["profit" does not mean sale of burial space at greater than cost where gain is used for upkeep of cemetery property, but means net earnings accruing to stockholders or association members]; *Pomona Cemetery Assn. v. Board of Supervisors of Los Angeles* (1942) 49 C.A.2d 626, 628, 122 P.2d 327; 1 Ehrman 3d, §6:19.)

The exemption is confined to lands and structures that at the time afford actual sepulchre to human bodies. (*Laurel Hill Cemetery Assn. v. San Francisco* (1947) 81 C.A.2d 371, 376, 184 P.2d 160 [cemetery land that was sold under executory contract and from which all bodies were removed was taxable, although legal title had not yet been transferred by cemetery corporation]; *Memorial Hills Assn. v. Sequoia Inv. Corp.* (1958) 157 C.A.2d 119, 122, 320 P.2d 567 [land was taxable where burials had virtually ceased and cemetery permit had been revoked for years].)

What constitutes profit-making so as to defeat the exemption often presents a difficult question. If the beneficial ownership of the land is in promoters, or the cemetery development is for their profit, there is no exemption. (See *Cypress Lawn*, supra.) On the other hand, cemetery land may be developed by percentage sales price contracts without losing the exemption. Thus, in *Westminster Memorial Park v. Orange* (1960) 54 C.2d 488, 6 C.R. 775, 354 P.2d 247, the M family, owners of unimproved land, sold it to a profit cemetery corporation, which later sold it to plaintiff nonprofit cemetery corporation. Plaintiff corporation agreed to charge a minimum price for burial plots, to develop the land as a cemetery, and to pay the M family as a purchase price 25% of the sales price of all grave or interment space sold, after allocations to the endowment care fund, with a minimum payment of \$ 4,000 per year and a percentage of the sales price of mausoleum space sold. *Held*, the property was exempt. Under stipulated facts and conclusions of the trial court the M family retained no title or interest in the land. There was no joint venture or basis for disregarding the corporate entity, and the relationship between them and the corporation was simply debtor and creditor. (54 C.2d 493.) (See 1 Ehrman 3d, §6:20.)

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9. Growing Crops, Trees, and Vines.

9 Witkin Sum. Cal. Law Tax § 204

[§ 204] Growing Crops, Trees, and Vines.

(1) *Growing Crops*. Growing crops are exempt from taxation. (Cal. Const., Art. XIII, §3(h); Rev.C. 202(a)(1).) The scope of the exemption is determined as of the time the constitutional provision was adopted (1894), and this restricts it to the traditional meaning of crops--those requiring annual planting or annual harvesting. (See *Jackson & Perkins Co. v. Stanislaus Board of Supervisors* (1959) 168 C.A.2d 559, 561, 564, 335 P.2d 976 [rose bushes raised for sale are not "growing crops" and are taxable personal property]; *Nunes Turfgrass v. Kern* (1980) 111 C.A.3d 855, 863, 866, 168 C.R. 842 [meaning and scope of "growing crops" exemption]; 1 Ehrman 3d, §6:56 et seq.)

Rev.C. 202.1 formerly provided that "turf grass ... cultivated and harvested for sale and transplanting" is within the constitutional exemption. In *Nunes Turfgrass v. Kern*, *supra*, the court held the statute invalid. Turf grass does not satisfy the test laid down in cases interpreting the constitutional provision. (111 C.A.3d 873.) (See 8 San Fernando Valley L. Rev. 185 [constitutionality of Rev.C. 202.1 and legislature's ability to exempt property from taxation].)

Nursery stock must be considered to be growing agricultural crops for the purpose of any laws that pertain to the agricultural industry of California. (*Food & Ag.C. 23(a)*.) In *Stribling's Nurseries v. Merced* (1965) 232 C.A.2d 759, 43 C.R. 211, *Food & Ag.C. 23(a)* was construed, in accordance with its purpose, as merely making those plants subject to marketing controls, and not as creating a tax exemption. The court declared that a grant of exemption of "nursery stock" would have to be express, pursuant to the power delegated to the Legislature under former Cal. Const., Art. XIII, §14 (now Cal. Const., Art. XIII, §2). (232 C.A.2d 761.)

(2) *Cultivated Trees and Vines*. Fruit and nut trees younger than 4 years and grapevines younger than 3 years are exempt. (Cal. Const., Art. XIII, §3(i); Rev.C. 211; see *Georgia-Pac. Corp. v. Butte* (1974) 37 C.A.3d 461, 469, 112 C.R. 327; 1 Ehrman 3d, §6:58.) Fruit and nut trees and grapevines of a grower (not a nursery), held for subsequent planting in orchard or vineyard and planted during the assessment year, are also exempt. (Rev.C. 223.) (On valuation of fruit and nut trees and grapevines, see Rev.C. 53.)

(3) *Seed Potatoes*. Seed potatoes of a grower held as personal property on the lien date and planted during the assessment year are exempt. The exemption is not available to plant nurseries. (Rev.C. 234; see 1 Ehrman 3d, §6:64.)

(4) *Forest Trees*. Unharvested, immature, forest trees are exempt under Cal. Const., Art. XIII, §3(j), which

establishes size and age standards for determining maturity. However, the Legislature may supersede the constitutional provision by an alternative system for taxing forest trees and timber that does not have to be based on property valuation. "Any alternative system or systems shall provide for exemption of unharvested immature trees, shall encourage the continued use of timberlands for the production of trees or timber products, and shall provide for restricting the use of timberland to the production of timber products and compatible uses with provisions for taxation of timberland based on the restrictions." (Cal. Const., Art. XIII, §3(j).) The Legislature has adopted an alternative system for taxing timber and timberlands. (See *infra*, §225.) Thus, the constitutional procedure is no longer in effect. (Stats. 1976, Chap. 176, §2(d); Task Force Report, p. 6, *supra*, §109.)

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10. Vessels and Aircraft.

9 Witkin Sum. Cal. Law Tax § 205

[§ 205] Vessels and Aircraft.

(1) *Freight and Passenger Vessels.* Vessels of over 50 tons burden in California and engaged in the transportation of freight or passengers are exempt. (Cal. Const., Art. XIII, §3(l); Rev.C. 209; see *Los Angeles v. Craig* (1940) 38 C.A.2d 58, 62, 100 P.2d 818; 1 Ehrman 3d, §6:52.) The exemption is not limited to common carriers operating between fixed points. (See *Alalunga Sport Fishers v. San Diego* (1967) 247 C.A.2d 663, 668, 55 C.R. 875 [sport-fishing vessels carrying passengers to fish].) But it is inapplicable to the movement of property by cranes on barges. This is not the "transportation of freight" contemplated by the Constitution. (*Smith-Rice Heavy Lifts v. Los Angeles* (1967) 256 C.A.2d 190, 198, 63 C.R. 841.) Moreover, it does not cover harbor tugs used to assist freight or passenger vessels in docking and undocking. (*Crowley Launch & Tugboat Co. v. Los Angeles* (1971) 16 C.A.3d 437, 440, 94 C.R. 150.)

Under Rev.C. 209.5, vessels of more than 50 tons burden or 100 tons displacement, and parts and materials, are exempt from local taxation during construction. The phrase "tons burden" in Rev.C. 209.5 refers to "net tonnage" (gross tonnage less space occupied by machinery, crew's quarters, etc.). (*Favalora v. Humboldt* (1976) 55 C.A.3d 969, 973, 127 C.R. 907 [rejecting equal protection challenge to statutory distinction based on tonnage].) The exemption applies to any vessel satisfying minimum tonnage or displacement requirements while under construction within California, without regard to the nature of its intended maritime use. (*Kaiser Steel Corp. v. Solano* (1979) 90 C.A.3d 662, 668, 153 C.R. 546 [semisubmersible offshore drilling vessels were exempt despite limitation of Rev.C. 209 and Constitution to freight and passenger vessels].)

(2) *Fishing and Oceanographic Research Vessels.* A "documented vessel" is any vessel not exempt from taxation under Cal. Const., Art. XIII, §3(l), that has a valid marine document issued by the federal government or is registered with or licensed by the Department of Motor Vehicles. A documented vessel is "assessed at 4 percent of its full cash value only if the vessel is engaged or employed exclusively" in commercial fishing, transportation of seven or more passengers for commercial passenger fishing, or oceanographic research. (Rev.C. 227; see *Haman v. Humboldt* (1972) 8 C.A.3d 922, 927, 106 C.R. 617, 506 P.2d 993, supra, §44 [former provision of Rev.C. 227 requiring that port of documentation of vessels be in California was unconstitutional].)

Rev.C. 227 does not apply to a fishing vessel under construction. (*Favalora v. Humboldt*, supra, 55 C.A.3d 975.)

A vessel used occasionally for "dive, tour, or whale watching" purposes may nevertheless be assessed at 4% of its

full cash value. "Occasionally," for purposes of the statute, means 15% or less of the total operating time logged for the immediately preceding assessment year. (Rev.C. 227(c).)

(3) *Small Pleasure Craft*. Noncommercial vessels with a market value of \$ 400 or less are exempt. The exemption does not apply to lifeboats or similar vessels, and cannot be claimed for more than one vessel. (Rev.C. 228(a); see 1 Ehrman 3d, §6:53.)

(4) *Wooden Vessels of Historical Significance*. Wooden vessels of historical significance, and all personal property on the vessels used in their operation, are exempt. (Rev.C. 230(a); for definition of "wooden vessel of historical significance," see Rev.C. 230(c)(1).) The exemption applies as long as the owner and operator is a nonprofit organization that has qualified for exemption under Rev.C. 23701d or 26 U.S.C., §501(c)(3) (Rev.C. 230(a)(1)) and no part of the owner's net earnings inures to the benefit of a private shareholder or individual (Rev.C. 230(a)(2)). The vessel must be used primarily as a maritime museum that is regularly open to the public. (Rev.C. 230(a)(3); for definition of "regularly open to the public," see Rev.C. 230(c)(2).) Income from fundraising use and charter activities must not exceed 40% of the vessel's operating revenues, and all net earnings must be used to further the museum's exempt activity. (Rev.C. 230(a)(4).)

(5) *Aircraft*. Aircraft that are considered business inventories are included in the inventory exemption (Rev.C. 219, *infra*, §208). (Rev.C. 5391.) Other exempt aircraft are:

(a) Aircraft not based in California and here on tax day solely for repair or service. (Rev.C. 220.)

(b) Government owned aircraft. (Rev.C. 5331, 5332.)

(c) Certain aircraft displayed in aerospace museums. (Rev.C. 217.1.)

(d) Certain historically significant aircraft owned by individuals and not used for commercial purposes or general transportation. (Rev.C. 220.5.)

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11. Libraries, Museums, and Exhibits.

9 Witkin Sum. Cal. Law Tax § 206

[§ 206] Libraries, Museums, and Exhibits.

(1) *Free Public Libraries and Museums.* Libraries and museums that are free and open to the public are exempt. (Cal. Const., Art. XIII, §3(d); Rev.C. 202(a)(2); see *Fellowship of Friends v. Yuba* (1991) 235 C.A.3d 1190, 1194, 1 C.R.2d 284 [building housing art collection of tax-exempt religious organization was not exempt as free museum where predominant use was not for collection and display of art; building was also used for residential and other purposes, collection was not well publicized, and visiting hours were restricted]; 1 Ehrman 3d, §6:14; on rent reduction where property is rented for this exempt use, see *infra*, §211; on exemption for wooden vessels of historical significance used primarily as maritime museum, see Rev.C. 230(a), *supra*, §205.) The exemption does not preclude the exemption of library and museum property under the welfare exemption. (Rev.C. 214(a); see *supra*, §187 et seq.)

(2) *Designated Institutions.* Property owned by the California Academy of Sciences and property held in trust for the Huntington Library and Art Gallery are exempt. (Cal. Const., Art. XIII, §4(c); Rev.C. 203.5; see *California Academy of Sciences v. Fresno* (1987) 192 C.A.3d 1436, 1441, 238 C.R. 154 [exemption was applicable during administration of estate to property owned by Academy of Sciences as residuary legatee].)

(3) *Exhibits.* Rev.C. 217.1 exempts certain aircraft displayed in aerospace museums. Rev.C. 213 exempts property brought into the state for exhibition only, to be removed from the state after exhibition, when it is subject to taxation in another state or country and all taxes due have been paid.

(4) *Art Works.* Rev.C. 217 exempts art works (paintings, sculpture, etc.) made available for display in a publicly owned art gallery or a museum that is regularly open to the public and that is operated by a tax-exempt nonprofit organization for a minimum period of 90 days during the preceding year. This exemption does not apply, however, "to any work of art loaned by any person who holds works of art primarily for purposes of sale." (Rev.C. 217(d); see 1 Ehrman 3d, §6:65; on property made available for display less than 90 days before lien date, see Rev.C. 217(e).)

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12. Homeowners' and Household's Exemptions.

9 Witkin Sum. Cal. Law Tax § 207

[§ 207] Homeowners' and Household's Exemptions.

(1) *Homeowner's Dwelling Exemption.* A homeowner is entitled to a property tax exemption of \$ 7,000 of the full value of a dwelling occupied as the homeowner's principal residence, unless the dwelling is receiving another real property exemption. (Cal. Const., Art. XIII, §3(k); Rev.C. 218; see 1 Ehrman 3d, §6:43; on assessor's duty to report total assessed value of homes receiving exemption, see Rev.C. 1367.)

The exemption is applicable only to a dwelling occupied by the owner as a principal place of residence on the lien date. (Rev.C. 218(b); on application of exemption to mobilehomes, see *supra*, §171.) The term "dwelling" includes the following:

(a) Single-family dwellings (a two-dwelling unit is considered as two separate single-family dwellings). (Rev.C. 218(c)(2)(B)(i).)

(b) An owner-occupied multiple dwelling unit. (Rev.C. 218(c)(2)(B)(ii).)

(c) A condominium. (Rev.C. 218(c)(2)(B)(iii); see *Smith v. State Bd. of Equalization* (1997) 53 C.A.4th 331, 334, 61 C.R.2d 604 [owners of leasehold condominiums were entitled to exemption under Cal. Const., Art. XIII, §3(k), and Rev.C. 218, because leasehold interests constituted condominiums within meaning of Rev.C. 218].)

(d) Premises occupied by a member of a cooperative housing corporation. (Rev.C. 218(c)(2)(B)(iv).)

Under Rev.C. 218, the exemption does not apply to the following:

(a) Property that is rented, vacant, or under construction on the lien date.

(b) A vacation or secondary home.

(c) Property on which an owner receives the veterans' exemption.

The Legislature may increase the exemption or may deny it to persons receiving state or local aid "to pay taxes either in whole or in part, and either directly or indirectly, on the dwelling." If the exemption is increased, the

Legislature must provide a comparable increase in benefits to qualified renters. (Cal. Const., Art. XIII, §3(k).) The Legislature must provide reimbursement to local governments for revenue lost because of the homeowners' exemption. (Cal. Const., Art. XIII, §25.) An increase in the exemption is not effective unless the Legislature also increases the subvention required by §25. (Cal. Const., Art. XIII, §3(k).) The subvention may be used for state or local purposes. (Cal. Const., Art. XIII, §24.)

(2) *Householders' Personal Property Exemption.* "Household furnishings and personal effects not held or used in connection with a trade, profession, or business" are exempt. (Cal. Const., Art. XIII, §3(m); Rev.C. 224; see 1 Ehrman 3d, §6:42.) Pets are also exempt. (Rev.C. 224.) The exemption under Rev.C. 224 does not cover the following:

- (a) Boats.
- (b) Aircraft.
- (c) Vehicles.
- (d) Property (including pets) held or used in connection with a trade, profession, or business.
- (e) Animals held for investment purposes.

The term "household furnishings" was given a broad construction in *Lake Forest Community Assn. v. Orange* (1978) 86 C.A.3d 394, 150 C.R. 286. Plaintiff owners association, organized to operate recreational facilities and common areas for member-homeowners, maintained a clubhouse. *Held*, this facility was exempt from taxation. It is not necessary that the exempt property be physically a part of an established household. The use made of it was clearly "household" use, i.e., the kind of use customarily made of personal property by members of a family in connection with their home or residence. (86 C.A.3d 399, 407.)

(3) *Exemption Filing Services.* Making untrue or misleading statements in any manner in connection with the offering or performance of a homeowners' exemption filing service is prohibited. Untrue or misleading statements include any of the following representations:

- (a) That a fee is required to receive an exemption. (B. & P.C. 17537.8(a)(1).)
- (b) That the filing service has a file covering the person whose business the service is soliciting. (B. & P.C. 17537.8(a)(2).)
- (c) That the service is, or is affiliated with, a governmental entity. (B. & P.C. 17537.8(a)(3).)

The service cannot mislead by using a governmental seal or emblem, by naming itself something that includes the words "homeowners' exemption" or "exemption" and "assessor" or "department" or "bureau" or similar, specified words, or by using an envelope that could be mistaken for one sent by a governmental entity. (B. & P.C. 17537.8(a)(3).) The service must conspicuously state, in capital letters, on any mailed solicitation: "This is not a government document." (B. & P.C. 17537.8(a)(3)(D).)

The service must disclose, in its advertising and oral solicitations, the following: "This homeowners' exemption filing service is not associated with any government agency. You can obtain and file a homeowners' exemption claim form, at no cost, with the county assessor's office." (B. & P.C. 17537.8(b).) The service cannot charge more than \$ 25, and cannot collect the payment until after the exemption is filed with the county assessor. (B. & P.C. 17537.8(c).)

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SUPPLEMENT: [This section is current through the latest supplement]



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B. Exemptions.
13. Business Inventories.

9 Witkin Sum. Cal. Law Tax § 208

[§ 208] Business Inventories.

(1) *In General.* Business inventories are exempt from taxation and cannot be assessed. (Rev.C. 219; see *Beckman Instruments v. Orange* (1975) 53 C.A.3d 767, 778, 125 C.R. 844 [former provision denying exemption to property assessed as escaped property in specified circumstances]; *California Computer Products v. Orange* (1980) 107 C.A.3d 731, 735, 166 C.R. 68; 11 *Pacific L. J.* 646; 1 Ehrman 3d, §§6:47, 6:48.)

(2) *Items Included.* Under Rev.C. 129, "business inventories" include the following:

(a) Goods intended for sale or lease in the ordinary course of business. (See *Westinghouse Beverage Group v. San Diego* (1988) 203 C.A.3d 1442, 1445, 250 C.R. 784 [containers of soft drink syrup and carbon dioxide supplied to wholesalers were not intended for sale or lease; soft drink manufacturer maintained control over containers]; *Transworld Systems v. Sonoma* (2000) 78 C.A.4th 713, 716, 93 C.R.2d 165 [form letters sent by collection service to debtors on behalf of service's customers qualified as exempt business inventory of nonprofessional service under Rev.C. 129; property qualifies for exemption if it is delivered incidental to rendition of service, regardless of whether it is delivered to customer or to third party designated by customer]; *Amdahl Corp. v. Santa Clara* (2004) 116 C.A.4th 604, 614, 10 C.R.3d 486 [pool of spare parts used by computer equipment seller to service and repair customers' equipment under extended service contracts did not qualify as business inventory under Rev.C. 129].)

(b) Raw materials and work in process with respect to the goods. (See *Sterigenics Int. v. Orange* (1996) 47 C.A.4th 1541, 1544, 55 C.R.2d 319 [cobalt 60 used by company to irradiate its customers' products was not business inventory].)

(c) Animals and crops held primarily for sale or lease.

(d) Animals used in the production of food or fiber and feed for those animals.

(e) Goods held by a licensed contractor and not yet incorporated into real property.

(3) *Items Excluded.* Rev.C. 129 excludes the following:

(a) Goods leased or rented on the lien date.

(b) Business machinery or equipment, or office furniture, machines, or equipment, unless held for sale or lease in the ordinary course of business.

(c) An item held for lease that has been or is intended to be used by the lessor before or subsequent to the lease.

(d) Goods intended for sale or lease in the ordinary course of business that cannot be sold or leased in California.

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B. Exemptions.

14. Property of Minimal Value.

9 Witkin Sum. Cal. Law Tax § 209

[§ 209] Property of Minimal Value.

The Legislature, two-thirds of each house concurring, "may authorize county boards of supervisors to exempt real property having a full value so low that, if not exempt, the total taxes and applicable subventions on the property would amount to less than the cost of assessing and collecting them." (Cal. Const., Article XIII, §7.) "The reference to 'total taxes and applicable subventions' is intended to insure that the comparison for this exemption will be between the cost of assessing and collecting the taxes and the sum of (1) the total taxes on the full value of the property (not just the county's share of these taxes) and (2) the state reimbursement of any tax loss resulting from an exemption of all or part of the value of the property." (Task Force Report, p. 17; *supra*, §109.)

Rev.C. 155.20 implements the constitutional authority by authorizing exemptions for property with a total base year value, or a full value, not more than \$ 5,000, or \$ 50,000 in the case of a possessory interest, for a temporary and transitory use, in a publicly owned convention or cultural facility. (See Rev.C. 155.20(b)(1) [defining "publicly owned convention or cultural facility"]; 12 *Pacific L. J.* 581; 1 Ehrman 3d, §6:49; for definition of "full value" and "base year value," see *supra*, §145.)

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15. Other Exempt Property.

9 Witkin Sum. Cal. Law Tax § 210

[§ 210] Other Exempt Property.

The following are also exempt:

- (1) Stock in trade (up to \$ 1,500) of the vending stand of a licensed blind vendor. (Rev.C. 216.)
- (2) Vehicles "of a type subject to registration under the Vehicle Code whether or not the vehicles are registered under the Vehicle Code." (Rev.C. 10758; see 1 Ehrman 3d, §6:54; on taxation of nonexempt vehicles, see supra, §169; on vehicle license fees, see infra, §383.)
- (3) A trailer, semitrailer, logging dolly, pole or pipe dolly, or trailer bus that has a valid identification plate issued to it under *Veh.C. 5014.1*. (Rev.C. 225(a).) The exemption does not apply to a logging dolly that is used exclusively off-highway. (Rev.C. 225(b).)
- (4) Money kept on hand for use in the ordinary course of a trade, profession, or business. (Rev.C. 212(b); see 1 Ehrman 3d, §6:68.)
- (5) Bank personal property. (Cal. Const., Art. XIII, §27; Rev.C. 23182; see 1 Ehrman 3d, §6:50.)
- (6) Insurance company personal property. (Cal. Const., Art. XIII, §28; Rev.C. 12102, 12204; see 1 Ehrman 3d, §6:51.)
- (7) Racehorses, which are subject to a uniform, statewide excise tax in lieu of property tax. (See Rev.C. 5701 et seq.; 1 Ehrman 3d, §6:62.)
- (8) California state and local government bonds. (Cal. Const., Art. XIII, §3(c); Rev.C. 208.)
- (9) Cargo containers principally used by vessels in ocean commerce. (Rev.C. 232; see 1 Ehrman 3d, §6:69.) The effect of the exemption is merely to shift the burden of the tax from the owners of the containers to the State of California. (*Sea-Land Service v. Alameda* (1974) 12 C.3d 772, 777, footnote 2, 117 C.R. 448, 528 P.2d 56, supra, §79.)
- (10) Human whole blood, plasma, blood products, and blood derivatives, or human body parts held in a bank for

medical purposes. (Rev.C. 33; see 1 Ehrman 3d, §6:71.) The exemption does not extend to personal property used to collect, manufacture, and store blood plasma and its derivatives. (*Alpha Therapeutic Corp. v. Los Angeles* (1986) 179 C.A.3d 265, 271, 272, 224 C.R. 498; *Alpha Therapeutic Corp. v. Franchise Tax Bd.* (2000) 84 C.A.4th 1, 6, 100 C.R.2d 548 [Rev.C. 33 does not exempt company that sells blood products from payment of franchise taxes]; on exemption of containers used to collect or store human whole blood, plasma, blood products, or blood derivatives from sales and use taxes, see *infra*, §363.)

(11) Hand tools, up to \$ 50,000 in value, that are owned and supplied by an employee and required as a condition of employment. (Rev.C. 241(a).)

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16. Reduction of Rent Where Use Is Exempt.

9 Witkin Sum. Cal. Law Tax § 211

[§ 211] Reduction of Rent Where Use Is Exempt.

A lessor must reduce rental payments or make refunds to the extent leased property receives an exemption (1) because of its use by a public library, museum, school, community college, state college, or university, or (2) because it is used exclusively for educational purposes by a nonprofit institution of higher education. (Rev.C. 202.2.) If the lessor does not claim an exemption, the lessee may claim, and receive directly, a refund based on the exempt use. (Rev.C. 202.2.)

A similar statute (Rev.C. 206.2) applies to property under the church exemption, although it does not authorize the lessee to claim the exemption directly.

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C. Valuation.

1. Development of Law.

a. Former Law.

9 Witkin Sum. Cal. Law Tax § 212

[§ 212] Former Law.

(1) *Original Requirement of "Full Cash Value."* The Constitution formerly declared that "[a]ll property subject to taxation shall be assessed for taxation at its full cash value." (Former Cal. Const., Art. XIII, §37.) And Rev.C. 401 formerly required that "all taxable property shall be assessed at its full cash value." (See *Bandini Estate Co. v. Payne* (1935) 10 C.A.2d 623, 626, 52 P.2d 959; *De Luz Homes v. San Diego* (1955) 45 C.2d 546, 561, 290 P.2d 544; *A.F. Gilmore Co. v. Los Angeles* (1960) 186 C.A.2d 471, 475, 9 C.R. 67; *Tuolumne v. State Bd. of Equalization* (1962) 206 C.A.2d 352, 366, 24 C.R. 113; *Lockheed Aircraft Corp. v. Los Angeles* (1962) 207 C.A.2d 119, 128, 24 C.R. 316; *Michael Todd Co. v. Los Angeles* (1962) 57 C.2d 684, 695, 21 C.R. 604, 371 P.2d 340, supra, §201; on meaning of "full cash value," see infra, §214.)

(2) *Judicial Approval of Lesser Valuation.* Despite the constitutional and statutory mandate, assessors followed the practice of assessing property at less than its "full cash value," and this practice was approved in *Michels v. Watson* (1964) 229 C.A.2d 404, 40 C.R. 464. Petitioner, a Los Angeles taxpayer, sued defendant tax assessor for declaratory relief, alleging that the latter had announced his intention to assess all property in the county at 25% of its fair market value. *Held*, judgment for defendant affirmed. Property may be assessed "at a uniform fraction of its full cash value." (229 C.A.2d 407.)

The court, in a lengthy review of tax history, pointed out that fractional assessment was the practice from early times, with the knowledge and approval of the Legislature and administrative authorities; and that although the issue of legality had never been squarely presented, the practice has been "accepted" by appellate courts for over 70 years. (229 C.A.2d 407; see *Hanks v. State Bd. of Equalization* (1964) 229 C.A.2d 427, 430, 40 C.R. 478 [companion case reaching same result; board's duty is to equalize on basis of fractional assessments].)

The dissenting justice in *Michels* refused to concede that "the long continued, systematic and intentional violation of the law" by assessors can create a right to do so. (229 C.A.2d 418.) "No amount of juggling, subterfuge, circumvention, evasions, deception, maneuvering, legalistic legerdemain or sorcery can change the plain and specific provisions of the Constitution." (229 C.A.2d 419; see 16 *Hastings L. J.* 573 [unfairness of fractional assessment].) But the Supreme Court, in *Sacramento v. Hickman* (1967) 66 C.2d 841, 847, 59 C.R. 609, 428 P.2d 593, approved the reasoning and holding of the majority in *Michels*.

(3) *Tax Reform of 1966*. The judicially approved practice of fractional assessment was codified by the amendment of Rev.C. 401 in 1966. The section was again amended in 1967, 1968 and 1972, to read as follows: "Every assessor shall assess all property subject to general property taxation at 25 percent of its full cash value."

In *Sacramento v. Hickman, supra*, the court upheld the constitutionality of the revised section on the theory that the constitutional provision was taken from the prior statute in 1933 with no intent to change the meaning already given it by the courts and the *Legislature*. (66 C.2d 851.) Because the Constitution thus permitted assessment at a uniform fraction of full cash value, the Legislature had the power to prescribe that fraction for statewide application, thereby promoting equality, uniformity, and lack of secrecy, which are the goals of a fair tax system. (66 C.2d 854.)

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C. Valuation.

1. Development of Law.

b. Constitutional Revision of 1974.

9 Witkin Sum. Cal. Law Tax § 213

[§ 213] Constitutional Revision of 1974.

The portion of former Cal. Const., Art. XIII, §37, on assessment at full cash value is now in Cal. Const., Art. XIII, §1(a), which requires that all property "be assessed at the same percentage of fair market value." The section further states: "When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for tax purposes as the full value."

Cal. Const., Art. XIII, 1(a), "restates the long-established principle that all property shall be taxed uniformly unless an exception to the rule is made in the Constitution or the laws of the United States. Fair market value, a figure which can be derived by using any one or more of the standard 'approaches' to value--sales, income, cost, etc.--is established as the general value standard, but the existence of other constitutionally authorized standards is recognized. A uniform percentage is to be applied to the 'full value' to derive the assessed value." (Task Force Report, p. 1; *supra*, §109.)

In light of the constitutional revision, Rev.C. 401 was amended in 1974 to require assessment at 25% of "full value" rather than "full cash value."

In *Oakland v. Digre* (1988) 205 C.A.3d 99, 252 C.R. 99, voters in plaintiff municipality approved a "parcel tax" to support municipal services. The tax classified parcels on the basis of type, size, and location, and imposed the same fee on all parcels within each class. Plaintiff sought a writ of mandamus to compel defendant, its director of finance, to enforce the tax. *Held*, writ denied. The tax violated the full value assessment requirement of Cal. Const., Art. XIII, §1.

(a) The tax is a property tax, not an excise tax on the privilege of utilizing municipal services. Like a property tax, it is imposed annually on all property, regardless of use. (205 C.A.3d 106.) Unlike an excise tax, it is not properly proportioned to the enjoyment of the privilege being taxed (205 C.A.3d 108), and it cannot be avoided by failing to engage in the privilege (205 C.A.3d 109).

(b) As a property tax, the parcel tax violates the constitutional requirement that all property be assessed at the same percentage of full value. "The clear import of this language, as well as the history of property taxation in this state, leads to the conclusion that a property tax must be ad valorem." (205 C.A.3d 109.) *Heckendorn v. San Marino* (1986) 42 C.3d

481, 229 C.R. 324, 723 P.2d 64, validating a non-ad valorem property tax as a "special tax" for purposes of Proposition 13, is distinguishable. It applies only to special taxes approved by two-thirds of the voters, not to general taxes. (205 C.A.3d 110.) (See *Thomas v. East Palo Alto* (1997) 53 C.A.4th 1084, 1089, 62 C.R.2d 185 [city's "excise" parcel tax to pay for government services was actually invalid property tax; tax was imposed on every owner of real property, without regard to use of property or of city services, on vacant and unused property, and on owners who resided elsewhere; it was collected annually as part of regular property tax collection, and nonpayment resulted in imposition of tax lien; following *Oakland v. Digre*]; *Mission Housing Dev. Co. v. San Francisco* (1997) 59 C.A.4th 55, 81, 69 C.R.2d 185, *infra*, §247 [limitations period of Rev.C. 1604(c) does not violate equal taxation provision of Cal. Const., Art. XIII, §1(a)].)

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C. Valuation.

1. Development of Law.
c. Present System of Full Value Assessment.

9 Witkin Sum. Cal. Law Tax § 214

[§ 214] Present System of Full Value Assessment.

(1) *Definitions.* Beginning with the 1981-82 fiscal year, California returned to a system of full value assessment. Every assessor must assess all property subject to general property taxation at its full value. (Rev.C. 401; see 1 Ehrman 3d, Chap. 9.)

"Full value" means "fair market value, full cash value, or such other value standard as is prescribed by the Constitution or in this code under the authorization of the Constitution." (Rev.C. 110.5.) "Assessed value" means "100 percent of full value." (Rev.C. 135(a).) "Tax rate" means "a rate expressed as a percentage of full value." (Rev.C. 135(b).)

"Full cash value" and "fair market value" mean "the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and both the buyer and the seller have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used, and of the enforceable restrictions upon those uses and purposes." (Rev.C. 110(a); see *De Luz Homes v. San Diego* (1955) 45 C.2d 546, 562, 563, 290 P.2d 544; *Michael Todd Co. v. Los Angeles* (1962) 57 C.2d 684, 695, 21 C.R. 604, 371 P.2d 340.) This definition makes it clear that the assessor may consider uses or purposes for which the land is naturally adapted, even though it is not actually used for those purposes. (*Wild Goose Country Club v. Butte* (1922) 60 C.A. 339, 341, 212 P. 711; *H. & W. Pierce v. Santa Barbara* (1919) 40 C.A. 302, 306, 180 P. 641.)

"Full cash value" for purposes of Cal. Const., Art. XIII A (Proposition 13) is defined in Rev.C. 110.1 (supra, §145) as fair market value determined under Rev.C. 110 for the appropriate valuation date.

(2) *Periodic Assessment.* The assessor periodically appraises all property not subject to Cal. Const., Art. XIII A "to substantiate the judgment of its full cash value or, when provided for by law, its restricted value for uniform assessment purposes." (Rev.C. 405.5; see *Fujitsu Microelectronics v. Assessment App. Bd.* (1997) 55 C.A.4th 1120, 1125, 64 C.R.2d 465 [assessment of fixtures was proper, even though it failed to consider reduction in market value resulting from plant closure 6 months after lien date; forced sale of property at sacrificial price after lien date has no bearing on property's value on lien date]; 76 A.L.R.2d 1077 [validity of revaluation program commenced but not completed within

1 year]; 42 A.L.R.4th 676 [requirement of full-value assessment for real property]; on valuation of property subject to restrictions, see *infra*, §223 et seq.; on cost of toxic cleanup as factor in determining fair market value, see *Firestone Tire & Rubber Co. v. Monterey* (1990) 223 C.A.3d 382, 392, 272 C.R. 745 [insufficient evidence on lien date of contamination to justify reducing fair market value by cleanup cost]; *Mola Dev. Corp. v. Orange County Assessment App. Bd.* (2000) 80 C.A.4th 309, 316, 95 C.R.2d 546 [board should have valued contaminated, commercial, nonincome-producing real property, for which adequate comparables were not available, by determining fair market value of property if unpolluted and then deducting cost of cleanup; board erred by following that method and then adding back expected contributions toward cleanup from former owners].)

(3) *Purchase Price as Full Cash Value.* Where real property (other than a possessory interest) is appraised following a purchase, full cash value and fair market value are the purchase price paid in the transaction, "unless it is established by a preponderance of the evidence that the real property would not have transferred for that purchase price in an open market transaction." The purchase price (the total consideration valued in money, whether paid in money or otherwise) is rebuttably presumed to be the full cash value or the fair market value if the terms of the transaction were negotiated at arms length between knowledgeable parties. (Rev.C. 110(b).) The presumption does not apply, however, if the taxpayer fails to provide information concerning the arms length nature of the transaction required in a change in ownership statement (*infra*, §229). (Rev.C. 110(c).)

In *Dennis v. Santa Clara* (1989) 215 C.A.3d 1019, 263 C.R. 887, plaintiff purchased commercial property for \$ 215,418 in an arm's length transaction. The property was assessed by defendant assessor at \$ 334,600, using the market data and income methods of appraisal (*infra*, §§216, 217). The trial judge found that the sale price was the only competent evidence of full cash value. *Held*, reversed. In reassessing the property, defendant was not bound by the purchase price.

(a) Under Rev.C. 110(b) and prior case law, the presumption of fair market value from purchase price may be rebutted. (215 C.A.3d 1028, citing *Guild Wineries & Distilleries v. Fresno* (1975) 51 C.A.3d 182, 124 C.R. 96, and *Carlson v. Assessment App. Bd. I of Santa Clara* (1985) 167 C.A.3d 1004, 213 C.R. 555, *infra*, §226.)

(b) Defendant was not required to take into account below market rate rents generated by the property. (215 C.A.3d 1029.) The fair market value is the sum total of interests in the property, even though the interests may not be wholly reflected in the purchase price or the income generated by the property. (215 C.A.3d 1030, citing *De Luz Homes v. San Diego* (1955) 45 C.2d 546, 290 P.2d 544, *infra*, §220.) Here, the assessment represents the value of the property to plaintiff and the "bonus value" of below market leases to plaintiff's lessees. "The assessor properly looked beyond the purchase price that reflected below market leases and relied upon well-accepted methods of valuation." (215 C.A.3d 1030.) (See *Maples v. Kern County Assessment App. Bd.* (2002) 103 C.A.4th 172, 179, 126 C.R.2d 585 [purchase price of property that had been used as petroleum reserve established fair market value under Rev.C. 110(b), even though buyer purchased property from federal Government following lengthy bidding process; use of term "negotiated" in Rev.C. 110(b) does not require bargaining, give and take, or compromise between parties].)

There is a rebuttable presumption that the value of improvements financed by the proceeds of an assessment resulting in a lien imposed on the property by a public entity is reflected in the total consideration, exclusive of the lien amount, involved in the transaction. This presumption may be overcome if the assessor establishes by a preponderance of the evidence that all or a portion of the value of those improvements is not reflected in that consideration. (Rev.C. 110(b); see *Huson v. Ventura* (2000) 80 C.A.4th 1131, 1137, 96 C.R.2d 116 [amendment retroactively applied to homeowner's claim that was pending as of date of enactment because amendment was intended to clarify existing method of real property assessments; county assessor erred by increasing value of home to include improvement bond lien].)

(4) *Valuation of Intangible Assets.* The "full cash" or "fair market" value of real property must reflect intangible attributes, including zoning, location, and other attributes that relate directly to the property. (Rev.C. 110(f).) Taxable property may be assessed and valued by assuming the presence of intangible assets or rights necessary to put the

property to beneficial or productive use. (Rev.C. 110(e); see Rev.C. 212(c), supra, §201.) Except as provided in Rev.C. 110(e), however, the value of taxable property cannot be enhanced by the exclusive nature of a concession, franchise, or similar agreement, nor can it reflect the value of intangible assets relating to the going concern value of a business that uses the property. Further, when the principle of unit valuation is used to value properties, the value of the intangible assets contained within the unit must be removed from the value of the unit. (Rev.C. 110(d).) (See 90 A.L.R.5th 547 [inclusion of intangible asset values in assessment of real property or tangible personal property used in business].)

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Purchase Price as Full Cash Value.* See *California Minerals, L.P. v. Kern* (2007) 152 C.A.4th 1016, 1023, 62 C.R.3d 1 [property owner did not carry burden of proving that fair market value of property with probable, but not yet proved, oil and gas reserves was different than purchase price of property; assessor properly applied purchase price presumption under Rev.C. 110(b)].



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C. Valuation.

2. Valuation Methods.

a. Cost Method.

9 *Witkin Sum. Cal. Law Tax* § 215

[§ 215] Cost Method.

Assessors use three basic appraisal methods to determine the value of property: (a) the cost method; (b) the market data or comparable sales method; and (c) the income or capitalization method. (See *De Luz Homes v. San Diego* (1955) 45 C.2d 546, 563, 290 P.2d 544; *Clayton v. Los Angeles* (1972) 26 C.A.3d 390, 392, 102 C.R. 687; 2 U.S.F. L. Rev. 47 [California property valuation]; 2 Ehrman 3d, Chap. 17; 72 *Am.Jur.2d* (2001 ed.), *State and Local Taxation* §667 et seq.) A county assessor must hold a valid appraiser's certificate issued under Rev.C. 670, although the assessor may exercise the powers of the office for 1 year with a temporary appraiser's certificate. (Rev.C. 24002.5.)

The cost method uses the cost of property as a basis for valuation. (See *Western Title Guaranty Co. v. Stanislaus* (1974) 41 C.A.3d 733, 739, 116 C.R. 351; *Guild Wineries & Distilleries v. Fresno* (1975) 51 C.A.3d 182, 188, 124 C.R. 96 [single open market sale does not bar use of replacement cost approach]; *Midstate Theatres v. Stanislaus* (1976) 55 C.A.3d 864, 882, 128 C.R. 54; *Xerox Corp. v. Orange* (1977) 66 C.A.3d 746, 753, 136 C.R. 583, *infra*, §219; *Fujitsu Microelectronics v. Assessment App. Bd.* (1997) 55 C.A.4th 1120, 1125, 64 C.R.2d 465 [board did not abuse discretion in refusing to admit into evidence report pertaining to depreciation rates of semiconductor manufacturing equipment; there was no evidence that depreciation factors used by assessor were incorrect, and report was of questionable validity]; *Maples v. Kern County Assessment App. Bd.* (2002) 96 C.A.4th 1007, 1014, 117 C.R.2d 663 [cost approach was inappropriate for assessing low-income housing subsidized property because property's income was highly regulated and restricted, and restriction was unrelated to initial cost of property]; 2 Ehrman 3d, §17:11 et seq.)

In *Bret Harte Inn v. San Francisco* (1976) 16 C.3d 14, 127 C.R. 154, 544 P.2d 1354, the assessor determined the full cash value of business personalty by discounting the original acquisition cost, using a uniform "depreciation factor" of 50% without regard to age or condition. *Held*, the valuation method was arbitrary and invalid. A cost-less-depreciation method is not improper. "Such a method, however, if it is to yield results consistent with the constitutional command that all property subject to taxation be assessed at full cash value, must be designed so that cost factors, which by their nature can have no direct relationship to present value, are modulated by depreciation factors in a manner reasonably calculated to achieve an approximation of such value with respect to the individual taxpayer." Merely halving the assessment ratio so that all property was taxed at 25% of its acquisition cost is "arbitrary, in excess of the assessor's discretion, and in violation of constitutional and legislative requirements that all property subject to taxation be assessed at its full cash value." (16 C.3d 25.) (See 65 *Cal. L. Rev.* 461 [*Bret Harte*]; on trade level value,

used in valuation of tangible personal property, see *Beckman Instruments v. Orange* (1975) 53 C.A.3d 767, 779, 125 C.R. 844; *San Diego v. Assessment App. Bd. No. 2* (1983) 140 C.A.3d 52, 55, 189 C.R. 145.)

SUPPLEMENT: [This section is current through the latest supplement]

See *Olen Commercial Realty Corp. v. Orange* (2005) 126 C.A.4th 1441, 1446, 24 C.R.3d 609 [cost method is not only approach available to value improvements].



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2. Valuation Methods.

b. Market Data or Comparable Sales Method.

9 Witkin Sum. Cal. Law Tax § 216

[§ 216] Market Data or Comparable Sales Method.

The comparable sales approach considers the prices at which the property being valued and similar properties have recently been sold. In using this method, loans must be adjusted to their cash equivalent value in order to reflect the fair market value of the property. (*Prudential Ins. Co. v. San Francisco* (1987) 191 C.A.3d 1142, 1149, 236 C.R. 869 [assessor was required to discount value of loan assumed by purchaser at below market rate of interest].) The assessor must have data regarding sales of other property sufficiently close in time to the valuation date (no later than 90 days after the lien date), located sufficiently near to the property being valued, and sufficiently similar in character "to make it clear that the properties sold and the properties being valued are comparable in value and that the cash equivalent price realized for the properties sold may fairly be considered as shedding light on the value of the property being valued." (Rev.C. 402.5; see *Ev.C. 816* [similar rule applied in condemnation cases]; *Midstate Theatres v. Stanislaus* (1976) 55 C.A.3d 864, 879, 128 C.R. 54; 89 A.L.R.3d 1126 [sale price of real property as evidence in determining value for tax assessment purposes]; *McDonnell Douglas Corp. v. Los Angeles* (1990) 219 C.A.3d 715, 726, 268 C.R. 294 [separate parcels were properly valued as economic unit; assessor was not required to value each parcel subject to its individual restrictions]; *Main & Von Karman Associates v. Orange* (1994) 23 C.A.4th 337, 344, 28 C.R.2d 432 [assessor using comparable sales method must make adjustments to sales data to reflect differences between subject property and comparable sales; assessor may not merely choose a value within range of values presented by raw data]; *Mitchell v. Los Angeles* (1997) 60 C.A.4th 497, 503, 70 C.R.2d 476 [remand to assessment appeals board was necessary because assessor failed to make required adjustments; on remand, board does not have to accept taxpayer's original estimate of value; following *Main & Von Karman Associates*]; 2 Ehrman 3d, §17:21 et seq.) Hence, in the absence of an actual market, the assessor must use other factors, such as replacement costs and capitalization of income. (*De Luz Homes v. San Diego* (1955) 45 C.2d 546, 563, 290 P.2d 544; *Kaiser Co. v. Reid* (1947) 30 C.2d 610, 623, 184 P.2d 879; *Hammond Lumber Co. v. Los Angeles* (1930) 104 C.A. 235, 244, 285 P. 896.)

In *Dressler v. Alpine* (1976) 64 C.A.3d 557, 134 C.R. 554, assessments of 33 mountain parcels, used only for summer grazing, were increased substantially under the comparative sales method. At equalization hearings in 1971 and 1972, the assessor presented evidence of seven sales between 1964 and 1969 to support his contention that the parcels, depending on topography, were worth from \$ 100 to \$ 775 per acre. Plaintiffs contended that they were only usable as grazing land and worth between \$ 45 and \$ 75 per acre. Acting on identical evidence, the board found the total value to

be \$ 2,431,500 in 1971 and \$ 1,804,150 in 1972. The trial court sustained the board. *Held*, reversed and remanded for further proceedings.

(a) The sales relied on by the assessor primarily related to land purchased for recreational and skiing development. There was no evidence, however, that any of the parcels were adaptable to that use, and the assessor refused to present usability comparisons. (64 C.A.3d 568, 569.) Thus, the express dictates of Rev.C. 402.5 were ignored. The board relied on "inadequate topographic catchwords--steep, moderate and gentle--as the prime basis of comparability. There is no assurance whatever that the sales in question could 'fairly be considered' as evidence of the assessor's appraisal. The lack of evidence of comparability obliterates the evidentiary foundation for the assessment." (64 C.A.3d 569.)

(b) Nevertheless, plaintiffs were not entitled to have their property assessed under the capitalization of income method. Assessors have discretion in selecting one or several of the approved methods. "That substantial evidence of comparability was not produced at the county board hearing does not mean that none is available." (64 C.A.3d 571.)

SUPPLEMENT: [This section is current through the latest supplement]

See *Olen Commercial Realty Corp. v. Orange* (2005) 126 C.A.4th 1441, 1445, 24 C.R.3d 609 [assessor properly applied comparable sales method to valuation of commercial property; assessor made mandatory adjustments, properly compared sales of land with buildings to taxpayer's building-only project, and made adjustments for differences in physical attributes, location, income, and amenities of comparable properties].



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c. Income or Capitalization Method.

9 *Witkin Sum. Cal. Law Tax* § 217

[§ 217] Income or Capitalization Method.

Under the income or capitalization method, "the value of the property is the sum of anticipated future installments of net income from the property, less an allowance for interest and the risk of partial or no receipt." (*De Luz Homes v. San Diego* (1955) 45 C.2d 546, 564, 290 P.2d 544; see 96 A.L.R.2d 666 [income or rental value as factor in valuation of real property for taxation].) Where there is insufficient actual income and expense history, the assessor may use an imputed income method, attributing a net income (e.g., 6% of the fee value of the property) on evidence that this is what an investor would expect. (See *Riverside v. Palm-Ramon Dev. Co.* (1965) 63 C.2d 534, 538, 47 C.R. 377, 407 P.2d 289 [Palm Springs Indian lands lease by United States (trustee) to lessees contemplating development and subleasing for commercial or professional uses]; *El Tejon Cattle Co. v. San Diego* (1966) 64 C.2d 428, 430, 50 C.R. 546, 413 P.2d 146 [irrigation district's exempt land leased for grazing purposes].) Similarly, where property is subject to an unfavorable lease, the net income to be capitalized is the amount the property would yield if it were subject to the lease; i.e., the fair rental value, rather than the actual rental income. (*Clayton v. Los Angeles* (1972) 26 C.A.3d 390, 396, 102 C.R. 687; see 2 Ehrman 3d, §17:15 et seq.)

In *Pacific Mut. Life Ins. Co. v. Orange* (1985) 187 C.A.3d 1141, 232 C.R. 233, the assessor determined that plaintiff taxpayer's corporate headquarters building was architecturally unique and valued it using the reproduction cost method. *Held*, the income method should have been used. The assessor erred in using a method, "designed solely to capture the specific utility of property to a particular owner" when the property's highest and best use was as an office facility for which income data was readily available. (187 C.A.3d 1149.)

In *Freeport-McMoran Resource Partners v. Lake* (1993) 12 C.A.4th 634, 16 C.R.2d 428, plaintiff challenged assessment of its geothermal power plants. The assessor used the income method, basing the assessment on capitalization of the income stream generated under several 10-year, fixed price contracts plaintiff had entered into with a public utility. Plaintiff contended that the assessment should have been based on the current market price for energy, which was lower than the amounts plaintiff was receiving under the contracts. *Held*, summary judgment for defendant affirmed; the assessor's method was valid.

(a) Cases such as *Clayton v. Los Angeles*, *supra*, holding that properties subject to below-market rate leases must be assessed by reference to the income the properties could generate on the open market, do not require that valuation be

based on market rather than actual income forecasts in all circumstances. To ignore the fixed rate contracts here would be to artificially deflate the value of the properties. (12 C.A.4th 643, 644.)

(b) Consideration of the fixed rate contract income does not impermissibly tax intangible property or plaintiff's enterprise activity. The income generated by the contract is inextricably tied to the beneficial use of the property and is properly considered in assessing its value. Moreover, there is no evidence that the increased value of the contract over current market rate is due to enterprise activity rather than a regulatory scheme that allows plaintiff the benefit of a long-term fixed contract price. (12 C.A.4th 645, 646.)

The following are among the cases discussing the income or capitalization method:

Mission Housing Dev. Co. v. San Francisco (1997) 59 C.A.4th 55, 83, 69 C.R.2d 185 [assessor's use of "band of investments" method to derive applicable capitalization rate was not arbitrary].

American Sheds v. Los Angeles (1998) 66 C.A.4th 384, 396, 78 C.R.2d 58 [20% royalty rate and 12% discount rate used by assessment appeals board to project income for landfill were reasonable; 20% was at high end of figures supplied by experts, but board considered characteristics that made landfill especially desirable; 12% reasonably reflected risk level of owner-lessor of landfill].

Maples v. Kern County Assessment App. Bd. (2002) 96 C.A.4th 1007, 1014, 117 C.R.2d 663 [in assessing low-income housing subsidized property, assessor properly calculated band-of-investment capitalization rate using effective one percent interest rate resulting from government credits for subsidized property, rather than general market interest rate].

Bontrager v. Siskiyou County Assessment App. Bd. (2002) 97 C.A.4th 325, 330, 118 C.R.2d 182 [in assessing low-income housing subsidized property, assessor properly calculated band-of-investment capitalization rate using effective one percent interest rate resulting from government credits for subsidized property, rather than interest rate on face of underlying promissory note].

Watson Cogeneration Co. v. Los Angeles (2002) 98 C.A.4th 1066, 1071, 120 C.R.2d 421 [in determining value of independent power plant, assessor properly considered income resulting from government power purchase agreement that ensured plant of buyer for its power at above-market rates; relying on *Freeport-McMoran* and *Maples*].

SUPPLEMENT: [This section is current through the latest supplement]



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d. Combination of Methods.

9 *Witkin Sum. Cal. Law Tax* § 218

[§ 218] Combination of Methods.

The components of taxable property may be separated for valuation purposes, with various components valued using different valuation methods. (*Orange v. Orange County Assessment App. Bd.* (1993) 13 C.A.4th 524, 533, 16 C.R.2d 695 [valuation of cable television system; income method used to value cable television company's possessory interest in public property and cost replacement method used to value remaining property, including fixtures and personal property]; see *Exxon Mobil Corp. v. Santa Barbara* (2001) 92 C.A.4th 1347, 1356, 112 C.R.2d 751 [distinguishing *Orange v. Orange County Assessment App. Bd.*; because there was common ownership of taxpayer's offshore oil and gas leaseholds that were developed for production and its onshore oil processing facility, and because components were physically connected by pipes and electrical lines, they were single integrated operation; board had no discretion to divide operation into its component parts and use different valuation methodology to calculate value of onshore facility].)

West's Key Number Digest, Taxation k.348(2)

SUPPLEMENT: [This section is current through the latest supplement]



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3. Sales Tax as Element of Valuation.

9 Witkin Sum. Cal. Law Tax § 219

[§ 219] Sales Tax as Element of Valuation.

In *Xerox Corp. v. Orange* (1977) 66 C.A.3d 746, 136 C.R. 583, assessors in six counties assessed X's leased equipment. If the equipment had a list price, they added sales tax and freight charges to that list price; if there were no list prices, they used a modified income approach, multiplying the average monthly rental by a factor of 35, and then added the sales tax and freight charges. X paid under protest, and sought recovery of the taxes insofar as they were based on the sales tax and freight charges. *Held*, the tax was valid.

(a) *Sales tax as part of price.* The sales tax is imposed on the business of retailers. It may be passed on to the consumer, as all of the seller's costs are, and is properly considered a part of the price paid for the goods. (66 C.A.3d 756.) *Diamond Nat. Corp. v. State Bd. of Equalization* (1976) 425 U.S. 268, 96 S.Ct. 1530, 47 L.Ed.2d 780, *infra*, §358, is distinguishable. There, the U.S. Supreme Court refused to follow California law on incidence of the tax in determining the immunity of national banks under federal law; here the issue is solely one of state law. (66 C.A.3d 757.) The sales tax is part of the market value of the goods. "The ultimate price the informed seller and buyer agree upon includes the amount of tax reimbursement. The retailer, absent exigent circumstances, would not sell for less, and the buyer purchases only if the value of the product to him justifies the total price." (66 C.A.3d 758.) The fact that the value will vary from county to county, because of differing sales tax rates, is irrelevant. "Fair market value traditionally depends upon the location of the market. ... We are concerned for tax purposes not with some esoteric value of the property, but with its value in exchange wherever the market is located." (66 C.A.3d 760.)

(b) *Sales tax as part of cost.* The cost approach is normally used when there is, as here, limited sales data. In such cases, it is proper to add taxes and freight charges to the list price in determining the consumer's costs. It is irrelevant that the cost approach assumes a sale, whereas X normally leases its equipment. The fair market value is the same whether the ultimate consumer owns or leases the property. (66 C.A.3d 760.)

(c) *Sales tax in income approach.* The assessors here used a gross rent multiplier of 35 for equipment which had no list price. There is no indication of how that factor was determined, but since X has not objected to it, the only question is whether the use of sales taxes and freight charges is inconsistent with the income approach. Assuming that the gross multiplier was based on comparable list prices, the exclusion of taxes and freight charges would not reflect the true market value; nor would it reflect the total costs to the consumer. Hence those items were properly added. (66 C.A.3d 762.)

(d) *Lack of taxpayer's interest in tax.* X's final argument that, because the tax must be paid to the state, it cannot be an element of value, ignores the market value concept, which reflects all costs of the seller in doing business. "The sales tax is merely another cost of doing business, measured by the gross receipts of that business." (66 C.A.3d 763.) (See *San Diego v. Assessment App. Bd. No. 2* (1983) 140 C.A.3d 52, 58, 189 C.R. 145 [following *Xerox*; imputed sales tax was properly added to value determined under true income method (capitalization of anticipated net income)]; *May Dept. Stores Co. v. Los Angeles* (1987) 196 C.A.3d 755, 767, 242 C.R. 162 [distinguishing *Xerox*; investment tax credit, subject to uncertainties of possible recapture, is not considered in assessing full cash value].)

SUPPLEMENT: [This section is current through the latest supplement]

See *Auerbach v. Los Angeles County Assessment App. Bd. No. 2* (2008) 167 C.A.4th 1428, 1439, 85 C.R.3d 105 [aircraft was used as common carrier and therefore sales tax should not have been element of valuation for purposes of property tax assessment; distinguishing *Xerox Corp. v. Orange* (1977) 66 C.A.3d 746, 136 C.R. 583, text, p. 328].



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4. Valuation of Possessory Interests.

a. In General.

9 *Witkin Sum. Cal. Law Tax* § 220

[§ 220] In General.

(1) *Leasehold Interests Generally*. A leasehold or other possessory interest is separately assessed when the reversion is exempt (see *supra*, §176), but the same valuation standard (*supra*, §215 et seq.) is used. (*De Luz Homes v. San Diego* (1955) 45 C.2d 546, 563, 290 P.2d 544 [value of lessee's interest "is the price it would bring if offered on an open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and this hypothetical market price is its value even though a sale of the property has not been made or contemplated"]; *Metropolitan Stevedore Co. v. Los Angeles* (1972) 29 C.A.3d 565, 569, 105 C.R. 595; see *American Airlines v. Los Angeles* (1976) 65 C.A.3d 325, 329, 330, 135 C.R. 261 [valuation of lease at city airport for period beyond term, based on expectation of renewal, was invalid]; *Service America Corp. v. San Diego* (1993) 15 C.A.4th 1232, 1240, 19 C.R.2d 165 [assessor erred in using entire income flow to value public stadium food and beverage concession where large part of income was based on nontaxable "enterprise value" rather than value of property used]; 2 Ehrman 3d, Chap. 18.)

The separate problem of valuing leasehold improvements was considered in *Riverside v. Palm-Ramon Dev. Co.* (1965) 63 C.2d 534, 47 C.R. 377, 407 P.2d 289. The lease periods were 25 years, with options to extend for a similar period, and improvements made by lessees became the property of the fee owner. The assessor, determining that the useful life of the buildings was shorter than the lease periods, used the reproduction cost less depreciation method of valuation. *Held*, this was permissible. (63 C.2d 540.)

(2) *Cable Television*. In response to *Cox Cable San Diego v. San Diego* (1986) 185 C.A.3d 368, 229 C.R. 839, *supra*, §167, holding that a cable television possessory interest in public streets and easements is taxable property, Rev.C. 107.7 governs the valuation of those interests as follows:

(a) The interest may be valued using the comparable sales method, the cost method, or the income method, but the "preferred" method is an income method capitalizing annual rent. (Rev.C. 107.7(a), (b).)

(b) Intangible assets or rights of a cable television system are not subject to property taxation but a possessory interest may be "valued by assuming the presence of intangible assets or rights necessary to put the cable television possessory interest to beneficial or productive use in an operating cable television system." (Rev.C. 107.7(d).)

(c) The statute is intended "to prohibit an assessment policy that equates any cable television possessory interest with the franchise or license itself or with other intangible assets or rights of a cable television system," but does not prohibit "the assessment of a cable television possessory interest as an asset put to beneficial or productive use in an operating cable television system." (Stats. 1988, Chap. 1630, §3.) (See *Stanislaus v. Assessment App. Bd.* (1989) 213 C.A.3d 1445, 1455, 262 C.R. 439, supra, §201; *Shubat v. Sutter County Assessment App. Bd. No. 1* (1993) 13 C.A.4th 794, 805, 17 C.R.2d 1 [assessment appeals board properly considered nontaxable intangibles in valuing possessory interest of cable television system].)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Leasehold Interests Generally.* See *Silveira v. Alameda* (2006) 139 C.A.4th 989, 995, 43 C.R.3d 501 [valuations of marina held by tenant under month-to-month lease were proper, even though they were based on anticipated terms of possession of 3 to 5 years, where tenant had possessed property for decades; month-to-month tenancies are properly treated for possessory interest tax purposes as having no stated term of possession and should be valued on basis of parties' history and expectation; distinguishing *American Airlines v. Los Angeles* (1976) 65 C.A.3d 325, 135 C.R. 261, text, p. 329]. (2) *Cable Television.* Rev.C. 107.7 was amended in 2006 and 2007 to govern the valuation of "video possessory interests" (state franchises to provide video service under *Pub.Util.C. 5840*), in addition to cable possessory interests. The portion of Rev.C. 107.7(d) quoted in the text now provides that a possessory interest may be "valued by assuming the presence of intangible assets or rights necessary to put the cable possessory interest or video service possessory interest to beneficial or productive use in an operating cable system or video service system."



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4. Valuation of Possessory Interests.
b. Rent Paid by Lessee of Exempt Property.

9 Witkin Sum. Cal. Law Tax § 221

[§ 221] Rent Paid by Lessee of Exempt Property.

(1) *De Luz Rule*. Valuation of a lease by the income or capitalization method (see supra, §217) is not affected by whether the lessee pays a high or low rent to the lessor, for no deduction is made for rent paid or to be paid. *L.W. Blinn Lumber Co. v. Los Angeles* (1932) 216 C. 474, 478, 14 P.2d 512, held that the lessee's charges to rent and amortization should be deducted from expected gross income. But *Blinn* was overruled by *De Luz Homes v. San Diego* (1955) 45 C.2d 546, 290 P.2d 544. The court held that the assessor must capitalize not the anticipated net earnings of the present lessee, but those of a prospective assignee (purchaser). The present owner may have invested well or poorly, and may have built expensive improvements, but the profitability of the property to its present owner is not the test of what a purchaser would expect to pay for the lease. (45 C.2d 566.) (See, following *De Luz* case, *Fairfield Gardens v. Solano* (1955) 45 C.2d 575, 578, 290 P.2d 562; *Victor Valley Housing Corp. v. San Bernardino* (1955) 45 C.2d 580, 584, 290 P.2d 565; *El Toro Dev. Co. v. Orange* (1955) 45 C.2d 586, 588, 290 P.2d 569; *Stamps v. Board of Supervisors of San Francisco* (1965) 233 C.A.2d 256, 258, 43 C.R. 398 [lessee agreed to operate public garage on city owned land; leasehold taxed at market value, even though by its terms rentals all go to retirement of bonds and no profit can be made].)

The *De Luz* rule was challenged in *Texas Co. v. Los Angeles* (1959) 52 C.2d 55, 338 P.2d 440, where plaintiffs obtained a lease of tax-exempt city tidelands. They sought to limit the prior holding to rent paid, contending that the assessor should deduct the present value of future rentals to be paid. In rejecting this contention, the court said: "A leasehold is not less valuable because it has not been paid for in advance, and to draw a distinction between rent paid and rent to be paid confuses the equity the lessee has in the leasehold with its value. That equity may arise either from the lessee's prepayment of rent or from an excess of the value of the use over the future rent agreed to be paid for it. It may not exist at all. In any event it is of no moment to a prospective purchaser interested only in the value of the use and possession of the property for the unexpired term of the lease. Such a purchaser will pay for that interest what it is worth, and since it belongs to the lessee, it is taxable to him at that value whether or not he has assumed rental or other obligations that will prevent his realizing any return to himself." (52 C.2d 61.)

(2) *Legislative Response*. Rev.C. 107.1 was enacted in 1957 to overcome the rule of the *De Luz* case as to leases created before the decision. It provides that the value of the possessory interest of a lessee of exempt property is the market value under the *De Luz* formula, less "the present worth of the rentals under said lease for the unexpired term

thereof." (See Rev.C. 107.2, 107.3 [oil and gas lease].)

The attempt to give retrospective effect to Rev.C. 107.1 was held an unconstitutional gift of public money (*Texas Co. v. Los Angeles*, *supra*, 52 C.2d 66; see *supra*, §17), but its prospective validity was upheld in *Forster Shipbuilding Co. v. Los Angeles* (1960) 54 C.2d 450, 6 C.R. 24, 353 P.2d 736, where the statute was in effect when the taxes became due. The assessor assessed leasehold interests without deducting "the present worth of the rentals ... for the unexpired term." (54 C.2d 453.) The court pointed out that the statute reinstated the *Blinn* rule, *supra*, as the method for assessing interests created in reliance on that rule (the section expressly applies "only to possessory interests created prior" to the *De Luz* decision (54 C.2d 454)), and that the *De Luz* rule was preserved for all other interests.

(a) "The basic issues presented, therefore, are whether the Legislature has the power to depart from assessment and taxation at full cash value and in proportion to value by prescribing temporary application of a principle once approved by this court, in order to mitigate hardships caused by our subsequent rejection of that principle, and, if so, whether section 107.1 is a proper exercise of the power." (54 C.2d 458.) The answer is that the Legislature has the same power as a court to give an overruling decision prospective effect (see 9 Cal. Proc. (4th), *Appeal*, §983 et seq.); hence the statute, which made the overruling of *Blinn* by *De Luz* prospective only, was valid. (54 C.2d 459.)

(b) "Rentals in leases of tax-exempt property created before the *De Luz* case were fixed at a level competitive with rentals of private property on the assumption that the rental value of the possessory interest would not be taxed. The *De Luz* case imposed an unexpected tax burden on the lessees that their governmental lessors refused to mitigate by reducing rentals, on the ground that such reductions would constitute unconstitutional gifts of public funds. ... The lessees were therefore required to pay both rentals equivalent to rentals of private property and taxes to which lessees of private property are not subject because the full value of private property is taxed to the lessor. Since adjustments in rentals can be made in leases created, extended, or renewed after the *De Luz* case, such leases are properly excluded from the operation of the section. The departure from assessment and taxation at full cash value and in proportion to value is therefore no broader than the hardship to be remedied. It is clearly not the type of discriminatory taxation that section 1 of article XIII and section 12 of article XI are designed to prevent." (54 C.2d 459.) (See *Atlantic Richfield Co. v. Los Angeles* (1977) 68 C.A.3d 105, 115, 137 C.R. 84 [prospective application of Rev.C. 107.2 and 107.3 is valid in light of *Forster*]; *Atlantic Richfield Co. v. Los Angeles* (1982) 129 C.A.3d 287, 296, 180 C.R. 901 [retrospective application of Rev.C. 107.2 and 107.3, intended to relieve hardship resulting from application of *De Luz* rule to oil and gas interests, was not invalid gift of public funds].)

In *Oryx Energy Co. v. Kern* (1993) 17 C.A.4th 48, 21 C.R.2d 221, plaintiff, the lessee of mineral leases from the federal government, challenged defendant county's valuation of the leases for property tax purposes, contending that the valuation should not include the present valuation of royalties paid by plaintiff to the lessor. *Held*, the present value of the royalties was properly included in the taxable value of the leasehold.

(a) Under *Atlantic Richfield Co. v. Los Angeles*, *supra*, 68 C.A.3d 105, the full valuation method of *De Luz*, applies to oil and gas leases, but the economic burden on preexisting leases is mitigated by Rev.C. 107.2. (17 C.A.4th 54, 55.) However, relief under Rev.C. 107.2 is available only where the extension or renewal of the lease is pursuant to statutory or contractual provisions that deny the lessee the ability to renegotiate in light of *De Luz*. (17 C.A.4th 59.)

(b) Here, neither the original leases, which predate *De Luz*, nor subsequent renewals provide an absolute right to renew, and each gives the Secretary of the Interior broad authority to waive, suspend, or reduce royalties. (17 C.A.4th 62.) Thus, because a reduction in royalty based on an increase in assessed valuation is not prohibited, plaintiff is not entitled to the hardship exemption provided by Rev.C. 107.2. (17 C.A.4th 64.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Legislative Response.Prospective effect:*

Cross-Reference: 9 Cal. Proc. (5th), *Appeal*, §551 et seq.



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5. Valuation of Time-share Interests.

9 Witkin Sum. Cal. Law Tax § 222

[§ 222] Valuation of Time-share Interests.

(1) *Definition.* A time-share estate is the right to occupy a time-share property, coupled with a freehold estate or an estate for years with a future interest in a time-share property or a specified portion of a time-share property. (*B. & P.C. 11212(x)(1).*) A time-share use is the right to occupy a time-share property, where the right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in a time-share property. (*B. & P.C. 11212(x)(2).*) For purposes of taxation, both time-share estates and time-share uses are "time-share interests." (*Rev.C. 998(c); B. & P.C. 11212(x).*)

(2) *Rule for Valuation and Assessment.* Time-share interests are separately assessed. (See *Rev.C. 2188.8, 2188.9.*) *Rev.C. 998* provides uniformity and certainty in assessing time-share interests. (See 22 Cal. Western L. Rev. 104 [assessment of time-share properties]; 80 A.L.R.4th 950 [taxation of residential time-share or interval-ownership units]; 2 Ehrman 3d, §23:09.) *Rev.C. 998(a)* sets forth the following rules:

(a) A time-share interest is valued at the full value of the real property portion. The value of the nonreal property portion, including vacation exchange rights, services, and club memberships, is excluded.

(b) The value may be determined by reference to comparable nontime-share property or by any alternate method that disregards nonreal property items.

(c) The aggregate value of all time-share interests in a single parcel is computed by adjusting the value of nontime-share portions to reflect an increase or decrease in value attributable to the fact that the property is marketed in increments of time.

Rev.C. 998 does not authorize reassessment as a result of the creation or transfer of a time-share interest, unless the creation or transfer would constitute a change of ownership under Cal. Const., Art. XIII A (see *supra*, §147). (*Rev.C. 998(b).*)

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6. Valuation of Open Space Land.

a. Development of Law.

9 *Witkin Sum. Cal. Law Tax* § 223

[§ 223] Development of Law.

(1) *Original Statute.* In an effort to conserve farmland and other open spaces around urban areas, the Legislature in 1965 enacted the California Land Conservation Act (also known as the Williamson Act). (*Govt.C. 51200* et seq.) In essence, the Act provided a means whereby a farmer could subject the land to binding restrictions on use for a minimum period of 10 years. In return, former Rev.C. 402.6 directed the assessor to "consider no factors other than the use permitted under such restrictions when there is no reasonable probability of the removal or modification of the restrictions in the near future." But there was uncertainty as to the proper standard of valuation to be applied and doubts were expressed about the constitutionality of the legislation. (See *55 Cal. L. Rev.* 273, 285; *30 Hastings L. J.* 1859 [California Land Conservation Act and fight to save California's prime agricultural land].)

(2) *Constitutional Amendment.* These doubts were resolved in 1966 when the "Open Space Amendment" (former Cal. Const., Art. XXVIII, §1, 2) was added to the California Constitution. In the constitutional revision of 1974, the provisions of Art. XXVIII were restated in Cal. Const., Art. XIII, §8, which provides in part:

"To promote the conservation, preservation and continued existence of open space lands, the Legislature may define open space land and shall provide that when this land is enforceably restricted, in a manner specified by the Legislature, to recreation, enjoyment of scenic beauty, use or conservation of natural resources, or production of food or fiber, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses." The new provision preserves the intent of the original: "[T]hat the dedication of open space land to continued open space is in the best interest of the State and its citizens." (Task Force Report, p. 18; *supra*, §109.)

(3) *Legislative Implementation.* The constitutional directive has been implemented by the enactment of Rev.C. 421 et seq. and a revision of the Land Conservation Act. (For background, see *Dorcich v. Johnson* (1980) 110 C.A.3d 487, 493, 167 C.R. 897; *55 Cal. L. Rev.* 273; *19 Hastings L. J.* 421; *42 So. Cal. L. Rev.* 59; see also 11 Santa Clara Lawyer 259 [whether restricted use assessments fulfill objectives]; *54 So. Cal. L. Rev.* 93 [Proposition 13 as mandate to reevaluate Williamson Act]; 2 Ehrman 3d, Chap. 25; on valuation of nonprofit golf course land, see *infra*, §227.)

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6. Valuation of Open Space Land.

b. Valuation Rules.

9 Witkin Sum. Cal. Law Tax § 224

[§ 224] Valuation Rules.

(1) *Qualified Land*. The following four types of land qualify for the special statutory assessment standards:

(a) Land located in an agricultural preserve and subject to an agreement or contract restricting its use, as provided by the Land Conservation Act (*Govt.C. 51200* et seq.). (Rev.C. 421(a), 422(a), 422(b).)

(b) Land subject to a "scenic restriction" under *Govt.C. 6950* et seq. (Rev.C. 421(d), 422(c).)

(c) Land subject to an "open space easement" under *Govt.C. 51050* et seq. or *Pub.Res.C. 5500* et seq. (Rev.C. 421(e), 422(d).)

(d) Land subject to a "wildlife habitat contract" with a federal or state governmental entity. (Rev.C. 421(f), 422(e); on enrollment of land in wildlife habitat contract, see Rev.C. 423.8.) (On enforcement of similar agreements executed under former law, see *Marin v. Assessment App. Bd.* (1976) 64 C.A.3d 319, 325, 134 C.R. 349 [construction in favor of validity to protect taxpayers].)

However, land may not be valued under the open space provisions unless an enforceable restriction meeting the requirements of Rev.C. 422 is signed, accepted, and recorded on or before the lien date for the fiscal year to which the valuation would apply. (Rev.C. 430.5.)

The statute does not apply to a residence (including housing for agricultural laborers) on the land or to an area of reasonable size used as a site for a residence. (Rev.C. 428.)

(2) *Valuation*. Land that qualifies for assessment under Rev.C. 421 et seq. must be valued by the capitalization of income method. The assessor is not permitted to consider sales data (i.e., comparable sales). (Rev.C. 423.) Where sufficient rental information is available, the income to be capitalized is the fair rent that can be imputed to the land being valued based on rent actually received for the land by the owner and on typical rentals received in the area for similar land in similar use, where the owner pays the property tax. (Rev.C. 423(a)(1).) Where sufficient rental information is not available, the income is "that which the land being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the land is enforceably restricted." (Rev.C.

423(a)(2); on valuation of land subject to a farmland security zone contract, see Rev.C. 423.4; on valuation of open space timberlands subject to enforceable restriction, see Rev.C. 423.5; on valuation of trees and vines, see Rev.C. 429; on considering value of minerals, oil and gas, etc., see Rev.C. 427; on value of open space land subject to wildlife habitat contract, see Rev.C. 423.7; on valuation where the restriction is to be terminated, see Rev.C. 426.)

Where the land is being used for agricultural purposes, there is a rebuttable presumption that the present use is its "highest and best agricultural use." (Rev.C. 430.)

(3) *Effect of Proposition 13.* Notwithstanding Cal. Const., Art. XIII A (see supra, §125), open space land, within the meaning of Cal. Const., Art. XIII, §8, is valued pursuant to Rev.C. 421 et seq. (Rev.C. 52(a).) However, "[u]nless a party to an instrument which creates an enforceable restriction expressly prohibits such a valuation, the valuation resulting from the capitalization of income method" under Rev.C. 423 may not exceed the lesser of the valuation that would have resulted if the property had not been subject to an enforceable restriction and had been valued under the "full cash value" method of either Rev.C. 110 or 110.1 (supra, §§145, 214). (Rev.C. 423(d); see *Bank of America v. Fresno* (1981) 127 C.A.3d 295, 312, 179 C.R. 497 [prima facie case of overassessment of restricted open space land under capitalization of income method requires independent proof of capitalized income value of land under Rev.C. 423].)

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7. Valuation of Timber and Timberland.

9 Witkin Sum. Cal. Law Tax § 225

[§ 225] Valuation of Timber and Timberland.

(1) *Basis and Effect of Special Treatment.* Under the authority of Cal. Const., Art. XIII, §3(j) (see supra, §204), a new method of taxation of timber and timberland was adopted in 1976. (See 8 *Pacific L. J.* 371 et seq.; 2 Ehrman 3d, Chap. 19.) The purpose of the law is to maintain timberland by encouraging timberland investment and discouraging its unnecessary conversion to other uses. (Govt.C. 51102.)

(2) *Applicability.* "Timber" means trees, other than nursery stock, "maintained for eventual harvest for forest products purposes." (Govt.C. 51104(e); Rev.C. 431(a).) "Timberland" means land "devoted to and used for growing and harvesting timber ... and compatible uses." (Govt.C. 51104(f).) An owner's past forest practices or subjective intent is not controlling in determining what constitutes timberland. The statutory definitions apply to land "when it is inherently capable of being so used or maintained and has not, by prior activity, been rendered unsuitable for forest product purposes." (*Clinton v. Santa Cruz* (1981) 119 C.A.3d 927, 935, 174 C.R. 296.)

(3) *Zoning.* The California Timberland Productivity Act (Govt.C. 51100 et seq.) provides for the creation of timberland production zones. (Govt.C. 51110 et seq.) Parcels zoned as timberland production are restricted to growing and harvesting timber and compatible uses. (Govt.C. 51115.) A county may not require a permit to commercially harvest timber as a prerequisite for zoning timberland as a timber production zone. (*California v. Santa Clara* (1983) 142 C.A.3d 608, 613, 191 C.R. 204.)

(4) *Valuation of Timberland.* The value of property in a timber production zone is determined by application of a statutory formula to various grades of property within three designated timber-producing regions of the state. (Rev.C. 434.5; see *Soper-Wheeler Co. v. State Bd. of Equalization* (1981) 124 C.A.3d 913, 920, 177 C.R. 515 [meaning of "immediate harvest value" in Rev.C. 434.5].) In preparing the assessment roll, the assessor uses the site value under Rev.C. 434.5 plus any value attributable to "existing, compatible, nonexclusive uses of the land." (Rev.C. 435(a).) The assessor may take into consideration "the existence of any mines, minerals, and quarries in or upon the land being valued, including, but not limited to, geothermal resources and oil, gas, and other hydrocarbon substances." (Rev.C. 435(b).)

Where land in a timberland production zone is rezoned, the use restriction continues for 10 years and the parcel is valued like other property for which a restriction is being phased out (Rev.C. 426; see infra, §226). (Govt.C. 51120(d),

51121(d).) However, where property is immediately rezoned (*Govt.C. 51130 et seq.*), the property is reassessed on the basis of its rezoned use and is subject to a tax recoupment fee. (*Govt.C. 51142.*)

Notwithstanding Cal. Const., Art. XIII A (Proposition 13; see *supra*, §125), property restricted to timberland use under Cal. Const., Art. XIII, §3(j), is valued for property tax purposes under Rev.C. 431 et seq. (Rev.C. 52(b).)

Real property not in a timberland production zone is valued like other property. However, property that is used for the commercial production of timber and that is enforceably restricted is valued under Rev.C. 423.5. The value of such property is the present value of the income that the future harvest of the timber and other compatible uses "can reasonably be expected to yield under prudent management." The capitalization rate provided by Rev.C. 423(b) is used and sales data is not considered. (Rev.C. 423.5.)

(5) *Exemption of Timber.* Timber is exempt from property taxation, including possessory interest taxation, and is not assessed. However, trees on land not zoned as timberland production may be assessed based on their "esthetic or amenity value." (Rev.C. 436.)

(6) *In Lieu Tax.* In lieu of annual local property taxation of standing timber, a state timber yield tax is imposed when timber is harvested, the funds from which are redistributed to the counties. (See *infra*, §388.)

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8. Valuation of Land Subject to Restrictions.

9 Witkin Sum. Cal. Law Tax § 226

[§ 226] Valuation of Land Subject to Restrictions.

(1) *In General.* Rev.C. 402.1 establishes the following rules for assessing land subject to enforceable restrictions on use:

(a) The assessor must consider the effect of the restrictions on the value of the land. (Rev.C. 402.1(a).) (See Rev.C. 110(a) [definition of "full cash value" or "fair market value" takes into account effect of enforceable restrictions on uses and purposes].)

(b) There is a rebuttable presumption that the restrictions "will not be removed or substantially modified in the predictable future and that they will substantially equate the value of the land to the value attributable to the legally permissible use or uses." (Rev.C. 402.1(b).) (On effect of rebuttable presumption, see *Meyers v. Alameda* (1977) 70 C.A.3d 799, 806, 139 C.R. 165 [no substantial evidence of zoning change in near future]; *Borel v. Contra Costa* (1990) 220 C.A.3d 521, 527, 269 C.R. 460 [rebuttable presumption under Rev.C. 402.1 that agricultural zoning was permanent was applicable to reassessment of walnut orchard entitled to status as agricultural preserve under Govt.C. 51200 et seq. (supra, §223)].)

(c) The presumption may be rebutted on the basis of "the past history of like use restrictions in the jurisdiction in question and the similarity of sales prices for restricted and unrestricted land." (Rev.C. 402.1(c).)

(d) The fact that the restriction expires at a certain time in the future is not conclusive evidence of future removal or modification unless "there is no opportunity or likelihood of the continuation or renewal of the restriction, or unless a necessary party to the restriction has indicated an intent to permit its expiration at that time." (Rev.C. 402.1(c).) (See Rev.C. 1630 [statement by local agency of intention not to remove or modify restriction].)

(e) If the presumption is unrebutted, the assessor cannot consider "sales of other comparable land not similarly restricted," unless the restrictions have a "demonstrably minimal effect upon value." (Rev.C. 402.1(d).)

(f) If the presumption of removal or modification in the predictable future has been rebutted, but the restriction remains and has some effect on present value, the assessor may consider representative sales of comparable land that are not under restriction but on which natural limitations have substantially the same effect as restrictions. (Rev.C.

402.1(e).) (See Rev.C. 402.5 ["comparable sale" must be "sufficiently alike in respect to ... zoning or other legal restriction as to use"]; 2 Ehrman 3d, §25:11.)

(2) *Restrictions.* Restrictions that must be considered include the following:

(a) Zoning. (Rev.C. 402.1(a)(1); see *McDonnell Douglas Corp. v. Los Angeles* (1990) 219 C.A.3d 715, 727, 268 C.R. 294 [assessor properly determined that deed and zoning restrictions had minimal effect on value where highest and best use for aviation and parking was consistent with restrictions].)

(b) Contracts with governmental agencies other than those involving open space restrictions under Rev.C. 422 and 422.5. (Rev.C. 402.1(a)(2).)

(c) Permit authority and permits of government agencies exercising land use powers concurrently with local governments (including coastal commissions, San Francisco Bay Conservation and Development Commission, and Tahoe Regional Planning Agency). (Rev.C. 402.1(a)(3).)

(d) Development controls under local coastal and marsh protection programs. (Rev.C. 402.1(a)(4), (a)(5).)

(e) Statutory environmental restraints. (Rev.C. 402.1(a)(6).)

(f) Hazardous waste land use restriction under *Health & Saf.C. 25240*. (Rev.C. 402.1(a)(7).)

(g) A recorded conservation, trail, or scenic easement in favor of a public agency or a nonprofit corporation. (Rev.C. 402.1(a)(8).)

In *Carlson v. Assessment App. Bd.* (1985) 167 C.A.3d 1004, 213 C.R. 555, defendant assessment appeals board reduced plaintiff assessor's valuation of property to reflect private restrictions on the use of the property, including a railway easement, a repurchase option, and a resale consent requirement. *Held*, private restrictions should not have been considered.

(a) The enforceable restrictions contemplated by Rev.C. 402.1 are those imposed by government, and the statute is intended to encourage and maintain effective land use planning. Here, no public land use policy is involved and the public derives no benefit. The restrictions are imposed solely for the private profit of the seller of the property. (167 C.A.3d 1010.)

(b) The fair market value of the property is properly determined by considering the value of the fee simple absolute, which includes the property interests of both the seller and the purchaser. (167 C.A.3d 1013.) (See *Dominguez Energy, L.P. v. Los Angeles* (1997) 56 C.A.4th 839, 853, 65 C.R.2d 766 [Rev.C. 402.1 applied to reduce tax on land undergoing environmental remediation, even though taxpayer was not under specific order to conduct cleanup].)

Rev.C. 402.1 is not, however, limited to land use restrictions needed to encourage effective land use planning. (*CAT Partnership v. Santa Cruz* (1998) 63 C.A.4th 1071, 1084, 74 C.R.2d 652 [rate protection provisions in franchise agreement were "enforceable restrictions" under Rev.C. 402.1].)

(3) *Property of Historical Significance.* To promote the preservation of property of historical significance, the Legislature may define that property and must provide that when it is enforceably restricted, in a manner specified by the Legislature, it will be valued for property tax purposes only on a basis that is consistent with its restrictions and uses. (Cal. Const., Art. XIII, §8.)

The Legislature has established special valuation rules for historical property, similar to those applicable to open space lands (*supra*, §§223, 224). Restricted historical property defined by *Govt.C. 50280.1* that is subject to an historical property contract under *Govt.C. 50280 et seq.* is valued under the capitalization of income method. (Rev.C. 439.2; on valuation where the restriction is to be terminated, see Rev.C. 439.3.) Property may not be valued under Rev.C. 439.2

unless an enforceable restriction meeting the requirements of Rev.C. 439 is signed, accepted, and recorded on or before the lien date for the fiscal year in which the valuation would apply. (Rev.C. 439.4; see 2 Ehrman 3d, §§25:10, 25:18.)

Notwithstanding Cal. Const., Art. XIII A (Proposition 13; see *supra*, §125), historical property subject to Cal. Const., Art. XIII, §8, is valued pursuant to Rev.C. 439 et seq. (Rev.C. 52(a).)

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9. Other Special Rules.

9 Witkin Sum. Cal. Law Tax § 227

[§ 227] Other Special Rules.

(1) *Nonprofit Golf Courses*. Real property in a parcel of 10 or more acres which, on the lien date and for 2 or more years immediately preceding, has been used exclusively for nonprofit golf course purposes must be assessed for taxation based on that use, plus any value attributable to mines, quarries, hydrocarbon substances, or other minerals in the property or the right to extract hydrocarbons or other minerals from the property. (Cal. Const., Art. XIII, §10; see *Stevens v. Watson (1971) 16 C.A.3d 629, 635, 94 C.R. 190*, supra, §42; 2 Ehrman 3d, §25:2; 41 A.L.R.4th 963 [exemption of public golf courses].)

Notwithstanding Cal. Const., Art. XIII A (Proposition 13; see supra, §125), property subject to valuation under Cal. Const., Art. XIII, §10, is valued in accordance with that section. (Rev.C. 52(c).) Nevertheless, the "valuation rollback" provided by Cal. Const., Art. XIII A, §2 (supra, §145), is applicable. Thus, the assessment of a nonprofit golf course is restricted to value on the 1975-76 tax bill, reflecting the use restrictions in Cal. Const., Art. XIII, §10, and subject to the inflation adjustments authorized by Cal. Const., Art. XIII A, §2. (*Los Angeles Country Club v. Pope (1985) 175 C.A.3d 278, 286, 220 C.R. 584* [assessor improperly valued golf course at current value subject to use restrictions, rather than 1975-1976 value subject to use restrictions].)

(2) *Single-Family Dwellings*. "The Legislature may provide for the assessment for taxation only on the basis of use of a single-family dwelling, as defined by the Legislature, and so much of the land as is required for its convenient use and occupation, when the dwelling is occupied by an owner and located on land zoned exclusively for single-family dwellings or for agricultural purposes." (Cal. Const., Art. XIII, §9.) Rev.C. 401.4 implements the constitutional provision.

(3) *Property Damaged or Destroyed*. The taxable status of property becomes fixed as of the lien date (see infra, §228) and ordinarily, the owner's tax liability is unaffected even though the property is damaged or completely destroyed between the lien date and the time when the tax is levied. However, the Legislature has the power to authorize local taxing agencies to provide for "assessment or reassessment of taxable property physically damaged after the lien date." (Cal. Const., Art. XIII, §15.) Rev.C. 170, a comprehensive property tax disaster relief statute, authorizes county boards of supervisors to provide by ordinance for the assessment or reassessment of property damaged or destroyed by misfortune or calamity in accord with the terms of the statute. Individual property owners may apply to the assessor for reassessment of damaged or destroyed property. (Rev.C. 170(a); see *Govt.C. 43013* [similar provisions relating to

municipal taxation].) If the damage exceeds \$ 10,000, the assessor must reduce the values on the assessment roll accordingly. (Rev.C. 170(b).) (On deferral of property tax pending reassessment, without penalty or interest, where property has suffered substantial damage from declared emergency, see Rev.C. 194 et seq.)

(4) *Implements of Husbandry*. "Implements of husbandry" are tools, machinery and equipment used in agricultural operations, other than those intended for sale in the course of business. (Rev.C. 411.) Their assessment is governed by Rev.C. 410 et seq., which provides a uniform statewide system of assessment (Rev.C. 410), but in accordance with the ordinary standard of full cash value (Rev.C. 413).

(5) *Geothermal Resources*. Unlike conventional real estate, the value of a mineral estate is not dependent on the value of the property itself, but on the process of production. It is only through exploitation or anticipated exploitation of the lessee's mineral rights that the property acquires value. Thus, special rules apply to the assessment of geothermal interests. (*Phillips Petroleum Co. v. Lake* (1993) 15 C.A.4th 180, 185, 192, 18 C.R.2d 765 [State Board of Equalization rules for valuation of oil and gas interests (supra, §161) also apply to local assessment of geothermal resources; base year value is assigned when there are "proved reserves"]; see *Freeport-McMoran Resource Partners v. Lake* (1993) 12 C.A.4th 634, 16 C.R.2d 428, supra, §217.)

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Property Damaged or Destroyed*. See *Slocum v. State Bd. of Equalization* (2005) 134 C.A.4th 969, 976, 36 C.R.3d 627 [regulation allowing midyear reassessment of airline and other property that suffered loss in value due to diminished access following terrorist events of September 11, 2001, was inconsistent with Rev.C. 170(a) and thus was invalid; Rev.C. 170(a), and Cal. Const., Art. XIII, §15, authorize reassessment following *physical* damage to property].



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D. Assessment Procedure.
1. Lien Date.

9 Witkin Sum. Cal. Law Tax § 228

[§ 228] Lien Date.

The lien date is the first day of January preceding the fiscal year for which the taxes are levied. (Rev.C. 2192; see *infra*, §252.)

The assessor must assess all taxable property in the county to the person who owns, possesses, claims, or controls it on the lien date. (Rev.C. 405(a); see *Seegmiller v. Nevada* (1997) 53 C.A.4th 1397, 1400, 62 C.R.2d 238, *supra*, §33 [taxpayer whose business property was located in taxing county on lien date was not entitled to partial refund of ad valorem personal property taxes for period after he relocated to another state during next fiscal tax year]; on exception for property assessed by State Board of Equalization; see *infra*, §240.) The assessment is made as provided in Cal. Const., Art. XIII and XIII A, and any legislative authorizations under those articles. (Rev.C. 401.3.) Property on the secured roll may be assessed to the person owning, claiming, possessing, or controlling it for the ensuing fiscal year. (Rev.C. 405(a); see 72 *Am.Jur.2d* (2001 ed.), *State and Local Taxation* §629 et seq.; 1 Ehrman 3d, Chap. 7; on supplemental assessment and collection to account for change in value arising from new construction or change of ownership, see Rev.C. 75 et seq., *supra*, §162; on assessment procedure for city property tax, see *Govt.C. 43000* et seq.)

All property taxed by local government must be assessed in the county, city, and district in which it is situated. (Cal. Const., Art. XIII, §14.)

West's Key Number Digest, Taxation k.336(1)

SUPPLEMENT: [This section is current through the latest supplement]



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2. Taxpayer's Statement and Information.
a. In General.

9 Witkin Sum. Cal. Law Tax § 229

[§ 229] In General.

(1) *Personal Property Statement.* Every person owning taxable personal property costing \$ 100,000 or more for an assessment year must file a signed property statement with the assessor. Other persons must do so on request of the assessor. However, the filing requirement does not apply to manufactured homes subject to the Manufactured Homes Property Tax Law (*supra*, §171). (Rev.C. 441(a); see *State Bd. of Equalization v. Cenicerros (1998) 63 C.A.4th 122, 130, 73 C.R.2d 539* [county rule concerning requests for information directed to and from assessor and taxpayer reflected procedures of Rev.C. 441]; 1 Ehrman 3d, Chap. 13.) The following requirements apply:

(a) The statement must be declared to be true under penalty of perjury. (Rev.C. 441(b).)

(b) It must be filed annually between the lien date and April 1. (Rev.C. 441(b).) There is a penalty for failure to file within the prescribed time. (Rev.C. 441(b), 463; see *infra*, §230.) The penalty applies for property statements not filed by May 7, or by the next business day when May 7 falls on a weekend or legal holiday. (Rev.C. 441(b).)

(c) The statement may be filed by mail. The postmark affixed by the United States Postal Service, or the date certified by a bona fide private courier service, is the date on which the statement is deemed filed. (Rev.C. 441(c); see Rev.C. 166(a) [whenever document must be filed with taxing agency by specified time and date, it is deemed timely if it is sent by mail and bears post office cancellation mark of specified date or earlier, or if other proof establishes that it was mailed on specified date or earlier].)

(d) If filed by a corporation, the statement must be signed by an officer or employee authorized to do so by the board of directors. (Rev.C. 441(e).)

(e) If property is owned by a financial institution and leased to an entity that is not a financial institution, the statement must be submitted by the financial institution. (Rev.C. 441(f).)

(f) The assessor may refuse to accept a statement that he or she determines to be in error. (Rev.C. 441(g).)

(g) The statement must describe all taxable property owned, claimed, possessed, controlled, or managed by the person filing it, and give its location. (Rev.C. 442, 443, 445.) (On exclusion from lessor's statement of certain exempt

property leased with option to acquire, see Rev.C. 442(c).) But the taxpayer need not fix a *valuation*; this is the assessor's duty. (See *Clunie v. Siebe* (1896) 112 C. 593, 597, 44 P. 1064.) (On application to have parcel separately valued, see Rev.C. 2821 et seq.)

The State Board of Equalization prescribes the specific wording of property statements that assessors are required to use. (Rev.C. 452.) In lieu of completing a statement, a taxpayer may furnish information on attachments to the statement in a form specified by the assessor. (Rev.C. 441.5.)

A property statement may be amended, to correct errors or omissions that the person who filed the statement did not wilfully intend to erroneously report, until May 31 of the year in which it is due. The penalty authorized by Rev.C. 463, *supra*, does not apply to an amended statement received before May 31, as long as the original statement is not subject to a penalty under Rev.C. 441(b). The remaining requirements of Rev.C. 441 et seq. apply to the amended statement. (Rev.C. 441(i).)

A property statement may be filed by the use of electronic media. In lieu of the signature required by Rev.C. 441(a) and the declaration under penalty of perjury required by Rev.C. 441(b), property statements filed using electronic media must be authenticated as specified by the assessor and the board. "Electronic media" includes computer modem, magnetic media, optical disk, and facsimile machine. (Rev.C. 441(k).)

(2) *Change of Ownership Statement.* A change in the ownership of certain property requires a reappraisal. (See *supra*, §147 et seq.) Thus, assesseees are required to report changes in ownership to the assessor. (Rev.C. 90; see Rev.C. 480 et seq.) Generally, the transferee of real property or a manufactured home must file a change in ownership statement in the county where the property is located. However, a statement is not required for property that is not locally assessed. (Rev.C. 480(a).) Where a decedent owned real property subject to probate proceedings, the decedent's personal representative must file a statement prior to or at the time the inventory and appraisal are filed. In all other cases in which a change of ownership occurs because of death, the transferee, or the trustee if the property was held in trust, must file the statement within 150 days of the death. (Rev.C. 480(b), (e).)

The statement is made under penalty of perjury and must include, but is not limited to, "a description of the property, the parties to the transaction, the date of acquisition, the amount, if any, of the consideration paid for the property, whether paid in money or otherwise, and the terms of the transaction," as well as a notice, concerning penalties, set forth in the statute. (Rev.C. 480(c).) The statement must be filed with the assessor within 45 days after the change of ownership. (Rev.C. 480(e).) In lieu of filing with the assessor, a statement may be filed with the recorder at the time other change of ownership documents are filed. (Rev.C. 480(d).) (On filing statements concerning change in ownership or control of corporations, partnerships, and other legal entities, see Rev.C. 480.1, 480.2; on preliminary change of ownership reports provided by recorders and assessors, see Rev.C. 480.3, 480.4; on reporting conveyance of right to use tax exempt property, see Rev.C. 480.5.)

Change of ownership statements are confidential and are not open to public inspection. (Rev.C. 481.) (See 1 Ehrman 3d, §2:28.)

(3) *Information or Records.* The assessor may also require a person to make available information or records regarding the person's property or other personal property on premises the person owns or controls. (Rev.C. 441(d)(1), 470 [business records].) The duty to make information and records available extends to "an owner-builder or an owner-developer of new construction that is sold to a third party, is constructed on behalf of a third party, or is constructed for the purpose of selling that property to a third party." (Rev.C. 441(d)(2).)

If a taxpayer fails to provide information requested under Rev.C. 441(d) and introduces requested materials or information at an assessment appeals board hearing (see *infra*, §243 et seq.), the assessor must be granted a continuance for a reasonable period of time. The continuance will extend the 2-year period specified in Rev.C. 1604(c) (see *infra*, §247) by the amount of the continuance. (Rev.C. 441(h).)

The assessor may request any person within the county to make an affidavit showing name, residence, and whether he or she is the owner of any taxable property. (Rev.C. 453.) The assessor may subpoena and examine a person as to a furnished statement. (Rev.C. 454.) The assessor may demand a legal description of land from the owner or person in possession. (Rev.C. 456 et seq.) (See Rev.C. 469 [assessor to audit books and records of profession, trade, or business with trade fixtures and business tangible personal property valued at \$ 400,000 or more; refund procedure where audit discloses overvaluation].)

Rev.C. 441(d)(1) provides that details of "property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties." The scope of this provision was examined in *Roberts v. Gulf Oil Corp.* (1983) 147 C.A.3d 770, 195 C.R. 393. Plaintiff county assessor obtained a subpoena duces tecum compelling defendant corporation to produce records concerning its oil and gas properties. Defendant conceded that it was required to furnish raw data, but refused to furnish interpretative data on studies, reports, and projects. *Held*, plaintiff was entitled to interpretative data.

(a) *Relevant documents.* The statutes are broadly worded and do not support a distinction between raw and interpretative data. (147 C.A.3d 783.) "The subjective/objective distinction ... is singularly inappropriate in the context of the assessment and appraisal of oil and gas interests. ... The value of such property is constantly changing as a result of economic factors and discovery or refinement of technological processes. Due to the unique quality of oil and gas interests, most, if not all of the data pertaining to the characteristics of the property could be considered interpretative to a certain degree." (147 C.A.3d 784.)

(b) *Right to privacy.* Defendant's assertion of the right to privacy in interpretive data was unavailable. (147 C.A.3d 787.) (See 7 Summary (10th), *Constitutional Law*, §577.)

(4) *Noncompliance.* If a person fails to furnish required information or records, the assessor may apply to the superior court for an order directing the person to appear and answer concerning the person's property. (Rev.C. 468.) It is a misdemeanor to wilfully give a false statement or to refuse to give the required information. (Rev.C. 461, 462.) (On arbitrary and penal assessments, see *infra*, §230.)

No person or entity may maintain an action to enforce the terms of an agreement providing for a change of ownership of real property until the agreement is recorded and a change of ownership agreement is filed with the county recorder. (C.C.P. 1062.10; see 3 Cal. Proc. (4th), *Actions*, §206.)

West's Key Number Digest, Taxation k.328.1

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Personal Property Statement.* On property statement for fleet of fractionally owned aircraft, see Rev.C. 441(l), added in 2007. On personal property statement for commercial air carriers, see Rev.C. 441(m), added in 2005 and relettered in 2007. (2) *Change of Ownership Statement.* On statement filed by owners of cooperative housing corporation, community apartment project, condominium, planned unit development, or other residential subdivision complex with common areas or facilities in which units or lots are transferred without use of recorded deeds, see Rev.C. 480.8, added in 2007.

(3) *Information or Records.* *Audit of profession, trade, or business:* Rev.C. 469 was amended in 2008. The \$ 400,000 trigger for audits was removed. Instead, 50% of audits are to be conducted on taxpayers who have the largest assessments of locally assessable trade fixtures and business tangible personal property in the county, while the other 50% are to be selected in a manner that is fair and equitable to all taxpayers. (Rev.C. 469(b)). (4) *Noncompliance.*

Cross-Reference: 3 Cal. Proc. (5th), *Actions*, §210.



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9 Witkin Sum. Cal. Law Tax § 230

[§ 230] Arbitrary and Penal Assessments.

(1) *Arbitrary Assessment Where Information Is Not Furnished.* If, after written request, a person fails to furnish information required by Rev.C. 441 or 470 (see supra, §229), the assessor must "estimate" the value of the property on the basis of information in the assessor's possession and promptly assess it, i.e., make an arbitrary assessment. (Rev.C. 501.) (See *Domenghini v. San Luis Obispo* (1974) 40 C.A.3d 689, 695, 115 C.R. 608 [assessor's functions are "inquisitorial not adversary"].) If, after a written request, the assessor does not receive sufficient change of ownership information, the assessor must estimate the value of the property and assess it on the basis of the estimate. (Rev.C. 485.)

(2) *Penal Assessment Where Statement or Affidavit Is Not Filed.* If a person fails to file a required or requested property statement within the prescribed time under Rev.C. 441 (see supra, §229), or fails to make an affidavit of name and residence on request under Rev.C. 453 (see supra, §229), the assessor must add a penalty of 10% of the assessed value of the unreported taxable property. (Rev.C. 463; see Rev.C. 531 [escape assessments made as result of owner's failure to file property statement are subject to penalty provided by Rev.C. 463].) Failure to file a timely change of ownership statement results in a monetary penalty added to the assessment and treated like a special assessment. (Rev.C. 482, 482.1; see Rev.C. 2516 [assessor to enter on assessment records fact that penalty has been added to assessment roll]; on abatement of penalty, see Rev.C. 483; on use of other sanctions generally available to assessor, see Rev.C. 484.)

(3) *Penal Assessment for Fraud.* If personal property is wilfully concealed or misrepresented to evade taxation, the assessor must assess the property in the "lawful amount" and impose a penalty of 25% of the additional assessed value. (Rev.C. 502, 504.) If taxable property escapes assessment through the taxpayer's fraud or fraudulent collusion with the assessor or the assessor's deputies, the assessor must assess the property in the "lawful amount" and impose a penalty of 75% of the additional assessed value. (Rev.C. 503.) A 25% penalty is imposed where an exemption was incorrectly allowed because of erroneous information knowingly given by a claimant (Rev.C. 531.1, 531.5, 531.6), and where there was a wilful or fraudulent failure to report the cost of personal property, or to report taxable business property, accurately (Rev.C. 531.3, 531.4). (On penal assessment of state assessed property, see Rev.C. 863, 866.)

(4) *Tax Rate.* The tax rate applicable to arbitrary and penalty assessments is the rate "to which the property would have been subject if it appeared upon the roll in the year when it should have been lawfully assessed." (Rev.C. 506.)

(5) *Interest.* Arbitrary and penalty assessments bear interest at the rate of three-fourths of one percent per month from the date "taxes would have become delinquent if they had been timely assessed to the date the additional assessment is added to the assessment roll." (Rev.C. 506.)

(6) *Notice.* No arbitrary or penal assessment made under Rev.C. 501 et seq. is effective until the assessee has been notified of the assessment (Rev.C. 534(b)), and notice must also be given of a penalty assessment for failure to file a statement or affidavit (Rev.C. 463). Rev.C. 534(c) describes the required contents of the notice. The notice must be on a form approved by the board. (Rev.C. 534(d)(1).) Giving the notice required by Rev.C. 531.8 (infra, §233) does not satisfy the requirements of Rev.C. 534. (Rev.C. 534(d)(2).)

(7) *Statute of Limitations.* Special limitation periods are prescribed:

(a) For the penalty assessment under Rev.C. 504, the limitations period is 8 years. (Rev.C. 532(b)(1).)

(b) For arbitrary assessments under Rev.C. 501 et seq., the limitations period is 4 years. (Rev.C. 532(a).)

(c) For a penalty assessment under Rev.C. 503 following a change in ownership or change in control, there is no limitations period. (Rev.C. 532(b)(3).)

For purposes of the statute of limitations, an arbitrary or penalty assessment is deemed made on the date it is entered on the roll if the assessee is notified of the assessment "within 60 days after the statute of limitations or the placing of the escape assessment on the roll." Otherwise, the assessment is deemed made on the date the assessee is notified. (Rev.C. 534(b).)

SUPPLEMENT: [This section is current through the latest supplement]



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1. Grounds.

9 *Witkin Sum. Cal. Law Tax* § 231

[§ 231] Grounds.

(1) *General Authorization.* If property has escaped assessment, the assessor must assess the property on discovery at its value on the lien date for the year for which it escaped assessment. It will be subject to the tax rate in effect in the year of its escape except as provided in Rev.C. 2905. (Rev.C. 531; see Rev.C. 2905 [rate on unsecured property]; *De Luz Homes v. San Diego* (1955) 45 C.2d 546, 560, 290 P.2d 544; *Bauer-Schweitzer Malting Co. v. San Francisco* (1973) 8 C.3d 942, 945, 106 C.R. 643, 506 P.2d 1019 [rule applied even though taxpayer accurately reported cost or value figures, with error due to assessor's having used improperly low assessment ratio]; *Ex-Cell-O Corp. v. Alameda* (1973) 32 C.A.3d 135, 139, 107 C.R. 839 [rule applied where taxpayer reported only original cost of machines, resulting in underassessment; following *Bauer-Schweitzer*]; *Western Title Guaranty Co. v. Stanislaus* (1974) 41 C.A.3d 733, 745, 116 C.R. 351 [following *Bauer-Schweitzer*]; *Hewlett-Packard Co. v. Santa Clara* (1975) 50 C.A.3d 74, 80, 123 C.R. 195 [same]; *Apple Computer v. Santa Clara Assessment App. Bd.* (2003) 105 C.A.4th 1355, 1366, 130 C.R.2d 335 [where company alleged that it overpaid its property taxes in four specific years and assessor issued "Notice of Proposed Escape Assessment" for only 1 year, assessor could not refuse to audit other 3 years on ground that those years had already been equalized by stipulation]; 1 Ehrman 3d, Chap. 14.)

If the owner of property fails to file the property statement required by Rev.C. 441 (supra, §229), the property is deemed to have escaped assessment to the extent that the failure "results in no assessment or an assessment at a valuation lower than would have obtained had the property been properly reported." (Rev.C. 531.)

If real property escapes assessment "as a result of an unrecorded change in ownership or change in control for which a change in ownership statement" is required but is not filed (see supra, §229), the assessor appraises the property as of the date of the transfer and enrolls the difference in taxable value on the secured roll. (Rev.C. 531.2(b).)

Where real property has escaped assessment, the escape assessment does not "create or impose a lien or charge" on the property if the property has (a) "been transferred or conveyed to a bona fide purchaser for value," or (b) "become subject to a lien of a bona fide encumbrance for value." Instead, the escape assessment is entered on the unsecured roll in the name of the person who should have been assessed in the year of escape at the secured rate for that year. (Rev.C. 531.2(a).)

Escape assessments may be prorated when authorized by the county board of supervisors. (Rev.C. 531.2(c).) A county board of supervisors may also, by ordinance, prohibit an assessor from making an escape assessment that would result in an amount of taxes due that is less than the cost of assessing and collecting them. The ordinance may not, however, prohibit an escape assessment that would result in taxes exceeding \$ 50. (Rev.C. 531.9.)

(2) *Other Grounds.* Escape assessments are specifically treated in several additional sections:

(a) If an exemption, or any portion of an exemption, has been terminated or incorrectly allowed, an escape assessment must be made in the amount erroneously allowed. (Rev.C. 531.1.)

(b) If the assessee omits to report the cost of personal property accurately, so that a lower or no assessment results, that portion of the property as to which the cost was not reported must be assessed as property that has escaped assessment. (Rev.C. 531.3; see *Beckman Instruments v. Orange* (1975) 53 C.A.3d 767, 774, 125 C.R. 844 [assessment based on reports of standard, rather than actual, costs].)

(c) Where the assessee fails to report taxable business property accurately, causing the assessor not to assess or to underassess it, the property not accurately reported must be assessed as escaped property. (Rev.C. 531.4.)

(d) If a business inventory exemption was incorrectly allowed because of erroneous or incorrect information submitted by the taxpayer, an escape assessment must be made in the amount of the exemption. (Rev.C. 531.5.)

(e) If a homeowners' exemption has been incorrectly allowed, an escape assessment must be made under Rev.C. 531.1, in the amount of the exemption. (Rev.C. 531.6.)

(f) If a disabled veterans' exemption has been incorrectly allowed, an escape assessment must be made under Rev.C. 531.1, in the amount of the exemption. (Rev.C. 279.5.)

(g) Where property has been tax deeded to a taxing agency other than the state, and is thus not legally assessable on the local secured roll, it is deemed to have escaped assessment if it has not been declared tax defaulted for delinquent taxes and it has been redeemed. It is also deemed to have escaped assessment if the tax deed has been held invalid. For this purpose, the limitations period provided by Rev.C. 532 (infra, §232) does not apply. (Rev.C. 531.7.)

(h) Where the additional tax is over \$ 500, the assessed party may file a timely written request for installment payments and may pay the assessment over a 4-year period. (Rev.C. 4837.5(a).) The tax collector may charge the assessee the actual cost of processing a request to pay in installments. (Rev.C. 4837.5(i).)

(i) If the assessor's audit of a trade or business discloses property subject to an escape assessment, the original assessment of all property at the business location is subject to review, equalization, and adjustment (see infra, §243 et seq.), except where the property has been equalized for that tax year. (Rev.C. 469(b)(3).) Equalization of property does not preclude a subsequent audit and escape assessment when appropriate, but it does preclude an escape assessment being levied on that portion of the assessment that was subject to an equalization hearing. (Rev.C. 469(b)(2); see *Heavenly Valley Ski Resort v. El Dorado County Bd. of Equalization* (2000) 84 C.A.4th 1323, 1334, 101 C.R.2d 591 [Rev.C. 1605(e) entitles taxpayer to administrative review by county board of equalization if audit under Rev.C. 469 reveals property that was underassessed or overassessed, regardless of whether escape assessment is actually levied].)

(j) An escape assessment may be made if a welfare exemption was granted while property was "in the course of construction" under Rev.C. 214.2 (supra, §188) and construction is abandoned or the property is used after completion for other than religious, hospital, or charitable purposes. If only a portion of the property is used for other than religious, hospital, or charitable purposes, that portion alone will be assessed as escaped property. The limitations period provided by Rev.C. 532 (infra, §232) does not apply to an assessment made for these reasons. (Rev.C. 532.2.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Other Grounds.*(i) *Original assessment subject to review:* Rev.C. 469(b)(3) was relettered Rev.C. 469(c)(3) in 2008. Rev.C. 469(b)(2) was relettered Rev.C. 469(c)(2) in 2008.

See *Los Angeles v. Raytheon Co. (2008) 159 C.A.4th 27, 36, 70 C.R.3d 788* [under former Rev.C. 469(b)(3) (now Rev.C. 469(c)(3)) and Rev.C. 1605(e), lessees with long-term leases had standing to seek reassessment of all property on which they had been assessed and had paid taxes, not just personal property for which county had issued escape assessment; lessees were beneficial owners and affected parties for property tax purposes].



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2. Time Limits.

9 Witkin Sum. Cal. Law Tax § 232

[§ 232] Time Limits.

(1) *Escape Assessments.* Escape assessments must be made within the following time periods:

(a) An assessment resulting from an unrecorded change in ownership for which either a change in ownership statement required by Rev.C. 480 or a preliminary change in ownership report required by Rev.C. 480.3 is not filed must be made within 8 years after July 1 of the assessment year in which the property escaped taxation or was underassessed. An "unrecorded change in ownership" means a deed or other document evidencing a change in ownership that was not filed with the county recorder's office at the time the event took place. (Rev.C. 532(b)(2).) There is no limitations period for a property that escaped taxation or was underassessed and for which a change in ownership statement required by Rev.C. 480.1 or 480.2 was not filed. (Rev.C. 532(b)(3).)

(b) Assessments that include the penalty provided by Rev.C. 504 (supra, §230) must be made within 8 years after July 1 of the assessment year in which the property escaped taxation or was underassessed. (Rev.C. 532(b)(1).) There is no time limit for assessments that follow a change in ownership or a change in control and that include the penalty provided in Rev.C. 503 (supra, §230). (Rev.C. 532(b)(3).)

(c) Other assessments must be made within 4 years. (Rev.C. 532(a).)

The periods provided by Rev.C. 532 begin July 1 of the assessment year in which the property escaped taxation or was underassessed. In *Dreyer's Grand Ice Cream v. Alameda* (1986) 178 C.A.3d 1174, 1180, 224 C.R. 285, Cal. Const., Art. XIII A, and Rev.C. 532 were "harmonized" and the phrase "assessment year" was construed to mean the year in which the base value of the property was determined under Art. XIII A. The 1987 Legislature rejected this interpretation by amending the statutes to incorporate the definition of "assessment year" in Rev.C. 118. The enacting legislation provided in part: "[T]he provisions of law relating to escape assessments are in no way inconsistent with Article XIII A. ... [A]n escape assessment is merely a mechanism for implementing existing property tax law and cannot be in conflict with it." Accordingly, the amendments to Rev.C. 532 made by this act are necessary to make clear that an escape assessment resulting from the correction of an error in a base year value may be made within the applicable time period after the first day of July of the assessment year in which the property either wholly escaped taxation or was under

assessed. (Stats. 1987, Chap. 537, §1(b).)

Hence, for purposes of determining the time limits provided in Rev.C. 532, "assessment year" means the period defined in Rev.C. 118. (Rev.C. 532(c).) An escape assessment is deemed made on the date it is entered on the roll if the assessee is notified "within 60 days after the statute of limitations or the placing of the escape assessment on the roll." Otherwise, the assessment is deemed made on the date the assessee is notified. (Rev.C. 534(b); see *Blackwell Homes v. Santa Clara* (1991) 226 C.A.3d 1009, 1016, 277 C.R. 251 [escape assessments made within 4 years of July 1 of the assessment year in which property escaped taxation, but more than 4 years after March 1, when new base year value for property was determined, were timely; rejecting *Dreyer's Grand Ice Cream v. Alameda*].)

(2) *Supplemental Assessments*. Rev.C. 75.11, governing supplemental assessments, prescribes time limits similar to those applicable to escape assessments under Rev.C. 532. (See *supra*, §162.) The amendment adding those time limits may not be construed to alter the application of the limitations period for escape assessments established by Rev.C. 532 and interpreted by *Blackwell Homes v. Santa Clara*. (Stats. 1992, Chap. 663, §3.)

In *Montgomery Ward & Co. v. Santa Clara* (1996) 47 C.A.4th 1122, 55 C.R.2d 261, plaintiff acquired leasehold interests in five parcels of commercial real property in June 1988, resulting in a change of ownership for assessment purposes (see *supra*, §147 et seq.). Plaintiff immediately notified the State Board of Equalization and defendant county. Defendant did not reassess the parcels, revise base year values, and bill plaintiff for underassessments based on the difference between the old and new base year values until April, 1993. Plaintiff paid the taxes under protest and sued for a refund. The trial judge held that the escape assessments were not time barred. *Held*, affirmed.

(a) Under Rev.C. 75.11(d) (*supra*, §162), defendant could not levy supplemental assessments for the 1988-89 assessment year. However, it could levy escape assessments for subsequent years. (47 C.A.4th 1132.)

(1) Base year values can be corrected at any time. Rev.C. 51.5(a) allows assessors who have not exercised their judgment as to value to correct base year values "whenever it is discovered that a base-year value does not reflect applicable constitutional or statutory valuation standards or the base-year value was omitted." (47 C.A.4th 1133.) Where, as here, the assessor has taken no action to adjust the base value, he has not exercised his judgment as to value. (47 C.A.4th 1137, 1138.)

(2) Rev.C. 51.5(d) permits assessors to levy "appropriate," i.e., timely, escape assessments when revaluation results in an increase in the base year value. Under Rev.C. 532, escape assessments must be made within 4 years after July 1 of the assessment year (as defined in Rev.C. 118) in which the property escaped taxation or was underassessed. (47 C.A.4th 1134.) Here, defendant levied escape assessments in April 1993 for the 1989-90, 1990-91, 1991-92, and 1992-93 assessment years. These escape assessments were timely. (47 C.A.4th 1138.)

(b) The escape assessments are not barred by C.C.P. 338(a), which establishes a 3-year statute of limitations for actions "upon a liability created by statute" (see 3 Cal. Proc. (4th), *Actions*, §607 et seq.). This statute has no applicability here. Defendant has not brought a civil action against plaintiff and does not need to do so to perfect its lien for taxes. (47 C.A.4th 1138.)

(c) The escape assessments are not barred by equitable principles. Even in the extreme situation where property is not reassessed until 100 years after the triggering event, there is no inequity because the property owner will have received a substantial windfall: 96 years of paying less than its fair share of property taxes and responsibility to pay escape assessments for only the last 4 years. (47 C.A.4th 1140.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Supplemental Assessments*.

Cross-Reference: 3 Cal. Proc. (5th), *Actions*, §664 et seq.



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3. Notice.

9 *Witkin Sum. Cal. Law Tax* § 233

[§ 233] Notice.

The assessor must mail or deliver notice of a proposed escape assessment at least 10 days before the assessment is enrolled. (Rev.C. 531.8.) Furthermore, an escape assessment is not effective unless the assessee has been notified of it personally or by United States mail at the address contained in the county assessor's official records. (Rev.C. 534(b).) Rev.C. 534(c) describes the required contents of the notice. The notice must be on a form approved by the board. (Rev.C. 534(d)(1).) Giving the notice required by Rev.C. 531.8 does not satisfy the requirements of Rev.C. 534. (Rev.C. 534(d)(2).)

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3. Claim of Exemption.

a. In General.

9 Witkin Sum. Cal. Law Tax § 234

[§ 234] In General.

(1) *Form of Claim.* A taxpayer may claim an exemption by filing an affidavit in the form prescribed by statute. (Rev.C. 251 et seq., 254; see Rev.C. 254.2 [affidavit is not required for federal migratory water fowl exemption]; on procedure for claiming exemptions, see 1 Ehrman 3d, Chap. 6; on claims procedure applicable to lessors of certain exempt property leased with option to acquire, see Rev.C. 251(b).)

For the following exemptions, the contents of the claimant's affidavit are specified by statute:

(a) Veterans' exemption. (Rev.C. 252, 252.1; on procedure for filing affidavit, see Rev.C. 252, 252.1, 254.5; on alternative procedure where claimant is unavailable or incapacitated, see Rev.C. 253.)

(b) Homeowners' exemption. (Rev.C. 253.5.)

(c) Church exemption. (Rev.C. 256(a).)

(d) Cemetery exemption. (Rev.C. 256.5.)

(e) Religious exemption. (Rev.C. 257.)

(f) College exemption. (Rev.C. 258.)

(g) Exhibition exemption. (Rev.C. 259.)

(h) Welfare exemption. (Rev.C. 259.5; on procedure for filing affidavit, see Rev.C. 254.5.)

(i) Veterans' organization exemption. (Rev.C. 259.7.)

(j) Library exemption. (Rev.C. 259.8.)

(k) Museum exemption. (Rev.C. 259.9.)

(l) Public school exemption. (Rev.C. 259.10.)

(m) Historical aircraft exemption. (Rev.C. 259.11.)

(n) Disabled veterans' exemption. (Rev.C. 277.)

(2) *Assessor's Notices.* Annually, the assessor sends a church exemption claim form to recipients of the exemption in the preceding year (Rev.C. 256(b)), and a homeowners' exemption claim form to persons who acquired title to or recorded ownership of eligible dwellings in the preceding year (Rev.C. 255.3). (On bilingual homeowners' exemption claim forms, see Rev.C. 255.8.)

Annually, the assessor sends notices of the circumstances under which property may no longer be eligible for various exemptions to persons claiming or receiving the exemptions in the previous year, including (a) the religious exemption (Rev.C. 257.1), (b) the disabled veterans' exemption (Rev.C. 278), (c) the homeowners' exemption (Rev.C. 2615.5), and (d) the welfare exemption (Rev.C. 254.5(c)(2)).

(3) *Time To File.* Exemption affidavits must generally be filed with the assessor between the lien date and February 15. (Rev.C. 255(a); on partial veteran's exemption in event of late filing, see Rev.C. 273.5, 276.) There are two exceptions:

(a) Homeowners' exemption must be filed between the date of eligibility and February 15. (Rev.C. 255(b); on partial exemption in event of late filing, see Rev.C. 275; on extension for timely, but defective, claim, see Rev.C. 255.1.) If a timely affidavit for the veterans' exemption is filed, a homeowners' exemption affidavit may be filed within 15 days after notice by the assessor that the claimant is ineligible for the veterans' exemption. (Rev.C. 255.2.)

(b) A claimant who has been found ineligible for the church or religious exemption may file a welfare exemption affidavit within 15 days after notice by the assessor that the claimant is ineligible for the other exemptions. (Rev.C. 255(c).)

(4) *Verification of Claims.* The county assessor is required to verify eligibility for the following exemptions:

(a) Welfare exemption. (Rev.C. 254.5.)

(b) Veterans' organization exemption. (Rev.C. 254.5.)

(c) Homeowners' exemption. (Rev.C. 255.6.)

(d) Disabled veterans' exemption. (Rev.C. 279.)

(e) Veterans' exemption. (Rev.C. 280 et seq.)

(5) *Assessor's Declaratory Relief Action.* If an assessor concludes that a constitutional provision, statute, or rule is invalid, and that property should be assessed contrary to the provision, or proposes to adopt an interpretation of the provision that will deny or reduce an exemption of five or more taxpayers, the assessor must, in lieu of making the assessment, file a declaratory action against the board of equalization. (Rev.C. 538.) If the assessor fails to do so, a taxpayer who thereafter prevails in a refund suit is entitled to recover a reasonable attorneys' fee as costs. (Rev.C. 5152.)

(6) *When Claim Is Not Required.* Where a welfare exemption has been granted, reapplication in subsequent years is not required if there is no transfer or change in title of the exempt property and the property is used exclusively by a governmental entity or by a nonprofit corporation described in Rev.C. 214.15. However, the applicant must notify the assessor when the applicant becomes ineligible for the exemption or the property is no longer owned or otherwise fails to meet the requirements for the exemption. (Rev.C. 254.5(d).)

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SUPPLEMENT: [This section is current through the latest supplement]



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b. Noncompliance With Claims Procedure.

9 Witkin Sum. Cal. Law Tax § 235

[§ 235] Noncompliance With Claims Procedure.

(1) *Loss of Exemption.* Failure to comply with the claims procedure (see supra, §234) results in the loss of the exemption. (Rev.C. 260; see Rev.C. 4987 [taxes on exempt property may not be cancelled (see infra, §236) if statutory procedure for claiming exemption has not been followed]; *Chesney v. Byram* (1940) 15 C.2d 460, 465, 101 P.2d 1106; *McHugh v. Santa Cruz* (1973) 33 C.A.3d 533, 541, 109 C.R. 149 [veterans' exemption claimed for only 1 fiscal year was waived for later years]; 4 A.L.R.2d 744 [legislative regulation of conditions for asserting exemption].)

The right to claim a veterans' exemption or a welfare exemption with respect to real property is ordinarily waived unless the claimant's interest in the property is recorded on the lien date. (Rev.C. 261(a).) There are two exceptions:

(a) If a veteran has an interest in real property under an unrecorded contract of sale, the veteran can furnish the assessor with the contract and an affidavit stating that the veteran purchased the property pursuant to the contract and is obligated by its terms to pay the taxes. (Rev.C. 261(b).)

(b) Where a welfare exemption claimant has a possessory interest in publicly owned lands, water rights, or improvements on land owned by another, the claimant can furnish the assessor with a copy of the document giving rise to the interest or rights or a written statement attesting to the separate ownership of the improvements. (Rev.C. 261(c).)

(2) *Relief Statutes.* The failure in any year to claim, in a manner required by the laws in effect at the time the claim is required to be made, an exemption or classification that reduces a property tax is a waiver of the exemption or classification for that year. (Cal. Const., Art. XIII, §6.) This provision establishes constitutional authority for existing statutes that relieve individuals and organizations from hardship when an exemption or special classification is lost due to the failure to file for it. The provision applies only if an affidavit must be filed. Self-executing exemptions and classifications are not affected. Under Cal. Const., Art. XIII, §6, relief statutes may be changed, but the changes will have prospective effect only. (Task Force Report, supra, §109, p. 17.) (See *Scott v. State Bd. of Equalization* (1996) 50 C.A.4th 1597, 1603, 58 C.R.2d 376, supra, §153 [statute that extended time period for claiming parent-child exclusion did not violate Cal. Const., Art. XIII, §6].)

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c. Cancellation of Past Taxes.

9 *Witkin Sum. Cal. Law Tax* § 236

[§ 236] Cancellation of Past Taxes.

(1) *Exemption Not Properly Claimed.* Rev.C. 270 provides for partial cancellation (and refund) of past taxes where a college, cemetery, church, religious, exhibition, veterans' organization, library, museum, public school, community college, state college or university, tribal housing, or welfare exemption was available, but a timely exemption application was not filed. Ninety percent of the tax will be cancelled if an application is filed by the lien date of the year following the year the exemption was not claimed; 85% will be cancelled if the application is filed after that. (On late filing for veterans' exemption and cancellation of tax, based on absence due to military service, see Rev.C. 273; on late filing of veterans' exemption and partial cancellation of tax, see Rev.C. 273.5; on late filing of homeowners' exemption and partial cancellation of tax, see Rev.C. 275; on late filing of disabled veterans' exemption and partial cancellation of tax, see Rev.C. 276; on late filing for classification of vessel as a documented vessel under Rev.C. 227 and partial cancellation of tax, see Rev.C. 275.5; on procedure in obtaining cancellation and refund, see *Samarkand of Santa Barbara v. Santa Barbara* (1963) 216 C.A.2d 341, 358, 31 C.R. 151; *infra*, §§284, 285, 292 et seq.; on constitutionality of cancellation statutes, see *supra*, §19; on power to grant relief from failure to claim exemption, see Cal. Const., Art. XIII, §6, *supra*, §235.)

(2) *Property Acquired After Lien Date.* Rev.C. 271 provides similar relief where property is acquired by an exempt organization after the lien date, or where property is acquired after the lien date by an exempt organization that came into existence after the lien date. If the property was acquired (or the organization came into existence) after the lien date but before the beginning of the fiscal year, and the application for exemption is filed within 90 days from the first day of the month following the month in which the property was acquired or by February 15 of the following calendar year, whichever occurs earlier, the entire tax is cancelled. (Rev.C. 271(a).) If the application is filed thereafter, 85% of the tax is cancelled. (Rev.C. 271(b).) If the property was acquired during the fiscal year, the tax will be cancelled in proportion to the amount of time the property was held in exempt status. (Rev.C. 271(d); see *Community Television of Southern Calif. v. Los Angeles* (1975) 44 C.A.3d 990, 996, 119 C.R. 276 [proportionate cancellation for property acquired during fiscal year]; on procedure for cancellation where property is acquired by public entity, see Rev.C. 5082.1, 5086.1; on cancellation or refund where taxpayer failed to receive timely disability rating from United States Department of Veterans Affairs, see Rev.C. 276.1; on cancellation or refund where property is acquired after lien date by person eligible for disabled veterans' exemption, see Rev.C. 276.2.)

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4. Assessment Roll.

a. Nature and Content.

9 Witkin Sum. Cal. Law Tax § 237

[§ 237] Nature and Content.

On or before July 1 (Rev.C. 616), the assessor must complete the local assessment roll and deliver it to the auditor (Rev.C. 617). This is ordinarily a book or books, indexed and listing the property, real and personal, with the name and address of the assessee, the value of each individual item, the total taxable value of all property assessed except intangibles, and a few other matters. (Rev.C. 601 et seq.; see Rev.C. 23 [defining "assessee"]; Rev.C. 109 [defining "roll," "secured roll," "unsecured roll," "local roll," and "board roll"]; Rev.C. 109.5, 109.6, 618 ["machine-prepared roll," prepared by electronic data processing equipment or other mechanical device, may be used]; Rev.C. 255.7 [recorder must provide assessor with copy of transfer document when change of ownership is recorded]; 1 Ehrman 3d, Chap. 12.)

The roll must contain an adequate description of the property (see Rev.C. 602, 321 et seq.) so that the taxpayer may ascertain with certainty what property is assessed to him or her, and whether it is properly valued. The description must be sufficiently definite and certain to identify the property, but a variety of methods, e.g., U.S. surveys, official maps, metes and bounds, and city lot numbers, are authorized by statute. (Rev.C. 321 et seq.; see *Best v. Wohlford* (1904) 144 C. 733, 737, 78 P. 293; *Ward Redwood Co. v. Fortain* (1940) 16 C.2d 34, 44, 104 P.2d 813.)

Minor mistakes in the assessment roll are generally not fatal. Thus, failure to enumerate personal property in detail (Rev.C. 602(d)), or to subscribe the assessor's affidavit of diligent compliance (Rev.C. 616), do not affect the validity of the assessment; and the same is true of a mistake in the owner's name (Rev.C. 613). (On correction of assessment roll, see Rev.C. 4831 et seq.)

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b. Effect of Mistake in Description.

9 *Witkin Sum. Cal. Law Tax* § 238

[§ 238] Effect of Mistake in Description.

If the description on the roll is wholly insufficient to identify the property, the assessment may be void. (*Palomares Land Co. v. Los Angeles* (1905) 146 C. 530, 536, 80 P. 931 [insufficient metes and bounds]; *Wright v. Fox* (1907) 150 C. 680, 681, 89 P. 832 [lot and block designation without naming city or town; see Rev.C. 324]; *Teater v. Johnson* (1928) 95 C.A. 182, 185, 272 P. 313 [entire one-quarter section assessed to one person although 24 acres did not belong to him]; *Stewart v. Atkinson* (1928) 96 C.A. 50, 55, 273 P. 606 [reference to half of lot, without designating which half]; *Tasker v. Nieto* (1930) 108 C.A. 135, 149, 291 P. 688 [lot and block designation without naming city or town]; see *Morton v. Sloan* (1929) 96 C.A. 747, 750, 275 P. 223 [description by lot, block, and tract without reference to map, was sufficient where uncertainty could be removed by reference to assessor's block book or to map prepared pursuant to ordinance and available in city offices]; *Sinai v. Mull* (1947) 80 C.A.2d 277, 280, 181 P.2d 924 [assessment of "fraction" of lot in subdivision, but no designation of the particular portion]; *Alma Inv. Co. v. Krausse* (1953) 117 C.A.2d 740, 744, 256 P.2d 1017 [separate assessment of "mining rights" for first time should have more clearly indicated coverage of oil and gas interests].)

Because the government is said to act in hostility to the owner, parol evidence may not be introduced to supply a missing element, although it may be used to apply the description to the property. (*Best v. Wohlford* (1904) 144 C. 733, 737, 78 P. 293; *E.E. McCalla Co. v. Sleeper* (1930) 105 C.A. 562, 568, 288 P. 146; *Jacoby v. Wolff* (1926) 198 C. 667, 676, 247 P. 195.) But where the assessee was not in fact misled, a defective description may not be fatal. (*San Francisco v. San Mateo* (1941) 17 C.2d 814, 819, 112 P.2d 595.) This is obviously true where the description was taken from the taxpayer's own property statement. (*Smith v. Addiego* (1942) 54 C.A.2d 230, 242, 129 P.2d 953 [map furnished by owner]; *E.E. McCalla Co. v. Sleeper*.)

The parol evidence rule does not prevent a taxpayer from showing that a general description of the taxpayer's property on the assessment roll included interests that were not subject to taxation. (*Lockheed Aircraft Corp. v. Los Angeles* (1962) 207 C.A.2d 119, 126, 24 C.R. 316.)

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4. Assessment Roll.

c. Information to Assesseees.

9 *Witkin Sum. Cal. Law Tax* § 239

[§ 239] Information to Assesseees.

(1) *Notice to Assesseees.* On or before completion of the local roll (see *supra*, §237), the assessor must either: (a) notify each assessee of real property on the secured roll of the new assessed value of the property, if the full value has increased (Rev.C. 619(a)(1)) or (b) notify every assessee on the secured roll, or every assessee on both the secured and unsecured rolls, of the assessed value of the property as it will appear on the local roll (Rev.C. 619(a)(2)). The notice must include, among other things, information concerning county board of equalization hearings. (Rev.C. 619(b); see 1 Ehrman 3d, §12:11 et seq.)

The notice must be given by mail (Rev.C. 619(d)) or by publication (Rev.C. 621). (See Rev.C. 619.2 [notice to persons not required to file property statements]; Rev.C. 620 [assessee may pay taxes under protest where assessor fails to give notice under Rev.C. 619 or 621].)

Notice is not required for annual inflation increases in valuation authorized by Cal. Const., Art. XIII A, §2(b) (see *supra*, §157) (Rev.C. 619(f)) or for increases caused solely by changes in the assessment ratio in Rev.C. 401 (see *supra*, §214) (Rev.C. 619(g)).

Neither the assessor's failure to send the notice nor the assessee's failure to receive the information affects the validity of the assessment or the tax. (Rev.C. 619(e).)

(2) *Assessor's Market Data and Records.* The assessor must, on the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. "Market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor must provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the assessor may not display any document relating to the business affairs or property of another. (Rev.C. 408(d).)

With respect to information, documents, and records, other than market data as defined in Rev.C. 408(d), the assessor must permit an assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any penalties and interest. However, except as provided in Rev.C. 408.1, an assessee or representative may not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property. (Rev.C. 408(e).) (See 1 Ehrman 3d, Chap. 15; on inspection of records in Los Angeles County, see Rev.C. 408.2; on fees for providing information and inspection of records, see Rev.C. 409.)

Homeowners' exemption claims are not open to public inspection, but the assessor must maintain public records identifying claimants who have been granted the exemption. (Rev.C. 408(a).) To assist in enforcing tax liens, the assessor must disclose to the tax collector information used to prepare the delinquent portion of the unsecured roll, including Social Security numbers. (Rev.C. 408(c).)

In counties with a population of at least 50,000, the assessor must keep for public inspection a list of interests in property (other than undivided interests) transferred within the preceding 2 years. The assessor may charge an inspection fee in the lesser of \$ 10 or the actual cost of the inspection. (Rev.C. 408.1.)

Except as provided in Rev.C. 408, information and records not required by law to be kept or prepared by the assessor (Rev.C. 408(a)) and information requested by the assessor or furnished in a property statement (Rev.C. 451) are not open to public inspection. (See *Chanslor-Western Oil & Dev. Co. v. Cook* (1980) 101 C.A.3d 407, 412, 415, 161 C.R. 624 [business trade secrets are not "market data" that assessor must disclose].) However, except as provided in Rev.C. 451 and Rev.C. 481 (confidentiality of change in ownership statement; see supra, §229), "property characteristics" information (e.g., square footage, number of rooms, acreage) must be open to public inspection. (Rev.C. 408.3.)

In *Henderson v. Bettis* (1975) 53 C.A.3d 486, 126 C.R. 199, taxpayers, applying for reductions in assessments, demanded market data concerning their properties. The assessor refused to give it unless they exchanged information on the value of their properties that they intended to present to the board of equalization, pursuant to Rev.C. 1606 (see infra, §245). The trial court issued mandamus directing the assessor to comply with Rev.C. 408. *Held*, affirmed.

(a) Rev.C. 408 and 1606 are not in conflict. Rev.C. 408 is limited to sales information, while Rev.C. 1606 applies to all information on which an opinion of value will be based, and the assessor may initiate the exchange procedure when the assessed value is more than \$ 25,000 (now \$ 100,000). (53 C.A.3d 493, 494.)

(b) The purpose of Rev.C. 408 is to allow an assessee to inspect the information and records relating to the appraisal and assessment of his or her property, a right that before 1961 was normally denied. The subsequent enactment of Rev.C. 1606 should not be construed to take away that valuable right. (53 C.A.3d 494.) Thus, properly construed, Rev.C. 1606 is merely an alternative procedure to that under Rev.C. 408. (53 C.A.3d 495.)

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SUPPLEMENT: [This section is current through the latest supplement]

(2) *Assessor's Market Data and Records.* Rev.C. 408(a) was amended in 2006 to provide that disabled veterans' exemption claims are not open to public inspection.



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5. Assessment of Utilities Property.

a. Constitutional Provision.

9 Witkin Sum. Cal. Law Tax § 240

[§ 240] Constitutional Provision.

The property of public utilities, formerly taxed by the state, is now taxed by local subdivisions, just like other property. However, to overcome the difficult problems of valuation and allocation of the property to particular counties, the Constitution provides that the State Board of Equalization (*infra*, §250) must annually assess this "state assessed property" (Rev.C. 108) at its actual value, and that the assessed property is subject to taxation "to the same extent and in the same manner as other property." Taxes or license charges different from those imposed on mercantile, manufacturing, and other business corporations may not be imposed on utilities. However, utilities may be required to pay for special privileges or franchises granted by government bodies. (Cal. Const., Art. XIII, §19; see Rev.C. 721 et seq.; *Southern Calif. Tel. Co. v. Los Angeles* (1941) 45 C.A.2d 111, 114, 123, 113 P.2d 773; *Los Angeles v. Mono* (1959) 51 C.2d 843, 337 P.2d 465; *Pacific Gas & Elec. Co. v. Oakland* (2002) 103 C.A.4th 364, 368, 126 C.R.2d 660 [city violated Cal. Const., Art. XIII, §19, by imposing business tax on electric utility at higher rate than that at which it taxed retail sales businesses, automobile sales businesses, grocers, and wholesalers; fact that city taxed all electric utilities at same rate was irrelevant]; 20 U.C.L.A. L. Rev. 419 [assessment of public utility property in California].) The board also assesses intercounty pipelines, flumes, canals, ditches, and aqueducts. (Cal. Const., Art. XIII, §19; see *Southern Pac. Pipe Lines v. State Bd. of Equalization* (1993) 14 C.A.4th 42, 54, 17 C.R.2d 345 [while privately owned intercounty oil pipelines are assessed by state board under Cal. Const., Art. XIII, §19, lands and rights-of-way through which pipelines run are assessed locally]; 1 Ehrman 3d, Chap. 16.)

Cal. Const., Art. XIII, §19, confines state assessment to regulated railway, telegraph, or telephone companies, thereby making it clear that recreational railways and other nonregulated railways are to be locally assessed. It eliminates express companies from the list of state assessees, and it permits the Legislature to convert public utilities not now named in Cal. Const., Art. XIII, §19, from local assessees to state assessees. Moreover, the provision permits the State Board of Equalization to delegate to local assessors the duty of assessing property used but not owned by a state assessee where the taxes are to be paid by a local assessee. Electronic data processing equipment that a state assessee leases from a manufacturer or leasing company is an illustration of used but not owned property that can better be assessed locally where other property of the lessor is assessed. (Task Force Report, p. 27; *supra*, §109.)

SUPPLEMENT: [This section is current through the latest supplement]

See *Independent Energy Producers Assn. v. State Bd. of Equalization* (2004) 125 C.A.4th 425, 437, 22 C.R.3d 562 [although broad language of Cal. Const., Art. XIII, §19, grants board assessment jurisdiction over "companies transmitting or selling gas or electricity," that provision allows assessment of public utilities only; independent electric generators fall within definition of utilities because they have dedicated their property for providing power to public].



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5. Assessment of Utilities Property.

b. Procedure.

9 *Witkin Sum. Cal. Law Tax* § 241

[§ 241] Procedure.

(1) *Property Statement*. The board of equalization requires a property statement from the taxpayer owning or claiming state assessed property, and may require other information or records. (Rev.C. 826 et seq.) The statement must be made under oath and, in the case of corporations, must be signed by an officer or a duly designated employee or agent. (Rev.C. 826.) It must be filed annually (a) by March 1, if the board's request is mailed before the lien date, or (b) within 60 days after the request, if the request is mailed in the calendar year following the lien date. (Rev.C. 830(a), (b).) Failure to file is subject to financial penalty. (Rev.C. 830(c).) (On confidentiality of statements, see Rev.C. 833.)

(2) *Fair Market or Full Value*. State assessed property is valued and assessed at its "fair market value or full value" on January 1. (Rev.C. 722.) The principle of *unit valuation* may be used to value property operated as a unit in a primary function of the assessee. Property valued under the unit valuation principle is "unitary property." (Rev.C. 723.) Properties operated as a unit that is not part of the unit in the primary functions of the assessee are "operating nonunitary properties." (Rev.C. 723.1.)

(3) *Notice*. Notices must be mailed to assessees stating the assessed value of the property and the date and place for filing a petition for reassessment. (Rev.C. 731 [notice of assessment of unitary property must be mailed by June 1]; Rev.C. 732 [notice of assessment of nonunitary property must be mailed by July 31].)

(4) *Petition for Reassessment*. A petition for reassessment of unitary property must be filed no later than July 20 of the year of the notice. (Rev.C. 731.) The deadline for a petition for reassessment of nonunitary property is September 20. (Rev.C. 732.) The petitions must be filed at the headquarters of the board in Sacramento. (Rev.C. 731, 732.) The board may extend the period for filing a petition for reassessment once, for up to 15 days, if a written request for an extension is filed with the board before the expiration of the period for which the extension may be granted. (Rev.C. 733(b).) An assessment becomes final if a timely petition for reassessment is not filed. (Rev.C. 733(a).) (On extension of time because of Saturdays, Sundays, and holidays, see Rev.C. 724; on form and content of petition, see Rev.C. 741; on procedure following filing of petition, including hearing and notice of decision, see Rev.C. 742 et seq.)

(5) *Allocation of Assessments*. Assessments of unitary and operating nonunitary property are allocated to the assessment rolls prepared by the board among the counties in which the property is located. (Rev.C. 745.) Notice of the

allocations is given to the assessee, who may petition for correction of the allocations. (Rev.C. 746; see Rev.C. 747 et seq.)

(6) *Transmittal of Information to County Auditors.* On or before July 15, estimates of total unitary value and operating nonunitary value of state assessed property and, on or before July 31, the roll showing the unitary and operating nonunitary assessments made in each county, city, and revenue district are transmitted to the auditors of each county. (Rev.C. 755(a), 756(a).) (For allocation formula, see Rev.C. 100; for special rules applicable to regulated railways, see Rev.C. 100.1, 755(b), 756(b).)

(7) *Escape Assessments.* If the assessee of state assessed property fails to file the required property statement, or files an inaccurate statement, an escape assessment is authorized to the extent that the property is not assessed or is underassessed. (Rev.C. 862.) The assessment may be levied either in the year of discovery or the next succeeding year, and the tax rate of the year chosen is used. (Rev.C. 864(a).) (On escape assessment penalties, see Rev.C. 862, 863; on additional assessment in lieu of interest, see Rev.C. 864(a); on excessive assessment as offset against escape assessment, interest, and penalties, see Rev.C. 864(b), (c).)

SUPPLEMENT: [This section is current through the latest supplement]

(6) *Transmittal of Information to County Auditors.* For special rules applicable to regulated railways, see Rev.C. 100.11, added in 2006.



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D. Assessment Procedure.

5. Assessment of Utilities Property.

c. Valuation Methods.

9 Witkin Sum. Cal. Law Tax § 242

[§ 242] Valuation Methods.

(1) *In General.* The board of equalization has great latitude in selecting a valuation method. It may employ the capitalization of income method even though the amount assessed may exceed the amount derived from a formerly used valuation method. (*ITT World Communications v. Santa Clara* (1980) 101 C.A.3d 246, 254, 255, 256, 162 C.R. 186 [former method was reproduction cost new less depreciation].) However, a taxpayer is entitled to notice of the board's assessment method "sufficient to permit a challenge to the method and its application," and the board's findings must disclose the valuation method used. (*Southern Pac. Trans. Co. v. State Bd. of Equalization* (1987) 191 C.A.3d 938, 953, 237 C.R. 191 [assessment notice calculated value using six different methods; assessment that was not based on identifiable method was arbitrary]; see *Union Pac. R. Co. v. State Bd. of Equalization* (1991) 231 C.A.3d 983, 998, 282 C.R. 745 [composite life/no replacement cost model, which rests on assumption that future capital replacements will earn at least their capital costs, is improper method for evaluating railroad operating assets, due to mandated reinvestment and economic integration of assets].)

(2) *Unit Taxation.* In *ITT World Communications v. San Francisco* (1985) 37 C.3d 859, 210 C.R. 226, 693 P.2d 811, plaintiff public utility sought a property tax refund, alleging that the valuation of its property under the unit taxation method should have been adjusted to its 1975-1976 value under Cal. Const., Art. XIII A, §2 (supra, §145). *Held*, Art. XIII A (Proposition 13) is not applicable to state-assessed property.

(a) *Unit taxation is applicable to utility property.* The principle of unit taxation applies to the valuation of public utility property. "[U]nit taxation is properly characterized not as the taxation of real property or personal property or even a combination of both, but rather as the taxation of property *as a going concern*. First, what the Board assesses is the value of the public utility property as a going concern; it considers the earnings of the property as a whole, and does not consider, much less assess, the value of any single real or personal asset. Second, what the Board allocates to the local taxing authority is ... a share of the value of the public utility property as a going concern; it makes a formulary allocation based on considerations of equity, and does not even attempt to match the allocation to the fair market value of the particular assets of the utility situated within the jurisdiction." (37 C.3d 864.) "Unit taxation ... is simply not real property taxation either in substance or in form." (37 C.3d 865.)

(b) *No implied repeal of Cal. Const., Art. XIII, §19.* If Art. XIII A were construed to require assessment of public

utility property at its 1975-1976 value, it would impliedly repeal Cal. Const., Art. XIII, §19, to that extent. In order for a subsequent law to repeal a prior law by implication, it "must constitute a revision of the entire subject, so that the court may say that it was intended to be a substitute for the first." (37 C.3d 866, quoting *Board of Supervisors v. Loneragan* (1980) 27 C.3d 855, 167 C.R. 820, 616 P.2d 802.) Here, Cal. Const., Art. XIII A, is not a revision of the entire subject of taxation; it merely changes certain aspects of real property taxation. Thus, it cannot be construed to accomplish an implied repeal of Cal. Const., Art. XIII, §19. (37 C.3d 866.)

(c) *Scope of Cal. Const., Art. XIII A.* Art. XIII A applies only to locally assessed property, not to public utility property, which is state-assessed. (1) Cal. Const., Art. XIII A, §2, defines "full cash value" as "the county's assessor's valuation," and "seems clearly to exclude state-assessed property from its coverage." (37 C.3d 868.) (2) The contemporaneous interpretation of Cal. Const., Art. XIII A, §2, by the State Board of Equalization and the Legislature, that §2 is not applicable to state assessed property, is entitled to great weight. (37 C.3d 869, citing *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22 C.3d 208, 149 C.R. 239, 583 P.2d 1281, supra, §146.)

(d) *Equal valuation not required.* Cal. Const., Art. XIII A, does not apply to public utility property indirectly through Cal. Const., Art. XIII, §19, which provides that public utility property is "subject to taxation to the same extent and in the same manner as other property." (37 C.3d 869.) Cal. Const., Art. XIII, §19, does not impose a requirement of equal valuation between public utility property and other property; it merely specifies that public utility property, once placed on local tax rolls, must be levied on at the same rate as locally assessed property. (37 C.3d 870.)

In *Los Angeles SMSA Ltd. Partnership v. State Bd. of Equalization* (1992) 11 C.A.4th 768, 14 C.R.2d 522, plaintiff cellular telephone company, a public utility, sought a property tax refund, alleging that defendant board's assessment improperly included the value of its F.C.C. license, an intangible asset not subject to tax. Plaintiff also claimed unconstitutional discrimination because the F.C.C. licenses of radio and television stations, and of a competing cellular telephone company, were not taxed. *Held*, the unit taxation of plaintiff as a going concern, undifferentiated into separate types of assets, was proper and constitutional.

(a) Although intangible property is exempt from property taxation, it may enhance the value of taxable tangible property. Unit taxation prevents real but intangible value from escaping assessment by treating public utility property as a whole, undifferentiated into separate assets or separate kinds of assets. (11 C.A.4th 776, 777, citing *ITT World Communications v. San Francisco*.)

(b) The fact that the F.C.C. licenses of radio and television stations were not assessed did not violate Cal. Const., Art. XIII, §19, does not mandate equal valuation or assessment between defendant and counties, only equal tax rates. Radio and television broadcasters are not public utilities and are not necessarily subject to this type of unit assessment. (11 C.A.4th 779.)

(c) Nor did defendant's assessment of plaintiff violate federal guaranties of equal protection relative to its assessment of a competing cellular telephone company. The competitor was assessed using a cost approach, rather than a capitalized income indicator, only because it had incurred a loss in the previous tax year and there was no historical net income to capitalize. Any disparity in treatment was appropriate, isolated, and temporary, and did not violate equal protection guaranties. (11 C.A.4th 781.)

In *GTE Sprint Communications Corp. v. Alameda* (1994) 26 C.A.4th 992, 32 C.R.2d 882, plaintiff telephone company sought property tax refunds for 2 tax years, alleging that the board of equalization unlawfully included the value of nontaxable intangible assets in the unit appraisal of the company's California property. The board contended that its unit valuation methods, a combination of the capitalized earnings ability (CEA) approach and the reproduction cost new less depreciation (RCNLD) approach, automatically assessed only the enhancement value of the intangible assets. The trial court denied plaintiff's claim for refunds. *Held*, reversed and remanded to the board for a rehearing. The valuation methodology used by the board to assess plaintiff's tangible property was invalid, because it did not satisfactorily account for the value of plaintiff's intangible assets. Although the value of intangible assets may be

included in the valuation of taxable tangible property, the board should not have assumed that its unit valuation methodology necessarily taxed only the enhancement value of the intangibles. The board erred when, without explanation, it failed to identify, value, and exclude intangible assets such as trade name, customer base, and assembled work force, from assessment, despite plaintiff's evidence of these assets. (26 C.A.4th 1003.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Unit Taxation.* See *Independent Energy Producers Assn. v. State Bd. of Equalization* (2004) 125 C.A.4th 425, 437, 22 C.R.3d 562 [Rev.C. 721.5, which authorizes state board to assess electric generation facilities with capacity of 50 megawatts or more, does not violate Proposition 13, even though it was passed by simple majority vote; Proposition 13's restrictions on taxation of real property have no application to unit taxation of public utility property under Cal. Const., Art. XIII, §19; following *ITT World Communications v. San Francisco* (1985) 37 C.3d 859, 210 C.R. 226, 693 P.2d 811, text, p. 364].



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E. Equalization.

1. County Board of Equalization.

a. Nature and Function.

9 *Witkin Sum. Cal. Law Tax* § 243

[§ 243] Nature and Function.

The Constitution and the Revenue and Taxation Code provide for two boards of equalization to correct errors in judgment or mistakes of assessors, and to equalize the valuation of taxable property for the purpose of taxation: the State Board of Equalization (see *infra*, §250) and the county board of equalization. The county board of equalization consists of one of two bodies:

(1) The board of supervisors. (See Cal. Const., Art. XIII, §16; Rev.C. 1604; *Universal Consol. Oil Co. v. Byram* (1944) 25 C.2d 353, 357, 153 P.2d 746; *Williamson v. Payne* (1938) 25 C.A.2d 497, 502, 77 P.2d 900; *Flying Tiger Line v. Los Angeles* (1958) 51 C.2d 314, 320, 333 P.2d 323; *Mission Housing Dev. Co. v. San Francisco* (1997) 59 C.A.4th 55, 79, 69 C.R.2d 185, *infra*, §247 [limitations period of Rev.C. 1604(c), *infra*, §247, does not violate requirement of Cal. Const., Art. XIII, §16, that assessment appeals boards determine assessed value].)

(2) An assessment appeals board, in counties where the board of supervisors has by ordinance created it. (See Cal. Const., Art. XIII, §16; Rev.C. 1620; *Los Angeles v. Tax App. Bd. No. 2 for Los Angeles* (1968) 267 C.A.2d 830, 834, 73 C.R. 469; *Stevens v. Fox Realty Corp.* (1972) 23 C.A.3d 199, 204, 100 C.R. 63; *Hunt-Wesson Foods v. Alameda* (1974) 41 C.A.3d 163, 168, 116 C.R. 160 [function of assessment appeals board is same as that of county board of equalization].) Two or more counties may create a joint assessment appeals board. (Cal. Const., Art. XIII, §16.)

The Legislature is required to provide for the number, qualifications, and terms of assessment appeals board members and their selection, appointment, and removal. It must also establish a procedure for joint assessment appeals boards. County boards of supervisors fix the compensation of assessment appeals board members and may provide for the discontinuance of assessment appeals boards. The supervisors are also required to furnish clerical and other assistance. (Cal. Const., Art. XIII, §16.)

The function of the board of equalization is to equalize assessments. It cannot decide legal questions of taxability. Thus, in *Board of Supervisors v. Archer* (1971) 18 C.A.3d 717, 96 C.R. 379, holders of grazing permits on federal land contended that, because the permits could be terminated by the government at any time, they were not possessory interests and had no taxable value. The assessor nevertheless assessed them. The county board of supervisors, sitting as a board of equalization, found that they had no value and ordered reduction of the assessments to zero. *Held*, the board

acted beyond its powers in determining as a matter of law that the interest was nontaxable. (18 C.A.3d 724.)

The board may act on its own motion to increase an assessment, but one property owner cannot apply to increase the assessment on another person's property. (*Stevens v. Fox Realty Corp.* (1972) 23 C.A.3d 199, 204, 100 C.R. 63; see 9 A.L.R.4th 428 [standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation].)

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SUPPLEMENT: [This section is current through the latest supplement]



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E. Equalization.

1. County Board of Equalization.
- b. Procedure Before County Board.
 1. In General.

9 *Witkin Sum. Cal. Law Tax* § 244

[§ 244] In General.

(1) *Statutes and Rules.* Equalization procedure is governed by statute (Rev.C. 1601 et seq.), by rules and regulations prescribed by the State Board of Equalization (*Govt.C. 15606(c); 18 Cal. Code Reg. §301* et seq.), and in some cases by local rules promulgated by the board of supervisors or the assessment appeals board. (See 2 Ehrman 3d, Chap. 27.)

County boards of supervisors must adopt rules of notice and procedures for assessment appeals boards "as may be required to facilitate their work and to insure uniformity in the processing and decision of equalization petitions." (Cal. Const., Art. XIII, §16; see *Stevens v. Fox Realty Corp. (1972) 23 C.A.3d 199, 204, 206, 100 C.R. 63.*)

(2) *Assessment Hearing Officers.* The board of supervisors may appoint assessment hearing officers to conduct hearings on assessment protests filed under Rev.C. 1601 et seq. (see *infra*, §244 et seq.) and to make recommendations to the county board of equalization or assessment appeals board concerning the protests. (Rev.C. 1636.)

The assessment hearing officer may conduct a hearing on an application for reduction of an assessment when all the following circumstances are present:

(a) The applicant is the assessee and has filed an application under Rev.C. 1603 (see *infra*, §245). (Rev.C. 1637(a)(1).)

(b) The total assessed value of the property does not exceed \$ 500,000, or the property is a single family dwelling, condominium, or cooperative, or a multiple family dwelling of four units or fewer, regardless of value. The \$ 500,000 limit does not apply to counties in which the board has adopted the alternative procedure authorized by Rev.C. 1641.1 (see *infra*, this section). (Rev.C. 1637(a)(2).)

(c) The applicant has requested that the hearing be held before a hearing officer. (Rev.C. 1637(a)(3).)

By resolution, the board of supervisors may require the assent of the assessor to hearings before an assessment hearing officer "in all cases in which the total assessed value on the current roll of the property under consideration exceeds a sum set by the resolution." The requirement may not apply to owner-occupied residential property. (Rev.C.

1637(b).) The applicant "may be represented in the hearing" and has the right to offer evidence. If the applicant is represented by an attorney, the assessor may be as well. The assessor and members of the assessor's staff may also present evidence. The hearing is conducted in accordance with Rev.C. 1601 et seq. (see *infra*, §244 et seq.) in an informal manner. (Rev.C. 1638.)

The hearing officer prepares a summary report on the proceedings and a recommendation on the assessment protest. These are transmitted in writing, at the conclusion of the hearing or by mail, to the protesting party or the party's agent and to the county board of equalization or assessment appeals board. (Rev.C. 1639, 1640, 1640.1.)

(3) *Alternative Procedure.* Ordinarily, the county board of equalization or the assessment appeals board is bound by the officer's recommendation and must establish the assessed value at the recommended value. (Rev.C. 1640, 1641.) However, the board of supervisors may, by resolution, adopt the following alternative procedure:

(a) The prevailing party is notified that the board is not bound by the officer's recommendation and that either the assessor or the prevailing party is entitled to a full hearing before the board. (Rev.C. 1640.1.)

(b) The prevailing party may request either acceptance or rejection of the officer's recommendation, and the assessor may request rejection. (Rev.C. 1641.1(a).)

(c) If a request is made, the board must accept the recommendation and change the assessed value in accord with Rev.C. 1610.8 or reject the recommendation and set the application for hearing. (Rev.C. 1641.1(a).)

(d) If no request is filed, the prevailing party or the assessor may apply for a hearing at which the board may consider, but is not bound by, the recommendation. (Rev.C. 1641.1(a).)

West's Key Number Digest, Taxation k.450(1)

SUPPLEMENT: [This section is current through the latest supplement]

(4) *(New) Finality of Hearing Officer's Decision.* The board of supervisors of a county in which a hearing officer exercises jurisdiction under Rev.C. 1637(a) may resolve that the hearing officer's decision on an assessment appeal application constitutes the final administrative decision of the county board of equalization or county assessment appeals board on that application, without any further action by the county board of equalization or county assessment appeals board. (Rev.C. 1641.5(a), added in 2005.) The resolution must be enacted by a majority of the entire membership of the board. In a county that adopts this type of resolution, the resolution supersedes Rev.C. 1640 and 1641. (Rev.C. 1641.5(b), added in 2005.)



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2. Notice and Application.

9 *Witkin Sum. Cal. Law Tax* § 245

[§ 245] Notice and Application.

(1) *Notice of Meeting.* The clerk of the board of supervisors gives published notice of completion of the assessment roll and of the time the county board will meet. (Rev.C. 1601; see Rev.C. 1628 [clerk of board of supervisors is clerk of assessment appeals board].) In counties with a population of 4 million or more (Los Angeles), the board meets on the fourth Monday in September (Rev.C. 1604(a)(1); *Govt.C. 28022*), and in all other counties on the third Monday in July (Rev.C. 1604(a)(2)). (On equalization of assessments made outside regular assessment period, see Rev.C. 1604 et seq.)

(2) *Application.* No reduction in assessment can be made unless the taxpayer or the taxpayer's agent files a verified, written application showing "the facts claimed to require the reduction and the applicant's opinion of the full cash value of the property." (Rev.C. 1603(a); see *DeMille v. Los Angeles* (1938) 25 C.A.2d 506, 509, 77 P.2d 905; *Rittersbacher v. Board of Supervisors of Los Angeles* (1934) 220 C. 535, 540, 32 P.2d 135; *Midstate Theatres v. Board of Supervisors* (1975) 46 C.A.3d 204, 209, 119 C.R. 894 [factual statement was adequate]; *Helene Curtis v. Assessment App. Bd.* (1999) 76 C.A.4th 124, 131, 90 C.R.2d 31 [taxpayer's application for reduction of escape assessment did not allow challenge to value of taxpayer's real property; although application listed six reasons for requesting change in value, taxpayer had only marked box for incorrect value of personal property and fixtures and thus had failed to give sufficient notice of intent to challenge real property assessment]; 2 Ehrman 3d, Chap. 26.)

The application must be filed between July 2 and September 15, inclusive. (Rev.C. 1603(b)(1); on stipulation extending time for filing, see Rev.C. 1603(c); on effect of September 15 as weekend day or legal holiday, see Rev.C. 1603(b)(4).) If a taxpayer does not receive a notice of assessment at least 15 calendar days prior to the filing deadline, the application (accompanied by an affidavit that the notice was not timely received) may be filed within 60 days of receipt of the notice or within 60 days of mailing of the tax bill, whichever is earlier. (Rev.C. 1603(b)(2).) Moreover, the last day of the filing period is extended to November 30 where the county assessor does not provide, by August 1, a notice, as described in Rev.C. 619, to all assessees of the assessed value of their real property as it appears on the completed local roll, including the annual inflation increases under Cal. Const., Art. XIII A, §2(b) (*supra*, §157). (Rev.C. 1603(b)(3).) The county assessor must notify the clerk of the county board of equalization and the county tax collector by April 1 of each year whether the notice will be provided by August 1. (Rev.C. 1603(b)(3)(A).) The clerk must certify the last day of the filing period and must immediately notify the State Board of Equalization whether the

last day of the filing period for the county will be September 15 or November 30. (Rev.C. 1603(b)(3)(B).) The State Board of Equalization must maintain a statewide listing of the time period to file an application in each county. (Rev.C. 1603(b)(3)(C).) The provisions of Rev.C. 621 are not a substitute for providing the notice specified in Rev.C. 1603(b)(3). (Rev.C. 1603(b)(3)(D); see *Helene Curtis v. Assessment App. Bd.*, *supra*, 76 C.A.4th 129 [upholding validity of administrative regulation providing that application may not be amended after filing deadline if effect of amendment is to request relief "additional to or different in nature from that originally requested"; regulation is reasonably necessary to effectuate purpose of Rev.C. 1603]; on notice under Rev.C. 619 and 621, see *supra*, §239.)

The form of the application is prescribed by the State Board of Equalization. (Rev.C. 1603(a).) The form must notify the applicant that written findings of fact of the local equalization hearing are available on written request at the applicant's expense. (Rev.C. 1603(e).) The form must contain a signature block in which the applicant, or the applicant's agent or attorney, certifies the truth of the information in the application. (Rev.C. 1603(f).)

A taxpayer and the county board of equalization may stipulate that an application involves only nonvaluation issues. Filing and accepting the stipulation is deemed compliance with the requirement that the taxpayer prosecute an application for reduction under Rev.C. 1601 et seq. in order to exhaust administrative remedies. (Rev.C. 5142(b).)

If a taxpayer or the taxpayer's agent files a duplicate application for reduction, the clerk may accept only the first application and may reject the duplicate. (Rev.C. 1603.5(a); for definition of "duplicate application for reduction," see Rev.C. 1603.5(b).)

Where the assessed value of the property involved, as shown on the current assessment roll, exceeds \$ 100,000 without regard to any exemption, the assessor may initiate an exchange of information with the applicant. (Rev.C. 1606(a).) Where information has been exchanged, neither party may introduce evidence on matters not so exchanged without the consent of the other party. However, each party may introduce new material relating to information received from the other party. (Rev.C. 1606(d); see *Henderson v. Bettis* (1975) 53 C.A.3d 486, 495, 126 C.R. 199, *supra*, §239; *Bank of America v. Fresno* (1981) 127 C.A.3d 295, 307, 179 C.R. 497 [Rev.C. 1606 requires reasonable notice of subject matter to be presented at hearing, not exchange of detailed evidence]; *State Bd. of Equalization v. Cenicerros* (1998) 63 C.A.4th 122, 130, 73 C.R.2d 539 [county rule adopted to govern assessment appeals board proceedings, concerning requests for information directed to and from assessor and taxpayer, was not preempted by Rev.C. 1606 even though in conflict with it; rule reflected procedures of Rev.C. 441, not Rev.C. 1606]; 1 Ehrman 3d, §15:3.)

Special rules apply to the assessment of mining or mineral property located in more than one county and alleged to be unitary property. (See Rev.C. 1642 et seq.)

(3) *Application Filing Services.* Making untrue or misleading statements in connection with the offering or performance of an assessment appeal application filing service is prohibited. Untrue or misleading statements include any of the following representations:

(a) That preparing an application guarantees a reduction of property taxes in a stated amount. (*B. & P.C. 17537.9(a)(1).*)

(b) That a fee is required for the county to process a reduction of a property's value. (*B. & P.C. 17537.9(a)(2).*)

(c) That the filing service has a file covering the person whose business the service is soliciting. (*B. & P.C. 17537.9(a)(5).*)

(d) That the service is, or is affiliated with, a governmental entity. (*B. & P.C. 17537.9(a)(6).*)

The service cannot mislead by using a governmental seal or emblem, by naming itself something that includes the words "appeal" or "tax" and "assessor" or "agency" or "bureau" or similar, specified words, or by using an envelope that could be mistaken for one sent by a governmental entity. (*B. & P.C. 17537.9(a)(6).*) The service must conspicuously

state, in capital letters, on any mailed solicitation: "This is not a government document." (B. & P.C. 17537.9(a)(6)(D).)

The service must disclose, in its advertising and oral solicitations, the following: "This assessment appeal application filing service is not associated with any government agency. If you disagree with the assessed value of your property, you have the right to an informal assessment review, at no cost, by contacting the assessor's office directly. If you and the assessor cannot agree to the value of the property or if you do not wish to contact the assessor you can obtain and file an application, at no cost, on your own behalf. An appeals board has the authority to raise property values (but in no case higher than the Proposition 13 protected value) as well as to lower property values." (B. & P.C. 17537.9(b).)

The offeror of the service must not represent that the offeror will complete the application in full or will be physically present to represent the assessee before the assessment appeals board, county board of equalization, or assessment hearing officer, unless the fee includes these services. (B. & P.C. 17537.9(a)(3), (a)(4).) The service cannot collect payment until after the assessment appeal application is filed with the clerk of the assessment appeals board. (B. & P.C. 17537.9(c).)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Application. Form of application:* The clerk of a county board of equalization may accept an electronically filed application for a changed assessment containing an electronic signature if all of the following criteria are met:

- (a) The application complies with all other requirements for filing. (Rev.C. 1603(g)(1), added in 2007.)
- (b) The electronic signature is accompanied by the certification described in Rev.C. 1603(f). (Rev.C. 1603(g)(2), added in 2007.)
- (c) The electronic signature is authenticated in a manner that is approved by the county board of supervisors, which may include the use of personal identification numbers the clerk has assigned to applicants. (Rev.C. 1603(g)(3), added in 2007.)



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3. Hearing Procedure.

9 *Witkin Sum. Cal. Law Tax* § 246

[§ 246] Hearing Procedure.

(1) *Majority Required.* A hearing of the application is held before the board, at which it may subpoena witnesses and take evidence. (Rev.C. 1607, 1609.4.) The taxpayer is entitled to a hearing before at least a majority of the board. (*Bandini Estate Co. v. Los Angeles* (1938) 28 C.A.2d 224, 230, 82 P.2d 185 [hearing before single member is denial of taxpayer's right]; *Universal Consol. Oil Co. v. Byram* (1944) 25 C.2d 353, 360, 153 P.2d 746 [determination by only two qualified members out of five was improper]; see *Midstate Theatres v. Stanislaus* (1976) 55 C.A.3d 864, 875, 128 C.R. 54 [dual representation of assessor and board by same deputy county counsel, contrary to *Govt.C. 31000.7*, denied fair hearing]; 2 Ehrman 3d, Chap. 27.)

(2) *Burden of Proof.* The taxpayer has the burden of proving that the assessment is unfair or discriminatory. (See *Leach Corp. v. Los Angeles* (1964) 228 C.A.2d 634, 637, 39 C.R. 654; *Schwarz v. Marin* (1969) 271 C.A.2d 120, 123, 76 C.R. 207.) However, "in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling or the assessment of an owner-occupied single-family dwelling," there is "a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor." (Rev.C. 167(a).) The rebuttable presumption in favor of the taxpayer or assessee also applies in the appeal of an escape assessment (Rev.C. 167(a); see *supra*, §231 et seq.), except when the appeal results from a taxpayer's failure either (a) to file a change in ownership statement or a business property statement, or (b) to obtain a permit for new construction. (Rev.C. 167(b).)

(3) *Notice of Hearing.* The board must give the taxpayer 45 days' notice of the hearing, unless the parties stipulate to a shorter notice period. (Rev.C. 1605.6.) This requirement is mandatory, not merely directory. If the board fails to comply with Rev.C. 1605.6, it does not acquire jurisdiction over the application and has no power to hear evidence or to determine value. (*International Medication Systems v. Assessment App. Bd.* (1997) 57 C.A.4th 761, 765, 767, 67 C.R.2d 394.)

(4) *Evidence.* "The hearing need not be conducted according to technical rules relating to evidence and witnesses." (Rev.C. 1609; see *Rancho Santa Margarita v. San Diego* (1933) 135 C.A. 134, 141, 26 P.2d 716; *Domenghini v. San Luis Obispo* (1974) 40 C.A.3d 689, 696, 115 C.R. 608.) However, the board acts in a judicial capacity and consequently

can make its orders only on the basis of legal evidence. (See *Universal Consol. Oil Co. v. Byram*, *supra*.) Where necessary, it may refer valuation of property to an appraisal commission consisting of the assessor, the chairman of the board, and the local member of the State Board of Equalization. (Rev.C. 1716 et seq.) The applicant has the right to introduce evidence of comparable sales. (Rev.C. 1609; see *Texaco Producing v. Kern* (1998) 66 C.A.4th 1029, 1050, 78 C.R.2d 433 [methods developed and employed by assessor's experts to appraise oil-producing property, even though newly created, were "sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs" and thus were admissible under Rev.C. 1609].) If the assessor intends to introduce evidence in support of a higher valuation than appears on the roll, the applicant must be informed of the valuation and the supporting evidence at least 10 days before the hearing. (Rev.C. 1609.4.) (On compulsory testimony of employees of the State Board of Equalization in hearings on reduction applications, see Rev.C. 1609.5.)

Depositions cannot be taken or considered. (Rev.C. 1609.4.)

(5) *Appearance and Examination of Taxpayer*. The board must examine the taxpayer or the taxpayer's agent under oath, and no reduction in assessment can be made unless the taxpayer or his agent attends the hearing and answers all pertinent questions. (Rev.C. 1607; see *Williamson v. Payne* (1938) 25 C.A.2d 497, 503, 77 P.2d 900 [upholding local board rule requiring personal attendance by taxpayer where possible].) However, the board may waive personal appearance by the taxpayer or agent in two situations:

(a) Where a written stipulation is signed by the assessor and the county legal officer and the taxpayer or the agent, as to the full and assessed value of the property, setting forth the facts on which the reduction in value is premised. The board may accept or reject the stipulation. If the board accepts it, personal appearance is waived and the board changes the assessed value in accordance with Rev.C. 1610.8 (see *infra*, §248). (Rev.C. 1607.)

(b) If the board and the assessor are satisfied that issues raised by the application have been previously considered by the board or are fully presented by the application, and the taxpayer or the agent requests a waiver of personal appearance in the application. (Rev.C. 1608.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Burden of Proof*. See *Auerbach v. Los Angeles County Assessment App. Bd. No. 2* (2008) 167 C.A.4th 1428, 1437, 1444, 85 C.R.3d 105 [under Rev.C. 167(a), assessor had burden of showing whether aircraft was being operated as common carrier on lien date].



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E. Equalization.

1. County Board of Equalization.
- b. Procedure Before County Board.
4. Effect of Board's Failure To Hear Evidence.

9 Witkin Sum. Cal. Law Tax § 247

[§ 247] Effect of Board's Failure To Hear Evidence.

(1) *Two-Year Period for Holding Hearing.* If the board fails to hear evidence and fails to make a final determination on a timely application within 2 years, the market value proposed by the taxpayer in the application for an assessment reduction is the value on which the taxes are levied, unless the taxpayer and the board mutually agree in writing or on the record to extend the time for hearing (Rev.C. 1604(c)(1)), or unless the application is consolidated with another by the same taxpayer and an extension has been agreed to as to that application (Rev.C. 1604(c)(2)). However, after the 2-year period or an authorized extension has passed, the application may not be consolidated without the taxpayer's written agreement. (Rev.C. 1604(c)(2).) (See *United Enterprises, Ltd. v. Assessment App. Bd.* (1994) 22 C.A.4th 152, 159, 27 C.R.2d 279 [limitations period of Rev.C. 1604 applies to appeals of reassessments based on change of ownership]; *Stocker Resources v. Assessment App. Bd.* (1996) 49 C.A.4th 391, 57 C.R.2d 28 [taxpayer was estopped from claiming benefit of Rev.C. 1604(c) where taxpayer's attorney had altered board's standardized waiver form without alerting board to the alteration; no "mutual agreement" to waive 2-year rule]; *Heavenly Valley Ski Resort v. El Dorado County Bd. of Equalization* (2000) 84 C.A.4th 1323, 1343, 101 C.R.2d 591 [requirements of hearing and final determination were met when county board of equalization denied taxpayer's application for lack of jurisdiction; after determining that board did have jurisdiction over application, trial court should have remanded case for administrative hearing on property valuation rather than adopting taxpayer's opinion of value]; *Flightsafety Int. v. Assessment App. Bd.* (2003) 105 C.A.4th 620, 626, 129 C.R.2d 539 [where appeals board did not make final determination on 1992 application until 1998, taxpayer's opinion of value became assessed value, both for year listed in application (Rev.C. 1604(c)) and for subsequent years until final determination was made (Rev.C. 1604(d))].)

Rev.C. 1604(c) does not apply where the taxpayer fails to provide full and complete information or where litigation relating to the issues involved in the application is pending. (Rev.C. 1604(c).) Moreover, if, within 90 days of the expiration of the 2-year period, the taxpayer objects to an assessment appeals board member under Rev.C. 1624.4 or applies for a hearing officer's recommendation to be heard by the county board under Rev.C. 1641.1, the 2-year period will be extended by 90 days. (Rev.C. 1641.2.)

The 2-year period in Rev.C. 1604(c) is not a "limitation," except on the board's power to impose a different valuation than the applicant's until the board decides the application for reduction. Expiration of the period does not

prevent the board from acting on an application, but merely encourages completion of the process. (*Helene Curtis v. Los Angeles County Assessment App. Bd.* (2004) 121 C.A.4th 29, 40, 16 C.R.3d 658 [board's reinstatement of taxpayer's application after 2-year period was authorized, but taxpayer was estopped from receiving benefits of Rev.C. 1604(c); taxpayer knew that board's reinstatement of its application was conditioned on waiver, but did not apprise board that it had withheld waiver until after reinstatement was granted; citing *Stocker Resources, supra*].)

In *Shell Western E & P v. Lake* (1990) 224 C.A.3d 974, 274 C.R. 313, plaintiff taxpayer and its successor in interest applied for assessment reductions. At a consolidated hearing on the applications held nearly 3 years after the applications were made, defendant board rejected plaintiff's proposed market value, on the basis of a stipulation extending the time for the hearing. Defendant then rejected plaintiff's application. The trial judge found that the stipulation was ineffective and entered judgment against defendant. *Held*, judgment affirmed.

(a) Even though plaintiff and its successor in interest were represented by the same attorney, plaintiff was not a party to the stipulation and was not bound by it. The stipulation had been entered into by plaintiff's successor and applied only to its application. (224 C.A.3d 982.)

(b) Rev.C. 1604(c), intended to ease the burden on taxpayers caused by administrative delay, was clearly enacted for the benefit of taxpayers. It is mandatory, not directory. Thus, defendant was bound by plaintiff's proposed market value. (224 C.A.3d 985.)

In *Mission Housing Dev. Co. v. San Francisco* (1997) 59 C.A.4th 55, 69 C.R.2d 185, plaintiffs, owners of low-income housing projects in defendant city, applied for reductions in assessments for 6 tax years. After the county assessment appeals board denied the applications, plaintiffs brought this refund action, asserting that the opinions of value they included on their applications must govern because the assessment appeals board failed to hear and decide the applications within the 2-year limitations period of Rev.C. 1604(c). *Held*, judgment for defendant reversed with respect to two of the tax years.

(a) *Rev.C. 1604(c) applies.* Defendant contended that plaintiffs' applications for reduction in assessment did not provide "full and complete information," and thus Rev.C. 1604(c), by its own terms, did not apply here. However, under the regulation implementing Rev.C. 1604(c), defendant was required to, but did not, provide plaintiffs with a written notice stating that a timely hearing would not be held for that reason. (59 C.A.4th 77.)

(b) *Rev.C. 1604(c) is constitutional.*

(1) Rev.C. 1604(c) does not violate the requirement of Cal. Const., Art. XIII, §16, that assessment appeals boards determine assessed value. Under Rev.C. 1604(d), the applicant's opinion of value remains on the assessment roll "until the county board makes a final determination on the application." "This unambiguous language makes clear that, notwithstanding section 1604, subdivision (c), the board retains both the power and duty to determine assessed value." (59 C.A.4th 79.)

(2) Rev.C. 1604(c) does not violate the separation of powers requirement of Cal. Const., Art. III, §3. Because the taxpayer's opinion of value stays on the assessment roll only until the assessment appeals board exercises its duty, the quasi-judicial function exercised by the board is not defeated or materially impaired by Rev.C. 1604(c). (59 C.A.4th 81.)

(3) Rev.C. 1604(c) does not violate the equal taxation provision of Cal. Const., Art. XIII, §1(a). The constitutional provision contemplates that different value standards may be set by statute, and Rev.C. 1604(c) does just that by mandating use of the taxpayer's opinion of value when the assessment appeals board fails to hold a timely hearing. (59 C.A.4th 82.)

(4) Rev.C. 1604(c) does not result in the creation of a partial tax exemption in violation of Cal. Const., Art. XIII, §4, which sets forth exclusively the types of property that may be exempted from property taxes. Plaintiffs presumably will be taxed for the affected years by applying the prevailing tax rate to the full amount of the value arrived at by using

their opinion. The possibility that plaintiffs' opinion of value may prove less than the assessment appeals board determines does not mean that they are receiving a tax exemption. (59 C.A.4th 83.)

(2) *Notification of Taxpayer.* The board must notify the taxpayer in writing if it decides not to hold a hearing within the 2-year period. The notice must inform the taxpayer that his or her opinion of value will be the value on which taxes will be levied. (Rev.C. 1604(e); see *Bunker v. Orange* (2002) 103 C.A.4th 542, 551, 126 C.R.2d 825 [class action requesting order that county send notices as required by Rev.C. 1604(e) and 2635 (infra, §285) was not class claim for tax refund, which would be prohibited by *Woosley v. California* (1992) 3 C.4th 758, 13 C.R.2d 30, 838 P.2d 758, supra, §86; refund claims and payments would result, if at all, after action's conclusion].)

SUPPLEMENT: [This section is current through the latest supplement]



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5. Decision and Correction of Roll.

9 Witkin Sum. Cal. Law Tax § 248

[§ 248] Decision and Correction of Roll.

The board of equalization may increase or lower an assessment. (Rev.C. 1610.8; see Rev.C. 1614 [delivery of statement of changes to auditor]; Rev.C. 1646.1 [correction of roll by auditor]; Rev.C. 2050 et seq. [equalized county assessment roll]; see *Redevelopment Agency of Long Beach v. Los Angeles* (1999) 75 C.A.4th 68, 74, 89 C.R.2d 10 ["last equalized" assessment roll, for purposes of determining division of property tax revenues between taxing agencies and redevelopment agencies, was assessment roll prepared before ordinance adopting redevelopment plan, not adjusted assessment roll made later in year after ordinance had been adopted and assessed values had been reduced as result of successful assessment appeals]; on necessity of findings of fact, see Rev.C. 1611.5, 1611.6; *Midstate Theatres v. Stanislaus* (1976) 55 C.A.3d 864, 886, 128 C.R. 54.) However, the board has no power to reduce an escape assessment made under Rev.C. 531.1 (incorrect exemption; see *supra*, §231) or a penal assessment levied with an escape assessment. (Rev.C. 1604(b)(2).)

For purposes of equalizing the assessment of property on the local roll, the full value of an individual property must be determined "without limitation by reason of the applicant's opinion of value stated in the application for reduction" under Rev.C. 1603(a) (*supra*, §245). (Rev.C. 1610.8, 1611.5.)

SUPPLEMENT: [This section is current through the latest supplement]



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6. Review.

9 Witkin Sum. Cal. Law Tax § 249

[§ 249] Review.

(1) *Issue of Fact*. The board acts judicially, and its determination of issues of fact cannot be annulled unless it is fraudulent or arbitrary. (*McClelland v. Board of Supervisors* (1947) 30 C.2d 124, 129, 180 P.2d 676; *Bank of America v. Mundo* (1951) 37 C.2d 1, 5, 229 P.2d 345; *De Luz Homes v. San Diego* (1955) 45 C.2d 546, 564, 290 P.2d 544 [board's decisions about specific valuations and methods of valuation employed are reviewable only for arbitrariness, abuse of discretion, or failure to follow Legislature's standards]; *Los Angeles v. Mono* (1959) 51 C.2d 843, 851, 337 P.2d 465 [same rule governs review of findings of State Board of Equalization sitting as board of equalization]; *Eastern-Columbia v. Los Angeles* (1945) 70 C.A.2d 497, 503, 161 P.2d 407; *Crothers v. Santa Cruz* (1957) 151 C.A.2d 219, 226, 311 P.2d 557; *A.F. Gilmore Co. v. Los Angeles* (1960) 186 C.A.2d 471, 476, 9 C.R. 67; *Alberts v. Board of Supervisors of San Mateo* (1961) 193 C.A.2d 225, 229, 14 C.R. 72 [completion of reassessment program was not prerequisite to valid assessment for year]; *Griffith v. Los Angeles* (1968) 267 C.A.2d 837, 841, 73 C.R. 773 [determination on facts was conclusive]; *Madonna v. San Luis Obispo* (1974) 39 C.A.3d 57, 61, 113 C.R. 916 [board's decision, unsupported by evidence, was arbitrary and properly set aside by trial court]; *Domenghini v. San Luis Obispo* (1974) 40 C.A.3d 689, 699, 115 C.R. 608 [bank loan application executed after lien date, which contradicted property statement, was sufficient to establish that board did not act arbitrarily or fraudulently]; *Beckman Instruments v. Orange* (1975) 53 C.A.3d 767, 777, 125 C.R. 844 [evidence supported finding of failure to fully report cost of inventory]; *Dressler v. Alpine* (1976) 64 C.A.3d 557, 570, 134 C.R. 554, supra, §216 [insufficient evidence of comparability of sales relied on by assessor].)

(2) *Question of Law*. The board's decision on a question of law is always subject to review. (See *Flying Tiger Line v. Los Angeles* (1958) 51 C.2d 314, 320, 333 P.2d 323 [board's refusal to consider evidence because of erroneous theory of law]; *Georgia-Pac. Corp. v. Butte* (1974) 37 C.A.3d 461, 474, 112 C.R. 327 [trial court properly considered additional evidence on legal question of correct method of valuation]; *Pacific Grove-Asilomar Operating Corp. v. Monterey* (1974) 43 C.A.3d 675, 682, 117 C.R. 874 [trial court properly considered additional evidence on legal question of existence of taxable interest]; *San Diego v. Assessment App. Bd. No. 2* (1983) 148 C.A.3d 548, 556, 559, 195 C.R. 895 [board's failure to compute taxable value under Rev.C. 51].)

(3) *Procedure*. In counties where assessment appeals boards have been established (see supra, §243), a party may

obtain review of board orders and decisions by administrative mandamus (C.C.P. 1094.5). (See *Sacramento County Fire Protection Dist. v. Sacramento County Assessment App. Bd. II* (1999) 75 C.A.4th 327, 331, 89 C.R.2d 215 [fire protection district lacked standing to seek writ of mandamus against county assessment appeals board after board upheld lower assessed valuation for taxpayer's real property, which resulted in fire district having to refund previously collected taxes]; 24 U.S.F. L. Rev. 155 [administrative mandamus review].) In *Los Angeles v. Tax App. Bd. No. 2 for Los Angeles* (1968) 267 C.A.2d 830, 73 C.R. 469, the county assessor placed a value of \$ 500,000 on certain real property (25% of market value) and the board reduced it to \$ 250,000. The county filed an administrative mandamus petition and the superior court granted the writ. *Held*, affirmed. The contention that the appeals board is the county, thus precluding challenge of its orders by the county, was rejected. (267 C.A.2d 834.)

When the county does not have an adequate remedy for review of an erroneous decision of the assessment appeals board, it may seek mandamus to compel the board to perform its duties as required by law. (*Sacramento v. Assessment App. Bd. No. 2* (1973) 32 C.A.3d 654, 673, 108 C.R. 434 [lease with option to buy was erroneously found by board to be conditional sale].)

(4) *Standard of Review*. In *Hunt-Wesson Foods v. Alameda* (1974) 41 C.A.3d 163, 116 C.R. 160, the court held that a challenge to the assessor's practice in determining depreciation was governed by the substantial evidence rule, and that the superior court erred in applying the independent judgment rule in overturning the Assessment Appeals Board's decision. (See 8 Cal. Proc. (4th), *Extraordinary Writs*, §289.) The court, however, emphasized the distinction between two kinds of issues:

(a) Review of the quantum of evidence before the board to support its factual determination of the value of the taxpayer's properties is under the substantial evidence rule. (41 C.A.3d 177.)

(b) Review of the method of valuation employed by the assessor and approved by the board involves a legal issue, and the taxpayer may challenge it for errors of law. (41 C.A.3d 178.) (See *Westlake Farms v. Kings* (1974) 39 C.A.3d 179, 183, 114 C.R. 137; *American Chemical Corp. v. Los Angeles* (1974) 42 C.A.3d 45, 51, 116 C.R. 751; *San Diego v. Assessment App. Bd.*, *supra*, 148 C.A.3d 555, 558; *May Dept. Stores Co. v. Los Angeles* (1987) 196 C.A.3d 755, 771, 242 C.R. 162 [trial court improperly disapproved reasonable depreciation method in absence of showing that assessor acted unreasonably].)

The standard of review was reexamined in *Bret Harte Inn v. San Francisco* (1976) 16 C.3d 14, 127 C.R. 154, 544 P.2d 1354, and the holdings of recent cases were summarized as follows: "If the plaintiff claims only that the assessor and the Board of Equalization erroneously applied a valid method of determining full cash value, the decision of the board is equivalent to the determination of a trial court, and the trial court in turn may review only the record presented to the board. ... The trial court may overturn the board's decision only when no substantial evidence supports it, in which case the actions of the board are deemed so arbitrary as to constitute a deprivation of property without due process. ... On the other hand, when the taxpayer challenges the validity of the valuation method itself, the trial judge is faced with a question of law. ... That question, stated in terms of the modern authorities ... , is whether the challenged method of valuation is arbitrary, in excess of discretion, or in violation of the standards prescribed by law." (16 C.3d 23; see 65 Cal. L. Rev. 461 [Bret Harte].) (See *Kaiser Center v. Alameda* (1987) 189 C.A.3d 978, 984, 234 C.R. 603 [where valuation evidence is in conflict, court will not conduct independent evaluation]; *May Dept. Stores Co. v. Los Angeles*, *supra*, 196 C.A.3d 762 [propriety of depreciation method was legal question of methodology, justifying trial de novo]; *Dominguez Energy, L.P. v. Los Angeles* (1997) 56 C.A.4th 839, 852, 65 C.R.2d 766 [taxpayer's contention that use of income capitalization method violated Rev.C. 402.1 (*supra*, §226) was question of law for de novo review]; *CAT Partnership v. Santa Cruz* (1998) 63 C.A.4th 1071, 1088, 74 C.R.2d 652 [after determining that rate protection provisions were "enforceable restrictions" (*supra*, §226), trial court properly recalculated property tax owed; no need for remand to assessment appeals board where recalculation did not involve factual questions]; *Plaza Hollister Ltd. Partnership v. San Benito* (1999) 72 C.A.4th 1, 22, 84 C.R.2d 715 [judgment reducing base-year value of property, entered on stipulation between county board of supervisors and taxpayer, represented exercise of judgment as to value and improperly invaded constitutional authority of board of equalization; fact that board of supervisors constituted

board of equalization was irrelevant because board of supervisors was not acting as board of equalization when it entered into stipulation]; *Maples v. Kern County Assessment App. Bd.* (2002) 96 C.A.4th 1007, 1012, 117 C.R.2d 663 [whether to apply federally subsidized interest rate or general market interest rate in calculating debt component of band-of-investment income analysis is question of law subject to de novo review].)

"If the board has used an improper method of value or has failed to use proper criteria in valuing the property and there is no evidence or there is a conflict in the evidence from which a proper value can or should be made, the trial court must remand the matter to the board for further proceedings. ... The constitutional responsibility to assess property falls to the local board of equalization and not to the courts. In resolving disputed factual issues, the trial court impermissibly shifts the ultimate equalization from the local board of equalization to the superior court." (*Norby Lumber Co. v. Madera* (1988) 202 C.A.3d 1352, 1366, 249 C.R. 646.)

(5) *Statute of Limitations*. An action "on behalf of any governmental officer, agency or entity to review a decision of the county board of equalization or an assessment appeals board" must be commenced within 6 months from the date of the board's final determination. (Rev.C. 1615; see *Sacramento County Fire Protection Dist. v. Sacramento County Assessment App. Bd. II*, *supra*, 75 C.A.4th 335 [Rev.C. 1615 is simply statute of limitations and does not grant authority to sue].)

West's Key Number Digest, Taxation k.449(5)

SUPPLEMENT: [This section is current through the latest supplement]

(4) *Standard of Review*.

Cross-Reference: 8 Cal. Proc. (5th), *Extraordinary Writs*, §291.



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2. State Board of Equalization.

9 Witkin Sum. Cal. Law Tax § 250

[§ 250] State Board of Equalization.

(1) *Duty To Equalize Among Counties.* The State Board of Equalization is an elective body, charged with the duty of equalizing assessments in the different counties where local assessors create inequalities throughout the state. The board compares assessment rolls of various counties and adds to or deducts from them, but cannot change individual assessments. (See Cal. Const., Art. XIII, §18; Rev.C. 1815 et seq.; *Koch v. Board of Supervisors of Orange* (1934) 138 C.A. 343, 347, 32 P.2d 163; *Redding Pine Mills v. State Bd. of Equalization* (1958) 157 C.A.2d 40, 42, 320 P.2d 25; 1 Ehrman 3d, Chap. 16; on membership and election of board, see Cal. Const., Art. XIII, §17.)

When valuing property, the board must follow the comparable sales provisions of Rev.C. 402.5 (see supra, §216), and, when valuing property other than "state-assessed property," is subject to the valuation considerations and methods applicable to assessors. (Rev.C. 1815, 1816; on power to subpoena relevant data from property owner, and confidentiality of data, see *California Portland Cement Co. v. State Bd. of Equalization* (1967) 67 C.2d 578, 584, 63 C.R. 5, 432 P.2d 700.) The board may require local officers, including assessors, to produce records in their custody. (Govt.C. 15612; see *State Bd. of Equalization v. Watson* (1968) 68 C.2d 307, 311, 66 C.R. 377, 437 P.2d 761.)

In *Dressler v. Alpine* (1976) 64 C.A.3d 557, 134 C.R. 554, the State Board increased the valuation of all property on the county's secured tax roll for 1970-1971, and the roll, as increased, was filed after the regular assessment period had closed. Plaintiffs sought a refund on the ground that the action constituted an assessment outside the regular assessment period without notice, in violation of former Rev.C. 1604.1 (now Rev.C. 1605). *Held*, the statute's purpose is to provide an opportunity for review of penal and escape assessments imposed after the regular adjustment roll has been completed, and it is concerned solely with county equalization of assessments. "The State Board ... , in contrast, engages in intercounty equalization; it acts upon the entire county roll, adjusting to achieve intercounty conformity; it does not 'assess' individual properties. ... Its action is not an 'assessment made outside the regular assessment period' within the meaning of section 1605." (64 C.A.3d 563.)

In the event of a state-levied property tax, the effects of unequalized local assessment levels "shall be corrected for purposes of distributing this tax by equalizing the assessment levels of locally and state-assessed properties and varying the rate of the state tax inversely with the counties' respective assessment levels." (Cal. Const., Art. XIII, §18; see Task Force Report, p. 26; supra, §109.)

(2) *Duty To Review Assessments of Public Property Beyond Boundaries*. The board also has the duty to review, equalize, and adjust assessments of taxable property owned by a city or county outside its boundaries (see *supra*, §177). (Cal. Const., Art. XIII, §11(g); Rev.C. 1840, 1841; on judicial review of board's decision, see *Los Angeles v. Mono* (1959) 51 C.2d 843, 851, 337 P.2d 465 [determination of issues of fact cannot be annulled unless fraudulent or arbitrary]; *Amador v. State Bd. of Equalization* (1966) 240 C.A.2d 205, 216, 49 C.R. 448 [finding was so general that it precluded effective review; matter remanded to board for further proceedings].)

SUPPLEMENT: [This section is current through the latest supplement]



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F. Levy and Lien of Tax.
1. Levy of Tax.

9 Witkin Sum. Cal. Law Tax § 251

[§ 251] Levy of Tax.

The levying of taxes is the fixing of the rates at which the property is to be taxed. The board of supervisors fixes the rates of county and district taxes. (Rev.C. 2151; see *Govt.C. 29100* [rates for secured roll, voter-approved indebtedness, and reserve necessary to service voter-approved debt]; *Esberg v. Badaracco* (1927) 202 C. 110, 119, 259 P. 730 [board of supervisors must fix rate at sum sufficient to meet board of education budget]; 2 Ehrman 3d, §28:2; on maximum rates for local governmental units, see Rev.C. 2260 et seq.; supra, §113; on relief from rate ceiling in emergency, see Rev.C. 2274; *Malibu West Swimming Club v. Flourney* (1976) 60 C.A.3d 161, 163, 131 C.R. 279; on levy procedure for city property taxes, see *Govt.C. 43000* et seq.)

The procedure consists of (1) ascertaining the total value of taxable property, (2) determining the amount to be raised, and (3) calculating the rate mathematically. (See *Ryan v. Byram* (1935) 4 C.2d 596, 602, 51 P.2d 872 [adoption of budget by supervisors is condition precedent to valid tax levy]; *Otis v. Los Angeles* (1937) 9 C.2d 366, 372, 70 P.2d 633.) Thereafter, the auditor must compile and enter on the roll, opposite each piece of property, the amount of tax and installments, or, if the roll is machine-prepared, the entries may be made on a newly prepared roll. (Rev.C. 2152.)

SUPPLEMENT: [This section is current through the latest supplement]



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2. Nature and Effect of Tax Liens.

9 Witkin Sum. Cal. Law Tax § 252

[§ 252] Nature and Effect of Tax Liens.

(1) *Tax Lien on Property*. Upon its levy, the tax may become a lien on property (Rev.C. 2187 et seq., see infra, §253) with the effect of an execution duly levied against the property. (Rev.C. 2193.) Except as otherwise provided, all tax liens attach as of the first day in January preceding the fiscal year for which they are levied. This is known as the "lien date." (Rev.C. 2192, 117.) (See *Long Beach v. Aistrup* (1958) 164 C.A.2d 41, 51, 330 P.2d 282.)

Ordinarily, the lien continues until the tax is paid or cancelled or the property is sold for delinquency. (Rev.C. 2194; see 72 *Am.Jur.2d* (2001 ed.), *State and Local Taxation* §798 et seq.; 2 Ehrman 3d, §28:3 et seq.; on priorities among tax liens and other liens, see Rev.C. 2192.1; 4 *Summary* (10th), *Security Transactions in Real Property*, §59 et seq.; on 30-year statute of limitations on enforcement of tax liens, see Rev.C. 2195; 3 *Cal. Proc.* (4th), *Actions*, §609; on recording removal of invalid lien, see Rev.C. 2196; on effect of taking in condemnation action after lien attaches, see *Long Beach v. Aistrup*, supra; 8 *Summary* (10th), *Constitutional Law*, §1260.)

Where the correction of an assessment error results in increased taxes, the increase is entered on the roll and collected like other taxes. However, if the correction affects taxes on the secured roll, an intervening bona fide purchaser or encumbrancer for value is protected. The increase does not create a lien on the property on the secured roll but is entered on the unsecured roll in the name of the assessee. Increases transferred to the unsecured roll are collected in the same manner as other delinquent taxes. (Rev.C. 4836.5; *United States Borax & Chemical Corp. v. Mitchell* (1980) 27 C.3d 84, 90, 95, 162 C.R. 450, 606 P.2d 757 [construction of former statute restricting correctable errors]; 1 Ehrman 3d, §12:17.)

(2) *Lien for Delinquent Taxes*. The assessor may file a delinquency certificate with the county recorder where there is any of the following:

(a) A possessory interest secured only by a lien on the possessory interest (see infra, §253). (Rev.C. 2191.3(a)(1)(A).)

(b) Goods in transit, not secured by a lien on real property. (Rev.C. 2191.3(a)(1)(B).)

(c) Improvements assessed to the owner of the improvements under Rev.C. 2188.2 (see infra, §253). (Rev.C.

2191.3(a)(1)(C).)

(d) Off-roll taxes on escape assessments where the error was not the fault of the assessee and the escape taxes are being paid pursuant to Rev.C. 4837.5. (Rev.C. 2191.3(a)(1)(D).)

(e) Unsecured property not secured by a lien on any real property, where the tax has become delinquent or where there are prior unpaid and delinquent taxes with respect to that same property. (Rev.C. 2191.3(a)(1)(E).)

A delinquency certificate may also be filed where a tax has been entered on the unsecured roll under Rev.C. 482 (penalty for failure to file change in ownership statement; see *supra*, §230), Rev.C. 531.2 (escape assessments; see *supra*, §231), or Rev.C. 4836.5, *supra*, or transferred to the unsecured roll. (Rev.C. 2191.3(a)(2).) (On discharge of liens resulting from filing delinquency certificate, see Rev.C. 2191.6.)

When the certificate is filed, the amount due, including interest and penalties, becomes a lien on "all personal and real property in the county owned by and then assessed to" the assessee named in the certificate or acquired by him before the lien expires. The lien has the effect of a judgment lien and continues for 10 years unless extended. (Rev.C. 2191.4; see Rev.C. 2191.5 [lien subordinate to certain other liens].)

Within 30 days after the assessor files a delinquency certificate, the recorder must send a notice that a tax lien has been filed to the assessee's last known address. (Rev.C. 2191.3(b).) Execution on the lien issues at the tax collector's request, just as it issues on other judgments, and sales are held under the execution as prescribed in the Code of Civil Procedure. (Rev.C. 2191.4.)

Although a tax lien under Rev.C. 2192.1 generally takes priority over a recorded homestead, a lien under Rev.C. 2191.4 has only the effect of a judgment lien. Hence, it does not take priority over a previously recorded homestead. (*Curtis v. Kern* (1974) 37 C.A.3d 704, 706, 113 C.R. 41; see 8 Cal. Proc. (4th), *Enforcement of Judgment*, §228.)

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SUPPLEMENT: [This section is current through the latest supplement]

(1) *Tax Lien on Property*.

Cross-Reference: 3 Cal. Proc. (5th), *Actions*, §667.(2) *Lien for Delinquent Taxes*. *Cross-Reference:* 8 Cal. Proc. (5th), *Enforcement of Judgment*, §235.



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3. Property Subject to Lien.

9 Witkin Sum. Cal. Law Tax § 253

[§ 253] Property Subject to Lien.

(1) *Real Property*. "Every tax, penalty, or interest, including redemptions penalty or interest, on real property is a lien against the property assessed." (Rev.C. 2187.) However, separate interests in condominiums, planned developments, community apartments, cooperative housing, and timeshare projects may be separately assessed. (See Rev.C. 2188.3 et seq.; supra, §§168, 222.)

(2) *Improvements*. A tax on improvements is a lien on the taxable land on which they are located only if they are assessed to the same person to whom the land is assessed. (Rev.C. 2188.) A tax on improvements assessed to a person other than the assessee of the land is a lien on the real property of the owner of the improvements (provided that the fact of the lien is indicated on the secured roll listing the real property). (Rev.C. 2188.1.) Where the improvements and land are separately owned, either owner may file a statement of separate ownership with the assessor, and the assessor will not assess them to the same assessee. Once filed, the statement remains in effect until either owner transfers his or her interest or cancels the statement. (Rev.C. 2188.2; for form of statement, see 16B Am.Jur. Legal Forms 2d (2001 ed.), State and Local Taxation §238:12.)

The tax becomes a lien on the improvements if the land is not tax exempt and the fact of the lien is indicated on the secured roll where the land is listed. (Rev.C. 2190.2; see *T.M. Cobb Co. v. Los Angeles* (1976) 16 C.3d 606, 624, 128 C.R. 655, 547 P.2d 431, infra, §280.)

Rev.C. 2188.2 has no application where the improvements are owned by the owner of the land. In *Valley Fair Fashions v. Valley Fair* (1966) 245 C.A.2d 614, 54 C.R. 306, plaintiff lessee merely filed a statement alleging that defendant landowner-lessor was the owner of the improvements; i.e., he alleged single ownership by the lessor. With Rev.C. 2188.2 thus inapplicable, the assessor was authorized under Rev.C. 405 to assess to the person possessing or controlling the property and ultimate liability between the lessor and lessee would depend on their lease terms. (245 C.A.2d 617.)

(3) *Possessory Interests*. A tax on a possessory interest becomes a lien on the possessory interest provided the land is not tax exempt and the fact of the lien is indicated on the secured roll where the land is listed. (Rev.C. 2190.2; see Rev.C. 2188.4 [separate assessment of certain agricultural and grazing leases]; Rev.C. 2189.5 [tax lien on personal property and improvements located on or appurtenant to oil and gas leasehold]; Rev.C. 2190 [delinquent tax on

possessory interest in property exempt under homeowners' exemption does not create lien on exempt property but may be transferred to unsecured roll].)

(4) *Personal Property*. A tax on personal property is a lien on the owner's real property if the personal property is located on the real property on the lien date and this fact is shown on the secured roll describing the real property. (Rev.C. 2189.) If not located on the real property, it may become a lien if the assessor, at the taxpayer's request and with the approval of the board of supervisors, issues a certificate that the real property is sufficient security and the taxpayer records it. (Rev.C. 2819.3.) (See *T.M. Cobb Co. v. Los Angeles*, *supra*, 16 C.3d 618.) Personal property taxes are not a lien on real property transferred to a bona fide purchaser for value after the lien date, but prior to the assessment date, as long as the purchaser did not "own, claim, possess, or control the personal property" at any time between the lien date and the assessment date. (Rev.C. 2189.)

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1. In General.

9 Witkin Sum. Cal. Law Tax § 254

[§ 254] In General.

If the tax is one that becomes a lien on real property owned by the taxpayer (see *supra*, §§252, 253), so that the normal method of enforcement in the event of nonpayment will ultimately be a sale of the real property (see *infra*, §263 et seq.), the tax is carried on the secured roll. (Rev.C. 109.) Other taxes are carried on the unsecured roll and are collected and enforced as unsecured taxes (see *infra*, §277), with two exceptions:

(1) Taxes on oil and gas leaseholds must be carried on the secured roll. (Rev.C. 107; see Rev.C. 2189.5 [tax on personal property and improvements appurtenant to leasehold may be placed on secured roll when, in assessor's opinion, value of estate is sufficient]; *Delaney v. Lowery* (1944) 25 C.2d 561, 564, 154 P.2d 674.)

(2) Taxes on possessory interests may, in the discretion of the board of supervisors, be placed on the secured roll. (Rev.C. 107.) However, these taxes are carried on the secured roll for purposes of collection only. They are enforced in the event of nonpayment in the same manner as unsecured taxes. (Rev.C. 107, 2189.5.) (See *Barer v. Riverside* (1997) 57 C.A.4th 558, 566, 67 C.R.2d 241 [transferring possessory interest taxes to unsecured roll after they became delinquent did not extinguish tax lien on possessory interest; distinguishing *T. M. Cobb Co. v. Los Angeles* (1976) 16 C.3d 606, 128 C.R. 655, 547 P.2d 431, *infra*, §280].)

The tax collector, a county officer, receives the secured roll from the auditor, with the computation of taxes due, and is charged with the duty of collecting the taxes. (Rev.C. 2601, 2602; see *San Diego v. Croghan* (1934) 2 C.A.2d 494, 497, 38 P.2d 474 [liability of tax collector for defalcations of deputies]; on duty of state controller to advise tax collectors as to their duties, see *Govt.C. 30300* et seq.; on collection procedure for city property taxes, see *Govt.C. 43000* et seq.)

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2. Notice and Tax Bill.

9 Witkin Sum. Cal. Law Tax § 255

[§ 255] Notice and Tax Bill.

(1) *Timing.* On or before the date when taxes are payable, the tax collector gives published notice of the due date, delinquency date, penalties, etc. (Rev.C. 2609, 2610.) Ordinarily, a tax bill will also be sent to the taxpayer. (Rev.C. 2610.5, 2611, 2611.6; see Rev.C. 2615.6 [notice of Senior Citizens Property Tax Assistance Law and Senior Citizens Property Tax Postponement Law to accompany tax bill]; Rev.C. 2615.5 [notice concerning homeowners' exemption to accompany tax bills sent to homeowners' exemption claimants].) The tax collector may electronically transmit the bill. (Rev.C. 2610.5.)

Taxes on personal property carried on the secured roll are due November 1. (Rev.C. 2605.) Those on real property may be paid in two installments. (Rev.C. 2605.) The first installment, due November 1, is delinquent December 10, and penalties are then added (Rev.C. 2617, 2605); the second installment is due February 1, and is delinquent April 10 (Rev.C. 2618, 2606). The second installment cannot be paid separately, unless the first has been paid, but the entire tax may be paid when the first installment is due or at any time thereafter until properties on the current roll become tax defaulted. (Rev.C. 2607.) If December 10 or April 10 falls on Saturday, Sunday, or a legal holiday, the time is extended to the next business day. (Rev.C. 2619.)

To effect a saving of manpower in computation, the board of supervisors, by resolution, may elect to collect all taxes, assessments, etc., on the secured roll, including personal property taxes, in two equal installments. (Rev.C. 2700 et seq.)

(2) *Consolidated Tax Statement.* A taxpayer may request a consolidated tax statement for all the properties entered on the secured roll for which the requesting taxpayer is the assessee. (Rev.C. 2611.7(a).) The request must specify the assessor's parcel number, and only one named assessee may request the statement for a given parcel. A request is valid for 5 fiscal years from the time it is made. (Rev.C. 2611.7(b).) The tax collector may charge a fee for providing the statement, which does not take the place of a tax bill. (Rev.C. 2611.7(c).) This procedure is available in a particular county only if the county's tax collector adopts Rev.C. 2611.7 by a written memorandum transmitted to the county board of supervisors and recorded with the county recorder. (Rev.C. 2611.7(c)(4).)

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3. Payment.

9 Witkin Sum. Cal. Law Tax § 256

[§ 256] Payment.

(1) *Methods of Payment.* Payment is ordinarily made at the tax collector's office. (Rev.C. 2613.) The collector may accept checks or other negotiable paper (Rev.C. 2505), but the payment is ineffective and its record is cancelled if the paper is dishonored (Rev.C. 2509). A payment made by mail is deemed received on the date shown by the postmark, but it need not be accepted if it arrives more than 30 days overdue. (Rev.C. 2512(a).)

Payment may also be made by deposit with an approved independent delivery service, in which case it is deemed received on the shipment date shown on the packing slip or air bill attached to the outside of the package containing the remittance. (Rev.C. 2512(a).) The taxpayer may also use an electronic payment option, such as wire transfer, telephoned credit card, or electronic Internet means, in which case payment is deemed received on the date the taxpayer completed the transaction. The taxpayer must present proof of the transaction in the form of a confirmation number or other convincing evidence to the tax collector's satisfaction. This provision does not apply to payments by electronic fund transfer as provided in Rev.C. 2503.1 and 2503.2. (Rev.C. 2512(b).)

The collector may accept electronic fund transfers as payment. (Rev.C. 2503.2(a).) The collector may require payment by electronic fund transfers by taxpayers whose aggregate payments for the previous two installments on the secured roll, or on the one installment of the most recent unsecured roll, total at least \$ 50,000. (Rev.C. 2503.2(b).)

The board of supervisors may authorize payment of the tax by credit card (Rev.C. 2511.1(b)), and the county may impose a fee to cover related costs (Rev.C. 2511.1(d)). The tax collector may refuse payment of the tax in coins. (Rev.C. 2502.)

(2) *Collector's Duties.* Upon payment, the collector marks the fact and date on the roll, opposite the tax (Rev.C. 2614, 2614.5), and where the tax is paid in cash or a receipt is requested, gives a receipt describing the property and specifying the amount paid and the fiscal year and installment to which the payment applies. (Rev.C. 2615.) Issuance of the receipt may be compelled by mandamus. (*Whitmore v. Brown* (1929) 207 C. 473, 477, 279 P. 447; *Spring Valley Water Co. v. Planer* (1927) 88 C.A. 170, 171, 263 P. 323.)

(3) *Partial Payments.* With the approval of the board of supervisors, the tax collector may accept partial payment of property taxes. The payments are first applied to "penalties, interest and costs," and then to taxes due. (Rev.C. 2636,

2708, 2927.6.) An escape assessment or an assessment arising from the correction of an assessor's error for a prior fiscal year that results in additional tax over \$ 500 may be paid, at a taxpayer's request, in annual installments over 4 years. (Rev.C. 4837.5(a).) The tax collector may charge the assessee the actual cost of processing a request to pay in installments. (Rev.C. 4837.5(i).) Partial payment of an assessment is allowed where the taxpayer owns an interest in real property, including an undivided interest, but does not own the entire parcel. (See Rev.C. 2801 et seq.; on partial redemption, see *infra*, §270.)

The tax collector must accept current year tax payments even though prior year delinquencies may exist. (Rev.C. 2607, 2703.)

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4. Penalties.

9 Witkin Sum. Cal. Law Tax § 257

[§ 257] Penalties.

(1) *Penalties Imposed.* Property taxes unpaid at the delinquency date bear a 10% penalty. (Rev.C. 2617, 2618, 2704, 2705, 2922.) (On maximum 6% penalty on unpaid taxes of service member during period of active military service, see *Mil. & Vet.C. 409.2(d)*; on collection of \$ 10 for preparing delinquent tax records and giving notice of delinquency, see Rev.C. 2621, 2706; on computation of penalties, see Rev.C. 2623, 2627, 2766.)

(2) *Cancellation of Penalties.* Penalties are cancelled if the assessee or fee owner demonstrates that the tax collector failed to mail or electronically transmit the bill to the address provided on the tax roll or to the electronic address provided and authorized by the taxpayer to the tax collector. The penalty imposed for delinquent taxes with respect to a late, amended, or corrected tax bill is cancelled if the tax is paid within 30 days following the date the bill is mailed or electronically transmitted. (Rev.C. 2610.5.)

A penalty resulting from tax delinquency may be cancelled if any of the following is true:

(a) Failure to make a timely payment is due to "reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care and the absence of wilful neglect," provided that the proper amount of the tax due is paid by June 30 of the fourth fiscal year following the year in which the tax becomes delinquent. (Rev.C. 4985.2(a).)

(b) The taxpayer made an inadvertent error in the amount of payment and the proper amount of the tax due is paid within 10 days after notice of the shortage is mailed. (Rev.C. 4985.2(b).)

(c) Cancellation was ordered by a local, state, or federal court. (Rev.C. 4985.2(c).)

Where a taxpayer has failed to pay property tax while pursuing an appeal for reassessment, the relief from penalties applies "only to the difference between the county board's final determination of value and the value on the assessment roll for the fiscal year covered by the application." (Rev.C. 4833.1(a), 4985.3(a).) These statutes were intended to address a consequence of the recession of the early 1990s: with the recession making it likely that some property devaluation has occurred, "many taxpayers have found it economically rewarding to simply fail to timely remit their property taxes once an appeal for reassessment has been filed," which has created substantial cash-flow problems for

some counties. (Stats. 1994, Chap. 856, §1.) The statutes become operative only if specified county entities approve them. (Rev.C. 4833.1(e), 4985.3(e).)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Cancellation of Penalties.*(c) *Cancellation ordered by court.* See *People v. Westoaks Inv. #27* (2006) 139 C.A.4th 1038, 1046, 43 C.R.3d 548, Supp., infra, §284.



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5. Inspection of Delinquency Records.

9 Witkin Sum. Cal. Law Tax § 258

[§ 258] Inspection of Delinquency Records.

In *Bruce v. Gregory* (1967) 65 C.2d 666, 56 C.R. 265, 423 P.2d 193, plaintiff was engaged in the business of buying owners' interests in tax-delinquent property, paying off liens, and selling for a profit. He demanded the right to inspect public tax records at any time, insisting that former Govt.C. 1227 and former C.C.P. 1892 made the right absolute. The court held, however, that the statutes should be construed as subject to the implied limitation that inspection not interfere with the operation of the office. Hence the custodian can make necessary regulations for this purpose. "Inspection may be denied or restricted if (1) records are needed by the staff of the tax collector's office or other officials; (2) the adequate space for inspection which the tax collector, in his regulations, has undertaken to provide is, at a particular moment, occupied by other members of the public; (3) he has valid reasons to fear defacement or other damage to the records, and supervision of inspection is, at the moment, impossible; (4) a person is monopolizing certain records to the detriment of other members of the public who wish to inspect them." (65 C.2d 678.) (On inspection of public records, see Govt.C. 6250 et seq., 2 Cal. Evidence (4th), Witnesses, §278 et seq.)

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H. Tax-Defaulted Property.
1. Former Law.

9 Witkin Sum. Cal. Law Tax § 259

[§ 259] Former Law.

(1) *Notice*. Formerly, under Rev.C. 3351 et seq., the tax collector annually published a notice of intent to sell to the state real property on which taxes, assessments, penalties, and costs had not been fully paid by the time of the sale. Under Rev.C. 3437, the amount due could be paid until the time of sale, if the property was separately valued on the secured roll. (See *Kipp v. Billingham* (1933) 217 C. 527, 528, 20 P.2d 318; on sufficiency of published notice, see *Banas v. Transamerica Title Ins. Co.* (1982) 133 C.A.3d 845, 851, 184 C.R. 262, supra, §21.)

(2) *Stamp Sale to State*. Under Rev.C. 3436, at the time fixed in the notice, the real property was sold to the state "by operation of law and the declaration of the tax collector," and entry to this effect was made on the roll. It then became "tax sold property." (Former wording of Rev.C. 126.)

The only important effect of this "sale," however, was to start the running of the primary 5-year redemption period (see infra, §271). The taxpayer's possession was undisturbed. (*Crocker v. Scott* (1906) 149 C. 575, 596, 87 P. 102; see *People v. Gustafson* (1942) 53 C.A.2d 230, 234, 127 P.2d 627.)

(3) *Publication of Delinquent List*. Annually, under Rev.C. 3371 et seq., after the tax sale to the state, the tax collector published the "delinquent list," i.e., a list of the property sold to the state for delinquent taxes. The list contained, among other things, the name of the assessee, a description of the property, the total amount for which the property was sold, and certain information regarding redemption.

(4) *Tax Deed to State*. Annually, under Rev.C. 3361 et seq., the tax collector published notice of intent to deed to the state "all real property which was previously sold to the state and which is subject to deeding to the state." The notice was also sent by registered mail to the last assessee. (See *Philbrick v. Huff* (1976) 60 C.A.3d 633, 642, 131 C.R. 733 [statutory provisions not constitutionally required; last assessee subject to limitation period of former Rev.C. 3521 despite erroneous notice to previous assessee]; *Herrington v. Weigel* (1978) 82 C.A.3d 676, 682, 147 C.R. 396, infra, §288 [where property held in joint tenancy or tenancy in common was assessed to all tenants as group, there was no duty to mail separate notice to each tenant].) Then, not less than 21 days after first publication of the notice and at least 5 years after the property was sold to the state, the tax collector executed a deed to the state, reciting the facts and conveying the property to the state, whereupon it became "tax-deeded property." (Former Rev.C. 3511, 3513, 127.)

Under former Rev.C. 3520, the deed conveyed absolute title to the state, free of encumbrances, but subject to certain specified exceptions in the case of other tax liens. It carried with it the usual rights of ownership, including the right to rents and profits that accrued while the state had title and before redemption. (*People v. Maxfield* (1947) 30 C.2d 485, 488, 183 P.2d 897; see *Merchants Finance Corp. v. Kuchel* (1948) 83 C.A.2d 579, 583, 189 P.2d 513 [state was entitled to retain money collected as damages for injury to its tax-deeded lands]; *People v. Lucas* (1961) 55 C.2d 564, 568, 11 C.R. 745, 360 P.2d 321.)

(5) *State's Action To Quiet Title*. Under former Rev.C. 3595 et seq., on request of the state controller, the district attorney of the county in which the property was situated brought an action to quiet title to any tax-deeded property (former Rev.C. 3595), and title to all real property sold to the state "in any county in the same year" could be quieted in a single action (former Rev.C. 3596).

(6) *Redemption After Tax Deed to State*. Under the former system of a tax sale and tax deed to the state, an important distinction was made between redemption after sale to the state and after deed to the state. The "stamp sale" did not disturb the taxpayer's possession, but when the deed to the state was made 5 years later, the state acquired absolute title, with the right to occupy the property, exploit its resources, and receive all proceeds from it. The former owner could still redeem unless a quiet title decree was obtained by the state, but the former owner did so subject to any rights of the state that accrued before the redemption. (See *People v. Lucas*, *supra*, 55 C.2d 571 [state was entitled to proceeds from timber sale on tax-deeded property, which were paid before former owner redeemed property].)

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H. Tax-Defaulted Property.
2. Default Procedure.
a. Revision in 1984.

9 Witkin Sum. Cal. Law Tax § 260

[§ 260] Revision in 1984.

The former procedure (see *supra*, §259) involved two stages before a tax sale to a third person: (1) A sale to the state, and (2) 5 years later, a deed to the state. Before the deed, the property was "tax-sold" property. After the deed, the property was "tax-deeded" property.

These procedures were eliminated in 1984. The new law replaced the sale to the state with a declaration of default (*infra*, §261) and the deed to the state with a notice of intent to sell (*infra*, §262). The term "tax-defaulted" replaces both "tax-sold" and "tax-deeded." (Rev.C. 126; see 2 Ehrman 3d, §29:13 et seq.)

Tax sales and tax deeds occurring before the effective date of the revision (September 11, 1984) were cancelled at that date if the right to redeem had not been terminated. The property became tax-defaulted property, subject to a delinquent tax lien with priority over all other real property liens. (Stats. 1984, Chap. 988, §74.)

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SUPPLEMENT: [This section is current through the latest supplement]



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b. Notice and Declaration of Default.

9 Witkin Sum. Cal. Law Tax § 261

[§ 261] Notice and Declaration of Default.

(1) *Notice of Default.* Annually, on or before June 8, the tax collector must publish a notice of impending default for failure to pay taxes on real property on which taxes, assessments, penalties, and costs have not been fully paid by June 30, or the next business day if June 30 falls on a Saturday, Sunday, or holiday. (Rev.C. 3351(a).) If the tax collector sends reminder notices before the close of the fiscal year and annually sends a redemption notice of prior year due taxes, the notice required by Rev.C. 3351(a) must only include properties that have been tax-delinquent for 3 or more years and for which the latest reminder notice or redemption notice was returned to the tax collector as undeliverable. (Rev.C. 3351(b).)

If the property was separately valued on the secured roll, the amount due may be paid until close of business on June 30. However, if June 30 is a Saturday, Sunday, or holiday, the amount due may be paid without penalty until close of business on the next business day. Rev.C. 2512 (supra, §256) applies to remittances made by mail. (Rev.C. 3437.)

(2) *Declaration of Default.* At 12:01 a.m. on July 1, unpaid taxes, assessments, penalties, and costs are declared in default by operation of law. (Rev.C. 3436.) Entry to this effect is made on the roll. (Rev.C. 3439.) It then becomes "tax-defaulted property." (Rev.C. 126.)

The declaration has the effect of beginning the 5-year period (see *infra*, §271) after which the right to redeem may be terminated by sale of the property (see *infra*, §263 et seq.).

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9 Witkin Sum. Cal. Law Tax § 262

[§ 262] Delinquent List and Notice of Intent To Sell.

(1) *Publication of Delinquent List.* Annually, after a default declaration (see supra, §261), and on or before September 8, the tax collector must publish an affidavit of tax default and a list of tax-defaulted property. (Rev.C. 3371.) The published delinquent list must contain the name of the assessee, the description of the property, and the total amount declared in default. (Rev.C. 3372.)

(2) *Notice of Intent To Sell.* The tax collector must publish annually, on or before June 8, a notice of intent to sell property that will be tax-defaulted for one of the following time periods:

(a) Five years or more on the specified date. (Rev.C. 3361(a).)

(b) Three years or more on the specified date in the case of residential real property that could serve the public benefit by providing housing or services directly related to low-income persons, if a local government or nonprofit organization has requested, under Rev.C. 3692.4, that the property be offered at the next public auction. (Rev.C. 3361(b).)

(c) Three years or more in the case of nonresidential commercial property, as defined in Rev.C. 3691 (infra, §263), in an applicable county, on the date specified. (Rev.C. 3361(c).)

The notice must also be sent by registered mail to the last assessee. (Rev.C. 3365.) (On sale, see infra, §263 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Publication of Delinquent List. Contents of list:* Rev.C. 3372 was amended in 2007 to require that the list contain the total amount necessary to redeem the property as of the date specified in the publication, rather than the total amount declared in default.



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a. In General.

9 Witkin Sum. Cal. Law Tax § 263

[§ 263] In General.

(1) *Alternative Procedures.* Tax-defaulted property may be sold under either of two procedures, each with distinct statutory requirements:

- (a) Sale to private persons (including taxing authorities) by auction under Rev.C. 3691 et seq.
- (b) Sale to state and local taxing agencies by agreement under Rev.C. 3791 et seq.

(2) *Time and Preconditions for Sale.* Once property has been tax-defaulted for 5 years, or 3 years in the case of nonresidential commercial property, the tax collector must attempt to sell, in accordance with Rev.C. 3692, any portion that has not been redeemed "unless by other provisions of law the property is not subject to sale." If the tax-defaulted property has been damaged by a disaster in an officially declared disaster area and has not been substantially repaired, the 5-year period is tolled until 5 years have elapsed from the date of the damage. (Rev.C. 3691(a)(1)(A); on county's option to have 5-year period apply to nonresidential commercial property, see Rev.C. 3691(a)(1)(B).) The tax collector must provide notice of an intended sale in the manner prescribed by Rev.C. 3704 and 3704.5. (Rev.C. 3691(a)(3) [also listing additional requirements for notice in case of nonresidential commercial property].)

A sale must be attempted within 4 years of the time the property becomes subject to sale. (Rev.C. 3692(a).) A sale may not take place without the approval of the board of supervisors. (Rev.C. 3694.) (On protection of rights where another taxing agency objects to sale or property is needed for public use, see Rev.C. 3695, 3695.3, 3695.4; on requirement that leave of court must be obtained before sale of tax-defaulted property belonging to service member during period of active military service, see *Mil. & Vet.C. 409.2(b)*.)

If the tax-defaulted property is subject to a nuisance abatement lien, or if a local government or nonprofit organization has requested, under Rev.C. 3692.4, that the property be offered at the next public auction, the tax collector may sell any unredeemed portion 3 years after the property becomes tax defaulted. (Rev.C. 3691(b)(1)(A).) The tax collector must first provide actual notice, by certified mail, to the property owner if the county records identify the owner. (Rev.C. 3691(b)(2).)

(3) *Preferential Rights To Purchase.* Nonprofit organizations have preferential rights to purchase vacant or residential tax-defaulted property for rehabilitation and to sell to, rent to, or otherwise use to serve low-income persons. (Rev.C. 3695.5; 9 *Pacific L. J.* 635.) In some cases (oil, gas or mineral rights; parcels rendered unusable by size, location, etc.), the property must first be offered to certain persons (e.g., other holders of outstanding oil, gas or mineral rights). (Rev.C. 3692(b), (c).) The tax collector may also require that an unusable parcel be joined with a contiguous parcel as a condition of sale. (Rev.C. 3692(c).)

(4) *Notice.* Notice of the proposed sale is published or posted. (Rev.C. 3702, 3703.) Not less than 45 nor more than 120 days before the proposed sale, the tax collector must also send notice by certified mail with return receipt requested to the last known addresses of parties of interest (lienholders of record and all people who might acquire title by redemption; see Rev.C. 4675), giving them information about the sale, their right to redeem, and their right to obtain excess proceeds. (Rev.C. 3701.) (On contents of notice, see Rev.C. 3701, 3704.) The tax collector may also advertise the sale by any means authorized by the board of supervisors. (Rev.C. 3704.5.)

Where tax-defaulted property is the primary residence of the last known assessee, the tax collector must also make a "reasonable effort" to contact the owner or occupant personally no more than 120 days and no less than 10 days before the date of the sale. (Rev.C. 3704.7(a).) The costs incurred in doing so, up to \$ 100, are added to the redemption amount of the property. (Rev.C. 3704.7(b).)

The tax collector must make a reasonable attempt to obtain the names and addresses of parties of interest, but failure to do so does not affect the validity of the sale. (Rev.C. 3701; see *Philbrick v. Huff* (1976) 60 C.A.3d 633, 648, 131 C.R. 733 [purpose of statute is to give assessee chance to redeem; erroneous mailing to personal representative of last assessee in name of previous assessee did not invalidate sale]; *Chesney v. Gresham* (1976) 64 C.A.3d 120, 129, 134 C.R. 238 [actual notice is not required; property owner is aware of annual assessments and must be alert to failure to receive notice]; *Bank of America v. Giant Inland Empire R.V. Center* (2000) 78 C.A.4th 1267, 1272, 1276, 93 C.R.2d 626 [county failed to make reasonable effort to obtain last known address of bank that had secured lien on tax-defaulted property; county relied solely on lot book report, which did not provide notice of documents recorded after creation of lien; moreover, county should have attempted to send further notice to bank after initial notice was returned to county marked "undeliverable"]; 45 A.L.R.4th 447 [right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party].)

(5) *Removal of Property From Sale.* The tax collector, on the county counsel's recommendation, may remove a parcel from the tax sale if the removal is in the county's best interest. The tax collector must notify the controller, in writing, whenever a parcel is removed from a tax sale. (Rev.C. 3698.8.)

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SUPPLEMENT: [This section is current through the latest supplement]

(4) *Notice.* See *Jones v. Flowers* (2006) 547 U.S. 220, 126 S.Ct. 1708, 1715, footnote 2, 164 L.Ed.2d 415, 427, Supp., supra, §21 [citing Rev.C. 3704.7 as example of statute that requires notice to occupants].



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9 Witkin Sum. Cal. Law Tax § 264

[§ 264] Bids and Payment.

(1) *Permissible Bidders.* The state, a city, a taxing agency, or a revenue district may bid on the property. (Rev.C. 3705.) Formerly, the last assessee could not bid at the sale and become the purchaser, on the theory that this would permit him to take advantage of his own wrong, and hence any payment made was regarded as a pro tanto payment of taxes and not as payment of the sale price which would entitle him to a conveyance of title. (See *Garvey v. Byram* (1941) 18 C.2d 279, 281, 115 P.2d 501.) Now, however, any person may purchase at the sale, regardless of a prior or existing lien, claim, or interest in the property. (Rev.C. 3691(a)(1)(A); see *Merchants Finance Corp. v. Mahomed* (1947) 82 C.A.2d 649, 652, 187 P.2d 39.)

The rule is different where a purchaser, in possession of land under an executory contract, buys at a tax sale and attempts to set up the title against the vendor. The purported purchase will be deemed a payment of the taxes. (See *Gipson v. Spears* (1955) 134 C.A.2d 370, 376, 285 P.2d 968; *Carberry v. Trentham* (1956) 143 C.A.2d 83, 91, 299 P.2d 966.)

(2) *Bidding and Payment.* The sale is at public auction to the highest bidder, except that sealed bids are used where the property is offered to persons specified in Rev.C. 3692 (supra, §263). (Rev.C. 3693, 3706; on postponement of sale, see Rev.C. 3706.1.) A "public auction" is a venue or medium to sell property that provides reasonable access to the public to bid on and purchase the property. (Rev.C. 3692.1(c); on requirements for public auction using electronic media, see Rev.C. 3692.2.) The state, the county, and employees of these entities acting in their official capacity in preparing, conducting, and executing a sale of property under Rev.C. 3691 et seq., are not liable for the failure of a device (such as computer hardware, computer software, a computer network, or a computer Web site), not owned, operated, and managed by the state or county, that prevents a person from participating in a sale. (Rev.C. 3692.3(b)(2).)

The minimum price at which property may be sold is the total amount necessary to redeem, plus costs. (Rev.C. 3698.5(a).) But except in the case of a partial redemption (infra, §270), a bid less than the minimum specified by the board of supervisors may not be accepted. (Rev.C. 3706.) In addition, if no acceptable bids have been received in response to an offer of sale, the tax collector has discretion to set an appropriate minimum price at a subsequent sale. (Rev.C. 3698.5(c).) (On minimum sale price for property entitled to welfare exemption, see Rev.C. 3698.7 [higher of 50% of fair market value or total amount necessary to redeem, plus costs].)

The high bid must be paid by legal tender, electronic transfer, or negotiable paper, as the tax collector chooses. (Rev.C. 3693(a); see Rev.C. 2502, 2503.2, 2504.) However, the tax collector may make the sale a credit transaction by requiring a deposit of \$ 5,000 or 10% of the minimum bid price, whichever is greater. The balance of the purchase price must then be paid by legal tender, electronic transfer, or negotiable paper, as specified by the tax collector, and within a period specified by the tax collector not to exceed 90 days from the date of the close of auction. Payment of the balance is a condition precedent to the transfer of title to the purchaser. If the purchaser was required to pay a deposit before the date of the sale, the deposit will be applied toward the purchase price of the property. If the successful bidder fails to consummate the sale within the period specified by the tax collector, the bidder will forfeit the deposit and all rights he or she may have with respect to that property. (Rev.C. 3693.1.) (On collection of costs of sale following nonpayment, see Rev.C. 3456; for definition of "close of auction," see Rev.C. 3692.1(a).)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Bidding and Payment.*

Methods of payment: Rev.C. 3693.1 was amended in 2005. It now refers to "deferred-payment" transactions, rather than to "credit" transactions.



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9 *Witkin Sum. Cal. Law Tax* § 265

[§ 265] Distribution of Proceeds.

Proceeds from the sale are distributed first to the state and county for specified expenses of advertising, notice, and sale. (See Rev.C. 4672 et seq.) Remaining proceeds are then distributed, in an amount no greater than the amount required to redeem the property, to assessment funds and tax funds in proportion to their respective claims and then, to the extent necessary, to satisfy current taxes, assessments, penalties, and costs. (Rev.C. 4673.1.)

Excess proceeds are retained in the delinquent tax sale trust fund and may be claimed by parties of interest within 1 year following the date of recordation of the tax deed to the purchaser. (Rev.C. 4674; on claim for excess proceeds, see Rev.C. 4675 et seq.)

Rev.C. 4675(b) authorizes written assignment of a claimant's right to excess proceeds under specified conditions and limits distribution of proceeds to those who have filed a claim. (See *Mission Valley East v. Kern* (1981) 120 C.A.3d 89, 94, 96, 174 C.R. 300 [right of postsale assignee to claim excess proceeds]; *First Corp. v. Santa Clara* (1983) 146 C.A.3d 841, 845, 194 C.R. 752 [claimant with fractional ownership interest in property before sale was entitled only to fractional share of excess proceeds and did not succeed to rights of nonclaiming coowners]; *Fjaeran v. Board of Supervisors* (1989) 210 C.A.3d 434, 439, 258 C.R. 353 [pretax-sale assignee of judgment creditor is "party of interest" under Rev.C. 4675 and need not comply with statute's specific assignment provisions].)

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See *Azadozy v. Nikoghosian* (2005) 128 C.A.4th 1369, 1371, 27 C.R.3d 811 [holder of unrecorded title to property sold at tax sale is not "party of interest" within meaning of Rev.C. 4675; purchaser of property at trustee's sale who failed to record deed was not entitled to claim excess proceeds from later tax sale of property]; *Marion Drive, LLC v. Saladino* (2006) 136 C.A.4th 1432, 1436, 39 C.R.3d 695 [owner of bond secured by recorded lien on property was lienholder of record with priority over subsequent lender; under Rev.C. 4675, bond owner was entitled to excess proceeds following tax sale].



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d. Tax Deed and Its Effect.

9 Witkin Sum. Cal. Law Tax § 266

[§ 266] Tax Deed and Its Effect.

The tax collector makes a deed to the purchaser reciting the facts concerning the sale. (Rev.C. 3708, 3710; see *Chapman v. Zoberlein* (1907) 152 C. 216, 220, 92 P. 188.) (On recordation and acknowledgment of deed, see Rev.C. 3708.1, 3709; on required contents of tax deeds for recording, see *Govt.C. 27288.1(c)*.) The deed conveys title free from encumbrances with certain exceptions such as other tax liens and easements. (Rev.C. 3712; see *Connors v. Jerome* (1948) 83 C.A.2d 330, 332, 188 P.2d 770; *Helvey v. Sax* (1951) 38 C.2d 21, 24, 237 P.2d 269 [deed conveys not merely title of person assessed, but new and complete title under independent grant from state]; *Beck v. Unruh* (1951) 37 C.2d 148, 153, 231 P.2d 13 [bankruptcy terminated and property of bankrupt abandoned; tax sale and deed conveyed title to purchaser]; *Campbell v. Lauigan* (1988) 202 C.A.3d 651, 658, 248 C.R. 747 [following *Beck*; third-party quitclaim grantee lacked standing to challenge tax deed where bankruptcy trustee failed to redeem property or oppose sale]; *Rest., Property* §567.)

If the deed is good in form, it is, except as against actual fraud, "conclusive evidence of the regularity of all proceedings from the assessment to the execution of the deed, both inclusive." (Rev.C. 3711; see *Campbell v. Moran* (1911) 161 C. 325, 328, 119 P. 89 [deed only prima facie evidence of proper notice]; *Edwards v. Santa Paula* (1956) 138 C.A.2d 375, 379, 292 P.2d 31 [description was fatally defective]; *Philbrick v. Huff* (1976) 60 C.A.3d 633, 649, 131 C.R. 733 [tax deed was valid despite notice to previous rather than last assessee].)

All property sold under Rev.C. 3691 et seq. is offered and sold as is. (Rev.C. 3692.3(a).) The state, the county, and employees of these entities acting in their official capacity in preparing, conducting, and executing a sale of property under Rev.C. 3691 et seq., are not liable for known or unknown conditions of the property, including errors in the assessor's records pertaining to improvement of the property. (Rev.C. 3692.3(b)(1).)

Under the former procedure of a tax deed to the state, the deed itself was not sufficient to establish the chain of title, and a purchaser in a quiet title action first had to introduce the deed to the state that preceded the sale to the purchaser, and then introduce the deed to the purchaser from the state. (*Swann v. Carson* (1943) 56 C.A.2d 502, 504, 132 P.2d 863; *Roma v. Elbert, Ltd.* (1946) 73 C.A.2d 338, 340, 166 P.2d 294; *De Flon v. Van Lue* (1948) 83 C.A.2d 288, 290, 188 P.2d 301; cf. *Johnson v. Warden* (1946) 76 C.A.2d 697, 699, 173 P.2d 838 [certificate of title under former Torrens Act, showing state as owner in fee was sufficient].)

Earlier cases established the right of the owner to redeem until the property had been disposed of to a private purchaser. Hence, the owner could attack the tax deed to such a purchaser for omissions, misrecitals, or other defects of form rendering it void. (See, e.g., *Baird v. Monroe* (1907) 150 C. 560, 564, 89 P. 352 [defects in deed to the state]; *Campbell v. Shafer* (1912) 162 C. 206, 211, 121 P. 737 [description]; *Henderson v. De Turk* (1912) 164 C. 296, 299, 128 P. 747 [same]; *Rudell v. Collins* (1917) 174 C. 363, 366, 163 P. 204 [failure to recite mailing]; *Saecker v. Cohn* (1919) 180 C. 151, 154, 179 P. 890 [mistake in assessee's name]; *Smart v. Peek* (1931) 213 C. 452, 457, 2 P.2d 380 [notice, description]; *Stewart v. Atkinson* (1928) 96 C.A. 50, 56, 273 P. 606 [invalid assessment].) Later statutes allowed the state to cut off the right to redeem, and the possibility of those attacks, by a decree quieting title. (See *supra*, §259.) Under the present law, the right to redeem terminates at the time of the sale. (See *infra*, §271.)

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9 Witkin Sum. Cal. Law Tax § 267

[§ 267] Rights and Remedies of Purchaser.

(1) *Action To Quiet Title*. Because of the many possible defects in a tax title, it is customary for the purchaser or the purchaser's successor in interest to seek to confirm it by an action to quiet title. "[T]ax titles are of little value in this state until the sufficiency and regularity of the proceedings have been confirmed through a quiet title action. The real purpose of such actions is to give the purchaser at a tax sale an opportunity to establish the validity of the tax proceedings and sale, and to give the former owner an opportunity to be heard." (*Taylor v. Chapman* (1936) 17 C.A.2d 31, 34, 61 P.2d 476.) Rev.C. 3950 et seq. provide for the action.

(2) *Correction of Deed*. The purchaser may seek a corrected deed from the tax collector. (See *Webster v. Somer* (1911) 159 C. 459, 462, 114 P. 575; *Morton v. Sloan* (1929) 96 C.A. 747, 752, 275 P. 223; *Smart v. Peek* (1931) 213 C. 452, 458, 2 P.2d 380; Rev.C. 3708.5 [clerical errors and misstatements of fact authorize issuance and recording of corrected deed without charge].)

(3) *Reimbursement If Property Is Lost*. If the sale or deed is eventually declared void by a court, the innocent purchaser has two protections:

(a) No forfeiture may be decreed until the former owner or other party in interest has reimbursed the purchaser for the amount of taxes, penalties, and costs the purchaser expended in pursuit of the state's title. (Rev.C. 3728; see *infra*, §289.) A purchaser or successor, claiming in good faith under a deed regular on its face, is also entitled to reimbursement for the value of permanent improvements. (Rev.C. 3728.)

(b) The purchaser is entitled to a refund from the county in the amount by which the purchase price exceeds the reimbursement for taxes, penalties, and costs. (Rev.C. 3729(a).)

(4) *Rescission*. Where a tax deed to a purchaser has been recorded and "it is determined that the property should not have been sold," the county and the purchaser may agree to rescind the sale if (a) the property has not been transferred by the tax-sale purchaser to a bona fide purchaser for value, and (b) the property has not become subject to a bona fide encumbrance for value after recordation. (Rev.C. 3731(a).) If the sale is rescinded, the purchaser is entitled to a refund of the purchase price. On recordation of the rescission, the tax deed becomes void. (Rev.C. 3731(b).)

(5) *No Right to Refund From Holder of Tax Certificate.* A tax certificate holder who received all or part of the amount paid by a delinquent taxpayer or by the purchaser is not obligated to refund any amount to the purchaser, the county, the delinquent taxpayer, or another person. (Rev.C. 3729(b) and 3731(c); on tax certificates, see *infra*, §272 et seq.)

(6) *Exclusivity of Remedies.* There is a split of authority in the Courts of Appeal whether a purchaser of tax-defaulted property from a public entity at a tax sale is limited to the remedies provided by Rev.C. 3725 et seq. or may also pursue traditional contract remedies. (See *Schultz v. Contra Costa* (1984) 157 C.A.3d 242, 247, 203 C.R. 760, 1 Summary (10th), *Contracts*, §268 [statutory remedies are not exclusive]; cf. *Van Petten v. San Diego* (1995) 38 C.A.4th 43, 51, 44 C.R.2d 816, 1 Summary (10th), *Contracts*, §268 [statutory remedies are exclusive].)

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a. Right To Redeem.

9 *Witkin Sum. Cal. Law Tax* § 268

[§ 268] Right To Redeem.

(1) *In General.* Tax-defaulted property (i.e., real property subject to a lien for taxes in default, *supra*, §261) may be redeemed on payment of taxes, penalties, and costs, including "redemption penalties," until the right of redemption is terminated. (Rev.C. 4101, 4102, 4103; see *Weston Inv. Co. v. California* (1948) 31 C.2d 390, 393, 189 P.2d 262; *Ferreira v. El Dorado* (1990) 222 C.A.3d 788, 792, 272 C.R. 49 [rejecting claim that redemption penalties are lien on property subject to extinction in foreclosure]; 2 Ehrman 3d, §29:17 et seq.; 72 Am.Jur.2d (2001 ed.), *State and Local Taxation* §898 et seq.) (On termination of right to redeem, see *infra*, §271; on distribution of redemption funds, see Rev.C. 4656 et seq.; on right of community redevelopment agency to share in redemption funds attributable to redevelopment property, see *Community Redevelopment Agency of Los Angeles v. Bloodgood* (1986) 182 C.A.3d 342, 345, 226 C.R. 924; on redemption rights of service member after period of active military service, see *Mil. & Vet.C.* 409.2(c).)

(2) *Who May Redeem.* The right of redemption may be asserted only by the delinquent taxpayer or by one having the requisite title or interest in the property. A stranger to the title has no standing to claim the right, nor can the stranger acquire it merely by payment of delinquent taxes on the property. (*Potter v. Los Angeles County* (1967) 251 C.A.2d 280, 286, 59 C.R. 335; *Settlors Corp. v. San Diego* (1967) 254 C.A.2d 631, 636, 62 C.R. 347.)

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b. Procedure.

9 Witkin Sum. Cal. Law Tax § 269

[§ 269] Procedure.

On application to redeem, the tax collector gives the redemptioner certificates specifying, in detail, the amount to be paid. (Rev.C. 4105.2; see Rev.C. 4107 [redemption certificate more than 12 years old may be destroyed if copies in approved substitute media are retained for at least 12 years].) Payment is made to the tax collector, who receipts each certificate. (Rev.C. 4106.) The board of supervisors may authorize the tax collector to accept partial payments. (Rev.C. 4143(a).) Redemption by payment in installments is also possible. (See Rev.C. 4216 et seq.; *Johnston v. Sanchez* (1981) 121 C.A.3d 368, 175 C.R. 361 [computation of redemption penalties after default in installment payments].)

An offer to redeem, improperly refused by the tax collector, is equivalent to actual redemption. It discharges the lien and restores title to the redemptioner. (*Hossom v. Long Beach* (1948) 83 C.A.2d 745, 750, 189 P.2d 787.)

Where a redemption payment is mistakenly made on the wrong property, it may be applied to the intended property if (1) the right of redemption of the intended property has not terminated; (2) 2 years have not elapsed from the date of payment; and (3) since the date of payment, the property has not been transferred to a bona fide purchaser for value or become subject to a bona fide encumbrancer for value. (Rev.C. 4920(a); see *Krienke v. California* (1945) 69 C.A.2d 353, 357, 158 P.2d 941.)

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SUPPLEMENT: [This section is current through the latest supplement]



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c. Partial Redemption.

9 Witkin Sum. Cal. Law Tax § 270

[§ 270] Partial Redemption.

(1) *In General.* If the right of redemption has not been terminated, any parcel of tax-defaulted property, including an undivided interest, may be separately redeemed. The parcel must be one that (a) is described in a recorded deed, purchase contract, etc.; (b) was separately valued on the roll when it was sold to the state; or (c) is separately valued on the current roll. (Rev.C. 4131(b).) If the property has not been separately valued, any person claiming a separate interest may apply to the redemption officer for separate valuation. (Rev.C. 4151.) When the separate value has been determined, the unpaid taxes on the separate parcel or interest are computed. (Rev.C. 4154, 4155.) This amount, together with a proportionate part of the delinquent penalties and costs, plus redemption penalties and fees, is the amount necessary to redeem. (Rev.C. 4156.)

(2) *Separate Valuation.* Formerly, the redemption officer was required to transmit any request for separate valuation to the assessor who was required to "immediately place a separate valuation on the parcel." In *Peterson v. Johnson* (1952) 39 C.2d 745, 249 P.2d 17, defendant J, owner of an undivided part of 120 acres, conveyed to his wife, who failed to pay taxes. Later, she conveyed 40 acres to plaintiff, who redeemed under the partial redemption sections. The state took the remaining 80 acres under a tax deed, plaintiff bought these, and in this action, received a judgment quieting title. Defendant J appealed, contending that the 80 acres had been excessively valued, and that former Rev.C. 4154 was unconstitutional in authorizing the assessor to "immediately place a separate valuation" on the separate parcel without providing for an equalization hearing. *Held*, judgment affirmed.

(a) Before a tax becomes final, a taxpayer is entitled to a review of the valuation by an equalization board or other tribunal (*supra*, §243 et seq.), but the right of redemption is wholly legislative, and there is no constitutional right to an additional equalization hearing. (39 C.2d 748.)

(b) "The partial redemption provisions enable an owner of tax-sold property to take advantage of a market for part of the property where none exists for the whole. The purchaser not only gives him the purchase price, but reduces the amount necessary to be paid by the vendor should he wish to redeem. Moreover, it is the owner of the tax-sold property who creates the situation in which two persons rather than one become interested in redemption. The Legislature has seen fit to accommodate the parties by a division of the right to redeem; but neither party may demand that the procedure be other than that provided. Under the statute, the valuation of the assessor is final. The parties may, of

course, contract in advance as to the amount to be paid by each and thus avoid any uncertainty as to the valuations the assessor may place upon the separate parts." (39 C.2d 748.)

The former statutes, however, did not expressly require separate valuation of undivided interests. *Smith v. Anderson* (1967) 67 C.2d 635, 640, 63 C.R. 391, 433 P.2d 183, imposed it nevertheless. The legislative response to *Smith* and assessors' claims of administrative inconvenience was the enactment of former Rev.C. 4152 providing that, where an application was made for separate valuation of an undivided interest, the redemption officer was required to "accept an amount which bears the same proportion to the tax as the undivided interest bears to the interest as assessed." This provision was repealed in 1980 and the statutes are again silent on separate valuation of undivided interests.

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d. Termination of Right.

9 *Witkin Sum. Cal. Law Tax* § 271

[§ 271] Termination of Right.

Under the former law, the primary redemption period was 5 years from the date of the "stamp" sale to the state (i.e., until deed to the state or to third parties, *supra*, §259), but there was also an indefinite right to redeem after deed to the state and before disposal of the property by the state. (See *Buck v. Canty* (1912) 162 C. 226, 231, 121 P. 924; *Jordan v. Beale* (1916) 172 C. 226, 228, 155 P. 990; *Andreson Co. v. Los Angeles* (1921) 55 C.A. 585, 586, 203 P. 1040; *People v. Gustafson* (1942) 53 C.A.2d 230, 234, 127 P.2d 627.)

Later statutes were enacted to end the right, but all were repealed. Under the former procedure governing tax-sold and tax-deeded property (*supra*, §259), the redemption right was terminated only by rendition of a final decree quieting the state's title. (Former Rev.C. 3614.5.) Under the present procedure governing tax-defaulted property, the right to redemption terminates "at the close of business on the last business day before the date of the sale" (Rev.C. 3707(a)(1)), but revives if the property is not sold (Rev.C. 3707(d)). If the tax collector approves a sale as a credit transaction and does not receive full payment by the date required under Rev.C. 3693.1, the right of redemption is revived on the next business day following that date. (Rev.C. 3707(a)(2).) (On former law governing redemption after deed to state, see *People v. Lucas* (1961) 55 C.2d 564, 11 C.R. 745, 360 P.2d 321.)

Where part of a tax-defaulted parcel is sold, the balance remains subject to redemption. (See Rev.C. 3691(a)(2), (b)(1)(B).)

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Rev.C. 3693.1 was amended in 2005. It now refers to "deferred-payment" transactions, rather than to "credit" transactions.



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a. Purpose of Statute.

9 Witkin Sum. Cal. Law Tax § 272

[§ 272] Purpose of Statute.

Recognizing that California counties have "several billion dollars outstanding as accounts receivable from unpaid secured roll property tax obligations," the 1995 Legislature added Rev.C. 4501 et seq., which allow counties to convert these "underperforming assets" to cash and to use the revenues to provide essential services. (Stats. 1995, Chap. 189, §10.) The statute establishes a procedure by which a county may (1) sell tax certificates, representing the right to receive due and unpaid taxes (see Rev.C. 4511, 4505), (2) invest a portion of the sales proceeds (see Rev.C. 4523(a)(2)), and (3) distribute the balance of the proceeds as it would distribute collected taxes (see Rev.C. 4523(b)).

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b. Nature of Certificates.

9 *Witkin Sum. Cal. Law Tax* § 273

[§ 273] Nature of Certificates.

(1) *Authorization of Certificate.* The board of supervisors of a county may authorize the sale of tax certificates on the recommendation of the tax collector. The board must authorize the sale by resolution during the fiscal year for which it is to first apply. (Rev.C. 4511.)

(2) *Rights Created.* A "tax certificate" is the intangible property right created when the tax collector sells the right to receive all amounts "in respect of a delinquency in connection with secured roll property or property on the supplemental roll." (Rev.C. 4505.)

(3) *Property for Which Certificate Is Available.* A tax certificate may be issued for a separately assessed parcel, or for multiple parcels with separate assessments, that are delinquent or defaulted at the time the certificate is offered. It may not be issued for any subsequent year taxes or assessments. (Rev.C. 4505(a).) In general, the tax collector cannot sell a tax certificate for a parcel for which the total amount of taxes and assessments to be assigned is less than \$ 100, unless the parcel is included in a bulk sale, or for a parcel that is (a) not on the secured roll or the supplemental roll, (b) owned by a governmental agency, (c) so polluted or contaminated that it poses a public health concern or environmental hazard, or (d) subject to bankruptcy or condemnation proceedings. (Rev.C. 4528(b); on exceptions, see Rev.C. 4528(c).)

(4) *Form of Certificate.* A tax certificate must identify (a) the parcel or parcels securing the certificate, (b) the certificate's purchase date, (c) the purchaser's name, (d) the total amount of the due and unpaid taxes and assessments being assigned to the purchaser, and (e) the purchase price of the certificate. (Rev.C. 4505(a).) It may be in the form of a physical certificate or in book-entry form, including in an electronic medium. (Rev.C. 4505(b).)

(5) *Transfer of Certificate.* A tax certificate may be transferred at any time before it is cancelled. If the certificate is held in physical form, it is transferred by the tax collector's endorsement. If it is held on book-entry form, it is transferred electronically. (Rev.C. 4530.)

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c. Conduct of Sale.

9 *Witkin Sum. Cal. Law Tax* § 274

[§ 274] Conduct of Sale.

(1) *Time, Place, and Manner of Sale.* As soon as the property is declared in default, the tax collector may offer a certificate for sale. (Rev.C. 4521.) The sale may be public or private and may take any form, including an auction, a negotiated sale, or a bulk sale. Before the sale, the tax collector must: (a) determine the size of the offering and the parcels to be included in the sale; (b) determine the fees necessary to conduct the sale; (c) establish rules and procedures for making offers; and (d) publish the determinations, fees, rules, and procedures and make them available on request. (Rev.C. 4528(a)(1).) The tax collector has the sole discretion to accept or reject bids, subject to these determinations, fees, rules, and procedures. (Rev.C. 4528(a)(2).) The holder of an outstanding certificate has the right of first refusal to purchase certificates for subsequent years for the same parcel. (Rev.C. 4528(d).)

(2) *Price.* Except for limited circumstances under which a certificate may be sold at a discount (see Rev.C. 4528(c)), the price received for a tax certificate must be at least the amount of taxes and assessments being assigned. (Rev.C. 4528(a).)

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d. Establishment of Redemption Fund.

9 Witkin Sum. Cal. Law Tax § 275

[§ 275] Establishment of Redemption Fund.

If a county elects to sell tax certificates, it must create a Tax Certificate Redemption Fund. (Rev.C. 4512.) At least 3% of the proceeds from the sale of each tax certificate must go to the fund, unless the amount in the fund is equal to or greater than 3% of the then current amount of taxes and assessments assigned under all outstanding tax certificates, in which case the proceeds are distributed as collected taxes are generally. The money in the fund must be invested at the county treasurer's direction, with interest paid to the county. (Rev.C. 4523(a).) The fund may be used only to pay certificate holders under the special circumstances listed in Rev.C. 4527 (*infra*, §276). (Rev.C. 4512.)

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e. Payments to Holder.

9 *Witkin Sum. Cal. Law Tax* § 276

[§ 276] Payments to Holder.

(1) *After Payment to Tax Collector.* After the tax collector receives (through payment, redemption, sale of the parcel, or otherwise) all or part of the taxes, assessments, and assigned penalties assigned by a tax certificate, the tax collector must pay that amount to the certificate's holder, and either cancel or adjust the tax certificate accordingly. (Rev.C. 4524(a), (b), (c).) Any amount collected must be first applied to the oldest outstanding certificate. (Rev.C. 4524(d).)

(2) *Under Other Circumstances.* Using money from the fund (*supra*, §275), the tax collector must cancel the certificate and pay the holder the purchase amount with interest if: (a) the taxes and assessments assigned by the certificate had been paid before its sale; (b) after its sale, the taxes and assessments assigned by the certificate are reduced or cancelled for any reason other than payment; (c) the lien on the parcel is removed before the holder has received all amounts due; or (d) the parcel is deeded to a taxing agency. In addition, the holder may request cancellation and payment if someone impairs the value of the parcel. (Rev.C. 4527(a).) The holder may also opt to receive payment if the delinquency penalty assigned by the certificate is cancelled. (Rev.C. 4527(c).)

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1. Delinquency.

9 Witkin Sum. Cal. Law Tax § 277

[§ 277] Delinquency.

Taxes that are not sufficiently secured by a lien on real property (see *supra*, §252 et seq.) are carried on the unsecured roll. (Rev.C. 109, see Rev.C. 134 [definition of unsecured property]; Rev.C. 2189.1 [delinquent taxes on state-assessed personal property may be collected through unsecured roll collection procedures]; *Delaney v. Lowery* (1944) 25 C.2d 561, 562, 154 P.2d 674; *Garcia v. Santa Clara* (1978) 87 C.A.3d 319, 324, 151 C.R. 80, citing the text.) They are due on the lien date (Rev.C. 2901), i.e., the first day of January (Rev.C. 2192). Taxes on the unsecured roll as of July 31st, if unpaid, are delinquent on August 31st. (Rev.C. 2922(a).) Taxes added to the unsecured roll after July 31 become delinquent on the last day of the month succeeding the month in which the assessment was added to the unsecured roll. (Rev.C. 2922(b).)

A 10% penalty attaches at the time of delinquency and additional penalties of 1.5% attach for each subsequent month of delinquency. (Rev.C. 2922(a), (b), (d).) Penalties are cancelled if the delinquency is due to the failure of the tax collector to mail or electronically transmit the tax bill to the address provided on the tax roll or to the electronic address provided and authorized by the taxpayer to the tax collector. Penalties imposed for delinquent taxes with respect to a late, amended, or corrected tax bill are cancelled if the tax is paid within 30 days following the date the bill is mailed or electronically transmitted. (Rev.C. 2610.5.)

Annually, after the taxes on the unsecured roll have become delinquent, the tax collector must prepare a delinquent roll or abstract list of all unpaid items from the unsecured roll. (Rev.C. 2927.2.) The delinquent roll is prima facie evidence of the matters recited. (Rev.C. 2927.5.) The original unsecured roll may be destroyed, under certain conditions, as long as a substitute media containing the information is retained for 5 years. (Rev.C. 2928.)

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a. In General.

9 *Witkin Sum. Cal. Law Tax* § 278

[§ 278] In General.

(1) *Property Subject to Seizure and Sale.* Taxes due on unsecured property may be collected by seizure and sale of personal property, improvements, or possessory interests belonging or assessed to the assessee. (Rev.C. 2951; see Rev.C. 2963 [3-year statute of limitations on remedy of seizure and sale]; *Mohawk Oil Co. v. Hopkins* (1925) 196 C. 148, 153, 236 P. 133; *Merchants Trust Co. v. Hopkins* (1930) 103 C.A. 473, 481, 284 P. 1072; 2 Ehrman 3d, §29:9.)

(2) *Hearing Required Before Sale.* The constitutionality of the procedure for summary seizure and sale (former Rev.C. 2914 et seq.; now Rev.C. 2951 et seq.) was examined in *T.M. Cobb Co. v. Los Angeles* (1976) 16 C.3d 606, 128 C.R. 655, 547 P.2d 431, infra, §280. Applying the rules and distinctions set forth in *Dupuy v. Superior Court* (1975) 15 C.3d 410, 124 C.R. 900, 541 P.2d 540, supra, §23, the court concluded that the seizure without a hearing was constitutionally permissible, but that the forced sale, with its hardship on the ordinary businessman, was not. (16 C.3d 616.) In *T.M. Cobb Co. v. Los Angeles*, plaintiff purchased the property at a sale by the holder of a security interest. When defendant's tax collector refused to release the property seized, plaintiff paid the challenged taxes under protest in order to obtain possession, and sued for a refund. Thus, there was only a valid seizure. No invalid sale was held. The requirement of payment of taxes under protest to obtain release of the property was no more burdensome than that of furnishing a bond. (16 C.3d 616, 617.) (On requirement that leave of court must be obtained before sale of property belonging to service member during period of active military service, see *Mil. & Vet.C. 409.2(b)*.)

(3) *Conduct of Sale.* The sale is at public auction (Rev.C. 2958), on published or posted notice (Rev.C. 2957). (See *Dohrmann Co. v. Security Savings & Loan Assn.* (1970) 8 C.A.3d 655, 664, 665, 87 C.R. 792 [posted notice may be challenged as denial of due process to known owner if in fact inadequate].)

On payment of the bid price, the property is delivered to the buyer with a bill of sale. (Rev.C. 2960.) Any excess of the proceeds of sale, over the taxes, penalties, and costs, is returned to the owner (Rev.C. 2961), and any unsold property may be left at the place of sale at the owner's risk (Rev.C. 2962).

The rule developed in the real property cases and later changed by statute, that a person under a legal or moral obligation to pay taxes cannot be a purchaser (see supra, §264), applies to tax-delinquent personal property. (*Weisberg v. Loughridge* (1967) 253 C.A.2d 416, 420, 61 C.R. 563.)

(4) *Redemption*. The property may be redeemed at any time before it is sold by payment of taxes, penalties, and costs at the office of the tax collector or to the auctioneer at the place of sale. For purposes of redemption, the property is deemed sold when the bid is accepted by the auctioneer. (Rev.C. 2959.)

(5) *Title*. Delivery of the bill of sale vests title in the purchaser. (Rev.C. 2960.) However, the rule that a purchaser at a tax sale receives title free and clear of all encumbrances (Rev.C. 3712; see *supra*, §266) refers to purchase of real property. A tax collector seizing and selling personal property is acting under the statutory equivalent of a common law writ of restraint. The tax collector has no tax lien on the property, and there is no statutory equivalent to Rev.C. 3712. Hence, title to personal property passed at a tax sale by bill of sale may be challenged for cause. (*Dohrmann Co. v. Security Savings & Loan Assn.*, *supra*, 8 C.A.3d 663; *Chrysler Credit Corp. v. Ostly* (1974) 42 C.A.3d 663, 673, 117 C.R. 167 [following *Dohrmann*].) (On absence of tax lien, see *infra*, §280.)

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b. Seizure and Sale Before Delinquency.

9 Witkin Sum. Cal. Law Tax § 279

[§ 279] Seizure and Sale Before Delinquency.

(1) *Declaration of Necessity.* Rev.C. 2953 et seq. permit seizure and sale under limited circumstances before delinquency and prescribe the procedures for those cases. The tax collector must determine that seizure "is necessary because there is a great probability that the taxes will not be collectible after the delinquency date due to the financial condition of the taxpayer or other suitable reason," and must file a written declaration to that effect with the clerk of the board of supervisors before seizure. (Rev.C. 2953.) If, however, the property is on the unsecured roll and is advertised for sale pursuant to U.C.C. 6101 et seq. (see 4 *Summary* (10th), *Sales*, §219 et seq.), is advertised for sale at public auction, or has already been seized for a prior year's delinquency, it may be seized without filing the declaration. (Rev.C. 2953.1.) A copy of the declaration must be delivered to the assessee when the property is seized. (Rev.C. 2953.)

(2) *Assessee's Petition and Bond.* The assessee may challenge the seizure by petition for prohibition or mandamus in the superior court, alleging that: (a) there are no grounds for the seizure; (b) the collector's declaration is untrue or inaccurate; and (c) there are and will be sufficient funds to pay the taxes before their delinquency. (Rev.C. 2954(a).) The assessee must also file a bond with the collector sufficient "to pay the taxes and all fees and charges actually incurred" by the collector as a result of the seizure, and furnish proof of the bond with the court. (Rev.C. 2954(b).) These actions, on the request of any party, have precedence in setting over all other cases, except those also having special precedence. (Rev.C. 2956.)

(3) *Recovery of Costs.* On filing of the bond, the collector must release the property seized. (Rev.C. 2954(b).) If the assessee prevails in the writ proceeding, the assessee is entitled to recover all costs and attorneys' fees, and the collector must bear all costs of the seizure and storage of the property. (Rev.C. 2955.) If the taxes thereafter become delinquent and unpaid, however, and a second seizure or an action to collect the taxes is required, the assessee must reimburse the collector for all costs incurred in connection with the original seizure as well as for any subsequent actions. (Rev.C. 2955.)

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c. No Tax Lien or Priority.

9 *Witkin Sum. Cal. Law Tax* § 280

[§ 280] No Tax Lien or Priority.

In *T.M. Cobb Co. v. Los Angeles* (1976) 16 C.3d 606, 128 C.R. 655, 547 P.2d 431, a creditor acquired a perfected security interest in the personal property and fixtures of its debtor. The debtor defaulted, and the creditor took possession of collateral and on September 16 noticed a private sale (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §179 et seq.). On September 22, defendant's tax collector posted a seizure notice pursuant to former Rev.C. 2914 (now Rev.C. 2951; see *supra*, §278) for debtor's delinquent taxes. On September 23, plaintiff bought the property at the private sale. *Held*, plaintiff acquired the property free from the tax claims.

(a) Taxes are not a lien on property assessed unless expressly made so by statute. Real property taxes constitute an automatic lien (see *supra*, §253), but personal property taxes do not. (16 C.3d 618.)

(b) The statutory power to seize and sell personal property does not result in an automatic lien on seizure. No language indicating such a legislative intent is to be found in the statute. (16 C.3d 619.) Hence, the tax collector who seizes and sells personal property for taxes has no priority over prior private liens. (16 C.3d 620, 621, citing *Dohrmann Co. v. Security Savings & Loan Assn.* (1970) 8 C.A.3d 655, 87 C.R. 792, *supra*, §278, and disapproving possibly contrary language in *RCA Photophone v. Huffman* (1935) 5 C.A.2d 401, 42 P.2d 1059.)

(c) The tax collector's claim of priority as to the fixtures presents a more complicated problem:

(1) Under Rev.C. 104 and 105, real property includes improvements, and improvements include fixtures. (See *supra*, §165.) Hence, under Rev.C. 2187, 2188, and 2192.1, taxes on improvements are liens on the real property with priority over all other liens. (16 C.3d 606; see *supra*, §253.) This is clearly the result when the improvements and land are assessed to the same person. (16 C.3d 624.)

(2) Under Rev.C. 2188.2 (*supra*, §253), where the improvements are owned by someone other than the owner of the land, either the improvement owner or the landowner can file a statement with the assessor indicating separate ownership. Under Rev.C. 2190.2 (*supra*, §253), the assessor must then assess the land and improvements separately, and the assessment on improvements becomes a lien only if the assessor notes the fact on the secured roll where the land on which the improvements are located is listed. Without this notice, the tax collector would be able to obtain a

secret lien on the improvements. (16 C.3d 625.)

(3) Here, the debtor, owner of the fixtures, was not the owner of the land, and neither the debtor nor the landowner filed a statement under Rev.C. 2188.2. The assessor nevertheless assessed the fixtures to the debtor, and this, although not required, was permissible. But it would defeat the statutory purpose (avoiding secret liens) to hold that this discretionary separate assessment can overcome the limitation of Rev.C. 2190.2. "[T]he Legislature must have intended section 2190.2 to apply in all instances in which the assessor has assessed land and improvements to different assesseees, and, thus, a tax on improvements can become a lien thereon only if the fact of the lien is noted on the secured roll where the land involved is listed." (16 C.3d 627.) If no such notation was made, plaintiff's priority as to the fixtures is determined by the same considerations which gave him priority as to the personal property. (16 C.3d 627.)

(4) The record does not show whether a notation was made, and the issue must also be decided on the assumption that it was made. Under the statutory scheme for collection of taxes, if the assessor places the property on the secured roll, the taxpayer has all the protections of the detailed provisions for sale on notice and redemption. (16 C.3d 628, citing the text.) If the assessor places it on the unsecured roll because he deems the lien insufficient security, and he proceeds to seize and sell the property (see *supra*, §278), the assessee or a prior lienholder obtains none of these protections, and to give him the priority of a real property lien would be harsh and unnecessary. "With all of these procedures by which taxes may be collected, we can perceive no purpose in affording the tax collector the absolute power to seize property free and clear of any prior private liens. We conclude that the Legislature did not intend to create such a power, and that when seizing and selling property ... the tax collector may not enforce the lien created by section 2187. That lien exists and will continue to exist for 30 years (§2195), but when the assessor has placed the property on the unsecured roll, he does not have the power to enforce it by seizure and sale." (16 C.3d 629.)

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3. Other Options for Collection.

9 Witkin Sum. Cal. Law Tax § 281

[§ 281] Other Options for Collection.

(1) *Action by Tax Officials.* An action may be brought by the county tax officials against the taxpayer in the following situations: (a) Where an assessee of unsecured property moves to another county. (Rev.C. 3002.) (b) Where delinquent taxes or assessments, including those on personal property, are not a lien on real property sufficient, in the judgment of the tax collector or the board of supervisors, to secure payment. (Rev.C. 3003.) The county seat of the county in which the property was assessed is a proper place for trial. (Rev.C. 3003.) An action under Rev.C. 3003 for delinquent taxes or assessments must be brought within 3 years after the delinquency date. However, the period is tolled during the time the action is prohibited by federal bankruptcy laws or rules or by a court order. (Rev.C. 3007.)

In certain circumstances, an action before delinquency is permissible. (Rev.C. 3006.) The tax collector may file the action "if, in the tax collector's opinion, it is necessary to do so in order to insure payment of such taxes because of the financial condition of the assessee or for other appropriate reasons." The tax collector must file a declaration, as part of the complaint, setting forth the grounds and necessity for the action before the delinquency date. The tax collector may also obtain an ex parte writ of attachment. (Rev.C. 3006(a).) These actions, on the request of any party, have precedence in setting over all other cases, except those also having special precedence. (Rev.C. 3006(e).)

To release the property, the assessee may file a bond "sufficient to pay the taxes alleged due." (Rev.C. 3006(b).) If the court finds the action and attachment unnecessary, the county must pay the assessee's costs and attorneys' fees. The court may, however, as a condition of releasing the sureties on the bond of liability, require payment of the taxes in question, in which case the assessee is entitled to 7% annual interest from the date the taxes are paid until the date the taxes would have become delinquent. (Rev.C. 3006(c).)

(2) *Summary Judgment.* If any tax, interest, or penalty is not paid by the last day of the month succeeding the delinquency date, the official collecting taxes on the unsecured roll, on 10 days' notice to the assessee, may file with the clerk of the court a certificate setting forth the facts and requesting issuance and entry of judgment against the assessee. (Rev.C. 3101.) The clerk must immediately enter judgment for the county against the assessee. (Rev.C. 3102.) The judgment is recorded and becomes a lien on the assessee's property in the county, with the effect of a judgment lien (Rev.C. 3103), and execution may be had as on other judgments (Rev.C. 3106).

(3) *Lien on Assessee's Property.* Where the tax on certain kinds of unsecured property has become delinquent, the

tax collector or assessor may obtain a lien on the assessee's property by filing a delinquency certificate with the county recorder. (See *supra*, §252.)

(4) *Assignment for Collection*. Unsecured taxes delinquent for 90 days may be assigned for collection by a four-fifths vote of the board of supervisors if, in the judgment of the tax collector, collection by seizure and sale under Rev.C. 2951 (*supra*, §278) will not be used. (*Govt.C. 26220(b)*.)

(5) *Decision Not To Collect Taxes*. A tax collector may apply to the board of supervisors for a discharge from accountability for collecting delinquent taxes on unsecured property. The amount of the taxes, penalty, interest, and other charges to be collected must be so small that the cost of collection is not justified, or collection enforcement must be impractical. (Rev.C. 2923.)

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SUPPLEMENT: [This section is current through the latest supplement]



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J. Defects in Tax Proceedings.
1. Strict Compliance by Taxing Authority.

9 Witkin Sum. Cal. Law Tax § 282

[§ 282] Strict Compliance by Taxing Authority.

Tax proceedings are regarded as "in invitum" (supra, §3) and a strict compliance with statutory requirements is ordinarily necessary in order to sustain the tax, tax sale, or tax deed (see *Dougery v. Bettencourt* (1931) 214 C. 455, 461, 6 P.2d 499; *Warden v. Ratterree* (1932) 215 C. 215, 217, 9 P.2d 215).

A number of cases recognize the rule that a small error in the proceedings (e.g., errors in the delinquency list or notice of sale concerning the amount or property involved) makes the tax title void. (See *Hall v. Park Bank of Los Angeles* (1913) 165 C. 356, 359, 132 P. 452 [50 cents excess]; *Gottstein v. Kelly* (1929) 206 C. 742, 746, 276 P. 347 [one cent excess]; *Knoke v. Swan* (1935) 2 C.2d 630, 631, 42 P.2d 1019 [two cents less than amount due]; *Bray v. Jones* (1942) 20 C.2d 858, 865, 129 P.2d 357; *Hall v. Chamberlain* (1948) 31 C.2d 673, 677, 192 P.2d 759.) However, the rule has been largely overcome in practice by the periodic enactment of curative administrative steps and statutes (see *infra*, §283).

Another protection for tax deeds is the short statute of limitations (1 year) established by Rev.C. 175 for a quiet title action (see *infra*, §288).

SUPPLEMENT: [This section is current through the latest supplement]



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2. Curative Steps and Legislation.

9 Witkin Sum. Cal. Law Tax § 283

[§ 283] Curative Steps and Legislation.

(1) *Curative Administrative Steps*. Some defects may be cured by subsequent administrative steps; e.g., errors in publication can be corrected by republication or supplementary publication. (Rev.C. 4841.) (See Rev.C. 4831 [errors on roll]; Rev.C. 4832 [errors of auditor]; Rev.C. 4834.5 [clerical errors on delinquent roll]; Rev.C. 4839.1 [erroneous declaration that property is tax defaulted]; Rev.C. 4840 [entry on wrong roll]; Rev.C. 4876 et seq. [errors of State Board of Equalization]; *El Dorado Palm Springs, Ltd. v. Board of Supervisors* (2002) 104 C.A.4th 1262, 1270, 128 C.R.2d 891 [where taxpayer's appeal of its 1993 assessment, based on reduction in value under Rev.C. 51 (supra, §161), was not resolved in its favor until 1997, and it did not seek relief for 1994 and 1995 until that point, delay in establishing reduced value extended 1-year limitations period of Rev.C. 4831(b) for correcting error in tax assessments until after property had been reappraised and taxable year established].)

(2) *Curative Statutes*. Defects may also be cured by a subsequent curative or validating statute. (See *Chambers v. Duvall* (1945) 26 C.2d 139, 143, 156 P.2d 921 [irregularities in recitals in tax deed]; *Compton v. Boland* (1945) 26 C.2d 310, 313, 158 P.2d 397 [defects in form and content of publication of tax delinquency and notice of sale]; *Barrett v. Brown* (1945) 26 C.2d 328, 331, 158 P.2d 567 [defective publication of delinquent tax list]; *Cooper v. Los Angeles Home Co.* (1946) 74 C.A.2d 766, 770, 169 P.2d 963; *Security Inv. Co. of Riverside v. Douglas* (1946) 76 C.A.2d 592, 594, 173 P.2d 672; *Elbert, Ltd. v. Nolan* (1948) 87 C.A.2d 24, 29, 196 P.2d 88; *Jones v. Bartlett* (1949) 94 C.A.2d 418, 420, 210 P.2d 903; *Litchfield v. Marin* (1955) 130 C.A.2d 806, 811, 815, 280 P.2d 117; *McMaster v. Santa Rosa* (1972) 27 C.A.3d 598, 601, 103 C.R. 749.)

But curative acts are ineffective in two situations:

(a) Where the defect is deemed "jurisdictional" rather than procedural. (See *Miller v. McKenna* (1944) 23 C.2d 774, 782, 147 P.2d 531; *Jones v. Walker* (1941) 47 C.A.2d 566, 570, 118 P.2d 299; *Sinai v. Mull* (1947) 80 C.A.2d 277, 281, 181 P.2d 924 [fatally uncertain description of land assessed]; *Sheeter v. Lifur* (1952) 113 C.A.2d 729, 738, 249 P.2d 336 [property belonged to railroad which had paid all taxes duly assessed]; *Litchfield v. Marin*, *supra*.)

(b) Where the statute impairs previously vested rights (see 7 Summary (10th), *Constitutional Law*, §632). This principle was given an unduly strict application in *Miller v. McKenna*, *supra*, where, prior to the curative act validating defendant's tax deed, plaintiff had obtained title through a mortgage foreclosure sale and subsequent deed.

It would seem that in the *Miller* case, the mortgagee and those claiming under him never obtained a right superior to the state's tax claim. Nevertheless, the decision was followed in *Hall v. Chamberlain* (1948) 31 C.2d 673, 192 P.2d 759. Tax proceedings were technically defective; the curative act became effective August, 1943, and a tax sale took place and a deed to defendants was executed in March, 1944. However, the property, which was mortgaged, was sold under foreclosure in 1938, and the purchaser, in July, 1943 (just prior to the effective date of the curative act), conveyed to plaintiffs. *Held*, plaintiffs were entitled to quiet title. The court declared that "the essential test is whether the owner (that is, the person having title at the time delinquent tax proceedings were initiated) has thereafter transferred to a third person or such person has acquired his title to the property prior to the effective date of the curative acts." (31 C.2d 675.) A strong dissenting opinion contends that this decision and *Miller* create "a vested right in the minor defects in the tax deed to the state" and criticizes the view that the transferee from the owner-mortgagor gets a greater right than his transferor. (31 C.2d 681.) (See *Wall v. M. & R. Sheep Co.* (1949) 33 C.2d 768, 771, 205 P.2d 14 [curative act nullified defects where plaintiff's predecessor was owner at time of delinquency and remained owner when act became effective].)

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SUPPLEMENT: [This section is current through the latest supplement]



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a. Cancellation of Assessment or Tax.

9 Witkin Sum. Cal. Law Tax § 284

[§ 284] Cancellation of Assessment or Tax.

(1) *Illegal Charge*. Rev.C. 4985 et seq. provide for cancellation of a tax, penalty, or costs, if the charge is illegal or otherwise defective. (See *Rittersbacher v. Board of Supervisors of Los Angeles* (1934) 220 C. 535, 541, 32 P.2d 135 [no cancellation for mere overvaluation by assessor]; *Los Angeles v. Board of Supervisors of Mono* (1930) 108 C.A. 655, 666, 292 P. 539 [if assessment is invalid, cancellation is mandatory]; see also Rev.C. 270, 271 [cancellation or refund of tax, penalty, or interest for late exemption claims]; Rev.C. 2780 et seq. [return of replicated payments]; Rev.C. 4946 et seq. [board of supervisors may, on notice to last assessee, cancel tax because of procedural errors, and enforce correct tax by new proceedings]; Rev.C. 4985 [cancellation of penalties, costs, interest, and fees resulting from error of tax collector, auditor, or assessor]; Rev.C. 4986 [cancellation of taxes, penalties, and costs that are erroneous on specified grounds]; Rev.C. 4986.8 [cancellation of tax bill of amount so small that cost of collection is not justified]; Rev.C. 4991, 4992 [cancellation of erroneous declaration of default or power of sale]; Rev.C. 5011 et seq. [cancellation of assessments on state-assessed property]; Rev.C. 5026 et seq., 5061 et seq. [cancellation of assessments on public lands]; Rev.C. 5081 et seq. [cancellation of taxes on property exempt because of acquisition by federal, state, or local public entity]; 11 *Pacific L. J.* 634 [Rev.C. 5081 et seq.].) (On proration of tax where property is taken by eminent domain, see C.C.P. 1268.410 et seq., 8 *Summary* (10th), *Constitutional Law*, §1260.)

(2) *Reasonable Effort by Taxpayer*. Where the "failure to make a timely payment is due to reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect," the auditor or tax collector may cancel any penalty, cost, or other charge resulting from the delinquency, provided that the tax due is paid by June 30 of the fourth fiscal year following the year of delinquency. (Rev.C. 4985.2(a).) Penalties, costs, and other charges may also be cancelled in the event of "an inadvertent error in the amount of payment made by the taxpayer," if the proper amount is paid within 10 days after notice of the shortage is mailed by the tax collector. (Rev.C. 4985.2(b).) The tax collector may also cancel a delinquency penalty if a local, state, or federal court so orders. (Rev.C. 4985.2(c).)

(3) *Wrong Property*. If the tax was paid on the wrong property, the taxpayer may have the credit cancelled and transferred to the intended property. (Rev.C. 4911 et seq.; on exhaustion of remedy under Rev.C. 4911 et seq. as condition of claim for refund, see *infra*, §290.) If property is assessed by two or more counties, the taxpayer may pay the largest tax into court and interplead the counties. (Rev.C. 4988.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Reasonable Effort by Taxpayer*. Rev.C. 4985.2(c) merely gives county tax officials legal permission to comply with court orders issued under authority other than Rev.C. 4985.2(c). It does not provide courts with independent authority to make otherwise unauthorized tax delinquency penalty relief orders. (See *People v. Westoaks Inv.* #27 (2006) 139 C.A.4th 1038, 1046, 43 C.R.3d 548 [trial court improperly granted receiver's motion for refund of delinquency charges to receivership estate; on remand, trial court would have to determine whether cancellation was authorized under Rev.C. 4985.2(a) or (b)].)



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b. Claim for Refund of Tax.

9 *Witkin Sum. Cal. Law Tax* § 285

[§ 285] Claim for Refund of Tax.

(1) *Grounds*. The taxpayer may file a claim for refund of tax after it is paid on the following grounds:

(a) Double payment. (Rev.C. 5096(a); see *Hayes v. Los Angeles* (1893) 99 C. 74, 78, 33 P. 766.)

(b) Erroneous or illegal collection. (Rev.C. 5096(b); see *Long Beach v. Board of Supervisors of Los Angeles* (1958) 50 C.2d 674, 680, 328 P.2d 964 [refund may be had where taxes were erroneously or illegally collected without showing that the taxes levied were erroneous or illegal]; *Bandini Estate Co. v. Los Angeles* (1938) 28 C.A.2d 224, 227, 82 P.2d 185 [illegality where only one member of board of equalization acted on case]; *Evans v. San Joaquin* (1945) 67 C.A.2d 452, 454, 154 P.2d 468 [refund may be had where taxes were erroneously or illegally collected without showing that the taxes levied were erroneous or illegal].)

(c) Illegal assessment or levy. (Rev.C. 5096(c); see *Otis v. Los Angeles* (1937) 9 C.2d 366, 367, 70 P.2d 633 [overpayments resulting from illegal tax rate].)

(d) Payment in excess of the ratio of assessed value to full value (see supra, §214) by reason of the assessor's clerical error or erroneous property information supplied by the assessee. (Rev.C. 5096(d); see *Pacific Coast Co. v. Wells* (1901) 134 C. 471, 473, 66 P. 657 [error in property statement furnished to assessor]; *Associated Oil Co. v. Orange* (1935) 4 C.A.2d 5, 7, 40 P.2d 887 [same].)

(e) Assessment of improvements not in existence on the lien date. (Rev.C. 5096(e).)

(f) Payment in excess of the equalized value. (Rev.C. 5096(f).)

(g) Payment in excess of the value determined under Rev.C. 469 (supra, §231). (Rev.C. 5096(g).)

Rev.C. 5096 is applicable even though the taxes are paid voluntarily. (*Stewart Law & Collection Co. v. Alameda* (1904) 142 C. 660, 665, 76 P. 481; *Birch v. Orange* (1921) 186 C. 736, 744, 200 P. 647; see C.C.P. 1268.440, 8 *Summary* (10th), *Constitutional Law*, §1261 [refund of taxes paid on property acquired by eminent domain]; Rev.C. 5097 [application for reduction of assessment under Rev.C. 1603 (supra, §245) is sufficient claim for refund if

application states that it is intended as claim for refund]; Rev.C. 5097.2 [refund by county auditor or tax collector within 4 years of payment]; Rev.C. 5096.8 [refund arising from reduction in base year value and supplemental assessment levied on subsequent owner]; 46 A.L.R.2d 1350 [accrual of right to refund]; for forms of claim for refund, see 2 Ehrman 3d, §30:5; 22B Am.Jur. P.P. Forms (2001 ed.), State and Local Taxation §55 et seq.)

(2) *Refund Not Available for Excess Valuation.* The refund procedure is not available in cases of excess valuation. The remedy is by application to the board of equalization (supra, §243 et seq.). (*Kuhlemeier v. Los Angeles* (1935) 2 C.2d 257, 261, 40 P.2d 828 [excessive assessment cannot be brought within clerical error provision where plaintiff's bookkeeper deliberately adopted a misleading system of bookkeeping that the assessor deliberately adopted in computing the tax]; *Los Angeles Shipbuilding & Dry Dock Corp. v. Los Angeles* (1937) 22 C.A.2d 418, 422, 71 P.2d 282.) Furthermore, Rev.C. 5096 does not apply to a voluntary mistaken payment. (*Sierra Inv. Corp. v. Sacramento* (1967) 252 C.A.2d 339, 344, 60 C.R. 519, infra, §290.)

A taxpayer and the county board of equalization may stipulate that an application involves only nonvaluation issues. Filing and accepting the stipulation is deemed compliance with the requirement that the taxpayer prosecute an application for reduction under Rev.C. 1601 et seq. in order to exhaust administrative remedies. (Rev.C. 5142(b).)

(3) *Procedure.* A refund claim must be in writing and must state whether the whole or only a specified portion of the assessment is void, and the grounds on which the claim is founded. (Rev.C. 5097.02.) Where the entire assessment is not disputed, the tax computed on the undisputed portion is not impounded. (Rev.C. 5097.03.)

The claim must be verified and must be filed within 4 years after payment. (Rev.C. 5097(a); see *Mission Housing Dev. Co. v. San Francisco* (1997) 59 C.A.4th 55, 68, 69 C.R.2d 185 [taxpayers' claims for refund, signed only by their attorney and lacking required statements, were not properly verified as required by Rev.C. 5097; however, defective verification did not negate purpose of claims and was therefore not fatal; taxpayers should have filed claim for refund within 4 years as required by Rev.C. 5097(a), even though they were still awaiting decision on their application for reduction in assessment]; *Hanjin Int. Corp. v. Los Angeles County Metropolitan Trans. Authority* (2003) 110 C.A.4th 1109, 1113, 2 C.R.3d 373 [4-year period of Rev.C. 5097, not shorter period allowed by taxing authority's rules, governed action for refund of overpayment of special benefit assessment imposed under *Pub.Util.C. 33000* et seq.]; *Plaza Hollister Ltd. Partnership v. San Benito* (1999) 72 C.A.4th 1, 34, 84 C.R.2d 715 [stipulated judgment was void to extent that it awarded refunds for tax payments for which claim had not been timely filed].)

Filing the claim is a condition precedent to a suit to recover the tax, except a suit under Rev.C. 5148 to recover taxes levied on state-assessed property. (Rev.C. 5142(a); see infra, §292; *Chrysler Credit Corp. v. Ostly* (1974) 42 C.A.3d 663, 680, 117 C.R. 167 [lienholder who paid taxes was required to file refund claim].)

In the event of an overpayment in excess of \$ 10, the tax collector must give the assessee written notice of the refund procedure. (Rev.C. 2635.)

(4) *No Interest on Refund.* In *Ball v. Los Angeles* (1978) 82 C.A.3d 312, 147 C.R. 252, plaintiff owned property leased to a city as a library materials depository. Neither she nor the county was aware of her exemption, and property taxes were collected for 3 years. She then filed a claim and defendant promptly processed it and paid the required refund. Her present action was brought to recover interest on the amount refunded. *Held*, summary judgment for defendant affirmed.

(a) California rejects the implied contract theory of interest on refunds and holds that a governmental entity is liable for interest only where a statute so provides. (82 C.A.3d 316.)

(b) Several Revenue Code sections, inapplicable here, expressly provide for interest on refunds. (82 C.A.3d 318.) These sections indicate that there is no general duty to pay, and reveal a legislative plan that authorizes interest where the county, with notice of an improper assessment, has failed to grant a refund. (82 C.A.3d 320.)

(c) Even in jurisdictions that follow the implied contract theory, interest does not begin to accrue until the taxpayer gives notice of erroneous collection by demanding a refund. (82 C.A.3d 321.) (See 88 A.L.R.2d 823 [right to interest on refund in absence of statute].)

(5) *No Federal Injunction*. The Federal Tax Injunction Act of 1937 prohibits district courts from enjoining the assessment, levy, or collection of a state tax "where a plain, speedy and efficient remedy may be had in the tax courts of such State." (28 U.S.C., §1341; see 2 Cal. Proc. (4th), *Jurisdiction*, §87.) A state statute requiring payment of taxes under protest and the right to obtain a refund without interest in 2 years is such a remedy and a bar to suit in the district court. (*Rosewell v. La Salle Nat. Bank* (1981) 450 U.S. 503, 101 S.Ct. 1221, 1232, 67 L.Ed.2d 464, 475.)

(6) *Refund as Credit Against Future Liability*. A taxpayer and the county may enter into a written settlement agreement to substitute credits against a taxpayer's future tax liabilities for payment of a refund and the interest accrued on the refund. Interest may continue to accrue on a substituted credit until the credit has been fully offset against future tax liabilities. The authority for providing the credit rests with the branch of the county that is authorized to settle legal disputes on the county's behalf. (Rev.C. 5103.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Grounds*. 46 A.L.R.2d 1350, text, p. 417, has been superseded by 14 A.L.R.6th 119.(3) *Procedure*. See 1 A.L.R.6th 1 [validity and applicability of statutory time limits for refund claims]; 14 A.L.R.6th 119 [construction and operation of statutory time limits for refund claims].(5) *No Federal Injunction*. See 10 A.L.R. Fed 2d 575 [what constitutes "plain, speedy, and efficient" remedy--general principles]; 11 A.L.R. Fed 2d 393 [what constitutes "plain, speedy, and efficient" remedy--taxes other than business or real property taxes]; 19 A.L.R. Fed 2d 383 [what constitutes "plain, speedy, and efficient" remedy--real property taxes]; 31 A.L.R. Fed 2d 237 [what constitutes "plain, speedy, and efficient" remedy--business taxes].

Cross-Reference: 2 Cal. Proc. (5th), *Jurisdiction*, §86.



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c. Exhaustion of Administrative Remedies.
1. When Required.

9 *Witkin Sum. Cal. Law Tax* § 286

[§ 286] When Required.

(1) *Where Valuation Is Improper.* Errors in the assessment should be corrected by application to the board of equalization (*supra*, §243 et seq.). On failure to do so, the valuation becomes conclusive against the taxpayer, even though the assessment is so arbitrary and discriminatory that the court would overturn an unfavorable determination of the board. (See *Mahoney v. San Diego* (1926) 198 C. 388, 396, 245 P. 189; *Luce v. San Diego* (1926) 198 C. 405, 406, 245 P. 196; *Dawson v. Los Angeles* (1940) 15 C.2d 77, 81, 98 P.2d 495; *Montgomery Ward & Co. v. Welch* (1936) 17 C.A.2d 127, 131, 61 P.2d 790; *Los Angeles Shipbuilding & Dry Dock Corp. v. Los Angeles* (1937) 22 C.A.2d 418, 422, 71 P.2d 282; *Security-First Nat. Bank v. Los Angeles* (1950) 35 C.2d 319, 320, 217 P.2d 946; *El Tejon Cattle Co. v. San Diego* (1967) 252 C.A.2d 449, 456, 463, 60 C.R. 586; *Stenocord Corp. v. San Francisco* (1970) 2 C.3d 984, 987, 88 C.R. 166, 471 P.2d 966, *infra*, §287; *Westinghouse Elec. Corp. v. Los Angeles* (1974) 42 C.A.3d 32, 38, 39, 116 C.R. 742 [rejecting contention that requirement does not apply where previous decisions by administrative agency in like cases render it fruitless]; *Schoderbek v. Carlson* (1980) 113 C.A.3d 1029, 1033, 1037, 170 C.R. 400 [rejecting contention that requirement does not apply to class action on behalf of many taxpayers; plaintiffs could have filed claim for refund on behalf of themselves and members of the class]; 3 *Cal. Proc.* (4th), *Actions*, §308 et seq.)

(2) *Where Partial Exemption Is Claimed.* If the taxpayer shows an exemption of only part of the property assessed as a unit, and does not contend that the assessment is totally void, he or she is entitled to a reclassification and segregation of the taxable and exempt portions. This has been held to present a problem of "equalization," and to call for exhaustion of the administrative remedy before the board. (*San Francisco v. San Mateo* (1950) 36 C.2d 196, 201, 222 P.2d 860 [defendant county improperly assessed improvements outside plaintiff city; remedy was application to State Board of Equalization].)

(3) *Where Factual Issue of Statutory Coverage Is Raised.* The requirement applies where "the person seeks to establish that his activities do not bring him within the orbit of the tax law under which he has been assessed." (*People v. Sonleitner* (1960) 185 C.A.2d 350, 365, 8 C.R. 528, *supra*, §24.)

West's Key Number Digest, Taxation k.973

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Where Valuation Is Improper.* *Cross-Reference:* 3 *Cal. Proc.* (5th), *Actions*, §333.



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2. When Not Required.

9 Witkin Sum. Cal. Law Tax § 287

[§ 287] When Not Required.

(1) *Where Assessment Is Void.* If the tax assessed is invalid, e.g., is on property wholly exempt from taxation or outside the jurisdiction of the taxing authority, no question of valuation of the property is involved and the board of equalization would have no function to perform. Hence, this administrative remedy need not be pursued. (*Parr-Richmond Industrial Corp. v. Boyd* (1954) 43 C.2d 157, 165, 272 P.2d 16 [levy on greater property interest than taxpayer owned--on vested title instead of only contingent possessory interest]; *Parrott & Co. v. San Francisco* (1955) 131 C.A.2d 332, 341, 280 P.2d 881 [unconstitutional tax on imports]; see *John Tennant Memorial Homes v. Pacific Grove* (1972) 27 C.A.3d 372, 378, 103 C.R. 215 [unconstitutional municipal tax ordinance, with penal sanctions; declaratory and injunctive relief, before tax became due, was proper].)

(2) *Where Sole Issue Is One of Law.* The exceptions to the exhaustion requirement were augmented by *Star-Kist Foods v. Quinn* (1960) 54 C.2d 507, 6 C.R. 545, 354 P.2d 1. Plaintiff, lessee of government-owned exempt property, was entitled to a deduction of the present worth of rentals under Rev.C. 107.1 (see supra, §221). He sought mandamus to compel cancellation of the excess assessment. The writ was denied because the remedy of payment under protest and suit to recover was adequate (see infra, §299). But the tax assessor's contention that application to the county board for correction of the assessment was essential to legal relief was rejected. The requirement of exhaustion depends on the nature of the issue, rather than on whether the assessment is challenged as a whole or in part. Here, the sole substantive issue was whether Rev.C. 107.1 was constitutional. "As in cases involving only the question whether property is taxable, there is no question of valuation that the local board of equalization had special competence to decide. There is no dispute as to the facts and no possibility that action by the board might avoid the necessity of deciding the constitutional issue or modify its nature. ... Under the circumstances, therefore, recourse to the local board of equalization was not required before seeking a judicial determination of the constitutionality of section 107.1." (54 C.2d 511.) (See *Knoff v. San Francisco* (1969) 1 C.A.3d 184, 199, 81 C.R. 683, 8 Cal. Proc. (4th), *Extraordinary Writs*, §93 [exhaustion doctrine was not applicable in mandamus action where taxpayers sought "examination and correction of wholesale deficiencies in the San Francisco assessment situation," not judicial relief from specific assessments].)

In *Stenocord Corp. v. San Francisco* (1970) 2 C.3d 984, 88 C.R. 166, 471 P.2d 966, plaintiff made an unsuccessful attempt to come within the exceptions to the exhaustion requirement. It reported the cost of goods to the assessor, and

the assessor notified it of a tax deficiency based on an understatement of values. Plaintiff paid, filed a claim for refund, and on rejection filed this action for recovery of the additional payment. Its theory was that the assessor had no legal authority to reassess where plaintiff correctly reported its costs, and consequently there was no factual question to be considered by the board of equalization. *Held*, judgment for defendant county on demurrer affirmed. Alleged overvaluation by the assessor is a matter within the special competence of a board of equalization. (2 C.2d 988.) Hence, whether the reassessments were penal assessments under Rev.C. 503 (supra, §230) or escape assessments under Rev.C. 531.1 (supra, §231), a question of valuation was presented for review by the board. (2 C.3d 990.)

In *Focus Cable of Oakland v. Alameda* (1985) 173 C.A.3d 519, 527, 219 C.R. 95, plaintiff's property was assessed at approximately \$ 5.4 million. Following an audit by the State Board of Equalization, the property was reassessed at approximately \$ 6.5 million and the assessor entered an escape assessment for the increase. In preparing for a hearing on plaintiff's application to reduce the escape assessment, the assessor determined that the actual value of the property was approximately \$ 3.7 million. The county assessment appeals board reduced the escape assessment to zero but refused to investigate the accuracy of the original assessment, because no application to reduce the original assessment had been filed. Plaintiff then filed a timely claim for refund with defendant county which denied the claim. *Held*, judgment for plaintiff affirmed. Although the value of the property was originally in dispute, once the actual value was determined, no factual issue regarding valuation remained and the assessment was a nullity as a matter of law. Thus, a refund was proper. (173 C.A.3d 527, 528.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Where Sole Issue Is One of Law.Knoff case:*

Cross-Reference: 8 Cal. Proc. (5th), *Extraordinary Writs*, §94.



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2. Actions.

a. Action To Quiet Title.

1. In General.

9 *Witkin Sum. Cal. Law Tax* § 288

[§ 288] In General.

The quiet title statute has been held to authorize an equitable action by the taxpayer-owner to quiet title against a claim based on a void tax deed. (See *Newcomb v. Newport Beach* (1936) 7 C.2d 393, 404, 60 P.2d 825; *Newcomb v. Newport Beach* (1938) 12 C.2d 235, 237, 83 P.2d 21; *Title Guarantee & Trust Co. v. Woody* (1944) 63 C.A.2d 209, 210, 146 P.2d 252; 28 Proof of Facts 3d 439 [proof of circumstances justifying setting aside tax sale]; 2 Ehrman 3d, §31:1.) (On quiet title action generally, see 5 *Cal. Proc.* (4th), *Pleading*, §613 et seq.; C.E.B., 1 Real Property Remedies 2d, Chap. 7.)

However, a 1-year statute of limitations applies. (Rev.C. 175, 3725; see Rev.C. 3810 [same limitation for defense or cross-complaint]; *Sears v. Calaveras* (1955) 45 C.2d 518, 520, 289 P.2d 425; *Edwards v. Santa Paula* (1956) 138 C.A.2d 375, 378, 292 P.2d 31; *Philbrick v. Huff* (1976) 60 C.A.3d 633, 640, 131 C.R. 733 [1-year statute applied even though notice under Rev.C. 3365 was erroneously mailed to previous rather than last assessee].)

The equitable doctrine that the court will not enforce a forfeiture (see 13 *Summary* (10th), *Equity*, §20) was applied to the quiet title action in *Herrington v. Weigel* (1978) 82 C.A.3d 676, 147 C.R. 396. Plaintiffs, Mr. and Mrs. H, owned undivided interests in property. Notices were sent to their address, and Mrs. H received money from her husband to pay the taxes, but spent it without his knowledge. She also received and destroyed the notices of intent to deed to the state, and likewise ignored the proceedings for a tax sale. The property, worth \$ 40,000, was purchased by defendant for \$ 13,100. Mr. and Mrs. H then sued to quiet title. *Held*, judgment for plaintiffs, with provision for payment of all taxes and reimbursement of defendant (see *infra*, §289), affirmed. The basis for relief was found in the facts that the delinquency was for the 3-year period of 1966-1969; thereafter, Mr. and Mrs. H sent the full amount for taxes due in the period of 1969-1970; and the tax collector accepted those payments. Thus, plaintiffs did not comply with the statutory procedure for redemption (see *supra*, §269), but when the tax collector accepts payment of current taxes without question, "he is very clearly participating in a redemption program contrary to law and contrary to equity." (82 C.A.3d 686.) This makes applicable the equitable rule against forfeiture. (82 C.A.3d 687.) "Equity will not allow the county or the state to accept current taxes knowing a delinquency exists which could cause the taxpayer to lose both current taxes and his land. The county and the state must work out a program to avoid such inequities, not contribute to the problem." (82 C.A.3d 687.)

West's Key Number Digest, Taxation k.800(1)

SUPPLEMENT: [This section is current through the latest supplement]

See *Mayer v. L & B Real Estate* (2008) 43 C.4th 1231, 1237, 78 C.R.3d 62, 185 P.3d 43 [statute of limitations of Rev.C. 3725 did not begin to run until property owners received letter from tax collector notifying them that property had been sold for nonpayment of taxes; before that time, due to assessor's errors, owners had no reason to suspect that small portion of their property was being separately assessed and tax bills were being sent to previous owner]; *L&B Real Estate v. Housing Authority of Los Angeles* (2007) 149 C.A.4th 950, 959, 57 C.R.3d 298 [1-year statute of limitations of Rev.C. 3725 did not bar county's claim that tax deed purporting to convey county-owned property was void; because property was tax-exempt, defect in title in tax deed was jurisdictional].

Cross-Reference: 5 Cal. Proc. (5th), *Pleading*, §654 et seq.



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a. Action To Quiet Title.
2. Duty To Reimburse Purchaser.

9 *Witkin Sum. Cal. Law Tax* § 289

[§ 289] Duty To Reimburse Purchaser.

(1) *Statutory Rule.* Under the principle that one who seeks equity must do equity (see 13 *Summary* (10th), *Equity*, §6), the owner must reimburse the purchaser for expenditures. (See *Newcomb v. Newport Beach* (1936) 7 C.2d 393, 406, 60 P.2d 825; *Newcomb v. Newport Beach* (1938) 12 C.2d 235, 237, 83 P.2d 21; *Roma v. Elbert, Ltd.* (1946) 73 C.A.2d 338, 341, 166 P.2d 294.) This duty is now covered in expanded form by Rev.C. 3728, which calls for payment of taxes, penalties, and costs, the amount necessary to discharge other tax liens, and the value of permanent improvements made by an innocent purchaser. But reimbursement cannot be had for the purchaser's payments on account of taxes, repairs, maintenance, management, or insurance after the purchaser takes possession. These may only be offset against an owner's claim for rentals collected during the purchaser's possession. (*Clayton v. Schultz* (1935) 4 C.2d 425, 432, 50 P.2d 446; *Clayton v. Schultz* (1941) 18 C.2d 328, 333, 115 P.2d 446.)

The equitable rule is limited to cases where the owner seeks affirmative relief and does not apply when the purchaser sues and the owner successfully defends his or her title. (See *Warden v. Ratterree* (1932) 215 C. 215, 217, 9 P.2d 215; *Newcomb v. Newport Beach*, *supra*, 12 C.2d 238.)

(2) *Effect of Failure To Reimburse.* It was formerly held that an owner who failed to make the ordered reimbursement nevertheless did not forfeit title; i.e., the court would deny the owner affirmative relief and dismiss his suit to quiet title, but could not vest title in the purchaser. (*Newcomb v. Newport Beach*, *supra*, 12 C.2d 238.) But Rev.C. 3728.1 now provides that if the amount required by Rev.C. 3728 is not paid within 6 months the court must order the issuance of a new tax deed to the original purchaser and then quiet title in the purchaser-grantee, and that after the judgment becomes final the tax deed will be conclusively presumed valid against the claims of any parties to the lawsuit and their successors in interest.

SUPPLEMENT: [This section is current through the latest supplement]



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1. No Recovery Where Payment Is Voluntary.

9 Witkin Sum. Cal. Law Tax § 290

[§ 290] No Recovery Where Payment Is Voluntary.

Apart from special statutory provisions, the right of a taxpayer to recover taxes improperly collected depends on general principles of quasi-contract, and the first and basic rule is that there can be no recovery where taxes are voluntarily paid, without compulsion or coercion. (See *Southern Service Co. v. Los Angeles* (1940) 15 C.2d 1, 7, 97 P.2d 963; *Flynn v. San Francisco* (1941) 18 C.2d 210, 216, 115 P.2d 3; *Rest., Restitution* §75; 72 Am.Jur.2d (2001 ed.), *State and Local Taxation* §978 et seq.; 1 Summary (10th), *Contracts*, §1020.)

The test is the effective exercise, or threat of exercise, of power against the taxpayer. "The illegality of the demand paid constitutes of itself no ground for relief. There must be, in addition, some compulsion or coercion attending its assertion, which controls the conduct of the party making the payment." (*Brumagim v. Tillinghast* (1861) 18 C. 265, 271.)

In a number of situations, including the following, what appear to be compelling circumstances are not considered legal coercion, and recovery has accordingly been denied:

(a) A threat by the tax collector to institute legal proceedings for recovery of the tax, where the validity of the claim could be contested in the proceedings. (See *Hanford Gas & Power Co. v. Hanford* (1912) 163 C. 108, 113, 124 P. 727; *Campbell v. Rainey* (1932) 127 C.A. 747, 750, 16 P.2d 310.)

(b) A threat by the collector to sell the property, where the tax deed pursuant to the sale would be void on its face and not constitute a cloud on the title. (See *Phelan v. San Francisco* (1898) 120 C. 1, 5, 52 P. 38.)

(c) Ignorance or mistake of fact or law on the part of the owner who voluntarily pays an illegal demand, but has the means of obtaining knowledge. (See *San Diego Land & Town Co. v. La Presa School Dist.* (1898) 122 C. 98, 99, 54 P. 528; *Southern Service Co. v. Los Angeles*, *supra*; 84 A.L.R.2d 1133 [right of property taxpayer to recover back taxes voluntarily but mistakenly paid second or successive time].)

In *Sierra Inv. Corp. v. Sacramento* (1967) 252 C.A.2d 339, 60 C.R. 519, plaintiff alleged that it mistakenly paid

taxes on real property that it did not own. The complaint did not disclose any further facts except that it was 3 years before it petitioned respondent board of supervisors to recover the taxes as "erroneously collected." On denial of the petition, this suit was filed to recover them. *Held*, judgment on demurrer affirmed.

(a) In the absence of statute, taxes voluntarily paid may not be recovered even though illegally levied or collected, or paid under the mistaken belief that the property is owned. (252 C.A.2d 342.)

(b) Rev.C. 4911 et seq. (supra, §284) provide for relief where taxes are paid on the wrong property, permitting cancellation and restoration of the tax lien prior to such time as a title certificate is issued. This administrative remedy is exclusive, and should have been followed here to obtain relief, if warranted. (252 C.A.2d 343.)

(c) Petitioner cannot recover under Rev.C. 5096(b) (supra, §285) on the theory of taxes "[e]rroneously or illegally collected." This language is applicable where the county mistakenly collects taxes by error in the levy or collection process, not where, as here, the only allegation is that plaintiff mistakenly paid them. (252 C.A.2d 344.)

(d) There were no equities in plaintiff's favor. No explanation was offered for the failure to discover the mistake for 3 years. Moreover, it is possible that the property has changed hands and that either the county could lose a tax lien or that an innocent purchaser or title company would become liable. (252 C.A.2d 346.)

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SUPPLEMENT: [This section is current through the latest supplement]

See 1 A.L.R.6th 229 [voluntary payment doctrine as bar to recovery of payment of generally unlawful tax].



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2. Recovery Where Payment Is Coerced.

9 Witkin Sum. Cal. Law Tax § 291

[§ 291] Recovery Where Payment Is Coerced.

The converse of the rule just considered (*supra*, §290) is that apart from statute, taxes improperly imposed and paid under compulsion or coercion can be recovered. This quasi-contractual right does not depend on express protest, but on the involuntary nature of the payment. (See *Southern Service Co. v. Los Angeles* (1940) 15 C.2d 1, 7, 97 P.2d 963; *Chrysler Credit Corp. v. Ostly* (1974) 42 C.A.3d 663, 676, 117 C.R. 167 [recovery may be available to third-party lien claimant who paid tax under compulsion]; *Rest., Restitution* §75.)

Thus, a payment was held to be involuntary and recovery was allowed where it was made after notice of sale, when the proceedings were valid on their face and the deed executed pursuant to the proceedings would have been *prima facie* valid and a cloud on plaintiff's title. (*Spencer v. Los Angeles* (1919) 180 C. 103, 107, 179 P. 163.) The same is true where payment could be enforced by sale of the property for delinquent taxes. (See *Grimes v. Merced* (1928) 96 C.A. 76, 82, 273 P. 839; 80 A.L.R.2d 1040 [payment of taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery].)

SUPPLEMENT: [This section is current through the latest supplement]

See *TracFone Wireless v. Los Angeles* (2008) 163 C.A.4th 1359, 1366, 78 C.R.3d 466 [by alleging that it believed county would hold it responsible for paying tax and that it would face severe consequences if it did not do so, taxpayer avoided general demurrer; citing *Chrysler Credit Corp. v. Ostly* (1974) 42 C.A.3d 663, 117 C.R. 167, text, p. 425].



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aa. In General.

9 *Witkin Sum. Cal. Law Tax* § 292

[§ 292] In General.

(1) *Consolidated Procedure.* Under former Rev.C. 5136 et seq., payment accompanied by a written protest specifying whether the whole or a part of the assessment was claimed to be void and the grounds on which the claim was founded did not constitute a voluntary payment. Under former Rev.C. 5138, an action on the payment could be brought within 6 months after the payment. As an alternative to the payment-under-protest procedure provided by former Rev.C. 5136 et seq., a taxpayer who paid the tax voluntarily and without protest could file a claim for refund (supra, §285) and bring an action after the claim had been rejected.

In 1976, the two remedies were consolidated: The payment-under-protest procedure was abandoned, and a new refund procedure was adopted. (Rev.C. 5140 et seq.; see 8 *Pacific L. J.* 476; 2 Ehrman 3d, §30:2.)

(2) *Claim for Refund.* No action may be brought for a refund unless a claim has been filed with the local agency pursuant to Rev.C. 5096 et seq. except an action under Rev.C. 5148 to recover taxes levied on state-assessed property. (Rev.C. 5142(a).) An application for a reduction of an assessment (see supra, §245) will satisfy the claim requirement if it states that it is intended also to constitute a claim. (Rev.C. 5097(b).) (See *Metropolitan Culinary Services v. Los Angeles* (1998) 61 *C.A.4th* 935, 946, 71 *C.R.2d* 859, supra, §145; on requirements for claims, see supra, §285.)

(3) *Parties.* Only the person who paid the tax, or the person's guardian, conservator, executor, or administrator, may bring the action; "if another should do so, judgment shall not be rendered for the plaintiff." (Rev.C. 5140; see *Neecke v. Mill Valley* (1995) 39 *C.A.4th* 946, 46 *C.R.2d* 266 [trial judge properly refused to certify class in refund action under Rev.C. 5140; applying *Woosley v. California* (1992) 3 *C.4th* 758, 13 *C.R.2d* 30, 838 *P.2d* 758, supra, §86].) When the tax, or any portion of it, was collected by the county for a city, the action must be brought against the county. On notice by the county, the city may intervene. The board of equalization may also be joined as a party in specified circumstances. (Rev.C. 5146.)

(4) *Refund of Tax on State-Assessed Property.* An action to recover taxes on state-assessed property arising out of an assessment dispute (including a dispute as to valuation, assessment ration, or allocation of value for assessment

purposes) is governed by Rev.C. 5148. A timely petition for reassessment or correction of an assessment may be used as a claim for refund, and the action is limited to the grounds specified in the petition (or a proceeding on the petition). The action must be brought by the state assessee against the board and the county within 4 years after the board's action on the petition, and all disputes for the year must be joined in a single complaint. (Rev.C. 5148.)

West's Key Number Digest, Taxation k.535

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Claim for Refund.* See *Los Altos Golf & Country Club v. Santa Clara* (2008) 165 C.A.4th 198, 203, 80 C.R.3d 340 [county residents who sought refund of sewer service charges paid in excess of charges paid by city residents failed to perfect claim for refund; *Health & Saf.C. 5472* contemplates payment under protest, followed by action for refund of charges, and residents did not follow that procedure].

(3) *Parties.* See *IBM Personal Pension Plan v. San Francisco* (2005) 131 C.A.4th 1291, 1300, 1301, 32 C.R.3d 656 [restriction in Rev.C. 5140 applies to actions seeking refunds of fraud penalties, as well as to those seeking tax refunds; pension plan lacked standing under Rev.C. 5140 to recover property taxes and fraud penalties paid on plan's behalf by plan's trustee]; *Batt v. San Francisco* (2007) 155 C.A.4th 65, 74, 65 C.R.3d 716 [ordinance imposing hotel tax prohibited class action to recover taxes paid; without express statutory authorization, class actions for tax refunds are precluded by *Woosley v. California* (1992) 3 C.4th 758, 13 C.R.2d 30, 838 P.2d 758, text, §86, and *Neecke v. Mill Valley* (1995) 39 C.A.4th 946, 46 C.R.2d 266, text, p. 426]; *Los Angeles v. Superior Court (Oronoz)* (2008) 159 C.A.4th 353, 357, 365, footnotes 8 and 9, 71 C.R.3d 485 [in absence of specific tax refund statute, rule of *San Jose v. Superior Court (Lands Unlimited)* (1974) 12 C.3d 447, 115 C.R. 797, 525 P.2d 701, 3 Cal. Proc. (5th), *Actions*, §239, that class claims are permissible under Govt.C. 910, rather than *Woosley*, applied to class action challenging utility user tax; criticizing "overbroad" language in *Neecke* and *Batt*].



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bb. Procedure.

9 *Witkin Sum. Cal. Law Tax* § 293

[§ 293] Procedure.

(1) *Timing*. The action must be brought in the superior court within 6 months from the date the claim is wholly or partially rejected. (Rev.C. 5141(a); see Rev.C. 5143 [when claim relates to only portion of assessment, action must be limited to that portion].) (For special venue and judicial disqualification provisions where action is brought by local public entity, see Rev.C. 5161.)

Where the claim involves payments under an installment plan of redemption, an action may be brought even though the taxes have not been paid in full, if the first installment is made within 6 months of the delinquency, other payments are timely, and the taxpayer posts a bond or provides security in the event that taxes, penalties, and interest exceed two-thirds of the value of the property involved. (Rev.C. 5145(a), (b).) The action must be brought within 6 months after refusal of refund of the first installment paid under an installment plan for payment of escape assessments under Rev.C. 4837.5 (*supra*, §256). The property owner may bring the action even if all taxes on the property have not been paid. (Rev.C. 5145.5.)

The action has priority in setting for trial. (Rev.C. 5149.)

(2) *When Claim Is Deemed Denied*. If notice of the board's action is not mailed within 6 months of the date the claim is filed, the claim may be deemed rejected, and an action may be filed. (Rev.C. 5141(b).) In *Geneva Towers Ltd. Partnership v. San Francisco* (2003) 29 C.4th 769, 129 C.R.2d 107, 60 P.3d 692, plaintiff submitted a *claim* to defendant city and county, asserting that the assessed value of the apartment building that plaintiff owned was too high and seeking a partial refund of the property taxes paid for specified tax years. Seven years later, plaintiff filed an *action* for a refund, alleging that the earlier claim for a refund had not been paid. The complaint did not state whether or when plaintiff's claim had been rejected. Defendant demurred, claiming that the action was barred both by Rev.C. 5141(a), which requires an action to be commenced within 6 months after the date that the claim is rejected, and C.C.P. 343 (3 Cal. Proc. (4th), *Actions*, §617), which provides that, where a limitations period is not provided, the action must be commenced within 4 years after the cause of action accrues. The superior court sustained the demurrer on the ground that the action was barred by Rev.C. 5141(a). The Court of Appeal affirmed, but under C.C.P. 343, holding that the

4-year limitations period began to run on the first day that plaintiff could have considered the claim rejected, i.e., 6 months after the claim for refund was filed. *Held*, judgment of the Court of Appeal reversed.

(a) *C.C.P. 343 does not apply*. The Court of Appeal applied the catchall provision of *C.C.P. 343* because it concluded that the 6-month period of Rev.C. 5141(a) did not apply to lawsuits in which the claimant had deemed the claim rejected under Rev.C. 5141(b). "We disagree." (29 *C.4th* 774.) The 6-month statute of limitations set forth in Rev.C. 5141(a) applies to *all* actions against cities and counties for property tax refunds. Those actions are governed by Rev.C. 5140, which authorizes a taxpayer to bring an action to recover a tax that the city or county has refused to refund on a claim filed pursuant to "this chapter" (Rev.C. 5096 et seq.). The 6-month statute of limitations set forth in Rev.C. 5141(a) applies to an action brought under "this article" (Rev.C. 5140 et seq.). An action for a property tax refund is brought under that article whether the claim was rejected or the claimant elected to consider the claim rejected under Rev.C. 5141(b). Rev.C. 5141(a) thus provides a specific statute of limitations for all property tax refund actions, and the catchall provision of *C.C.P. 343* does not apply. (29 *C.4th* 774.)

(b) *When 6-month period of Rev. C. 5141(a) begins to run*.

(1) Defendant contends that the statute of limitations of Rev.C. 5141(a) began to run 6 months after the claim was filed. This contention is without merit. It is clear from Rev.C. 5141(b) that if the city or county fails to act, the claimant is permitted, but not required, to deem its claim denied. In effect, Rev.C. 5141(b) establishes a different 6-month period beginning whenever the claimant considers the claim rejected and brings an action. Because Rev.C. 5141(b) does not establish a limitations period within which the claimant must deem the claim denied if not acted on, the present claim was not automatically denied 6 months after it was filed. (29 *C.4th* 774.) Rev.C. 6934 (*infra*, §372), in language that mirrors Rev.C. 5141(b), also allows the claimant to consider board inaction to be a rejection, and that provision is permissive only. (29 *C.4th* 779.)

(2) The rule adopted here will obviate the need for claimants to file unnecessary protective lawsuits when a claim involving difficult issues remains unresolved for more than 4 years. For example, if a lead case is designated to resolve a particular issue while the remaining cases involving the same issue are held in abeyance, and if resolution of the lead case, including appeals, takes several years, some of the claimants whose claims are being held in abeyance might be forced to file suit, rather than wait for the resolution of the lead case to determine whether judicial proceedings are necessary. Moreover, having the 6-month statute of limitations imposed by Rev.C. 5141(a) commence automatically 6 months after the claim is filed if the public entity has not acted would produce unpleasant and unfair surprises for many claimants whose suits for refunds would be barred by the statute of limitations before the public entity ever acted on the claim. (29 *C.4th* 781.)

(c) *Defendant's demurrer should have been overruled*. The complaint here does not reflect when or if the claim for refund was denied. Accordingly, it does not clearly and affirmatively appear on the face of the complaint that the action is barred by the statute of limitations, and the demurrer should have been overruled on this ground. A demurrer based on a statute of limitations will not be granted where the action may be, but is not necessarily, barred. (29 *C.4th* 781.) When an application for reduction in an assessment is also a claim (see *supra*, §292), the claim is deemed "denied on the date the final installment of the taxes extended on such assessment becomes delinquent" or when the board of equalization "makes its final determination on the application, whichever is later." (Rev.C. 5141(c).)

(3) *Summons*. To avoid dismissal of the action, the summons must be issued and served and return made within 1 year of commencement, except where the parties have filed a stipulation in writing that the time may be extended or the party against whom the action is prosecuted has made a general appearance in the action. (Rev.C. 5147(a); see *Ford Motor Co. v. Tulare* (1983) 145 *C.A.3d* 688, 691, 193 *C.R.* 511 [construing earlier version of statute that did not make exception for general appearance]; *Southern Pac. Trans. Co. v. State Bd. of Equalization* (1985) 175 *C.A.3d* 438, 442, 221 *C.R.* 12 [rejecting *Ford Motor Co. v. Tulare*].) However, the right to a dismissal may be waived by conduct amounting to submission for a determination on the merits. (*Synanon Foundation v. Marin* (1982) 133 *C.A.3d* 607, 614, 184 *C.R.* 129; on mandatory dismissal for delay in service, see 6 *Cal. Proc.* (4th), *Proceedings Without Trial*, §287.)

(4) *Standard of Review*. In a suit for the refund of state assessed taxes, the trial court is not restricted to the administrative record and must consider all evidence relating to the valuation of the property that is admissible under the rules of evidence. Its decision must be based on the preponderance of the evidence. (Rev.C. 5170.)

In a suit to refund locally assessed taxes, the trial court is limited to the administrative record and may overturn the assessment appeals board's determination only if there is no substantial evidence to support it. (*Simms v. Pope* (1990) 218 C.A.3d 472, 477, 266 C.R. 911 [upholding assessor's valuation based on estimated square feet of new construction where taxpayer refused to allow assessor to make actual measurements].)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *When Claim Is Deemed Denied*.C.C.P. 343:

Cross-Reference: 3 Cal. Proc. (5th), Actions, §677.(3) *Summons*.

Cross-Reference: 6 Cal. Proc. (5th), *Proceedings Without Trial*, §319 et seq.



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3. Action After Rejection of Claim for Refund.

cc. Judgment.

9 *Witkin Sum. Cal. Law Tax* § 294

[§ 294] Judgment.

No recovery may be had on any ground not specified in the claim made to the local agency. (Rev.C. 5142(a).) If an assessment is void, in whole or in part, judgment is entered for the taxes paid on the void assessment. (Rev.C. 5144.)

A taxpayer who files a refund action can recover no more than the amount the taxpayer sought in the underlying claim. (*Mission Housing Dev. Co. v. San Francisco* (2000) 81 C.A.4th 522, 527, 97 C.R.2d 8 [even though taxpayers had originally filed applications for reduction in assessment listing artificially low values for their property, their claim for refund listed higher values and refund had to be measured by difference between amount taxpayers had paid and amount due based on values listed in claim].)

Interest on a refund is allowed, but is paid only when it amounts to \$ 10 or more. (Rev.C. 5151(a).) The \$ 10 restriction is reasonably related to administrative convenience and does not violate state or federal equal protection rights. (*Cohan v. Alvord* (1984) 162 C.A.3d 176, 184, 208 C.R. 421; see *Union Pac. R. Co. v. State Bd. of Equalization* (1991) 231 C.A.3d 983, 1004, 1005, 282 C.R. 745 [former Rev.C. 5150 governed inclusion of interest in judgments for recovery of taxes; Rev.C. 5151 provides for inclusion of interest in refunds made directly by assessing and taxing authorities].)

If the taxes to be refunded were paid after delinquency, the amount of penalties, interest, or costs must be computed only on the taxes recovered. (Rev.C. 5149.5.) Taxes paid on any portion of an assessment found not to be void, if paid after delinquency, must carry penalties, interest, and costs. (Rev.C. 5144.)

Where a refund arises from an improper assessment made in violation of the state constitution, the property tax statutes, or a rule or regulation of the board, and the assessor should have sought declaratory relief under Rev.C. 538 in lieu of making the assessment, the plaintiff is entitled to reasonable attorneys' fees. (Rev.C. 5152.)

SUPPLEMENT: [This section is current through the latest supplement]

Grounds specified in claim: See *Korean Air Lines Co., Ltd. v. Los Angeles* (2008) 162 C.A.4th 552, 557, footnote 3, 76

C.R.3d 26 [airline's refund claim was sufficiently broad to encompass several elements of definition of possessory interest under Rev.C. 107 (text, §166); at trial, airline could focus on element that it had not emphasized before assessment appeals board].

Interest: See *Northrop Grumman Corp. v. Los Angeles* (2005) 134 C.A.4th 424, 435, 36 C.R.3d 71 [trial court correctly awarded prejudgment interest to taxpayer beginning on dates that taxpayer filed tax refund claims; because taxpayer had not pursued assessment reduction under Rev.C. 1603 (text, §245), Rev.C. 5151(c) did not authorize interest from date that taxes were paid]; *Macy's Dept. Stores v. San Francisco* (2006) 143 C.A.4th 1444, 1456, 50 C.R.3d 79 [C.C. 3287, Cal. Const., Art. XIII, §32, and Cal. Const., Art. XV, §1, operated together to require payment of 7% interest on refund of local business taxes, from time taxes were paid; neither Rev.C. 5151 nor local ordinance that purported to apply different interest rate and different accrual time applied].



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1. In General.

9 Witkin Sum. Cal. Law Tax § 295

[§ 295] In General.

Under general principles of equity, the taxpayer may sometimes be given injunctive relief against tax proceedings if there is no adequate remedy at law. But the danger of serious interference with the operations of government is such that courts are reluctant to grant this remedy, unless it can be shown that collecting the tax would lead to a multiplicity of actions, produce irreparable injury, or cloud the taxpayer's title. (See *Crocker v. Scott* (1906) 149 C. 575, 593, 87 P. 102 [injunction will not lie to restrain tax collector from declaring property sold to state because there is no cloud on title until deed is executed by state]; *Las Animas & San Joaquin Land Co. v. Preciado* (1914) 167 C. 580, 583, 140 P. 239; *Helms Bakeries v. State Bd. of Equalization* (1942) 53 C.A.2d 417, 421, 128 P.2d 167; 72 Am.Jur.2d (2001 ed.), *State and Local Taxation* §985 et seq.; 65 A.L.R.2d 550 [financial hardship or inability to pay taxes as rendering inapplicable statutes denying remedy by injunction against assessment or collection of tax]; 6 Cal. Proc. (4th), *Provisional Remedies*, §276 et seq.; for forms of complaint and answer, see 22B Am.Jur. P.P. Forms (2001 ed.), *State and Local Taxation* §33 et seq.)

With regard to the possibility of clouding the taxpayer's title, the test of the right to an injunction is whether, in a later action by the purchaser holding a tax deed, the taxpayer would be required to offer evidence to defeat the claim. If so, the taxpayer should have an injunction. (*Chase v. City Treasurer of Los Angeles* (1898) 122 C. 540, 542, 55 P. 414; *Las Animas & San Joaquin Land Co. v. Preciado*, supra, 167 C. 585.) But if the purchaser's action would inevitably fail for lack of a prima facie case, as where the deed would be void on its face, no injunction may be had. (*Z. Russ & Sons Co. v. Crichton* (1897) 117 C. 695, 703, 49 P. 1043.)

In an action for equitable relief where the plaintiff taxpayer owns property subject to tax, the taxpayer must do equity by paying or offering to pay the taxes properly due. (See *Imperial Land Co. v. Imperial Irr. Dist.* (1916) 173 C. 660, 666, 161 P. 113; *Charles v. Crescent City* (1939) 14 C.2d 234, 236, 93 P.2d 129.)

An injunction is not available to restrain reclassification of the taxpayer's status or withdrawal of an exemption. (See *Bob Jones University v. Simon* (1974) 416 U.S. 725, 94 S.Ct. 2038, 2047, 40 L.Ed.2d 496, 513 [racially segregated school was denied injunction against withdrawal of exemption]; *Alexander v. Americans United* (1974) 416 U.S. 752, 94 S.Ct. 2053, 2058, 40 L.Ed.2d 518, 527 [lobbying nonprofit corporation was denied injunction against

reclassification]; 88 *Harv. L. Rev.* 220 [*Bob Jones University and Alexander*].)

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SUPPLEMENT: [This section is current through the latest supplement]

Cross-Reference: 6 *Cal. Proc.* (5th), *Provisional Remedies*, §274 et seq.



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2. Statutory Restriction.

9 Witkin Sum. Cal. Law Tax § 296

[§ 296] Statutory Restriction.

Rev.C. 4807 prohibits an injunction or other legal or equitable process against local public entities or officers to prevent or enjoin the collection of a property tax. (See *Connolly v. Orange* (1992) 1 C.4th 1105, 1114, 4 C.R.2d 857, 824 P.2d 663, supra, §184 [Rev.C. 4807 barred petition for mandamus by Regents of University of California to exempt faculty residences on university property from property tax]; *McKendry v. Kern* (1986) 180 C.A.3d 1165, 1169, 226 C.R. 45 [prepayment action to invalidate procedure for recording personal property tax liens was barred by Rev.C. 4807; under *Pacific Gas & Elec. Co. v. State Bd. of Equalization* (1980) 27 C.3d 277, 165 C.R. 122, 611 P.2d 463, infra, §297, payment and claim for refund were required]; *Community Facilities Dist. No. 88-8 of Riverside v. Harvill* (1999) 74 C.A.4th 876, 881, 88 C.R.2d 405 [Rev.C. 4807 barred defendants from "offsetting" taxes they owed under Community Facilities Act, even though facilities district had not performed services for which taxes were levied; defendants were effectively seeking to prevent collection of taxes by precluding judgment of foreclosure]; *Riverside County Community Facilities Dist. No. 87-1 v. Bainbridge* (1999) 77 C.A.4th 644, 659, 92 C.R.2d 29 [Rev.C. 4807 applies to taxes levied under Community Facilities Act; in community facilities district's action to foreclose liens on special taxes on defendants' properties, defendants' affirmative defenses, based on failure of consideration, were barred].)

A taxpayer's action under C.C.P. 526a (action to enjoin illegal public expenditure; see 4 Cal. Proc. (4th), Pleading, §144) does not avoid the bar of Rev.C. 4807. In *Daar v. Alvord* (1980) 101 C.A.3d 480, 161 C.R. 658, plaintiffs brought an action under C.C.P. 526a to obtain an injunction against expending funds constituting assertedly excessive taxes collected by defendant county. Held, the illegal governmental activity that is subject to taxpayer challenge in C.C.P. 526a does not include activity characterized as illegal solely by reason of purportedly illegal tax collection. (101 C.A.3d 485.)

SUPPLEMENT: [This section is current through the latest supplement]
Cross-Reference: 4 Cal. Proc. (5th), Pleading, §162.



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3. Constitutional Restriction.

9 *Witkin Sum. Cal. Law Tax* § 297

[§ 297] Constitutional Restriction.

The availability of equitable relief in tax matters is further restricted by Cal. Const., Art. XIII, §32: "No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax." Instead, after payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest. (Cal. Const., Art. XIII, §32.)

In *Pacific Gas & Elec. Co. v. State Bd. of Equalization* (1980) 27 C.3d 277, 165 C.R. 122, 611 P.2d 463, three public utility companies sought mandamus and declaratory relief to compel defendant board to adjust the assessment of their real property in accordance with Cal. Const., Art. XIII A (Proposition 13; see supra, §125). The board refused on the ground that Proposition 13 refers only to county-assessed real property, not property of public utilities assessed by the State Board (see supra, §240). *Held*, the action was precluded by Cal. Const., Art. XIII, §32. The utilities' remedy was payment of the tax and suit for refund under Rev.C. 5096 and 5140 (see supra, §292).

(a) On its face, Cal. Const., Art. XIII, §32, bars the present action, for assessment is an integral part of the taxing process, and a court order invalidating an assessment would in effect "prevent or enjoin the collection" of the tax. Moreover, a taxpayer may not circumvent restraints on prepayment tax litigation by seeking only declaratory relief. (27 C.3d 280.)

(b) The utilities' contention that the bar of Cal. Const., Art. XIII, §32, should not apply because the remedy at law is inadequate, cannot be sustained. (1) The constitutional provision is not a mere restatement of the former equity practice. It carries out a policy to allow revenue collection during litigation so that essential public services dependent on the funds are not unnecessarily interrupted. (27 C.3d 282, 283.) (2) The utilities are not forced to litigate in more than 50 counties in separate actions; they may either coordinate their actions under C.C.P. 404 et seq., or choose a target forum and, if they receive a favorable judgment, obtain refunds from the remaining counties through administrative procedures. (27 C.3d 283.)

In *Western Oil & Gas Assn. v. State Bd. of Equalization* (1987) 44 C.3d 208, 242 C.R. 334, 745 P.2d 1360, defendant board, under its authority to assess intercounty pipelines, sought information from plaintiff pipeline owners

about the land and rights of way on which the pipelines were located. Plaintiffs sued to prevent disclosure of the information, contending that defendant lacked jurisdiction to assess the property interests underlying the pipelines. *Held*, the trial court erred in granting the requested relief.

(a) Cal.Const., Art. XIII, §32, does not merely make a particular remedy unavailable or preclude actions challenging the ultimate validity of an assessment. It broadly limits the power of courts to intervene in tax collection matters and applies "if the prepayment judicial determination sought would impede tax collection." (44 C.3d 213.) Here, defendant's demand for information is the first step in the assessment and collection of taxes and the constitutional provision applies. (44 C.3d 213.)

(b) In limited circumstances, prepayment judicial intervention may be justified. (44 C.3d 213.) The role of the court is to examine defendant's authority to inquire; it does not determine the ultimate validity of the assessment to which the inquiry is directed. Prepayment relief is limited to those situations in which it is clear that under no circumstances can the government prevail. (44 C.3d 214.) Here, defendant's interpretation of its assessment authority is not "so devoid of merit or lacking a basis in law and fact" that it could never prevail. (44 C.3d 215.)

In *Union Pac. R. Co. v. State Bd. of Equalization* (1989) 49 C.3d 138, 260 C.R. 565, 776 P.2d 267, defendant board, in assessing plaintiff's property, sought disclosure of confidential portions of plaintiff's strategic plan for future acquisition of property. Plaintiff provided information about currently held property, but refused to produce information about potential acquisitions and projected income from them. Defendant imposed a penalty assessment and issued a subpoena demanding production of the entire plan. The trial court issued a peremptory writ of prohibition permanently restraining defendant from requiring production of the plan and prohibited defendant from enforcing the penalty assessment. The Court of Appeal affirmed the order prohibiting the penalty but reversed the order granting the writ, concluding that it was unable to find that the strategic plan was not reasonably relevant to assessment of plaintiff's current property. *Held*, prohibition of penalty affirmed and denial of writ reversed.

(a) Under *Western Oil & Gas Assn. v. State Bd. of Equalization*, defendant may compel the disclosure of information "reasonably relevant" to its inquiry. *Western Oil & Gas Assn.* does not hold that Cal. Const., Art. XIII, §32, allows prepayment judicial review only where there is no conceivable basis for the tax imposed. (49 C.3d 146.) The requirement of reasonable reliance is rooted in the constitutional guarantee against unreasonable searches and seizures, and "an assessee is entitled to prepayment judicial relief from an assessor's demand for information if the assessee can show that the information is not reasonably relevant to the proposed tax." (49 C.3d 147.)

(b) Plaintiff's strategic plan for acquisition of property is not reasonably relevant to assessment of its current property. In the income or capitalization method of valuation (see *supra*, §217), only future income from existing property is capitalized. Income from possible acquisitions cannot properly be included in the capitalized income stream. Thus, information about future acquisitions is not relevant. (49 C.3d 149.)

(c) The trial court had jurisdiction to prohibit enforcement of the penalty assessment. "[I]f an assessee prevails on its prepayment judicial challenge to an assessor's request for information, the assessee is also entitled to prepayment judicial relief from a penalty assessment imposed for the assessee's refusal to produce the information." In order to provide meaningful relief, the court may temporarily abate a penalty assessment until it decides whether the underlying demand for information is proper. (49 C.3d 156.)

Two justices dissented, contending that the majority opinion rendered Cal. Const., Art. XIII, §32, a nullity. (49 C.3d 159.) (See 17 *Pepperdine L. Rev.* 1143 [*Union Pac. R. Co.*].)

In *Pacific-Union Club v. Superior Court* (1991) 232 C.A.3d 60, 283 C.R. 287, 7 *Summary* (10th), *Constitutional Law*, §380, the State Franchise Tax Board, in an attempt to determine whether members of the Pacific-Union Club had taken improper tax deductions, filed a petition for an administrative subpoena to obtain the club's membership list. The club resisted on privacy grounds. *Held*, the court had jurisdiction to consider the merits of the claim despite the

anti-injunction provision of Cal. Const., Art. XIII, §32. The supremacy of the federal Constitution "is especially clear" when taxing authorities seek information. The court has jurisdiction to determine whether the inquiry offends the prohibition against unreasonable searches and seizures or violates the right of privacy or the privilege against self-incrimination. (232 C.A.3d 70, quoting *Western Oil & Gas Assn.*, *supra*.)

Although Cal. Const., Art. XIII, §32, requires payment of a tax before challenging it, it does not require a suit for refund. Instead, it authorizes the Legislature to provide the specific procedures for challenging a tax. (*American President Lines, Ltd. v. Zolin* (1995) 38 C.A.4th 910, 919, 45 C.R.2d 370 [administrative mandamus was proper procedure for reviewing assessment of trailer truck registration fees by Department of Motor Vehicles].)

Other cases construing the prohibition in Cal. Const., Art. XIII, §32, include the following:

Agnew v. State Bd. of Equalization (1999) 21 C.4th 310, 322, 87 C.R.2d 423, 981 P.2d 52, *infra*, §375 [Cal. Const., Art. XIII, §32, does not require prepayment of *interest* on tax before administrative refund claim or subsequent legal action for refund].

Franchise Tax Bd. v. Superior Court (1989) 212 C.A.3d 1343, 1347, 261 C.R. 236 [former Rev.C. 19081 (now Rev.C. 19381, *infra*, §333), postponing collection of taxes during litigation of fact of taxpayer's residence, does not violate Cal. Const., Art. XIII, §32; statutory prohibition of collection of tax is not "legal or equitable process"].

Merced County Taxpayers' Assn. v. Cardella (1990) 218 C.A.3d 396, 401, 267 C.R. 62 [following *Pacific Gas & Elec. Co. v. State Bd. of Equalization*].

Garg v. People (1997) 53 C.A.4th 199, 208, 61 C.R.2d 376 [trial court lacked jurisdiction to determine whether taxpayer was exempt from unpaid tax].

Brown v. Los Angeles (1999) 72 C.A.4th 665, 670, 85 C.R.2d 414 [declaratory relief judgment that documentary transfer tax must be based on purchase price did not violate Cal. Const., Art. XIII, §32; provision applies to actions against State of California, not those involving assessments by local governments, and to actions challenging property tax, not excise tax; without declaratory judgment, county could continue to overcharge taxpayer, who frequently purchased property at trustee sales].

Flying Dutchman Park v. San Francisco (2001) 93 C.A.4th 1129, 1135, 113 C.R.2d 690 [taxpayer was required to pay local parking tax before challenging it; distinguishing *Brown v. Los Angeles* and relying on *Writers Guild of America, West v. Los Angeles* (2000) 77 C.A.4th 475, 91 C.R.2d 603, *infra*, §311].

Los Angeles v. Southern Calif. Edison Co. (2003) 112 C.A.4th 1108, 1116, 5 C.R.3d 575 ["pay first, litigate later" rule of Cal. Const., Art. XIII, §32, applies not only when taxpayer challenges assessment or collection of tax, but also when taxpayer defends collection action by taxing authority].

Rickley v. Los Angeles (2004) 114 C.A.4th 1002, 1009, 8 C.R.3d 406 [taxpayer could not file declaratory relief action before paying property taxes and *penalties* imposed under Rev.C. 2617 (*supra*, §257); distinguishing *Agnew*, *supra*, which involved payment of *interest* under Rev.C. 6591].

SUPPLEMENT: [This section is current through the latest supplement]

Other cases construing the prohibition in Cal. Const., Art. XIII, §32, include the following:

Milhous v. Franchise Tax Bd. (2005) 131 C.A.4th 1260, 1265, 32 C.R.3d 640 ["pay now, litigate later" rule of Cal. Const., Art. XIII, §32, does not affect court's subject matter jurisdiction and may be waived; by failing to raise it in trial court, board waived issue whether taxpayer had to pay both tax assessed and accrued interest before commencing refund action].

Andal v. Stockton (2006) 137 C.A.4th 86, 90, 40 C.R.3d 34 ["pay first, litigate later" rule did not preclude plaintiffs' declaratory relief action challenging future collection of fee by municipality; plaintiffs had paid challenged fee and were not seeking refund and thus did not have to pursue administrative refund process before filing action]

City Nat. Corp. v. Franchise Tax Bd. (2007) 146 C.A.4th 1040, 1044, 53 C.R.3d 411 [taxpayer's refund action was not barred by Cal. Const., Art. XIII, §32, where taxpayer had paid all taxes that were subject of refund action; taxpayer was not required to pay proposed assessments that were not yet due, and rule requiring all tax liabilities for single time period to be litigated in single action did not convert proposed assessments into final assessments]

California Logistics v. California (2008) 161 C.A.4th 242, 246, 73 C.R.3d 825, 8 Cal. Proc. (5th), Judgment, Supp., §441A [action challenging state's classification of taxpayer's delivery drivers as employees could not proceed until taxpayer paid taxes resulting from that classification, even though previous adjudications of classification issue were decided in taxpayer's favor; doctrine of collateral estoppel does not take precedence over Cal. Const., Art. XIII, §32].



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9 Witkin Sum. Cal. Law Tax § 298

[§ 298] Declaratory Relief.

(1) *In General.* An action for declaratory relief may be brought in property tax cases. (See *Montgomery Ward & Co. v. Welch* (1936) 17 C.A.2d 127, 133, 61 P.2d 790 [recognizing action but denying relief for failure to exhaust administrative remedies]; *Maxwell v. Santa Rosa* (1959) 53 C.2d 274, 278, 1 C.R. 334, 347 P.2d 678 [validity of local assessment]; 5 Cal. Proc. (4th), Pleading, §816.)

(2) *Statutory Authorization.* Not later than 30 days after the delinquency date of a property tax bill, a taxpayer may seek declaratory relief on an allegation that locally assessed property taxes have been illegally or unconstitutionally assessed or collected. Relief is limited to a declaration that the taxes are unconstitutional or otherwise invalid, and payment may not be postponed pending the court's decision. (Rev.C. 4808.) The statute is applicable only where the collection or assessment occurs as the direct result of a change in administrative regulations or constitutional or statutory law effective within 12 months before the date of the action. (Rev.C. 4808.) Actions under Rev.C. 4808 are to be quickly heard and determined and have precedence, with specified exceptions, over other civil actions. (Rev.C. 5149.)

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SUPPLEMENT: [This section is current through the latest supplement]

(1) *In General.*

Cross-Reference: 5 Cal. Proc. (5th), Pleading, §856.



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3. Extraordinary Writ.

9 Witkin Sum. Cal. Law Tax § 299

[§ 299] Extraordinary Writ.

(1) *Former Law.* There was formerly some uncertainty about the availability of certiorari or mandamus to review determinations of boards of equalization. Certiorari was upheld where a board increased an assessment without notice to the petitioner. (*Birch v. Board of Supervisors of Orange* (1923) 191 C. 235, 237, 215 P. 903.) It was denied, however, where there was a remedy by payment of the tax under protest and an action to recover. (*Rickard v. City Council of Santa Barbara* (1920) 49 C.A. 58, 62, 192 P. 726; see *McClelland v. Board of Supervisors* (1947) 30 C.2d 124, 130, 180 P.2d 676; 8 Cal. Proc. (4th), *Extraordinary Writs*, §31 et seq.)

Mandamus was generally denied on the ground of adequacy of the legal remedies. (See *Sherman v. Quinn* (1948) 31 C.2d 661, 665, 192 P.2d 17; *Security-First Nat. Bank v. Board of Supervisors of Los Angeles* (1950) 35 C.2d 323, 327, 217 P.2d 948; *Star-Kist Foods v. Quinn* (1960) 54 C.2d 507, 511, 6 C.R. 545, 354 P.2d 1; *Jillson v. Board of Supervisors of Sacramento* (1963) 221 C.A.2d 192, 194, 34 C.R. 419; *Tivens v. Assessment App. Bd.* (1973) 31 C.A.3d 945, 107 C.R. 679, citing the text; *Sacramento v. Assessment App. Bd. No. 2* (1973) 32 C.A.3d 654, 672, 108 C.R. 434; *Mystery Mesa Mission Christian Church v. Assessment App. Bd.* (1976) 63 C.A.3d 37, 40, 133 C.R. 565 [administrative mandamus barred]; 48 Cal. L. Rev. 811.) But in a case involving the interpretation of the constitutional veterans' exemption, the Supreme Court, to avoid multiplicity of proceedings and resulting hardship, granted mandamus to cancel the assessment. (*Lockhart v. Wolden* (1941) 17 C.2d 628, 633, 111 P.2d 319.) Mandamus was also granted to compel a defendant county to cancel taxes levied on exempt irrigation district property. (*Oakdale Irr. Dist. v. Calaveras* (1955) 133 C.A.2d 127, 140, 283 P.2d 732; see 8 Cal. Proc. (4th), *Extraordinary Writs*, §72 et seq.; 2 Ehrman 3d, §30:9.)

(2) *Present Law.* Rev.C. 4807 eliminates mandamus as a remedy: "No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against any county, municipality, or district, or any officer thereof, to prevent or enjoin the collection of property taxes sought to be collected." (See *Merced County Taxpayers' Assn. v. Cardella* (1990) 218 C.A.3d 396, 401, 267 C.R. 62 [Rev.C. 4807 barred mandamus in action to correct alleged inequities in assessments despite disclaimer of refunds]; *Nast v. State Bd. of Equalization* (1996) 46 C.A.4th 343, 346, 53 C.R.2d 592 [mandamus was not available to overturn board's rejection of taxpayer's objections to income tax assessments; under Cal. Const., Art. XIII, §32, and Rev.C. 19381 and 19382, action for tax refund was plaintiff's exclusive remedy].)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Former Law.*

Cross-Reference: 8 Cal. Proc. (5th), *Extraordinary Writs*, §33 et seq. *Cross-Reference:* 8 Cal. Proc. (5th), *Extraordinary Writs*, §74 et seq.

(2) *Present Law.* See *Little v. Los Angeles County Assessment App. Bd.* (2007) 155 C.A.4th 915, 922, 66 C.R.3d 401 [taxpayer could not use petition for mandamus to challenge assessor's determination of base year value and to seek assessment of property at lower value for all subsequent years].



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1. Tax Assistance.
a. Nature of Program.

9 Witkin Sum. Cal. Law Tax § 300

[§ 300] Nature of Program.

(1) *Former Law and Revision.* The Senior Citizens Property Tax Assistance Law (former Rev.C. 19501 et seq.) was originally enacted in 1967 to provide property tax relief for elderly persons with limited incomes. In conjunction with the enactment of a property tax postponement law in 1977 (see *infra*, §303), the former assistance law was repealed and replaced by a similar statute (Rev.C. 20501 et seq.), applicable to both owners and renters and subsequently extended to blind and disabled claimants.

Under the program, administered by the Franchise Tax Board, the state makes assistance payments to eligible claimants based on property taxes they have paid or are deemed to have paid. (See 45 *A.L.R.3d* 1147 [validity of statute or ordinance giving property tax exemption or favorable property tax rate to older persons].)

(2) *Eligibility.* A claimant must be at least 62 years old on the last day of the calendar year or approved fiscal year ending within the fiscal year for which assistance is claimed, or blind or disabled, as defined in Welf.C. 12050, on that date. The claimant must also be a "member of the household"; i.e., the claimant must reside on the property. (Rev.C. 20505(a).) The claimant does not lose eligibility for tax assistance by reason of a temporary confinement in a hospital or medical institution for medical reasons. (Rev.C. 20507(a).)

The claimant may be either the owner of a residential dwelling or the renter of a rented residence. (Rev.C. 20505(a); for definition of "residential dwelling," see Rev.C. 20508; for definition of "rented residence," see Rev.C. 20509.) A renter claimant must pay rent of at least \$ 50 a month. (Rev.C. 20510.)

(3) *Amount of Assistance.* For property owners, the amount of assistance provided is a percentage of the property tax accrued and paid on the first \$ 34,000 of full value of the property. No assistance is allowed for taxes on the value in excess of \$ 34,000. (Rev.C. 20542(a); see Rev.C. 20543 [listing applicable percentages].) The taxes on which the claim is based are those for the fiscal year in which the application for assistance is sought. (Rev.C. 20511.) Interest, penalties, principal payments on improvement bonds, and charges for service, are excluded. (See Rev.C. 20512 [defining "property taxes accrued"]; on waiver of requirement that taxes be paid before assistance can be granted, see Rev.C. 20562.) For renters, the amount of assistance provided is a percentage of \$ 250, the statutory property tax equivalent. (Rev.C. 20542(a), 20544.) (On election of mobilehome owner to file either owner's or renter's claim, see Rev.C.

20541(b).)

(4) *Effect of Statutory Amendments.* Unless otherwise specifically provided, changes in the assistance statutes are applied with respect to claims filed for property tax assistance for fiscal years beginning after enactment. (Rev.C. 20646.)

SUPPLEMENT: [This section is current through the latest supplement]



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CHAPTER XI - Taxation

Witkin Summary of California Law
X. LOCAL PROPERTY TAXATION
L. Tax Assistance and Postponement.
1. Tax Assistance.
b. Restrictions.

9 Witkin Sum. Cal. Law Tax § 301

[§ 301] Restrictions.

(1) *Income Restriction.* For both owner-claimants and renter-claimants, the allowable percentage of assistance is inversely proportional to total household income, and assistance is not available where household income exceeds a specified amount. (Rev.C. 20543, 20544.) The household income figures are calculated by using the figures from the immediately preceding year, multiplied by an inflation factor. The inflation factor is calculated using the percentage change in the California Consumer Price Index as reported by the Department of Industrial Relations. (Rev.C. 20543(b), 20544(b).)

In addition, assistance is not allowed if gross household income, after allowance for actual cash expenditures that are reasonable, ordinary, and necessary to realize the income, exceeds a specified amount. (Rev.C. 20514(a).) The gross household income figures are calculated by using the figures from the immediately preceding year, multiplied by an inflation adjustment factor. The inflation factor is calculated using the percentage change in the California Consumer Price Index as reported by the Department of Industrial Relations. (Rev.C. 20514(b).)

"Household income" is all income received by all persons of a household while members of the household and all income, regardless of source, of a nonresident claimant. (Rev.C. 20504.) "Income" is broadly defined to include items that are ordinarily excluded in determining adjusted gross income for income tax purposes, such as retirement benefits, social security benefits, and unemployment insurance payments. (Rev.C. 20503(a).) Income is determined for the calendar year or approved fiscal year which ends within the fiscal year for which assistance is claimed. (Rev.C. 20503(b).)

The household of an owner-claimant includes all persons whose principal residence is the residential dwelling of the claimant, except bona fide renters, minors, or students. The household of a renter-claimant includes the claimant and the claimant's spouse and all persons residing on the premises except renters, minors, or students, and owners of the same residence. (Rev.C. 20506.)

Where a rented residence is occupied for less than 12 months during the calendar year for which assistance is claimed, the allowable assistance must be prorated. (Rev.C. 20513.) Where a residential dwelling is jointly owned by individuals who are not members of the same household, the property tax on which assistance is based must be prorated

to reflect the claimant's ownership interest. (Rev.C. 20511 [listing shared ownership interests not requiring proration]; on proration where residential dwelling is integral part of large unit or multipurpose or multidwelling building, see Rev.C. 20512(b).)

(2) *Restrictions on Multiple Claims.* A claimant may not qualify as an owner-claimant and as a renter-claimant in the same year. (Rev.C. 20505(a).) In addition, assistance is provided for only one owner-claimant per household per year. If two or more individuals qualify as owners and are unable to determine who may file the claim, the Franchise Tax Board determines the matter. (Rev.C. 20542(b)(1)(A).) Where two or more individuals qualify as renter-claimants, each is entitled to assistance. However, spouses residing together are presumed to be one renter. (Rev.C. 20542(b)(1)(B).)

Where a claim for tax postponement has been filed (see *infra*, §303 et seq.), a claim for assistance must be filed by the same individual, not by an otherwise qualified member of the claimant's household. (Rev.C. 20542(b)(4).)

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1. Tax Assistance.
c. Procedure.

9 Witkin Sum. Cal. Law Tax § 302

[§ 302] Procedure.

(1) *Claims Procedure.* Except as otherwise specifically provided, the assistance laws are enforced by the Franchise Tax Board. (Rev.C. 20642.) The claimant files a claim under penalty of perjury with the board on a form supplied by the Board. (Rev.C. 20561, 20641.) The claim must be filed after June 30 of the fiscal year for which the assistance is claimed, but not later than October 15 of the succeeding fiscal year. (Rev.C. 20563(a); on late filing where timely filing is prevented by medical incapacity, see Rev.C. 20563(c).) The Franchise Tax Board is authorized to prescribe, by regulation, the information necessary to constitute a valid claim. (Rev.C. 20561(c).)

(2) *Effect of Fraud or Failure To Provide Information.* An assistance claim must be disallowed if the claimant fails to furnish information requested in writing by the Franchise Tax Board, or if the claim is fraudulent. (Rev.C. 20643; see Rev.C. 20644 [mathematical errors are not evidence of fraud]; on procedure where assistance has been erroneously granted, see Rev.C. 20645.)

(3) *Effect of Death of Claimant.* If a claimant dies without filing a timely claim, a claim on the decedent's behalf may be filed by the claimant's surviving spouse. (Rev.C. 20542(b)(3).) If a claimant dies after filing a timely claim, the amount of the claim may be distributed to (a) the surviving spouse, (b) a qualified claimant in the household, if there is no surviving spouse, or (c) any member of the household, if there is neither a surviving spouse nor a qualified claimant. (Rev.C. 20542(b)(2).)

(4) *Payment.* The Franchise Tax Board computes the amount of assistance and authorizes payment. However, authorized assistance may be applied against any liability due from the claimant. (Rev.C. 20561.) In addition, if a lien for the fiscal year for assistance has been acquired, the net payment otherwise due is first applied to reduce the obligation secured by the lien. (Rev.C. 20564(a); on adjustment in lien where allowance of assistance is later deemed to be erroneous, see Rev.C. 20564(b).) Assistance is paid between July 15 and November 15 of the calendar year in which the claim is filed. (Rev.C. 20563(b).) Interest is not allowed on assistance payments made to a claimant. (Rev.C. 20644.5.) (On civil and criminal penalties for endorsement of assistance warrants by tax preparers, see Rev.C. 20645.7, 20645.9.)

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2. Tax Postponement.
a. Nature and Scope of Program.

9 Witkin Sum. Cal. Law Tax § 303

[§ 303] Nature and Scope of Program.

(1) *Constitutional and Statutory Authorization.* Cal. Const., Art. XIII, §8.5, authorizes legislation to postpone property taxes on dwellings owned and occupied by certain individuals as their principal place of residence. The constitutional provision applies to persons of low or moderate income who are at least 62 years of age and to disabled persons. The constitutional provision is implemented by Rev.C. 20581 et seq. (See 1 Ehrman 3d, §11:6 et seq.)

Unless otherwise specifically provided, changes in the postponement statutes apply with respect to claims filed for property tax assistance for fiscal years beginning after enactment. (Rev.C. 20646.)

(2) *Eligible Taxpayers.* Postponement is available to four classes of taxpayers, subject to similar, but distinct, restrictions and requirements:

(a) Homeowners, under the Senior Citizens and Disabled Citizens Property Tax Postponement Law (Rev.C. 20581 et seq.).

(b) Tenant-stockholders in cooperative housing corporations, under the Senior Citizens Tenant-Stockholders Property Tax Postponement Law (Rev.C. 20625 et seq.).

(c) Mobilehome occupants, under the Senior Citizens Mobilehome Property Tax Postponement Law (Rev.C. 20639 et seq.).

(d) Possessory interest holders, under the Senior Citizens Possessory Interest Holders Property Tax Postponement Law (Rev.C. 20640 et seq.).

(3) *Subvention and Reimbursement.* The Legislature must provide for state subventions to local entities to replace revenues lost by postponement and reimbursement to the state when postponed taxes are eventually paid. Reimbursement must include interest on the subventions and costs incurred by the state. (Cal. Const., Art. XIII, §8.5.)

A fund of \$ 12.7 million has been appropriated to pay postponed taxes. (*Govt.C. 16180*; see Stats. 1977, Chap. 1242, §17 [declaration of legislative intent to "properly" fund in future].)

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b. Definitions.

9 Witkin Sum. Cal. Law Tax § 304

[§ 304] Definitions.

(1) *In General.* Unless the context requires otherwise, the definitions governing tax assistance (supra, §300 et seq.) are applicable to tax postponement. (Rev.C. 20502, 20582.) Additional definitions are applicable to tax postponement generally. (See Rev.C. 20583, 20585.) These are supplemented by definitions applicable to tenant-stockholder claimants (Rev.C. 20626), mobilehome claimants (Rev.C. 20639.1), and possessory interest holder claimants (Rev.C. 20640.1).

(2) *Claimant.* Tax postponement claimants fall into four classes, according to the character of their occupancy:

(a) Owner occupant under Rev.C. 20581 et seq.

(b) Tenant-stockholder occupant under Rev.C. 20625 et seq. A tenant-stockholder claimant occupies a residential unit in a cooperative housing corporation as the occupant's principal place of residence. (Rev.C. 20627.)

(c) Mobilehome occupant under Rev.C. 20639 et seq. As used in Rev.C. 20639 et seq., "mobilehome" does not include mobilehomes taxed as real property. (Rev.C. 20639.2(b).)

(d) Possessory interest holder occupant under Rev.C. 20640 et seq. A "possessory interest" is possession or the right to possession of land, whether or not coupled with ownership of a residential dwelling on the land or possessory interest in tax-exempt land. (Rev.C. 20640.2(a).) A possessory interest holder claimant is a person holding a right to a possessory interest under a recorded instrument conveying the possessory interest for a term not less than 45 years beyond the last day of the calendar year ending immediately before the fiscal year for which taxes are initially postponed. (Rev.C. 20640.3(a).)

(3) *Residential Dwelling.* "Residential dwelling" means a dwelling occupied as the claimant's principal place of residence and includes "so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home," and also includes (a) condominiums, (b) mobilehomes assessed as realty, (c) the land on which mobilehomes not assessed as realty are situated, and (d) a part of a multiresidential or multipurpose unit and the land on which it is built. (Rev.C. 20583(a).) Ownership includes (a) the interest of vendees in possession under a recorded land sale contract, (b) the interest of life tenants under a recorded instrument, (c) the interest of various joint holders, including

those owning community property, and (d) the interest in a residential dwelling in which the title is held in trust, as described in Rev.C. 62(d) (supra, §151), provided that the controller determines that the state's interest is adequately protected. (Rev.C. 20583(b).) Registered owners of mobilehomes are deemed owners. (Rev.C. 20583(c).)

Except for mobilehomes and the residences of tenant-stockholders, ownership must be evidenced by a recorded written instrument. (Rev.C. 20583(d).) Claimants must also have at least a 20% equity in the residence and, if they hold it under a contract of sale or a life estate, they must obtain the written consent of the vendor or reversionary interest holder to the postponement. (Rev.C. 20583(e)(1), (e)(2).) In addition, they must receive a secured tax bill for the property. (Rev.C. 20583(e)(3).) (For definition of "residential unit" applicable to tenant-stockholder claimants, see Rev.C. 20628; for definition of "residential dwelling" applicable to possessory interest holder claimants, see Rev.C. 20640.2(b).)

(4) *Property Taxes*. "Property taxes" includes city and county ad valorem property taxes, special assessments, and other charges or user fees attributable to the residential dwelling (Rev.C. 20584(a)), and property taxes that became delinquent after the claimant was 62 years of age or after the claimant became blind or disabled as defined in Welf.C. 12050 (Rev.C. 20584(c)). Where a residential dwelling is an integral part of a larger tax unit, postponement applies to the percentage of the total tax that the value of the residential dwelling bears to the value of the total tax unit. (Rev.C. 20584(b).) (For special definition of "property taxes" applicable to tenant-stockholder claimants, see Rev.C. 20629; for special definition applicable to mobilehome claimants, see Rev.C. 20639.3; for special definition applicable to possessory interest holder claimants, see Rev.C. 20640.2(c).)

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9 *Witkin Sum. Cal. Law Tax* § 305

[§ 305] Conditions and Restrictions.

(1) *Residency Requirement.* The claimant must be a member of the household and the owner or occupant of the residential dwelling for which postponement is claimed. Ownership and occupancy are determined on the last day of the calendar year ending immediately before the commencement of the fiscal year for which the postponement is claimed. (Rev.C. 20505(b), 20627, 20640.3(b).) (On continued qualification where claimant buys new principal dwelling, see Rev.C. 20505(c).)

A claimant does not lose eligibility for tax postponement by reason of temporary confinement in a hospital or medical institution for medical reasons, as long as the residential dwelling was the claimant's principal residence immediately before the confinement. (Rev.C. 20507(a).)

(2) *Age or Disability Requirement.* Ordinarily, postponement applies only to claimants who are 62 years of age or older. However, postponement is also available to blind or disabled owner-occupants regardless of age. Age is determined on December 31 of the fiscal year for which the postponement is claimed. Disability is determined at the time of application or on December 10 of the fiscal year for which postponement is claimed, whichever is earlier. (Rev.C. 20505(b), 20627, 20640.3(c).)

(3) *Income Restriction.* Postponement is available only where "household income" is \$ 24,000 or less. (Rev.C. 20585(c).) (For applicable definitions, see Rev.C. 20503 [income]; Rev.C. 20504 [household income]; Rev.C. 20506 [household]; supra, §301.) For purposes of postponement, income is determined for the calendar year ending immediately before the fiscal year for which postponement is claimed. (Rev.C. 20503(c).)

(4) *Multiple Claimants.* Only one claimant per household per year is entitled to postponement. When two or more members of a household are qualified as claimants, they may agree between themselves who will be the claimant. If they are unable to do so, the controller determines the claimant and the decision is final. (Rev.C. 20586.)

(5) *Tax Delinquency.* With certain exceptions, postponement is not available where property taxes are delinquent at the time of application. (Rev.C. 20583(e)(5) [owner-claimants]; Rev.C. 20639.4(b) [mobilehome claimants]; Rev.C. 20640.4(c) [possessory interest holder claimants].)

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(3) *Income Restriction.* Rev.C. 20585(c) was amended in 2006 to specify various household incomes above which postponement is not available. The incomes vary from \$ 24,000 to \$ 39,000, adjusted for inflation, depending on when the claimant first filed and qualified for postponement.

(5) *Tax Delinquency.* Rev.C. 20583(e)(5) was deleted in 2005. Rev.C. 20583(f), added in 2005, precludes postponement for houseboats and floating homes on which property taxes are delinquent at the time the postponement application is made.



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d. Claims.

9 Witkin Sum. Cal. Law Tax § 306

[§ 306] Claims.

(1) *Administration.* Except as otherwise specifically provided, the postponement laws are administered by the Franchise Tax Board. (Rev.C. 20642.) However, many specific duties are imposed on the controller. (On controller's postponement records, see *Govt.C. 16181*, Rev.C. 20632 [mobilehome claimants]; Rev.C. 20640.10 [possessory interest holder claimant]; on request to controller for statement of postponement status, see Rev.C. 20638 [tenant-stockholder claimant].)

(2) *Amount of Claim.* A claim for postponement may not exceed the property taxes for the fiscal year for which the claim is made. (Rev.C. 20601, 20630(a), 20639.4(a), 20640.4(a).)

(3) *Manner and Content of Claim.* Forms filed under the postponement law need not be under oath, but must be made under penalty of perjury. They are filed with the controller, who is required to furnish and distribute blank forms. (Rev.C. 20641; on content of claim, see Rev.C. 20621, 20630.5, 20639.9, 20640.9.) The controller prescribes the procedure for spouses or authorized agents to apply on behalf of incapacitated claimants. (Rev.C. 20603, 20639.7, 20640.7.)

(4) *Time for Filing.* Claims must be filed annually, after May 15, and on or before December 10. (Rev.C. 20622, 20630.5, 20639.8, 20640.8.) (On cancellation of delinquent penalties and interest where claim is timely filed, see Rev.C. 20645.5.)

The controller may, for good cause, grant a reasonable extension of time for filing a postponement claim within the fiscal year for which postponement is claimed. (Rev.C. 20641.5.)

(5) *Effect of Fraud or Failure To Provide Information.* A postponement claim must be disallowed if the claimant fails to furnish information requested in writing by the controller or if the claim is fraudulent. (Rev.C. 20643; see Rev.C. 20644 [mathematical errors are not evidence of fraud].)

(6) *Certificate of Eligibility.* When a claim is approved, the controller may make payment directly to a lender, mortgage company, escrow company, or county tax collector for the property taxes owed on behalf of a qualified

claimant. (Rev.C. 20602(a)(1).) Alternatively, the controller may issue a certificate of eligibility to the claimant. (Rev.C. 20602(a); on content of certificate, see Rev.C. 20602(b); on duration, see Rev.C. 20602(d); on time of issuance, see Rev.C. 20602(e); on replacement of lost or destroyed certificate, see Rev.C. 20602(f).) (For similar statutes applicable to tenant-stockholder claimants, see Rev.C. 20630; for statutes applicable to mobilehome claimants, see Rev.C. 20639.6; for statutes applicable to possessory interest holder claimants, see Rev.C. 20640.4, 20640.6.)

(7) *Appeal*. If a claim is denied, or the controller determines that postponement has been erroneously granted, the claimant is entitled to an administrative appeal. (Rev.C. 20645.1; on payment of tax and cancellation of delinquency where controller is reversed on appeal, see Rev.C. 20645.6.)

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e. Payment.

9 Witkin Sum. Cal. Law Tax § 307

[§ 307] Payment.

(1) *Execution and Effect of Certificates.* Once certificates of eligibility (*supra*, §306) are signed by the claimants (or spouses or authorized agents) and countersigned by the local tax collectors, they constitute promissory notes of the state to pay the taxes due. (Rev.C. 20602(c).) The executed certificates must be accepted by the local collectors as payment for the current taxes (Rev.C. 2505(b)), but subject to specified exceptions, may not be accepted for payment of delinquent penalties, costs, fees, interest, or redemption charges (Rev.C. 2505(c)). (On acceptance of certificate of eligibility by tax collector, see Rev.C. 2514(a).)

(2) *Impound Accounts.* Originally, the fact that the payment of taxes by claimants was postponed did not relieve them of their duty to make payments to lenders with respect to impound trust and other accounts described in C.C. 2954 (Rev.C. 20605(a)), but now, subject to stated exceptions, payments to impound accounts are not required (Rev.C. 20605(b)) and double payments of taxes are refunded (Rev.C. 20602(b), 2514(a)(3)).

(3) *Interest.* Interest is not allowed on postponement payments made to a claimant. (Rev.C. 20644.5.)

(4) *Effect on Welfare Entitlement.* Property taxes defined by Rev.C. 20584 (*supra*, §304) that are postponed under Rev.C. 20581 et seq. or Rev.C. 20641 et seq. are not considered income or resources for purposes of designated assistance programs. (Welf.C. 11008.4.)

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f. Security and Enforcement.

9 Witkin Sum. Cal. Law Tax § 308

[§ 308] Security and Enforcement.

(1) *Lien*. Tax postponement sums paid by the state must be secured by liens. (*Govt.C. 16182(a)*.) A notice of lien on real property is recorded with the county recorder. (*Govt.C. 16182(b)*.) A notice of lien on a mobilehome is filed with the Department of Housing and Community Development. (*Govt.C. 16182(c)(4)*.) (See *Govt.C. 27282(a)(5)* [notice may be recorded without acknowledgment]; on subordination of state liens, see *Govt.C. 16185*.) If the dwelling is part of a larger parcel taxed as a unit, the lien attaches to the entire parcel. (*Govt.C. 16182(a)*.) Interest accrues on the obligations from the first day of the month following payment at a rate adjusted annually according to a statutory formula. (*Govt.C. 16183*.)

(2) *Security Interest*. In certain situations, postponed taxes are subject to security interests:

(a) Postponement of taxes owed by a tenant-stockholder are secured by a pledge of the claimant's shares in the cooperative housing corporation. (*Rev.C. 20630(b)(2)*.)

(b) Postponed taxes on a mobilehome are secured by a security interest in the mobilehome or an additional security interest acceptable to the controller. (*Rev.C. 20639.5*.)

(c) Postponed taxes on a possessory interest are secured by assignment of the remaining term of the claimant's interest, by a security interest in improvements on the land, or by an additional security interest acceptable to the controller. (*Rev.C. 20640.5*.)

(3) *Changes in Secured Amount*. Obligations are reduced or increased as payments are received or new taxes postponed. (*Govt.C. 16184*; *Rev.C. 20635*; on discharge of obligations, see *Govt.C. 16186*; on refund of overpayment, see *Govt.C. 16186.5*.) A claimant or surviving spouse or coowner can request postponement for subsequent years, and subsequent payments by the state are added to the existing lien. (*Govt.C. 16192*; see *Rev.C. 20636* [postponement by surviving spouse of shareholder-tenant claimant].)

(4) *When Postponed Amounts Become Due*. All amounts paid by the state become due whenever one of the following happens:

(a) Claimants cease to occupy the premises as a residential dwelling; die; sell, convey, or dispose of the property; or allow a delinquency in taxes or special assessments. (*Govt.C. 16190(a).*)

(b) Coowning claimants die and their surviving spouses or other coowners allow a delinquency in taxes or special assessments, cease to occupy the premises as a residential dwelling, die, or convey or dispose of the interest in the property. (*Govt.C. 16190(b).*)

(c) Claimants fail to perform an act secured by a senior lien. (*Govt.C. 16190(c).*)

(d) Postponement is erroneously granted. (*Govt.C. 16190(d).*)

Interest continues, but there is no delinquency, when claimants, or their surviving spouses or other coowners, cease to continue postponement of taxes, so long as none become delinquent. (*Govt.C. 16191*; see *Rev.C. 20634* [when tenant-stockholder postponement amounts due]; *Rev.C. 20639.11* [when mobilehome claimant postponement amounts become due]; *Rev.C. 20640.11* [when possessory interest holder claimant postponement amounts due].)

(5) *Enforcement.* If the controller determines that amounts due are payable under *Govt.C. 16190*, the controller may do any of the following:

(a) Demand payment. (*Govt.C. 16201(a).*)

(b) If the controller has reasonable grounds to believe that sale of the property will not satisfy the state lien, file a claim with the estate of any deceased person whose property is liable for the amounts, or request the attorney general to bring an action under *C.C. 2931c*. (*Govt.C. 16201(b).*)

(c) Direct the Department of General Services to sell the property (see *Govt.C. 14735* et seq.; *U.C.C. 9109* et seq.; *Rev.C. 3201* et seq.). (*Govt.C. 16201(c).*)

In addition, the controller may take another action with respect to the real property interest that best serves the interest of the state, including sale, lease, or retention of any interest acquired. (*Govt.C. 16202.*) (See *Rev.C. 20637* [actions to secure payment of tenant-stockholder postponement amounts]; *Rev.C. 20639.12* [actions to secure payment of mobilehome claimant postponement amounts]; *Rev.C. 20640.12* [actions to secure payment of possessory interest holder postponement amounts].)

The controller is notified of pending foreclosures on any properties securing state liens for postponed taxes. (*Govt.C. 16187*; *Rev.C. 3375*; see *C.C. 2924b(c)(2)(F).*) The controller may (a) pay the amounts due and add them to the existing amounts secured by the liens, (b) bid on the affected property, or (c) merely acknowledge receipt of the notices. (*Govt.C. 16200.*) (On procedures employed where property secured by state lien is condemned or sold, see *Govt.C. 16210* et seq.)

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XI. OTHER LOCAL TAXATION
A. Local License Taxes.
1. In General.

9 Witkin Sum. Cal. Law Tax § 309

[§ 309] In General.

(1) *Purpose of License Taxes.* License taxes (also termed "privilege" or "occupation" taxes) are levied on the exercise of a privilege, business, or vocation. (See 53 Cal. L. Rev. 801 [comprehensive study of municipal taxes in California and their effect on intrastate commerce]; 51 Am.Jur.2d (2000 ed.), *Licenses and Permits* §5 et seq.; 16B Am.Jur. P.P. Forms (2000 ed.), *Licenses and Permits* §3 et seq.; 12 Am.Jur. Legal Forms 2d (1999 ed.), *Licenses and Permits* §164:16 et seq.)

Municipalities and counties have direct constitutional authority to license for purposes of *regulation*. (Cal. Const., Art. XI, §7; see 7 Summary (10th), *Constitutional Law*, §984.) Counties and cities formed under general law have no power to license for *revenue* in the absence of a grant of that power by the Legislature under Cal. Const., Art. XIII, §24. (B. & P.C. 16000, 16100; see *In re Gritton* (1956) 46 C.2d 856, 858, 300 P.2d 7 ["The general policy of the state is opposed to the raising of revenue by the collection of direct taxes as a condition precedent to the conduct of business"]; *Redding v. Dozier* (1922) 56 C.A. 590, 592, 206 P. 465; *In re Bock* (1932) 125 C.A. 375, 379, 13 P.2d 836; *Cooper v. Michael* (1967) 257 C.A.2d 176, 178, 64 C.R. 842.)

Rev.C. 7284 allows counties to license and tax, *for revenue and regulation*, every kind of lawful business transacted in the unincorporated portion of the county. The performance of a governmental function by a public agency, however, does not constitute the transaction of business within the meaning of Rev.C. 7284. (*Sacramento Mun. Util. Dist. v. Solano* (1997) 54 C.A.4th 1163, 1166, 63 C.R.2d 286 [county's business license tax on electrical energy produced by commercial wind turbine generators within county could not be applied to municipal utility district].) Moreover, nonprofit organizations are exempt from municipal and county business license taxes, both flat taxes and those based on income or gross receipts. (Rev.C. 7284.1.)

Chartered cities and towns are specifically authorized by the Constitution to impose license taxes for revenue purposes, but are subject to charter limitations on the power (see *infra*, §310).

(2) *Special Taxes Distinguished.* All cities, counties, and districts (state agencies formed "for the local performance of governmental or proprietary functions within limited boundaries") are authorized to impose special taxes under Cal. Const., Art. XIII A (see *supra*, §125 et seq.). (Govt.C. 50075, 50077; see Govt.C. 23027 [county may impose uniform special tax].) A fee may be treated as a "special tax" only when one or both of the following conditions exist: (a) The

fee exceeds the reasonable cost of providing the service or regulatory activity for which it is charged, or (b) the fee is levied for general revenue purposes. (*Govt.C. 50076; Carlsbad Mun. Water Dist. v. QLC Corp. (1992) 2 C.A.4th 479, 485, 3 C.R.2d 318.*)

(3) *Veterans' Exemption.* Veterans may "hawk, peddle and vend" personally owned goods or merchandise (except liquor) without payment of a license tax or fee. (*B. & P.C. 16102; see Brooks v. Santa Clara (1987) 191 C.A.3d 750, 758, 236 C.R. 509* [nature and scope of exemption].) Cities and counties may not require a regulatory license or impose a regulatory license fee on the solicitation of donations for the support of veterans by federally chartered veterans' organizations. (*B. & P.C. 16000.7(b), 16100.7(a).*) These prohibitions do not extend, however, to the licensing and regulation of business-related activities, such as those involving the sale or exchange of goods or services. (*B. & P.C. 16000.7(c), 16100.7(b).*)

(4) *Extraterritorial Effect.* A license tax or fee on a business operating both inside and outside the jurisdiction of the legislative body imposing the fee must be levied so that the measure of the tax or fee "fairly reflects" the proportion of the activity "actually carried on within the taxing jurisdiction." (*B. & P.C. 16000(a); Govt.C. 37101(b).*)

West's Key Number Digest, Taxation k.117

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Purpose of License Taxes.* See 12 Am.Jur. Legal Forms 2d (2008 ed.), Licenses and Permits §164:16 et seq.



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XI. OTHER LOCAL TAXATION

A. Local License Taxes.

2. Authority of Charter Cities.

9 Witkin Sum. Cal. Law Tax § 310

[§ 310] Authority of Charter Cities.

Charter cities have complete control over municipal affairs, and so have direct constitutional power to impose license taxes for revenue if that power is not specifically withheld by the city charter. (See Cal. Const., Art. XI, §5(a); *West Coast Advertising Co. v. San Francisco* (1939) 14 C.2d 516, 522, 95 P.2d 138; *Flynn v. San Francisco* (1941) 18 C.2d 210, 213, 115 P.2d 3; *Ainsworth v. Bryant* (1949) 34 C.2d 465, 469, 211 P.2d 564; *Grass Valley v. Walkinshaw* (1949) 34 C.2d 595, 599, 212 P.2d 894 ["A construction in favor of the exercise of the power and against the existence of any limitation or restriction thereon which is not expressly stated in the charter is clearly indicated"]; *Los Angeles v. Belridge Oil Co.* (1954) 42 C.2d 823, 271 P.2d 5, supra, §51; *Glendale v. Trondsen* (1957) 48 C.2d 93, 98, 308 P.2d 1; *American Locker Co. v. Long Beach* (1946) 75 C.A.2d 280, 284, 170 P.2d 1005 [city tax on operation of storage lockers]; *Redwood Theatres v. Modesto* (1948) 86 C.A.2d 907, 912, 196 P.2d 119 [city tax of 3 cents on every theatre ticket]; *Franklin v. Peterson* (1948) 87 C.A.2d 727, 732, 197 P.2d 788 [Los Angeles gross receipts tax on persons engaged in various trades and professions was validly applied to attorney at law]; *Los Angeles v. Tannahill* (1951) 105 C.A.2d 541, 544, 233 P.2d 671; *Arnke v. Berkeley* (1960) 185 C.A.2d 842, 846, 8 C.R. 645; *Alameda v. San Francisco* (1971) 19 C.A.3d 750, 757, 97 C.R. 175, supra, §52 ["commuter tax"]; *Los Angeles v. A.E.C. Los Angeles* (1973) 33 C.A.3d 933, 940, 109 C.R. 519; *Modesto v. Modesto Irr. Dist.* (1973) 34 C.A.3d 504, 506, 508, 110 C.R. 111; *Independent Casting-Television v. Los Angeles* (1975) 49 C.A.3d 502, 508, 122 C.R. 416 [gross receipts of casting agency included salaries paid to extras by producers where agency was general employer, citing the text, *Workers' Compensation*]; *Marsh & McLennan of Calif. v. Los Angeles* (1976) 62 C.A.3d 108, 115, 132 C.R. 796 [gross receipts tax on insurance brokers]; *Hospital Med. Collections v. Los Angeles* (1976) 65 C.A.3d 46, 53, 135 C.R. 147 [commissions retained by out-of-town assignee-collectors were part of gross receipts of local assignor-collectors]; *Los Angeles v. London Towne Livery Service* (1979) 97 C.A.3d 814, 817, 159 C.R. 94 [tax on transportation service where transporting occurs either entirely within city or on trips originating or terminating within city].) (For constitutional and statutory challenges, see *infra*, §311 et seq.)

Although the imposition of a license tax is within the municipal power, the imposition of criminal penalties for failure to pay is not. P.C. 424 preempts the field of punishment for refusal or neglect to pay public money. (*People v. Evans* (1967) 249 C.A.2d 254, 262, 57 C.R. 276.)

SUPPLEMENT: [This section is current through the latest supplement]



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XI. OTHER LOCAL TAXATION

A. Local License Taxes.

3. Constitutional Challenges.

9 *Witkin Sum. Cal. Law Tax* § 311

[§ 311] Constitutional Challenges.

(1) *Discriminatory Provisions or Extraterritorial Effect.* Numerous cases, including the following, have determined whether local license taxes are discriminatory or extraterritorial in effect:

Los Angeles v. Shell Oil Co. (1971) 4 C.3d 108, 119, 93 C.R. 1, 480 P.2d 953, supra, §51 [constitutionally invalid apportionment].

John Tennant Memorial Homes v. Pacific Grove (1972) 27 C.A.3d 372, 381, 103 C.R. 215, supra, §53 [tax on nonprofit retirement homes was denial of equal protection].

Gutknecht v. Sausalito (1974) 43 C.A.3d 269, 281, 117 C.R. 782 [equal protection claim rejected].

Los Angeles v. Crawshaw Mortg. & Inv. Co. (1975) 51 C.A.3d 696, 705, 124 C.R. 363 [gross receipts tax imposed on lenders making loans secured by realty, but only annual fee charged to lenders making loans not so secured, did not deny equal protection].

Marsh & McLennan of Calif. v. Los Angeles (1976) 62 C.A.3d 108, 121, 132 C.R. 796 [gross receipts tax on insurance brokers, but not on insurance agents, did not deny equal protection].

Brabant v. South Gate (1977) 66 C.A.3d 764, 771, 136 C.R. 150 [tax on various acts of real estate brokers, regardless of location of place of business, imposed unconstitutional burden on intercity business by imposing multiple taxation without apportionment].

Westfield-Palos Verdes Co. v. Rancho Palos Verdes (1977) 73 C.A.3d 486, 496, 141 C.R. 36 [business license tax on residential developers at higher rate than tax on contractors was valid in view of developers' mass production of homes].

San Jose v. Ruthroff & Englekirk Consulting Structural Engineers (1982) 131 C.A.3d 462, 469, 183 C.R. 391 [unapportioned, minimum business license tax unfairly discriminated against consulting engineers whose activities within taxing municipality were slight].

Bunker Hill Associates v. Los Angeles (1982) 137 C.A.3d 79, 86, 186 C.R. 719 [excise tax on commercial tenants whose landlords (banks and insurance companies) are exempt from property tax did not discriminate arbitrarily and did not constitute unconstitutional tax on those landlords].

Berkeley v. Oakland Raiders (1983) 143 C.A.3d 636, 640, 192 C.R. 66 [sports event tax applicable to professional events but not to amateur events did not violate equal protection].

Park 'N Fly of San Francisco v. South San Francisco (1987) 188 C.A.3d 1201, 1211, 1212, 234 C.R. 23 [business license tax on commercial parking facilities within city did not tax extraterritorial activities even though customers received shuttle bus transportation to airport outside city].

Kay v. Pacific Tel. & Tel. Co. (1978) 83 C.A.3d 814, 817, 148 C.R. 213 [local tax on use of telephones that exempts interstate use is valid; classification is justified by administrative burden of arrangements to tax interstate calls and by possibility that taxation of interstate calls would violate Commerce Clause unless apportioned].

Programming-Enterprises v. Los Angeles (1989) 215 C.A.3d 281, 292, 263 C.R. 558 [distinction between employees and independent contractors in application of local business license tax to employment agency did not deny equal protection].

Burbank-Glendale-Pasadena Airport Authority v. Burbank (1998) 64 C.A.4th 1217, 1223, 76 C.R.2d 297 [city's transient parking tax did not violate Commerce Clause, despite some evidence that it was intended to fall disproportionately on air travelers who park at airport; tax was within category of taxes expressly permitted by Anti-Head Tax Act (49 U.S.C., §40116) and would pass test set forth in *Complete Auto Transit v. Brady* (1977) 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326, supra, §93].

Writers Guild of America, West v. Los Angeles (2000) 77 C.A.4th 475, 478, 91 C.R.2d 603 [in order to challenge business license tax on writers who work at home as discriminatory and in violation of 42 U.S.C., §1983, writers must pay tax and then raise constitutional challenges in suit for refund; public policy against enjoining collection of state taxes set forth in *Pacific Gas & Elec. Co. v. State Bd. of Equalization* (1980) 27 C.3d 277, 165 C.R. 122, 611 P.2d 463, supra, §297, applied to collection of city tax].

Union Oil Co. of Calif. v. Los Angeles (2000) 79 C.A.4th 383, 392, 94 C.R.2d 81 [taxpayers may not challenge municipal taxation under 42 U.S.C., §1983 when adequate state remedy exists].

(2) *Double Taxation*. Another constitutional ground for attacking a license tax is double taxation. (See *Flynn v. San Francisco* (1941) 18 C.2d 210, 215, 115 P.2d 3 [license tax based entirely on ownership of vehicle was equivalent to additional property tax and invalid]; supra, §112.) This attack will usually fail, however, because the objection applies only to property taxation, and there is no unconstitutionality in the imposition of more than one excise tax on the same business. (See *Redwood Theatres v. Modesto* (1948) 86 C.A.2d 907, 918, 196 P.2d 119 [two separate license taxes on operation of movie theatre]; *Pesola v. Los Angeles* (1975) 54 C.A.3d 479, 485, 126 C.R. 580 [equine license tax and tax on privilege of breeding racehorses was not invalid double taxation].)

(3) *Infringement of Free Speech or Other Fundamental Right*. Local taxes that unduly interfere with freedom of speech or religion have been held unconstitutional. (See *Grosjean v. American Press Co.* (1936) 297 U.S. 233, 56 S.Ct. 444, 80 L.Ed 660 [excessive tax on newspapers]; 7 Summary (10th), *Constitutional Law*, §362; but see *Watchtower Bible & Tract Soc. v. Los Angeles* (1947) 30 C.2d 426, 430, 182 P.2d 178, 7 Summary (10th), *Constitutional Law*, §521 [valid ad valorem tax on religious pamphlets stored in bulk].) An annual license tax may be imposed on a newspaper, without abridgement of the right of free speech if the tax is neither arbitrary in amount nor discriminatory and if its purpose is revenue rather than regulation. (*Corona v. Corona Daily Independent* (1953) 115 C.A.2d 382, 390, 252 P.2d 56.)

Other cases discussing the effect of local license taxes on free speech and other fundamental rights include the

following:

Minneapolis Star & Tribune Co. v. Minnesota Commr. of Revenue (1983) 460 U.S. 575, 103 S.Ct. 1365, 1372, 75 L.Ed.2d 295, 303, 7 Summary (10th), *Constitutional Law*, §362 [use tax on cost of paper and ink consumed in production singled out press for special treatment; burden on First Amendment rights was not justified by compelling interest].

Leathers v. Medlock (1991) 499 U.S. 439, 111 S.Ct. 1438, 1443, 113 L.Ed.2d 494, 503, 7 Summary (10th), *Constitutional Law*, §362 [application of general sales tax to distribution of cable television services did not violate First Amendment].

Long v. Anaheim (1967) 255 C.A.2d 191, 197, 200, 63 C.R. 56 [to avoid declaration of unconstitutionality, city's business license tax was construed as directed against business for profit and inapplicable to plaintiffs' socialist newspaper].

Alameda v. Premier Communications Network (1984) 156 C.A.3d 148, 154, 202 C.R. 684, 7 Summary (10th), *Constitutional Law*, §362 [following *Minneapolis Star*; business license tax on subscription television service imposed differential burden on First Amendment rights and was not justified by local need for revenue].

Festival Enterprises v. Pleasant Hill (1986) 182 C.A.3d 960, 965, 227 C.R. 601 [city tax on admission to sporting events, theaters, museums, etc., though nondiscriminatory on its face, effectively applied only to commercial movie theaters (only taxable entities within city) and thus imposed impermissible burden on protected speech].

Times Mirror Co. v. Los Angeles (1987) 192 C.A.3d 170, 182, 237 C.R. 346 [municipal business license tax was validly applied to newspaper; although tax was levied on privilege of engaging in or transacting business, it was tax for revenue purposes only, and did not grant or take away any right to do business, and press was not singled out for differential treatment; distinguishing *Minneapolis Star* and *Premier Communications*].

United Artists Communications v. Montclair (1989) 209 C.A.3d 245, 252, 257 C.R. 124 [city admissions tax falling disproportionately on movie theaters and adult bookstores was unconstitutional as applied to businesses engaged in protected speech; following *Minneapolis Star* and *Festival Enterprises*].

Sacramento Cable Television v. Sacramento (1991) 234 C.A.3d 232, 240, 286 C.R. 470 [rational basis for applying utility user tax to cable television service; following *Leathers v. Medlock*].

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SUPPLEMENT: [This section is current through the latest supplement]



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A. Local License Taxes.
4. Statutory Challenges.

9 *Witkin Sum. Cal. Law Tax* § 312

[§ 312] Statutory Challenges.

A regulatory license measure is invalid if the field is occupied by controlling general law. (See *Pacific Tel. & Tel. Co. v. Los Angeles* (1955) 44 C.2d 272, 283, 282 P.2d 36 [because municipality cannot license privilege of operating telephone business, it cannot exact fee for franchise to use streets or other public places, except where telephone property is actually located]; 7 *Summary* (10th), *Constitutional Law*, §986 et seq.)

Similarly, a local measure enacted for revenue purposes is invalid if a statewide tax has been imposed. (See *Century Plaza Hotel Co. v. Los Angeles* (1970) 7 C.A.3d 616, 624, 87 C.R. 166 [local "tipplers' tax" on liquor purchases was invalid; field was preempted by state sales tax laws]; Rev.C. 17041.5 [no city or county may levy income tax, as distinguished from license tax measured by gross receipts]; 11 *Santa Clara Lawyer* 343 [municipal income taxes and state preemption in California].)

But a local license tax for revenue purposes is not in conflict with a state regulatory measure, and is valid unless prohibited by the charter. (*Franklin v. Peterson* (1948) 87 C.A.2d 727, 732, 197 P.2d 788 [license tax on gross receipts of attorney]; see *Arnke v. Berkeley* (1960) 185 C.A.2d 842, 846, 8 C.R. 645; *In re Groves* (1960) 54 C.2d 154, 156, 4 C.R. 844, 351 P.2d 1028; *Willingham Bus Lines v. Municipal Court* (1967) 66 C.2d 893, 896, 59 C.R. 618, 428 P.2d 602; *Rivera v. Fresno* (1971) 6 C.3d 132, 136, 98 C.R. 281, 490 P.2d 793; *Santa Clara County Contractors & Homebuilders Assn. v. Santa Clara* (1965) 232 C.A.2d 564, 577, 43 C.R. 86; *Pesola v. Los Angeles* (1975) 54 C.A.3d 479, 484, 126 C.R. 580 [equine license tax was not preempted by state property tax on racehorses]; *Marsh & McLennan of Calif. v. Los Angeles* (1976) 62 C.A.3d 108, 124, 132 C.R. 796 [gross receipts tax on insurance brokers was not preempted by state taxation of insurance companies]; *Oakland Raiders v. Berkeley* (1976) 65 C.A.3d 623, 627, 137 C.R. 648 [tax on business of lessee of publicly owned property constituted tax on privilege of performing business, not on exempt property].)

In *Ainsworth v. Bryant* (1949) 34 C.2d 465, 475, 211 P.2d 564, a municipal excise (purchase and use) tax covering purchase from retailers selling tangible personal property, and requiring the retailers to collect the tax from their customers, was validly applied to a liquor dealer, notwithstanding the constitutional and statutory regulation of the liquor business by the state.

A.B.C. Distr. Co. v. San Francisco (1975) 15 C.3d 566, 125 C.R. 465, 542 P.2d 625, upheld a municipal tax of one

percent of the payroll expense tax of persons engaging one or more employees to perform services in the city. The court, following *Ainsworth v. Bryant*, rejected challenges made by liquor distributors, and held that (a) the payroll expense tax was not a license or occupation tax, for it contained no regulatory provisions or criminal penalties for failure to pay (15 C.3d 572); and (b) it was not a tax on the sale of alcoholic beverages precluded by Rev.C. 32010, for it was imposed on the payroll expense of all types of business (15 C.3d 574). *Century Plaza Hotel Co. v. Los Angeles*, *supra*, was distinguished on the ground that, there, the "tipplers' tax" singled out the liquor industry. (15 C.3d 575.)

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XI. OTHER LOCAL TAXATION

A. Local License Taxes.

5. Occupation Tax on Employee.

9 Witkin Sum. Cal. Law Tax § 313

[§ 313] Occupation Tax on Employee.

In *Weekes v. Oakland* (1978) 21 C.3d 386, 146 C.R. 558, 579 P.2d 449, defendant city adopted an ordinance imposing an "employee license fee" on the "privilege of engaging in or following any business, trade, occupation or profession as an employee." The fee was measured by the employee's "gross receipts" for services performed in the city, consisting generally of one percent of city-derived earnings. The ordinance was challenged on the ground that Rev.C. 17041.5 expressly prohibits municipal taxes on income. Defendant contended that (a) the license fee was not an income tax but a business or occupation tax measured by gross receipts, and (b) even if it is classified as an income tax, defendant, a chartered city, had constitutional power to adopt revenue measures under the home rule provision, Cal. Const., Art. XI, §5(a), which the Legislature could not prohibit. *Held*, the tax was valid, as an occupation tax expressly authorized by Rev.C. 17041.5. Because this conclusion disposed of the statutory objection, the constitutional issue of municipal home rule was not reached.

(a) *Nature of the tax.* The tax applies to all persons engaged in business, etc., as an employee. It is measured by the employee's "gross receipts," defined as "compensation"--salaries, wages, commissions, etc., for services rendered within the city. If an employee has an ownership interest in a business and is thereby liable for a portion of the existing business license fee, the employee is entitled to a credit against the employee license fee. The employer must withhold the tax from the employee's paycheck, but if the employer fails to do so, the employee must file an annual return. Residents of defendant city employed elsewhere are not subject to the tax. (21 C.3d 391, 392.)

(b) *Not an income tax within meaning of Rev.C. 17041.5.*

(1) There are numerous differences between this license tax and the typical federal or state income tax; e.g.: (a) "Gross income" for state and federal income tax purposes includes income derived from rents, royalties, interest in a trust, and other items that defendant's tax does not reach. (b) The traditional income tax is on net income; this one is on gross receipts. This tax also differs from a conventional municipal income tax imposed in other jurisdictions, which reaches all earned income of city residents, whether for services rendered inside or outside the city. (21 C.3d 393.)

(2) The tax resembles the traditional business or occupation tax on the privilege of doing business, which is often measured by gross receipts. Such a tax has been upheld in many cases. (21 C.3d 394.) Defendant's tax differs from those heretofore approved in only two respects: It is not made applicable to identified businesses (e.g., retail sales), but

encompasses all trades and professions; and it reaches the individual employee instead of owners and independent contractors. These are not substantial differences. A tax broad enough to include all businesses, callings, and trades is a proper business tax. It does not, by virtue of its encompassing character, become an income tax. Moreover, there is no reason to apply a different principle to a tax on the privilege of engaging in an occupation as an employee rather than as a proprietor or independent contractor. "A taxing entity may choose to impose an excise tax only upon attorneys, electricians and stenographers who own their businesses or operate independently, but it cannot be said that it lacks the power also to require the license fee of attorneys, electricians and stenographers who sell their services to employers. The license fee is no less a tax on the privilege of doing business in the second case than in the first." (21 C.3d 395.)

(3) An otherwise legitimate excise tax on the privilege of employment is not converted into an income tax simply because the liability is measured by employee compensation. The measure is not conclusive as to the type of tax; e.g., a franchise tax measured by net income is not an income tax. Using compensation as the measure is a proper means of meeting constitutional requirements by scaling the tax to the quantum of business done in the taxing jurisdiction. (21 C.3d 396.)

(c) *Effect of Govt.C. 50026.* This provision, enacted 5 years after the statute barring municipal income taxes, prohibits a local entity entitled to tax the privilege of earning a livelihood by an employee, measured by earnings, from imposing the tax on nonresidents unless the same tax is imposed on residents. *Govt.C. 50026* expressly cautions that it is not to be construed as authorizing any tax prohibited by *Rev.C. 17041.5*. *Govt.C. 50026*, prohibiting discriminatory municipal occupation taxes measured by employee compensation, would be pointless and redundant if *Rev.C. 17041.5* prohibited all those taxes. (21 C.3d 397.)

(d) *State employees subject to tax.* Defendant is not barred from imposing the tax on state employees who work within the city. (21 C.3d 398.)

Two justices concurred (21 C.3d 398) and two dissented. (21 C.3d 409.) (See 19 *Santa Clara L. Rev.* 259 [Weekes]; 10 *U.C. Davis L. Rev.* 185 [municipal occupation taxes; written before Weekes].)

No county or city, including a charter city, may require an employee to obtain a business license or home business occupation permit for, or impose a business tax or registration fee based on income earned for, services performed for an employer by the employee in an employment relationship. (*B. & P.C. 16300(a)*.)

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SUPPLEMENT: [This section is current through the latest supplement]



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A. Local License Taxes.
6. Condominium Business License Tax.

9 Witkin Sum. Cal. Law Tax § 314

[§ 314] Condominium Business License Tax.

In *The Pines v. Santa Monica* (1981) 29 C.3d 656, 175 C.R. 336, 630 P.2d 521, defendant city adopted an ordinance imposing a "condominium business license tax," solely for revenue purposes. The tax was a one-time charge of \$ 1,000 per salable unit, and payment or execution of a lien agreement was a prerequisite to issuance of a condominium license required for all project approvals and permits, including subdivision approval. Plaintiff developers contended that the Subdivision Map Act (see 12 *Summary* (10th), *Real Property*, §809 et seq.) made the subject of subdivisions an area of statewide concern, and that by conditioning subdivision approvals on payment of the tax, the ordinance contravened the state law. *Held*, the tax was valid.

(a) The Subdivision Map Act neither imposes nor prohibits revenue taxes. Hence, there is no direct conflict. The fact that the state has preempted a field of statewide concern for purposes of regulation does not prevent local taxation of the persons or activities regulated. (29 C.3d 655, 656, citing *Rivera v. Fresno* (1971) 6 C.3d 132, 98 C.R. 281, 490 P.2d 793, *In re Groves* (1960) 54 C.2d 154, 156, 4 C.R. 844, 351 P.2d 1028, and *Ainsworth v. Bryant* (1949) 34 C.2d 465, 211 P.2d 564, *supra*, §312.) Cases holding license-tax ordinances invalid involved the requirement of additional licenses and license fees from persons holding state licenses, and imposed regulations beyond those provided by the state statute. (29 C.3d 661, 662, citing *Agnew v. Los Angeles* (1952) 110 C.A.2d 612, 243 P.2d 73, and *Lynch v. Los Angeles* (1952) 114 C.A.2d 115, 249 P.2d 856.)

(b) The fact that the ordinance conditions subdivision approval on payment of the tax is not significant. The power to tax includes the power to prescribe reasonable means of enforcement, and the licensing and approval features are means of enforcement. (29 C.3d 663, citing *Rivera*, *Groves*, and *Ainsworth*.)

(c) Language in a number of Court of Appeal decisions construing the Subdivision Map Act as a limitation on local tax power is disapproved. (29 C.3d 660, 664, listing, among others, *Santa Clara County Contractors & Homebuilders Assn. v. Santa Clara* (1965) 232 C.A.2d 564, 43 C.R. 86, and *Benny v. Alameda* (1980) 105 C.A.3d 1006, 164 C.R. 776.) (See 16 *Loyola L.A. L. Rev.* 61 [*The Pines*].)

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B. Local Sales and Use Taxes.
1. Uniform Rates and Practice.

9 Witkin Sum. Cal. Law Tax § 315

[§ 315] Uniform Rates and Practice.

State sales taxes have been imposed since 1933, and use taxes since 1935 (see *infra*, §344 et seq.). A number of cities and counties subsequently adopted local taxes of varying types, and in 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev.C. 7200 et seq.) was enacted to bring about uniformity in rates and practice. "The act contemplates an integrated, uniform system of city and county sales and use taxation. The counties are given authority to impose sales and use taxes as a means of raising additional revenue, and the cities are furnished with a plan of state administration which will relieve them from operating collection systems of their own. The taxpayers will receive the benefit of a scheme which will free them from the burden of complying with differing regulations of state and local taxes, avoid the necessity of making payments and reports to several governmental bodies, and permit all auditing to be done by a single agency. The method devised provides for the equitable sharing of revenue by a county and the cities within its boundaries. It is intended that there will be concurrent action by a county and the cities in the county for the purpose of adopting an integrated system of local sales and use taxation, and the city ordinances adopted under the authority of the act are apparently made contingent upon the existence of a county tax ordinance. Retailers are entitled under the statute to credit against the county tax the amount of sales and use taxes due to the city in which the business is located, provided the city tax is levied under an ordinance which incorporates certain specified provisions. A city system adopted pursuant to the act is substantially the same as that prescribed for the county and the state, and the city tax, like that of the county, is to be administered by the State Board of Equalization." (*Geiger v. Board of Supervisors of Butte* (1957) 48 C.2d 832, 837, 313 P.2d 545 [county ordinance was not subject to referendum]; *San Joaquin v. State Bd. of Equalization* (1970) 9 C.A.3d 365, 369, 88 C.R. 12; 53 Cal. L. Rev. 816 [Bradley-Burns Uniform Local Sales and Use Tax Law].)

The Legislature may authorize cities and counties to enter into contracts, with the approval of the voters, to apportion between them revenue derived from sales and use taxes. (Cal. Const., Art. XIII, §29(a).) For Bradley-Burns revenues, contracts may be approved by a two-thirds vote of the local governing body. (Cal. Const., Art. XIII, §29(b).) (On exchange of allocations between local agencies within county, see Cal. Const., Art. XIII, §25.5(a)(2)(C).)

SUPPLEMENT: [This section is current through the latest supplement]



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2. Adoption of Ordinance.

9 Witkin Sum. Cal. Law Tax § 316

[§ 316] Adoption of Ordinance.

Any county's board of supervisors may adopt a sales and use tax ordinance containing specified provisions. (Rev.C. 7201; see Rev.C. 7202 [sales], Rev.C. 7203 [use], Rev.C. 7203.2 [provisions are deemed to have been adopted].) The ordinance must contain provisions identical to those of the state sales and use tax law, except that the county's name appears as the taxing agency and no additional seller's permit is required. (Rev.C. 7202(b), 7203(a).) Amendments to the state act, not inconsistent with the Uniform Local Act, automatically become a part of the ordinance. (Rev.C. 7202(c), 7203(b); on state act, see *infra*, §344.) The county ordinance must provide that it may be rendered inoperative (in not less than 60 days but not earlier than the first day of the calendar quarter) if any city in the county increases its rate above that in effect when the county ordinance was adopted. (Rev.C. 7202(e).)

A city may adopt a sales and use tax ordinance containing similar provisions. (See Rev.C. 7202(h).) (See *Hoogasian Flowers v. State Bd. of Equalization* (1994) 23 C.A.4th 1264, 1284, 28 C.R.2d 686, *supra*, §139 [local sales tax levied by educational financing authority, as authorized by Rev.C. 7286.1, was invalid because ordinance imposing tax garnered only majority, not two-thirds, voter approval, but authorizing legislation was not invalid].)

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SUPPLEMENT: [This section is current through the latest supplement]



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XI. OTHER LOCAL TAXATION
B. Local Sales and Use Taxes.
3. Rate, Exemptions, and Credit.

9 Witkin Sum. Cal. Law Tax § 317

[§ 317] Rate, Exemptions, and Credit.

(1) *Rate.* The sales tax is 11/4% of the gross receipts from sale of all tangible personal property sold at retail in the county. (Rev.C. 7202(a).) The use tax is 11/4% of the sales price of the property, the storage, use, or other consumption of which is subject to the tax. (Rev.C. 7203; see Rev.C. 7205(a) [gross receipts include delivery charges when those charges are subject to state sales and use tax].) The rate of a sales or use tax imposed by a city may not exceed one percent. (See Rev.C. 7202(h)(1).) The Legislature may not, except under specified conditions, restrict the authority of a city or county to impose a tax rate under, or change the method of distributing revenues derived under, Rev.C. 7200 et seq. as that law read on November 3, 2004. (Cal. Const., Art. XIII, §25.5(a)(2)(A).)

(2) *Exemptions.* All of the exemptions to the state sales and use tax are incorporated in the local taxes. (See Rev.C. 7202(b), 7203(a); *infra*, §358 et seq.) A sale or use previously taxed by any other city or county operating under the Uniform Local Act is exempt (Rev.C. 7202(h)(5), 7203(c)), and the amount subject to the tax may not include the amount of sales or use tax imposed by the state on a retailer or consumer (Rev.C. 7202(f), 7203(d)). (On 75% or 80% exemption from sales and use tax on tangible personal property sold to operators of aircraft used as common carriers, see Rev.C. 7202(g), 7202(h)(8), 7203(e).)

(3) *City Tax Credits.* Any person subject to tax under a county ordinance is entitled to a credit against those taxes for the amount of taxes due to any city in the county, provided that the city tax rate is one percent or less and the city taxing ordinance conforms to the uniform scheme. (See Rev.C. 7202(h).) A city or county ordinance may provide a credit against the city or county tax for any payment made to the city's redevelopment agency under the agency's sales and use tax. (Rev.C. 7202.5.)

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4. Administration and Collection.

9 Witkin Sum. Cal. Law Tax § 318

[§ 318] Administration and Collection.

The participating counties and cities must contract with the State Board of Equalization to administer the tax (Rev.C. 7202(d), 7202(h)(4)), and the board transmits the money to the local government (Rev.C. 7204), charging an amount to reimburse the board for the cost of the services (Rev.C. 7204.3).

The board may not administer a sales and use tax ordinance that does not conform to Rev.C. 7202 and 7203. (Rev.C. 7203.5; on 1996 amendments to Rev.C. 7203.5, which will become operative only if amendments to Rev.C. 7282.3 are held inapplicable to charter cities, see *infra*, §323.) However, the board may continue to administer the sales and use tax ordinance of a local jurisdiction that imposes (a) a sales or use tax on motor vehicle fuel under *Pub.Util.C. 99500* et seq. or Rev.C. 9501 et seq. (Rev.C. 7210), or (b) a transactions and use tax for public transit under *Govt.C. 29560* et seq. (Rev.C. 7211). (On board's authority to accept offers in compromise on tax liability, see Rev.C. 7093.6.)

West's Key Number Digest, Taxation k.1222

SUPPLEMENT: [This section is current through the latest supplement]

Rev.C. 7211 was amended in 2007 to provide that the board may continue to administer the sales and use tax of a local jurisdiction that imposes a transactions and use tax administered by the board in accordance with Rev.C. 7251 et seq.



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5. Place of Sale.

9 Witkin Sum. Cal. Law Tax § 319

[§ 319] Place of Sale.

For the purpose of imposing the local sales tax, all retail sales are considered to be consummated at the retailer's place of business unless the goods are delivered to an out-of-state destination. (Rev.C. 7205(a); see *Pomona v. State Bd. of Equalization* (1959) 53 C.2d 305, 310, 1 C.R. 489, 347 P.2d 904 [decided under former presumption as to place of sale].) Where the retailer has no place of business in the state, or has several places of business, the place of sale is determined by board regulation. (Rev.C. 7205(b)(1); see *San Joaquin v. State Bd. of Equalization* (1970) 9 C.A.3d 365, 374, 88 C.R. 12 [board's pooling and allocation procedure]; on exception for jet fuel, see Rev.C. 7205(b)(2).)

In *Pomona, supra*, a Sears, Roebuck and Co. retail store bisected the boundary line of Pomona, Los Angeles County, and Montclair, San Bernardino County. Both cities and San Bernardino County had local sales tax ordinances. The trial court apportioned the taxes on the basis of receipts of the particular departments where the sales occurred, as shown by Sears' accounting system. This gave 82.7% to Pomona, for only three departments were bisected by the boundary line. Montclair and San Bernardino County argued for apportionment based on the percentage of the physical plant located within each city, contending that sales involve more than display and negotiation, but include customer parking, stock storage, etc. This would have given them 54.3%. *Held*, the statute and regulations, though not express, indicated the propriety of the court's method. (53 C.2d 311.)

SUPPLEMENT: [This section is current through the latest supplement]



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XI. OTHER LOCAL TAXATION
C. Documentary Transfer Tax.

9 Witkin Sum. Cal. Law Tax § 320

[§ 320] Documentary Transfer Tax.

(1) *In General.* When the federal tax on documentary transfers expired in 1968, the gap was filled by the enactment of a similar local tax (Rev.C. 11901 et seq.), operative so long as Congress does not reenact a federal tax. Counties may impose a tax on instruments transferring real property, at the rate of 55 cents for each \$ 500 of the value of the property. (Rev.C. 11911(a); see *Brown v. Los Angeles* (1999) 72 C.A.4th 665, 668, 85 C.R.2d 414 [in assessing tax under Rev.C. 11911(a) against purchaser at trustee's sale who is neither mortgagee nor beneficiary under foreclosed deed of trust, local government must base tax on purchase price paid at sale, not on amount of unpaid indebtedness].) Cities may also impose a tax at one-half the rate, with a credit against the county tax. (Rev.C. 11911(b), (c).) (See *Huntington Beach v. Superior Court* (1978) 78 C.A.3d 333, 340, 144 C.R. 236 [city transfer tax was valid excise tax, not property tax]; on exemptions, see Rev.C. 11921 et seq.)

(2) *Exemptions.* Rev.C. 11922 exempts all instruments from tax where an exempt governmental agency acquires title. (See *People v. Santa Clara* (1969) 275 C.A.2d 372, 379, 79 C.R. 787 [certified copy of order of condemnation vesting title in condemnor (former C.C.P. 1253, now C.C.P. 1268.030) was entitled to recordation without payment of tax].) Also exempt from documentary transfer taxes are conveyancing documents transferring community, quasi-community, or quasi-marital property between spouses in effecting a division of property required by a judgment of dissolution, separation, or nullity, a judgment or order pursuant to the Family Code, or a written agreement between spouses executed in contemplation of the judgment or order. (Rev.C. 11927(a).) To qualify for the exemption, the document must include a written recital signed by either spouse that the document is entitled to the exemption. (Rev.C. 11927(b).)

(3) *Application to Leasehold.* Rev.C. 11911 authorizes a documentary transfer tax "on each deed, instrument, or writing by which any lands, tenements, or other *realty sold* within the county shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser." The meaning of "realty sold" was explored in *Thrifty Corp. v. Los Angeles* (1989) 210 C.A.3d 881, 258 C.R. 585, in which the court held that leasehold interests of 35 years or more are subject to the tax. Although leases are generally not taxable under Rev.C. 11911, "a lease of ... sufficient longevity to approximate a transfer in fee does warrant taxation." (210 C.A.3d 883.) The Legislature intended that the term "realty sold" in Rev.C. 11911 be defined consistently with the phrase "change of ownership" in Rev.C. 61(c), which includes leasehold interests of 35 years or more (see *supra*, §148). (210 C.A.3d 885, 886.) (See *McDonald's Corp. v. Board of Supervisors of Mendocino* (1998) 63 C.A.4th 612, 617, 74 C.R.2d 101 [documentary transfer tax should not have been imposed when lessee extended long-term lease, even though entire period of leasehold exceeded 35 years; 13 years

remaining on original lease along with 15 years added by extension created only 28-year term; citing *Thrifty Corp.*.)

(4) *Application To Transfer to Revocable Trust.* Although Rev.C. 11911 does not define "realty sold," that phrase is sufficiently similar to the phrase "change in ownership," used in the Revenue Code and governing the analogous subject of property taxation, to warrant that each phrase be defined to have the same meaning. (*Thrifty Corp. v. Los Angeles*, *supra*, 210 C.A.3d 886.) Thus, a transfer of property by a trustor into a revocable trust, which is excluded from being "a change in ownership" by Rev.C. 62(d) (*supra*, §151), is not a transaction subject to the documentary transfer tax.

SUPPLEMENT: [This section is current through the latest supplement]



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D. Retail Transaction and Use Taxes.

9 Witkin Sum. Cal. Law Tax § 321

[§ 321] Retail Transaction and Use Taxes.

(1) *For Transit.* To benefit public transit, authorized counties and local transit districts and commissions may, under specified circumstances, impose transaction and use taxes up to one-half percent in addition to local sales and use taxes. (Rev.C. 7261(a), 7262.) The transit taxes are subject to restrictions and exemptions similar to those governing local sales and use taxes (Rev.C. 7261, 7262) and are administered in the same way (Rev.C. 7270). (On transit districts, see Rev.C. 7252 et seq.; on local sales and use taxes, see *supra*, §315 et seq.; for retailers subject to Sales and Use Tax Law but not to Transactions and Use Tax Law, see Rev.C. 6203(c)(5); on authority of State Board of Equalization to accept offers in compromise on tax liability, see Rev.C. 7093.6.)

(2) *For Other Purposes.* Counties and school districts may establish local public finance authorities with the power, subject to voter approval, to impose transaction and use taxes of at least one-quarter percent for purposes of drug abuse prevention, crime prevention, health care services, and public education. (Rev.C. 7288.1, 7288.3.) The board of supervisors of a county may, by ordinance, impose a transactions and use tax for funding public library construction, acquisition, programs, and operations. The tax rate may be either one-eighth or one-quarter percent. (Rev.C. 7286.59.) The combined rate of all transaction and use taxes for any county may not exceed 2%. (Rev.C. 7251.1.)

A city may levy, increase, or extend a transactions and use tax for general purposes at a rate of 0.25% or a multiple of that rate, if the ordinance proposing the tax is approved by a two-thirds vote of all members of the city's governing body and the tax is approved by a majority vote of the qualified voters voting on the issue. The transactions and use tax must conform to Rev.C. 7251 et seq. (Rev.C. 7285.9.) Alternatively, the tax may be imposed for specific purposes, if specified requirements are met. (Rev.C. 7285.91.) This authority to impose transactions and use taxes is in addition to any authority in Rev.C. 7286.20 et seq., and is subject to the rate limitation of Rev.C. 7251.1. (Rev.C. 7285.92.)

(3) *No Restriction on Taxing Authority.* The Legislature may not restrict the authority of a local entity to impose a transactions and use tax rate under Rev.C. 7251 et seq., or change the method for distributing revenues derived under a transaction and use tax rate imposed under Rev.C. 7251 et seq., as it read on November 3, 2004. (Cal. Const., Art. XIII, §25.5(a)(6).)

(4) *Refund of Unconstitutional Taxes.* In response to *Rider v. San Diego* (1992) 11 C.A.4th 1410, 14 C.R.2d 885, holding a local transaction and use tax unconstitutional, the 1993 Legislature added Rev.C. 7275 et seq. The statute authorizes the refund of taxes collected pursuant to a local transaction and use tax "determined to be unconstitutional in

a final and nonappealable decision of a court of competent jurisdiction." (Rev.C. 7275(a).) The remedy provided by Rev.C. 7275 et seq. is exclusive with respect to unconstitutional taxes, but is not intended to affect refund statutes governing claims on any other basis. (Stats. 1993, Chap. 1060, §4.)

The statutory refund scheme delineated in Rev.C. 7275 et seq. became effective on October 11, 1993. In *Kuykendall v. State Bd. of Equalization* (1994) 22 C.A.4th 1194, 27 C.R.2d 783, a consumer class action seeking direct reimbursement of the tax found unconstitutional in *Rider, supra*, plaintiffs argued that the statutory scheme did not apply to them. The trial judge had entered judgment for the plaintiffs, and had ordered the board to devise a reimbursement plan and to obtain the judge's approval of it, 3 days before the statute's effective date. The trial judge agreed with plaintiffs that his judgment and orders were not rendered moot by the new statute. *Held*, reversed. The enactment of Rev.C. 7275 et seq. displaced the trial judge's orders regarding reimbursement. The statutory claim process constitutes the sole authorized procedure for obtaining a refund of unconstitutional transaction and use taxes levied under Rev.C. 7251 et seq. It applies retroactively to all cases pending on its effective date, and pending cases include those, such as this one, that were on appeal after final judgment in the trial court. (22 C.A.4th 1211.) (See *Cod Gas & Oil Co. v. State Bd. of Equalization* (1997) 59 C.A.4th 756, 760, 762, 69 C.R.2d 366 [Rev.C. 7277 clearly bars retailers from seeking refunds under Rev.C. 7275 et seq., and statutory bar is constitutional; retailers were already reimbursed for taxes by purchasers, and statutory distinction favoring purchasers over retailers for refunds is based on legitimate state interest in directly and efficiently refunding invalid taxes to persons who bore economic burden of tax].)

SUPPLEMENT: [This section is current through the latest supplement]



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E. Utility Users' Taxes.

9 Witkin Sum. Cal. Law Tax § 322

[§ 322] Utility Users' Taxes.

(1) *In General.* These taxes, which has been levied by many California cities, are typically assessed at 5% of the charges for telephone, gas, and electricity service. They are collected by the utility and paid to the city. (See *Rivera v. Fresno* (1971) 6 C.3d 132, 138, 98 C.R. 281, 490 P.2d 793 [tax is different from one levied on sale or use of tangible personal property and thus is not preempted by state legislation (see supra, §312)]; *Hospital Service of Calif. v. Oakland* (1972) 25 C.A.3d 402, 406, 101 C.R. 800 [statute exempting charity's funds from taxation did not prevent imposition of utility use tax]; *Eastern Mun. Water Dist. v. Moreno Valley* (1994) 31 C.A.4th 24, 30, 36 C.R.2d 823 [general law city had authority to require municipal water district to collect and remit utility user's tax]; *Edgemont Community Services Dist. v. Moreno Valley* (1995) 36 C.A.4th 1157, 1165, 42 C.R.2d 823 [city was required to reimburse community services district for cost of collecting utility user's tax for city].)

(2) *Limitations on Utility's Responsibility To Collect Tax.* As a consequence of the decision in *Santa Clara County Local Trans. Authority v. Guardino* (1995) 11 C.4th 220, 45 C.R.2d 207, 902 P.2d 225, supra, §134, there was "uncertainty concerning the legality of taxes imposed by local jurisdictions on customers of public utilities and other service suppliers." (Stats. 1996, Chap. 939, §1.) In response, the Legislature enacted *Pub.Util.C. 799* in 1996. The statute limits the responsibilities of a public utility or service supplier with regard to the collection of utility taxes as follows:

(a) The utility or service supplier has no duty to independently investigate the validity of the ordinance imposing the tax. (*Pub.Util.C. 799(a)(1).*)

(b) The utility or service supplier is not liable, as a consequence of collecting the tax, to customers in an action arising from the tax's invalidity. (*Pub.Util.C. 799(a)(2).*)

(c) It is the sole responsibility of the local jurisdiction to refund the tax if ordered to do so, although the utility or service supplier may assist the local jurisdiction if the local jurisdiction reimburses the cost of assistance. (*Pub.Util.C. 799(a)(3).*)

(d) The sole necessary party defendant in an action challenging the tax is the local jurisdiction, and the utility or service supplier cannot be named as a party in the action. (*Pub.Util.C. 799(a)(4)*; see *Balikov v. Southern Calif. Gas Co.* (2001) 94 C.A.4th 816, 819, 114 C.R.2d 614 [gas user's action against gas company, alleging that municipal tax

imposed on gas users and collected by company included improper surcharges, was barred by *Pub.Util.C. 799(a)(4)*.)

(e) The local jurisdiction must notify the utility or service supplier in writing if it adopts a new tax, or makes changes to an existing tax that would affect collection and remittance. The utility or service supplier establishes the notification procedure, and has at least 90 days after notification to begin collecting a new tax and at least 60 days after notification to implement a change in an existing tax. (*Pub.Util.C. 799(a)(5)*, (a)(6).)

(3) *Prohibition Against Disclosure of Tax Information.* A local jurisdiction that imposes a utility user's tax may not disclose a utility user's tax return or records of payment to anyone other than specified employees and agents of the jurisdiction or the utility. (Rev.C. 7284.6(a).) Employees and agents of the local jurisdiction are similarly restricted. (See Rev.C. 7284.7(a).)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *In General.* See 30 A.L.R.6th 341 [validity and application of utility taxes on retail transactions of Internet access providers].



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F. Occupancy Taxes.

9 Witkin Sum. Cal. Law Tax § 323

[§ 323] Occupancy Taxes.

A city or county may levy a tax on the privilege of occupying rooms or other living space in a hotel, inn, tourist home, motel, or other lodging, including camping sites and spaces in campgrounds and recreational vehicle parks, unless the occupancy is for more than 30 days. When levied by a county, the tax applies only to the unincorporated areas of the county. (Rev.C. 7280(a), 7280(c); see 58 A.L.R.4th 274 [tax on hotel and motel room occupancy].) However, facilities subject to Rev.C. 7282 (campsites in state parks), facilities operated by local government entities, and campsites subject to membership camping contracts are excluded. (Rev.C. 7280(c).) (See *Gowens v. Bakersfield* (1961) 193 C.A.2d 79, 83, 13 C.R. 820 [tax on privilege of occupying room in hotel or motel, etc., levied on transients, was valid]; *San Bernardino Hotel/Motel Assn. v. San Bernardino* (1997) 59 C.A.4th 237, 242, 250, 69 C.R.2d 97 [transient occupancy tax levied by charter city was not preempted by Rev.C. 7280; tax ordinance was void for vagueness because definitions did not adequately distinguish between person living from day-to-day or week-to-week in motel and apartment dweller on month-to-month tenancy]; *Patel v. Gilroy* (2002) 97 C.A.4th 483, 486, 118 C.R.2d 354 [transient occupancy tax was not void for vagueness; although definitions of "hotel" and "occupancy" contained words "dwelling" and "lodging," implying either temporary or permanent situation, and "exemptions" section was somewhat unclear, tax clearly applied solely to those who occupied hotel or motel for 30 consecutive calendar days or less].)

A city or county may levy a tax on the privilege of renting a mobilehome that is located outside a mobilehome park for occupancy on a transient basis unless the occupancy is for more than 30 days. When levied by the legislative body of a county, the tax applies only to the unincorporated areas of the county. (Rev.C. 7281.)

Cities and counties may not levy a tax under Rev.C. 7280 on any amount subject to sales and use tax with respect to the sale of food products. (Rev.C. 7282.3(a).) Rev.C. 7282.3(a) prevents taxpayers from being subjected to both a sales and use tax and a transient occupancy tax on the same transaction. (Stats. 1996, Chap. 940, §4.) By its terms, the statute applies to charter cities. (Rev.C. 7282.3(b).) However, if the statute is held inapplicable to charter cities, 1996 amendments to Rev.C. 7203.5 (supra, §318) will become operative. (Stats. 1996, Chap. 940, §4.) Those amendments prohibit the state from administering a tax that subjects taxpayers to the kind of double taxation that Rev.C. 7282.3 is intended to prevent. (On board's authority to accept offers in compromise on tax liability, see Rev.C. 7093.6.)

SUPPLEMENT: [This section is current through the latest supplement]

See *Vacaville v. Pitamber* (2004) 124 C.A.4th 739, 743, 21 C.R.3d 396 [ordinance imposing transient occupancy tax was not unconstitutionally vague; following *Patel v. Gilroy* (2002) 97 C.A.4th 483, 118 C.R.2d 354, text, p. 467];

Kumar v. Superior Court (2007) 149 C.A.4th 543, 548, 57 C.R.3d 72 [ordinance imposing transient occupancy tax on persons who occupy hotel for less than 30 consecutive calendar days was not unconstitutionally vague, did not violate Equal Protection Clause, and was not preempted by Rev.C. 7820(a)]; *Santa Cruz v. Patel* (2007) 155 C.A.4th 234, 244, 65 C.R.3d 824 [ordinance imposing transient occupancy tax on persons who occupy hotel for less than 30 consecutive calendar days was not unconstitutionally vague and did not violate Equal Protection Clause; tax plainly applied only to temporary occupancy situations, and city had rational basis for taxing privilege of short-term occupancy of accommodations within city's jurisdiction].



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G. Other Taxes.

9 Witkin Sum. Cal. Law Tax § 324

[§ 324] Other Taxes.

(1) *Local Vehicle License Fees*. In a county that has adopted a general plan for a network of county expressways and has financed the first phase of construction by a bond issue of at least \$ 70 million, a local vehicle license fee may be imposed to help finance the program. (See Rev.C. 11101 et seq.)

(2) *Tort Liability Fund*. In a county with a population of 4 million or more (Los Angeles) (*Govt.C. 53747*), a city, county, or district may provide for levy of assessments or taxes to create a fund to pay for claims made under the law establishing governmental liability in tort (see *Govt.C. 810* et seq., 5 *Summary* (10th), *Torts*, §216 et seq.). (*Govt.C. 53741*.)

(3) *Standby Charges or Special Taxes for Fire and Police Protection*. *Govt.C. 53970* et seq. authorize defined local agencies to impose special taxes for fire and police protection pursuant to designated procedures, including approval by a two-thirds vote of those affected.

(4) *Community Facilities Taxes*. Community facilities districts may be formed to levy special taxes for the purpose of financing public facilities and services, e.g., police and fire protection, schools, libraries, parks, recreational facilities, and flood control. (See *Govt.C. 53311* et seq. [Mello Roos Community Facilities Act], *Govt.C. 53313*; *Camarillo v. Ventura* (1994) 26 C.A.4th 1351, 1356, 31 C.R.2d 920 [delinquency penalties collected on special community facilities taxes "follow the tax" and go to public entity that levied tax]; *Community Facilities Dist. No. 88-8 of Riverside v. Harvill* (1999) 74 C.A.4th 876, 879, 88 C.R.2d 405 [failure of consideration is not defense to action for foreclosure under Community Facilities Act; defendants were required to pay taxes levied under Act even though facilities district had not performed services for which taxes were levied]; *Riverside County Community Facilities Dist. No. 87-1 v. Bainbridge* (1999) 77 C.A.4th 644, 654, 92 C.R.2d 29 [charges levied under Community Facilities Act are special taxes, not special assessments, and thus are subject to foreclosure for nonpayment].)

(5) *Library Taxes*. Cities, counties, and library districts may impose special taxes to provide public library facilities and services. (*Govt.C. 53717* et seq.)

(6) *Hospital Taxes*. Specified hospital districts may impose special taxes that apply uniformly to all taxpayers in all real property within the district. (*Govt.C. 53730.01, 53730.02*.)

(7) *Graffiti Prevention Tax*. Cities and counties, by an ordinance approved by two-thirds of the electorate, may levy a tax on the retail sale of (a) aerosol paint containers and containers of other marking substances (at a rate of no more than 10 cents), and (b) felt tip markers and other marking instruments (at a rate of no more than 5 cents). (Rev.C. 7287(a).) Revenue generated beyond the cost of administering and enforcing the tax may be used only "for the purposes of the removal and prevention of graffiti, or for educational programs for at-risk youth to combat graffiti vandalism in all its forms." (Rev.C. 7287.6.) The tax is administered by the State Board of Equalization. (Rev.C. 7287.8.) The ordinance may last no more than 5 years. (Rev.C. 7287.2(b).)

(8) *Excise Tax on Developers*. In *Centex Real Estate Corp. v. Vallejo* (1993) 19 C.A.4th 1358, 1362, 1364, 24 C.R.2d 48, a city ordinance imposed an excise tax on developers as a condition for issuance of a building permit. Plaintiffs, real estate developers, alleged that the tax was actually a development fee subject to Govt.C. 66000 et seq. and was therefore invalid. The trial court disagreed. *Held*, affirmed. The excise tax was valid. It was not a development fee. It was imposed only after approval of a building permit and was designed to raise revenue for the city's general fund, not to fund facilities or services related to a new development. Moreover, the city's charter authorized the tax, which did not conflict with a state statute.

Excise taxes are governed by Cal. Const., Art. XIII C, which imposes strict voter approval requirements on new and existing taxes and applies to all local government entities, including charter cities. (On requirements of Cal. Const., Art. XIII C, see *supra*, §131 et seq.; on Cal. Const., Art. XIII D, restricting local assessments, fees, and charges, see *supra*, §141 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



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XII. STATE TAXATION
A. Succession and Death Taxes.
1. Former Inheritance Tax.

9 Witkin Sum. Cal. Law Tax § 325

[§ 325] Former Inheritance Tax.

(1) *History.* The California Inheritance Tax Law (former Rev.C. 13301 et seq.) was enacted in 1893 and frequently revised. The various statutes were considered continuous in effect despite repeal, and the taxability of the transfer and rate of tax were determined by the law in effect at the time of transfer, although the value of the property was the market value at the date of death. (See *Riley v. Havens* (1924) 193 C. 432, 434, 225 P. 275; *Riley v. Howard* (1924) 193 C. 522, 528, 226 P. 393; 5 A.L.R.2d 1065 [time at which rate of tax applicable to transfer in contemplation of death, or to take effect on death, is determined].) The law was made a part of the Revenue Code in 1945.

(2) *Excise Tax on Succession.* The tax was not a property or personal tax, but an excise tax on the privilege of succession in interest to the decedent's property. (*Estate of Bloom* (1931) 213 C. 575, 581, 2 P.2d 753; *Estate of Barter* (1947) 30 C.2d 549, 556, 184 P.2d 305; see *Estate of Austin* (1988) 206 C.A.3d 1249, 1253, 254 C.R. 372 [under law at time of decedent's death in November 1970, decedent's interest in husband's pension and profit-sharing plan was subject to inheritance tax]; 42 Am.Jur.2d (2000 ed.), *Inheritance, Estate, and Gift Taxes* §5.) Hence, it was levied and computed according to the value of the particular property transferred to each beneficiary or heir. (*Estate of Rath* (1937) 10 C.2d 399, 405, 75 P.2d 509; *Estate of Madison* (1945) 26 C.2d 453, 456, 159 P.2d 630.)

"Succession" meant "transfer." The statute expressly included "as subjects of inheritance taxation transfers of property by will, succession, or survivorship, and transfers of the proceeds of life insurance." (*Estate of Thurston* (1950) 36 C.2d 207, 209, 223 P.2d 12.)

The tax was on the "net succession," i.e., on the property left to the beneficiary according to the value of the gift, without diminution on account of a misappropriation by the executor or administrator. (*Estate of Hite* (1911) 159 C. 392, 394, 113 P. 1072.)

It was not a charge on the estate of the decedent nor an expense of administration, but a tax on each particular share to which a beneficiary succeeded. (*Cohn v. Cohn* (1942) 20 C.2d 65, 68, 123 P.2d 833; *Kelso v. Sargent* (1936) 11 C.A.2d 170, 177, 54 P.2d 26.) If, however, the will made a gift free and clear of inheritance tax, there was in effect a gift of the specified money or property plus an additional amount sufficient to pay the tax. (*Estate of Irwin* (1925) 196 C. 366, 375, 237 P. 1074.)

(3) *Federal Estate Tax Compared.* The federal tax is imposed on the privilege of transfer rather than of succession, and is based on the value of the entire estate less certain deductions. (See *Estate of Madison, supra*; *Estate of Bauer* (1943) 59 C.A.2d 152, 156, 138 P.2d 717; *Estate of Parker* (1950) 98 C.A.2d 393, 395, 220 P.2d 580; *Estate of Giolitti* (1972) 26 C.A.3d 327, 332, 103 C.R. 38.) "The federal estate tax is an excise, not a property, tax; it is a tax upon the surrender of old incidents of the property by the decedent and the acquisition of new ones by the survivor, and is measured by the value of the property to which these incidents attach. It is not ... a tax on what the beneficiaries received." (*Estate of Buckhantz* (1953) 120 C.A.2d 92, 98, 260 P.2d 794.)

(4) *Rate.* The Inheritance Tax Law established a graduated or progressive tax, measured by percentages of the market value of the property, and varying with the relationship of the transferee to the decedent and with the value of the property transferred. (Former Rev.C. 13404, 13405, 13406; see *Estate of Steehler* (1925) 195 C. 386, 389, 233 P. 972; *Estate of Brown* (1925) 196 C. 114, 121, 236 P. 144; *Estate of Childs* (1941) 18 C.2d 237, 240, 115 P.2d 432; *Estate of Morris* (1943) 56 C.A.2d 715, 718, 133 P.2d 452; 43 Cal. L. Rev. 49 [summary of former inheritance and gift tax].)

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SUPPLEMENT: [This section is current through the latest supplement]



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A. Succession and Death Taxes.
2. Former Gift Tax.

9 *Witkin Sum. Cal. Law Tax* § 326

[§ 326] Former Gift Tax.

(1) *History and Nature.* The Gift Tax Law (former Rev.C. 15101 et seq.) was enacted in 1939 to impose a tax on "every transfer by gift of any property by an individual." (Former Rev.C. 15201.) The California statute was patterned on the federal act, and federal cases were persuasive in its interpretation. (See *Douglas v. California* (1942) 48 C.A.2d 835, 838, 120 P.2d 927; *Gregory v. California* (1946) 77 C.A.2d 26, 29, 174 P.2d 863, 175 P.2d 542; *Keck v. Cranston* (1965) 236 C.A.2d 39, 42, 45 C.R. 634.)

The object of the statute was to reach gifts inter vivos not covered by the Inheritance Tax Law and thereby to prevent tax avoidance. The inheritance tax was intended "to tax every transfer made in lieu of or to avoid the passing of property by will or the laws of succession," while the gift tax was imposed on any gift, irrespective of intent to avoid testamentary disposition. (Former Rev.C. 15104; former Rev.C. 14059 [credit on inheritance tax for gift tax paid]; former Rev.C. 14591, 14592 [duty of inheritance tax referee to report liability for gift tax]; see 42 *Am.Jur.2d* (2000 ed.), *Inheritance, Estate, and Gift Taxes* §§342, 343.)

(2) *Rate.* The gift tax varied according to the amount of the gift and the relationship between donor and donee. Donees were divided into three classifications identical to those of the Inheritance Tax Law. (Former Rev.C. 15110 et seq., 13307 et seq.; see supra, §325.) The rates, which also paralleled those of the Inheritance Tax Law, began at 3% and ran as high as 24%. (Former Rev.C. 15205 et seq.; cf. former Rev.C. 13404 et seq., supra, §325.) (See generally *Gregory v. California* (1946) 77 C.A.2d 26, 174 P.2d 863, 175 P.2d 542.)

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A. Succession and Death Taxes.
3. Repeal of Inheritance and Gift Taxes.

9 Witkin Sum. Cal. Law Tax § 327

[§ 327] Repeal of Inheritance and Gift Taxes.

(1) *Initiative and Legislative Measures.* In 1982, the California Inheritance Tax Law (former Rev.C. 13301 et seq.) and the Gift Tax Law (former Rev.C. 15101 et seq.) were repealed by two initiatives and subsequently by legislation. (See Stats. 1982, Chap. 1535, §14). Rev.C. 13301 now provides: "Neither the state nor any political subdivision of the state shall impose any gift, inheritance, succession, legacy, income, or estate tax, or any other tax, on gifts or on the estate or inheritance of any person or on or by reason of any transfer occurring by reason of a death." Instead, Rev.C. 13302 authorizes an estate tax equal to the California portion of the maximum credit for state death taxes allowed under federal law. (On enactment of tax statute, see *infra*, §328 et seq.)

In *Carlson v. Cory* (1983) 139 C.A.3d 724, 189 C.R. 185, taxpayers and electors challenged the validity of the repeal on three constitutional grounds: (a) that the power to tax may only be limited by an initiative amending the Constitution, not one repealing tax statutes; (b) that the initiative impairs the Legislature's fiscal management function of balancing the state budget; and (c) that the initiative circumvents the constitutional prohibition against referenda on tax levies. *Held*, the repeal was constitutional.

(a) Cal. Const., Art. II, §8, reserves the initiative power to the people without limitation. "This reservation of power by the people is, in the sense that it gives them the final legislative word, a limitation on the power of the Legislature." It is not restricted by the Legislature's constitutional authority to pass property tax laws (Cal. Const., Art. XIII, §33). (139 C.A.3d 728, 729.)

(b) Repeal of the inheritance tax neither destroys nor severely limits fiscal functions of the Legislature, which has "broad powers to tax" and "considerable discretion to limit spending" to balance the budget. (139 C.A.3d 730.)

(c) The constitutional language reserving the initiative power (Cal. Const., Art. II, §8) is clear and unambiguous. It will not be construed to restrict the rights reserved to the people by reading into it the prohibition of referenda on tax liens (Cal. Const., Art. II, §9). (139 C.A.3d 730, 731.)

(2) *Repeal Not Retroactive.* Two initiative measures on the June 8, 1982, election ballot (Propositions 5 and 6) repealed the inheritance tax law and the gift tax law. By its terms, Proposition 5 prohibited inheritance or gift tax on any transfer "made or completed on or after January 1, 1981." Pursuant to Proposition 6, the repeal applies to the estates of

decedents dying on or after, or to gifts made or completed after, the date of passage of the initiative. The estates of decedents dying before that date are to be governed by the law existing on the date of death, as if the inheritance tax had not been repealed.

In *Estate of Gibson* (1983) 139 C.A.3d 733, 189 C.R. 201, the inheritance tax with respect to the estate of a decedent dying after the effective date of Proposition 5 and before the effective date of Proposition 6 was in dispute. *Held*, the repeal was prospective. Under Cal. Const., Art. II, §10, where the provisions of two or more measures approved at the same election are in irreconcilable conflict, the measure receiving the highest affirmative vote prevails. Such a conflict exists between the provisions governing the effective dates of Propositions 5 and 6; and because Proposition 6 received the highest affirmative vote, it must prevail. (139 C.A.3d 736.) (See *Estate of Martin* (1983) 150 C.A.3d 1, 5, 197 C.R. 261 [following *Gibson*]; *Estate of Cirone* (1984) 153 C.A.3d 199, 203, 200 C.R. 511 [inheritance tax was not applicable to estate of decedent dying on June 8, 1982, date of repeal].)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Initiative and Legislative Measures.* See *Estate of Claeysens* (2008) 161 C.A.4th 465, 469, 74 C.R.3d 304, 14 Summary (10th), *Wills and Probate*, Supp., §585 [graduated probate filing fee based on appraised value of estate assets operated as ad valorem tax and was illegal under Rev.C. 13301].



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A. Succession and Death Taxes.

4. Estate Tax.

a. In General.

9 *Witkin Sum. Cal. Law Tax* § 328

[§ 328] In General.

(1) *Nature and Purpose of Tax.* In 1982, the California Inheritance Tax Law was repealed by initiative and subsequently by legislation. (See *supra*, §327.) The initiative included new statutes (a) prohibiting gift and death taxes (Rev.C. 13301), (b) allowing an estate tax equal to the California portion of the maximum credit for state death taxes allowed under federal law (Rev.C. 13302), and (c) authorizing the Legislature to provide for collection and administration of the tax (Rev.C. 13303). The Legislature reenacted the initiative provisions and added statutes governing the new tax. (See Rev.C. 13301 et seq.) The tax, commonly known as a pickup tax, has the effect of shifting to the state a portion of the estate tax that would otherwise be paid to the federal government. (See *21 Pepperdine L. Rev.* 695 [retention of state death tax credit in federal transfer tax scheme]; Cal. Civil Practice, 3 Probate and Trust Proceedings, §17:68 et seq.; on payment and proration of estate tax, see *Prob.C. 20100* et seq.; for regulations, see *2 Cal. Code Reg. §1138.10* et seq., *18 Cal. Code Reg. §13303* et seq.)

(2) *Property Defined.* The tax imposed under Rev.C. 13302 is calculated based on "property located in California." For this purpose, "property" was defined in Rev.C. 13402 as the "real or personal property or interest therein of a decedent." Thus, two requirements were considered to be inherent in the definition. "First, to be taxable, the property must have been the decedent's property; i.e., he or she must have owned it. Second, the property must be located in California." (*Hoffman v. Connell* (1999) 73 C.A.4th 1194, 1198, 87 C.R.2d 272 [decedent did not own trust that her husband had established on his death, which directed trustees to pay trust income to decedent for life and, on her death, to pay remaining principal to husband's son from prior marriage; hence, no California estate tax was owed].)

Following *Hoffman*, Rev.C. 13402 was amended to define "estate" or "property" as the "real or personal property or interest therein included in the gross estate of a decedent or transferor." The amendment was intended to overrule *Hoffman v. Connell*, which the Legislature declared to be contrary to the long-standing intent that California be entitled to collect the maximum allowable amount of the credit for state death taxes, allowable under federal estate tax law, that is attributable to property located in California. The amendment is intended to clarify what the Legislature declares "was and continues to be the law." (Stats. 2000, Chap. 363, §1.) (For additional definitions, see Rev.C. 13401 et seq.; on computation of tax when decedent leaves property both within and outside state, see Rev.C. 13303.)

(3) *Administration.* The tax is administered by the state controller (Rev.C. 14101) who has the authority to employ

assistants (Rev.C. 14102, 14151), to make and enforce rules (Rev.C. 14103), and to conduct hearings, including the power to issue subpoenas (Rev.C. 14201 et seq.). (On confidentiality of controller's estate tax records, see Rev.C. 14251, 14252.)

(4) *Court Jurisdiction and Procedure.* Jurisdiction to determine questions involving the pickup tax is in the superior court having jurisdiction of probate of a decedent's estate (Rev.C. 14000), or, if the decedent leaves no estate subject to probate, in the superior court for the county of the decedent's residence (Rev.C. 14001). For nonresident decedents, jurisdiction is in the superior court for the county in which the decedent's real property is located or, if no real property, in which personal property is located. (Rev.C. 14002.) Except as otherwise provided, the Code of Civil Procedure governs proceedings involving the tax. (Rev.C. 14010 et seq.)

(5) *Domicile Disputes.* The pickup tax reenacted, without substantive change, former provisions establishing a decedent's domicile by compromise and arbitration of disputes between states. (See *supra*, §38.)

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SUPPLEMENT: [This section is current through the latest supplement]

(1) *Nature and Purpose of Tax.* See 33 *Pepperdine L. Rev.* 835 [historical perspective on state death tax credits].



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4. Estate Tax.

b. Returns, Payment, and Refunds.

9 *Witkin Sum. Cal. Law Tax* § 329

[§ 329] Returns, Payment, and Refunds.

(1) *Estate Tax Return.* A pickup tax return for estates subject to the tax and a copy of the federal return must be filed with the controller by the filing deadline (including extensions) for the federal return. (Rev.C. 13501, 13502.) (On amended returns, see Rev.C. 13503; on notice to controller of final determination of federal tax, see Rev.C. 13504.)

(2) *Penalties.* A penalty of 5% of the tax due is imposed for each month in which a timely return is not filed, up to 25%, unless a federal waiver or other reasonable cause for delay is shown. (Rev.C. 13510.)

(3) *Deficiency Determination.* If a return that is neither false nor fraudulent has been filed, the controller may make a deficiency determination within 4 years of filing. (Rev.C. 13516.) If the return is false or fraudulent, or no return is filed, a deficiency may be determined at any time. (Rev.C. 13517.) (On amended deficiency, see Rev.C. 13518; on notice of deficiency, see Rev.C. 13519; on suit to modify deficiency, see Rev.C. 13520.)

(4) *Payment of Tax.* The pickup tax is paid by the personal representative from the assets subject to the representative's control. (Rev.C. 13530.) It is due on the decedent's death (Rev.C. 13531) and is delinquent if not paid within 9 months of death (Rev.C. 13532). Delinquent amounts bear interest at the rate for underpayment of estate tax provided in 26 U.S.C., §6621(a)(2), from the date they become delinquent until paid. (Rev.C. 13550.) Every payment on the estate tax is applied, first, to any interest due on the tax, second, to any penalty imposed, and then, if there is any balance, to the tax itself. (Rev.C. 13551.) (On controller's motion to require personal representative to execute bond to pay delinquent tax, see Rev.C. 13555 et seq.)

(5) *Refunds.* An application for a refund of an overpayment may be made within 1 year after the federal estate tax has been finally determined (Rev.C. 13561), and a refund with interest must be paid on "satisfactory" proof of an overpayment (Rev.C. 13560, 13562). Interest on a refund for an overpayment for a period beginning before July 1, 2002, is computed in the manner provided in 26 U.S.C., §§6621(a)(1) and 6622. (Rev.C. 13563(a).) Interest on a refund for an overpayment for a period beginning on or after July 1, 2002, is tied to the bond equivalent rate of 13-week United States Treasury bills, and is at most 5%. (Rev.C. 13563(b).)

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4. Estate Tax.
c. Collection of Tax.

9 *Witkin Sum. Cal. Law Tax* § 330

[§ 330] Collection of Tax.

(1) *Suit for Tax and Tax Lien.* The state may sue to collect the tax or to enforce a tax lien in a court of competent jurisdiction. (Rev.C. 13601.) (On out-of-state suits, see Rev.C. 13683.) Collection proceedings may be commenced within 10 years after a delinquency determination. (Rev.C. 13680.) The state's enforcement remedies are cumulative (Rev.C. 13684), and injunctions, writs and process to prevent or enjoin collection of the tax are forbidden (Rev.C. 13682). The amount of any unpaid tax, penalty, interest, and costs that are due and payable is a perfected and enforceable state tax lien, generally subject to *Govt.C. 7150* et seq. (Rev.C. 13610(a); on termination, subordination, and expiration of lien, see Rev.C. 13610(b).)

(2) *Warrant for Collection of Tax.* Within 10 years after delinquency or the recording of a notice of lien, the controller may issue a warrant, with the same effect as a writ of execution, to collect unpaid amounts or to enforce a lien. (Rev.C. 13615.)

(3) *Writ of Execution.* At any time after delinquency, the controller is entitled to a writ of execution to enforce a judgment with respect to the tax. (Rev.C. 13620.)

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5. Generation-Skipping Transfer Tax.

9 Witkin Sum. Cal. Law Tax § 331

[§ 331] Generation-Skipping Transfer Tax.

As part of the Tax Reform Act of 1977, intended to conform California law to federal law changes made in 1976, a tax was imposed on "every generation-skipping transfer in an amount equal to the amount allowable as a credit for state generation-skipping transfer taxes" under 26 U.S.C., §2604. (Rev.C. 16710(a).) This type of tax is designed to prevent the use of trusts to avoid a tax on transfers between successive generations of beneficiaries, and is the equivalent of an estate or inheritance tax that would be imposed if the property were transferred outright to each successive generation. (See 34B Am.Jur.2d (annual ed.), Federal Taxation §146,031 et seq.; 25 U.C.L.A. L. Rev. 700 [generation- skipping tax]; C.E.B., 1 Will Drafting 3d, §15.1 et seq.)

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XII. STATE TAXATION
B. Personal Income Tax.
1. Nature of Tax.

9 *Witkin Sum. Cal. Law Tax* § 332

[§ 332] Nature of Tax.

(1) *Constitutional and Statutory Authorization.* Cal. Const., Art. XIII, §26(a), authorizes the imposition on individuals of taxes on or measured by income. Under a similar, earlier constitutional provision (former Cal. Const., Art. XIII, §11), the Personal Income Tax Law (Rev.C. 17001 et seq.) was originally enacted in 1935. It was intended in part as a substitute for the ad valorem tax on intangible personal property imposed by the former Political Code. (See *Weber v. Santa Barbara* (1940) 15 C.2d 82, 85, 98 P.2d 492; *Commercial Discount Co. v. Los Angeles* (1940) 16 C.2d 158, 163, 105 P.2d 115; 24 Cal. L. Rev. 493.) Numerous revisions were subsequently made, and extensive renumbering of sections took place in 1955.

Limited partnerships, limited liability companies, and limited liability partnerships are all subject to a tax on the privilege of doing business in California. (See Rev.C. 17935 [limited partnerships]; Rev.C. 17941 et seq. [limited liability companies]; Rev.C. 17948 et seq. [limited liability partnerships].)

(2) *Relation to Federal Law.* Today, the main provisions, other than those fixing rates, are either identical or closely similar to those of the federal law, and California decisions are few. Hence, federal decisions construing comparable provisions are strong persuasive authority. (*Holmes v. McColgan* (1941) 17 C.2d 426, 430, 110 P.2d 428; *Meanley v. McColgan* (1942) 49 C.A.2d 313, 317, 121 P.2d 772; *Rihn v. Franchise Tax Bd.* (1955) 131 C.A.2d 356, 360, 280 P.2d 893; see *Spurgeon v. Franchise Tax Bd.* (1984) 160 C.A.3d 524, 530, 206 C.R. 636 [federal interpretation of definition of income persuasive].)

In 1983, 1985, and 1987, the Personal Income Tax Law was substantially revised. Except as otherwise indicated, the revised law incorporates the Internal Revenue Code. (Rev.C. 17024.5.) The Franchise Tax Board is required to submit to the Legislature an annual report on changes in the Internal Revenue Code during the preceding year. (Rev.C. 19522.) Frequently, the Legislature enacts conforming amendments the following year. (See, e.g., Stats. 1977, Chap. 1079 [conforming to changes in federal Tax Reform Act of 1976]; Stats. 1982, Chap. 278 [conforming to changes in federal bankruptcy provisions]; Stats. 1985, Chap. 1461 [conforming to changes in federal Tax Reform Act of 1984]; Stats. 1987, Chap. 1138 [conforming to changes in federal Tax Reform Act of 1986]; 14 *Pacific L. J.* 713 [1981 bankruptcy changes].)

Income tax practice is such a complex specialty, and the interrelation of federal and state law is so great, that no

useful purpose would be served by a detailed coverage of the California statutes, and it is not attempted here. (See *Horack v. Franchise Tax Bd.* (1971) 18 C.A.3d 363, 370, 95 C.R. 717 [taxpayers' remedies]; *Greene v. Franchise Tax Bd.* (1972) 27 C.A.3d 38, 43, 103 C.R. 483 [constitutionality of summary collection procedures]; *Mason v. Superior Court* (1981) 121 C.A.3d 876, 881, 175 C.R. 462 [remedy for recovering property seized in jeopardy assessment is administrative proceeding and judicial review, not mandamus]; for federal law, see Am.Jur.2d, volumes 33, 33A, 34, 34A, 34B [revised annually]; on state income taxes generally, see 71 Am.Jur.2d (2001 ed.), *State and Local Taxation* §382 et seq.; for income tax considerations in specified transactions, see Cal. Civil Practice, 2 Family Law Litigation, Tax Issues in Marriage Termination, Chap. 7; on licensing and regulation of tax preparers, see B. & P.C. 22250 et seq. [tax preparers must maintain bond and provide proof of compliance to their customers].)

(3) *Administration and Enforcement.* The statutes governing the administration and enforcement of both the Personal Income Tax Law (Rev.C. 17001 et seq.) and the Corporation Tax Law (Rev.C. 23001 et seq.), unless otherwise provided (Rev.C. 18401), consist of the following chapters:

- (a) General Provisions (Rev.C. 18401 et seq.).
- (b) Returns (Rev.C. 18501 et seq.).
- (c) Voluntary Contributions (Rev.C. 18701 et seq.).
- (d) Payments and Assessments (Rev.C. 19001 et seq.).
- (e) Collection of Tax (Rev.C. 19201 et seq.).
- (f) Overpayments and Refunds (Rev.C. 19301 et seq.).
- (g) Administration of Tax (Rev.C. 19501 et seq.).
- (h) Disposition of Proceeds (Rev.C. 19601 et seq.).
- (i) Violations (Rev.C. 19701 et seq.).
- (j) Res Judicata (Rev.C. 19801 et seq.). (For regulations, see 18 Cal. Code Reg. §18501 et seq.)

The 1988 Legislature added Rev.C. 21001 et seq., the Katz-Harris Taxpayers' Bill of Rights, designed to improve voluntary taxpayer compliance (Rev.C. 21002). It is administered by the Franchise Tax Board and is applicable to the Personal Income Tax Law (Rev.C. 21003). (See *supra*, §§123, 124.)

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SUPPLEMENT: [This section is current through the latest supplement]

(2) *Relation to Federal Law.* See 48 *Santa Clara L. Rev.* 805 [federal tax treatment of same-sex marriages, civil unions, and domestic partnerships]; 34 *Southwestern U. L. Rev.* 635 [treatment of same-sex couples for federal income tax purposes]; 60 *Stanf. L. Rev.* 745 [lifetime income averaging and consumption tax as alternatives to income tax]; 60 *Stanf. L. Rev.* 789 [superiority of consumption tax as alternative to income tax].(3) *Administration and Enforcement.*

(d) *Payments and Assessments.* See *Ordlock v. Franchise Tax Bd.* (2006) 38 C.4th 897, 904, 44 C.R.3d 212, 135 P.3d 628 [statute of limitation for deficiency assessment under Rev.C. 19060].

(i) *Violations.* See *Neufeld v. State Bd. of Equalization* (2004) 124 C.A.4th 1471, 1476, 22 C.R.3d 423 [board's imposition of penalty on taxpayer, under Rev.C. 19714, for instituting frivolous administrative appeal did not violate taxpayer's free speech rights].



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B. Personal Income Tax.
2. Residents and Nonresidents.

9 Witkin Sum. Cal. Law Tax § 333

[§ 333] Residents and Nonresidents.

The California income tax is imposed on the entire taxable income of residents of the state, and the taxable income of nonresidents and part-year residents derived from sources within the state. (Rev.C. 17041; see Rev.C. 17014 [definition of resident]; Rev.C. 17015 [definition of nonresident]; Rev.C. 17016 [presumption of residence from 9 months permanent abode during the year]; Rev.C. 17301 [deductions of nonresident]; Rev.C. 17951 et seq. [gross income of nonresident]; 20 U.S.F. L. Rev. 289 [constitutional determination of residency for California income tax purposes].)

The following are among the numerous cases discussing residency for income tax purposes:

Newman v. Franchise Tax Bd. (1989) 208 C.A.3d 972, 977, 256 C.R. 503 [nonresident actor properly allocated income earned from exclusive contract by dividing working days in California by total working days under contract].

Wilson v. Franchise Tax Bd. (1993) 20 C.A.4th 1441, 1452, 25 C.R.2d 282 [nearly all of nonresident professional football player's football income was earned in California during the football season, and thus was subject to California income tax, where his contract did not require him to be available for football year-round; distinguishing *Newman*].

Daks v. Franchise Tax Bd. (1999) 73 C.A.4th 31, 33, 85 C.R.2d 927 [pension income earned while taxpayer is resident of another state but distributed after taxpayer becomes resident of California is taxable personal income in California].

Valentino v. Franchise Tax Bd. (2001) 87 C.A.4th 1284, 1290, 105 C.R.2d 304 [California source income of S corporation, passed through to nonresident shareholder, is subject to California tax].

Noble v. Franchise Tax Bd. (2004) 118 C.A.4th 560, 566, 13 C.R.3d 363 [taxpayers who intended to move to Colorado, but who continued to reside in California home, to register their vehicles in California, to maintain their California drivers' licenses, etc., were California residents subject to taxation; one is resident for tax purposes until there are sufficient indicia of actual change of residence].

While one who is domiciled in California, but "is outside the state for a temporary or transitory purpose," is included in the term "resident" (Rev.C. 17014(a)), the Act does not purport to impose a tax on persons who are domiciled in California but are permanently residing elsewhere, except as to income derived from sources within

California. (See *Klemp v. Franchise Tax Bd.* (1975) 45 C.A.3d 870, 876, 119 C.R. 821 [time spent in state does not alone determine whether individual is in state "for other than a temporary or transitory purpose" within meaning of Rev.C. 17014(a)]; 16 *Santa Clara L. Rev.* 176 [Klemp].)

Under Rev.C. 17014(b), California domiciliaries and their spouses "shall be considered outside this state for a temporary or transitory purpose" while holding a federal elective or appointive office (requiring appointment by the President and confirmation by the Senate) or while employed by an elective officer of Congress. A taxpayer and an accompanying spouse absent from the state under an employment-related contract for an uninterrupted period of at least 546 consecutive days are considered outside the state for other than a temporary or transitory purpose. (Rev.C. 17014(d).) (On credits to persons taxed by two states, see Rev.C. 18001, 18002; *Crocker-Anglo Nat. Bank v. Franchise Tax Bd.* (1960) 179 C.A.2d 591, 592, 3 C.R. 906; *Tetreault v. Franchise Tax Bd.* (1967) 255 C.A.2d 277, 282, 63 C.R. 326; *Christman v. Franchise Tax Bd.* (1976) 64 C.A.3d 751, 757, 759, 134 C.R. 725 [no credit for foreign tax on income derived from California source; source of income is determined by California law as to California resident]; *Gray v. Franchise Tax Bd.* (1991) 235 C.A.3d 36, 43, 286 C.R. 453 [sister state tax on net capital gains was "net income tax" for purposes of Rev.C. 18002, authorizing credit for net income tax on California-source income paid by nonresident taxpayer to sister state]; 12 *San Diego L. Rev.* 475 [federal law regarding foreign earned income of community property taxpayers]; 12 *A.L.R.2d* 359 [constitutionality, construction, and application of statutory provisions allowing credit for income tax paid to another state or country]; on Multistate Tax Compact, see Rev.C. 38006; 6 *Pacific L. J.* 406.)

A person claiming to be a nonresident may bring an action for declaratory relief against the Franchise Tax Board to determine the fact of residence. (*C.C.P.* 1060.5; Rev.C. 19381; see *Franchise Tax Bd. v. Superior Court* (1989) 212 C.A.3d 1343, 1347, 261 C.R. 236 [former Rev.C. 19081 (now Rev.C. 19381), postponing collection of taxes during litigation of fact of residence, is not inconsistent with Cal. Const., Art. XIII, §32 (supra, §297), prohibiting equitable process to prevent collection of tax]; on jurisdiction of state, see supra, §31.)

In *Whittell v. Franchise Tax Bd.* (1964) 231 C.A.2d 278, 41 C.R. 673, petitioner had a home in California and lived there with his wife 8 or 9 months of the year. The couple also had a home on Lake Tahoe in Nevada, where they lived in the summer months. They had bank accounts in both states and made charitable gifts in both; professional relationships were in California; social and political activities were in Nevada, and petitioner voted in Nevada. *Held*, petitioner was a California resident under Rev.C. 17014. The meaning of "residence" depends on the particular statute. Under the Personal Income Tax Law, it means presence here for other than a temporary or transitory purpose. Hence, one may be a California resident for income tax purposes although domiciled elsewhere. (Double taxation is avoided by the credit under Rev.C. 18001.) Voting in Nevada was relevant but not controlling. It may have indicated mere laxity of state officials. (231 C.A.2d 286.)

SUPPLEMENT: [This section is current through the latest supplement]

Cases discussing residency: See *Milhous v. Franchise Tax Bd.* (2005) 131 C.A.4th 1260, 1268, 32 C.R.3d 640

[California could not fairly tax any portion of payments nonresident taxpayers received for covenant not to compete; no part of payments arose from activities in California or from capital that was located in or associated with California].



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B. Personal Income Tax.
3. Rates of Tax.

9 Witkin Sum. Cal. Law Tax § 334

[§ 334] Rates of Tax.

The California tax rates, though progressive, are different from and considerably lower than those in the Internal Revenue Code. The tax commences with one percent on taxable income up to \$ 3,650, and reaches a limit of 9.3% on the excess over \$ 23,950. (Rev.C. 17041(a).) The rates apply at slightly higher levels of income for heads of households. (See Rev.C. 17041(c).) (On alternate minimum tax, see Rev.C. 17062, 17063.) An additional tax at the rate of one percent applies to taxable income in excess of \$ 1,000,000. (Rev.C. 17043(a).) The revenue from Rev.C. 17043(a) is deposited into the Mental Health Services Fund (Rev.C. 19602.5(a)), unlike most other revenue collected by the Franchise Tax Board, which is deposited into the Personal Income Tax Fund (Rev.C. 19602).

The tax on a nonresident or part-year resident is calculated by multiplying the individual's "taxable income," as defined in Rev.C. 17041(i), by a rate equal to the tax computed under Rev.C. 17041(a) on the individual's entire taxable income, as if the individual were a resident for the taxable year and as if the individual were a resident for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income. (Rev.C. 17041(b); see Rev.C. 17041(d) [head of household].)

In lieu of the rates provided by Rev.C. 17041, an individual's tax may generally be computed under tax tables promulgated by the Franchise Tax Board. (Rev.C. 17048(a); for exceptions, see Rev.C. 17048(b).) (On penalties for late payment, see Rev.C. 19132; on temporary amnesty program for tax liabilities for reporting periods before January 1, 2003, see Rev.C. 19730 et seq.)

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SUPPLEMENT: [This section is current through the latest supplement]

On amnesty program for tax liabilities for taxable years 2003 through 2006, see Rev.C. 19740 et seq., added in 2008.



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B. Personal Income Tax.
4. Adjustments to Income Tax.

9 *Witkin Sum. Cal. Law Tax* § 335

[§ 335] Adjustments to Income Tax.

(1) *Exemptions.* The California Constitution provides the following exemptions:

(a) Interest on bonds issued by California or a local government in California is exempt from state income taxation. (Cal. Const., Art. XIII, §26(b).)

(b) Income from a nonprofit educational institution of corporate grade in California that is not unrelated business income and that is used exclusively for educational purposes is exempt from state income taxation. (Cal. Const., Art. XIII, §26(c).) "Section 26(c) is intended to remove argument as to the tax exempt status of income of private colleges or universities by restating the existing statutory law and administrative practice which exempts income of qualified private colleges and universities to the extent the income is not unrelated business income and is used exclusively for educational purposes. Section 26(c) does not relieve any private college or university from satisfying the exemption requirements set forth in Part 11 of Division 2 of the Revenue and Taxation Code." (Task Force Report, p. 30; *supra*, §109.)

(c) Nonprofit organizations are exempt from business license taxes or fees measured by income or gross receipts. (Cal. Const., Art. XIII, §26(d); see *Arden Carmichael v. Sacramento* (2001) 93 C.A.4th 507, 513, 113 C.R.2d 248 [county fee imposed on nonprofit organizations based on percentage of their prize payouts from bingo games did not violate Cal. Const., Art. XIII, §26(d), notwithstanding that prize payouts were roughly constant percentage of gross receipts; exemption applies only to fees measured by income or gross receipts, and county's fee was measured by type of expense; prize payouts are not income but are expense to organization deducted from gross receipts].)

If the tax is not discriminatory, income earned for services performed in a federal area and income of federal officers and employees is not exempt. (4 U.S.C., §§106, 111; see *Barker v. Kansas* (1992) 503 U.S. 594, 112 S.Ct. 1619, 1622, 118 L.Ed.2d 243, 249 [state income taxation of retirement benefits of federal military employees and exemption of retirement benefits of state and local government employees violated nondiscrimination requirement of 4 U.S.C., §111]; *Jefferson County, Alabama v. Acker* (1999) 527 U.S. 423, 119 S.Ct. 2069, 2079, 2080, 144 L.Ed.2d 408, 425, 428 [county's license tax on certain occupations operated as tax on federal judges' compensation and was allowed under 4 U.S.C., §111; tax did not discriminate between similarly situated federal and state employees].)

(2) *Deductions.* For California purposes, "gross income," "adjusted gross income," and "taxable income" have the same meaning as in federal personal income tax law except as specifically provided by Rev.C. 17071 et seq. Likewise, California follows federal law governing items specifically included in gross income (Rev.C. 17081 et seq.) and excluded from gross income (Rev.C. 17131 et seq.), except as specifically provided otherwise. Except as otherwise provided, itemized deductions for California personal income tax purposes are determined by the Internal Revenue Code. (Rev.C. 17201 et seq.) (On tax incentives to offset economic impact of closure of federal military bases, see Rev.C. 17053.45 and 17053.46.)

(3) *Credits.* Personal exemptions from gross income were formerly allowed (former Rev.C. 17181), but in 1967, these were eliminated in favor of tax credits. The credits, deductible from the tax imposed, are determined by the taxpayer's status, e.g., single, married filing jointly, married filing separately, head of household. The credits are annually adjusted for inflation. (Rev.C. 17054.) Various credits are progressively reduced to the extent adjusted gross income exceeds specified threshold amounts: \$ 200,000 for joint returns, \$ 150,000 for head of household returns, and \$ 100,000 for single returns. (Rev.C. 17054.1.)

The personal income tax law offers a variety of specialized tax credits, of which the following are illustrative:

(a) Rev.C. 17053.5 provides a renter's credit.

(b) Rev.C. 17053.7, 17053.74, and 17053.75 provide credits for employment of disadvantaged and disabled employees in enterprise zones.

(c) Rev.C. 17053.49 provides a credit for part of the cost of tangible personal property used in specified manufacturing, processing, refining, fabricating, recycling, research, and development.

(d) Rev.C. 17052.2 provides a credit to credentialed teachers, based on years of service.

(e) Rev.C. 17053.30 provides a credit to persons who donate qualified real property to the public, in order to protect wildlife habitat, open space, and agricultural lands. The credit equals 55% of the property's fair market value.

(f) Rev.C. 17053.80 provides a credit to eligible caregivers of specified persons requiring long-term care.

(4) *Contributions.* Taxpayers may contribute to a variety of programs by designating on their returns that contributions (e.g., refunds or excess withholding) in excess of their tax liability be applied to specified funds. The following are illustrative:

(a) State Children's Trust Fund for the Prevention of Child Abuse (see Rev.C. 18711 et seq.). The fund will be eliminated January 1, 2008, or earlier if specified minimum contributions are not made. (Rev.C. 18716(a).)

(b) Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account (see Rev.C. 18741 et seq.). The account will be eliminated January 1, 2008, or earlier if specified minimum contributions are not made. (Rev.C. 18744.)

(c) California Alzheimer's Disease and Related Research Fund (see Rev.C. 18761 et seq.). The fund will be eliminated January 1, 2010, or earlier if specified minimum contributions are not made. (Rev.C. 18766.)

(d) National World War II Veterans Memorial Trust Fund (see Rev.C. 18701 et seq.). The statutes are effective until January 1 of the third taxable year following the first appearance of the fund on the tax return, but may be repealed earlier if specified minimum contributions are not made. (Rev.C. 18704.)

(e) California Fund for Senior Citizens (see Rev.C. 18721 et seq.). The fund will be eliminated on January 1, 2010, or earlier if a specified minimum amount of contributions is not made. (Rev.C. 18724.)

(f) California Seniors Special Fund (see Rev.C. 18771 et seq.).

(g) California Breast Cancer Research Fund (see Rev.C. 18791 et seq.). The statutes are effective until January 1, 2008, but may be repealed earlier if specified minimum contributions are not made. (Rev.C. 18796.)

(h) California Firefighters' Memorial Fund (see Rev.C. 18801 et seq.). The statutes are effective until January 1, 2006, but may be repealed earlier if specified minimum contributions are not made. (Rev.C. 18804.)

(i) Asthma and Lung Disease Research Fund (see Rev.C. 18831 et seq.). A voluntary contribution designation for this fund may not be added to the tax return until another voluntary contribution designation is removed. (Rev.C. 18831(f).) Rev.C. 18831 et seq. will then remain effective until January 1 of the fifth taxable year following the first appearance of the fund on the tax return (Rev.C. 18835(a)) or until the fund fails to garner a specified minimum amount of contributions (Rev.C. 18835(b)).

(j) California Missions Foundation Fund (see Rev.C. 18841 et seq.). The statutes are effective until January 1 of the fifth taxable year following the first appearance of the fund on the tax return or until the fund fails to garner a specified minimum amount of contributions. (Rev.C. 18844.)

(k) California Military Family Relief Fund (see Rev.C. 18705 et seq.). The statutes are effective until January 1 of the fifth taxable year following the first appearance of the fund on the tax return (Rev.C. 18709(a)) or until the fund fails to garner a specified minimum amount of contributions (Rev.C. 18709(b)).

(l) California Prostate Cancer Research Fund (see Rev.C. 18845 et seq.). The statutes are effective until January 1 of the fifth taxable year following the first appearance of the fund on the tax return (Rev.C. 18845.3(a)) or until the fund fails to garner a specified minimum amount of contributions (Rev.C. 18845.3(b)).

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Credits.*

(d) *Credentialed teachers:* Rev.C. 17052.2 was repealed in 2007.

(4) *Contributions.*

(a) *State Children's Trust Fund:* Rev.C. 18716(a) was amended in 2007 to extend the effective date of Rev.C. 18711 et seq. until January 1, 2013.

(b) *Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account:* Rev.C. 18744 was amended in 2007 to extend the effective date of Rev.C. 18741 et seq. until January 1, 2013. (g) *California Breast Cancer Research Fund:* Rev.C. 18796 was amended in 2007 to extend the effective date of Rev.C. 18791 et seq. until January 1, 2013.

(h) *California Firefighters' Memorial Fund:* Rev.C. 18804 was amended in 2005 to extend the effective date of Rev.C. 18801 et seq. until January 1, 2011. Rev.C. 18804 was amended in 2008 to extend the effective date of Rev.C. 18801 et seq. until January 1, 2016.

(k) *California Military Family Relief Fund:* Rev.C. 18709(a) was amended in 2006 to extend the effective date of Rev.C. 18705 et seq. until January 1, 2010. Rev.C. 18709(a) was amended in 2008 to extend the effective date of Rev.C. 18705 et seq. until January 1, 2015.

(l) *California Prostate Cancer Research Fund:* Rev.C. 18845.3(a) was amended in 2006 to extend the effective date of Rev.C. 18845 et seq. until January 1, 2010.

(m) *(New) California Ovarian Cancer Research Fund:* Rev.C. 18797 et seq. were added in 2008. A voluntary

contribution designation for this fund may not be added to the tax return until another voluntary contribution designation is removed. (Rev.C. 18797.2(e).) Rev.C. 18797 et seq. will then remain effective until January 1 of the fifth taxable year following the first appearance of the fund on the tax return (Rev.C. 18797.5(a)) or until the fund fails to garner a specified minimum amount of contributions (Rev.C. 18797.5(b)).

(n) *(New) California Cancer Research Fund*: Rev.C. 18861 et seq. were added in 2008. A voluntary contribution designation for this fund may not be added to the tax return until another voluntary contribution designation is removed. (Rev.C. 18861(f).) Rev.C. 18861 et seq. will then remain effective until January 1 of the fifth taxable year following the first appearance of the fund on the tax return (Rev.C. 18864(a)) or until the fund fails to garner a specified minimum amount of contributions (Rev.C. 18864(b)).

(o) *(New) ALS/Lou Gehrig's Disease Research Fund*: Rev.C. 18881 et seq. were added in 2008. A voluntary contribution designation for this fund may not be added to the tax return until another voluntary contribution designation is removed (Rev.C. 18882(d)), but the Legislature's intent is to add the designation as soon as space is available (Rev.C. 18882(e)). Rev.C. 18881 et seq. will remain effective until January 1, 2013 (Rev.C. 18886(a)) or until the fund fails to garner a specified minimum amount of contributions (Rev.C. 18886(b)).

(p) *(New) Municipal Shelter Spay-Neuter Fund*: Rev.C. 18755 et seq. were added in 2008. A voluntary contribution designation for this fund may not be added to the tax return until another voluntary contribution designation is removed. (Rev.C. 18755(e).) Rev.C. 18755 et seq. will then remain effective until January 1 of the fifth taxable year following the first appearance of the fund on the tax return (Rev.C. 18755.3(a)) or until the fund fails to garner a specified minimum amount of contributions (Rev.C. 18755.3(b)).



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XII. STATE TAXATION
C. Bank and Corporation Taxes.
1. In General.

9 *Witkin Sum. Cal. Law Tax* § 336

[§ 336] In General.

(1) *Constitutional Authorization*. "The Legislature, a majority of the membership of each house concurring, may tax corporations, including State and national banks, and their franchises by any method not prohibited by this Constitution or the Constitution or laws of the United States. Unless otherwise provided by the Legislature, the tax on State and national banks shall be according to or measured by their net income and shall be in lieu of all other taxes and license fees upon banks or their shares, except taxes upon real property and vehicle registration and license fees." (Cal. Const., Art. XIII, §27.)

(2) *Franchise Tax*. The Corporation Tax Law provides for a tax on the privilege of exercising corporate franchises in California, measured by the net income for the preceding year. (Rev.C. 23151.) This system was established by a constitutional amendment in 1928 and legislation in subsequent years. The former statutes were brought into the Revenue Code in 1949, effective July 1, 1951 (Rev.C. 23001 et seq.). (See 71 *Am.Jur.2d* (2001 ed.), *State and Local Taxation* §368 et seq.; on nature and history of tax, see *Fullerton Oil Co. v. Johnson* (1934) 2 C.2d 162, 165, 39 P.2d 796; *Union Oil Associates v. Johnson* (1935) 2 C.2d 727, 730, 43 P.2d 291; *American States Water Service Co. of Calif. v. Johnson* (1939) 31 C.A.2d 606, 609, 88 P.2d 770; *Edward Brown & Sons v. McColgan* (1942) 53 C.A.2d 504, 508, 128 P.2d 186; on procedure for returns and payments, see Rev.C. 18601 et seq.; *Jones-Hamilton Co. v. Franchise Tax Bd.* (1968) 268 C.A.2d 343, 345, 73 C.R. 896 [upholding validity of statutory provisions requiring declaration and prepayment of estimated taxes]; on determination that corporation engaged in limited activities is not doing business in state, see Rev.C. 23101.5; on administration and enforcement of corporation tax, see *supra*, §332; on credits, see Rev.C. 23601 et seq.; on collection of tax, see Rev.C. 18661 et seq.; on refunds and refund credits, see Rev.C. 19301 et seq.; on temporary amnesty program for tax liabilities for reporting periods before January 1, 2003, see Rev.C. 19730 et seq.; on taxation of cooperatives, see Rev.C. 24404 et seq.; *Anaheim Union Water Co. v. Franchise Tax Bd.* (1972) 26 C.A.3d 95, 103, 102 C.R. 692; on oil depletion allowance, see 7 *Pacific L. J.* 540; on treatment of foreign income taxes, see 17 *Pacific L. J.* 77; on double taxation of corporate income, see 23 *Santa Clara L. Rev.* 715.)

The minimum franchise tax may not be increased by more than 10% in any calendar year. (Rev.C. 23153(h).) A corporation incorporated on or after January 1, 1999, and before January 1, 2000, that estimates its gross receipts for a taxable year to be less than \$ 1 million pays a minimum franchise tax of \$ 500 for the second taxable year. The corporation must be incorporated in California or qualified to transact intrastate business in California and must begin business operations at or after the time of its incorporation. (Rev.C. 23153(e).) A corporation that incorporates or

qualifies to do business in California on or after January 1, 2000, does not pay any minimum franchise tax for its first taxable year. (Rev.C. 23153(f)(1).)

The statute specifies a number of exemptions, including labor and political organizations, charitable and religious corporations, and various types of nonprofit corporations. (See Rev.C. 23701 et seq.) But some kinds of unrelated business income of the exempt organizations are taxable. (See Rev.C. 23731 et seq.)

(3) *Refunds*. Strict compliance with the administrative procedure for claiming a franchise tax refund, set forth in former Rev.C. 26101 et seq. (now Rev.C. 19381 et seq.) is a precondition for a refund action, even where the refund claim challenges the constitutionality of the tax. (*Shiseido Cosmetics (America) Ltd. v. Franchise Tax Bd.* (1991) 235 C.A.3d 478, 491, 286 C.R. 690 [neither prepayment protest and appeal nor check endorsed with "paid under protest" constituted formal refund claim required by statute]; see *Chen v. Franchise Tax Bd.* (1998) 75 C.A.4th 1110, 1121, 90 C.R.2d 268 [payment of accrued interest is not jurisdictional prerequisite to action for refund of franchise taxes paid; Cal. Const., Art. XIII, §32, and Rev.C. 19382 require payment of "tax" before refund action, but do not include interest within meaning of "tax"].)

(4) *Relation to Federal Law*.

In large measure, the provisions of the Corporation Tax Law conform to the provisions of the Internal Revenue Code applicable to corporations. (On attempts to conform to federal income tax law changes, see Stats. 1982, Chap. 278 [bankruptcy changes]; Stats. 1985, Chap. 1461 [changes in federal Tax Reform Act of 1984]; Stats. 1987, Chap. 1139 [changes in federal Tax Reform Act of 1986]; 14 *Pacific L. J.* 713 [1981 bankruptcy changes].)

(5) *Taxpayers' Bill of Rights*.

Rev.C. 21001 et seq., the Katz-Harris Taxpayers' Bill of Rights Act, are designed to improve voluntary taxpayer compliance (Rev.C. 21002). The Act is administered by the Franchise Tax Board and is applicable to the Corporation Tax Law (Rev.C. 21003). (See *supra*, §§123, 124.)

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SUPPLEMENT: [This section is current through the latest supplement]

(2) *Franchise Tax*. See 38 *McGeorge L. Rev.* 729 [constitutional limits on income tax on religious organizations].

On amnesty program for tax liabilities for taxable years 2003 through 2006, see Rev.C. 19740 et seq., added in 2008.(3) *Refunds*. See *Milhous v. Franchise Tax Bd.* (2005) 131 C.A.4th 1260, 1265, 32 C.R.3d 640 ["pay now, litigate later" rule of Cal. Const., Art. XIII, §32, and Rev.C. 19382, does not affect court's subject matter jurisdiction and may be waived; by failing to raise it in trial court, board waived issue whether taxpayer had to pay both tax assessed and accrued interest before commencing refund action].

(4) *Relation to Federal Law*. See *Pillsbury Co. v. Franchise Tax Bd.* (2004) 124 C.A.4th 892, 896, 21 C.R.3d 819 [federal tax provisions that permit corporation to assign income to its subsidiaries were not adopted by California].



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C. Bank and Corporation Taxes.

2. Banks and Other Financial Institutions.

9 Witkin Sum. Cal. Law Tax § 337

[§ 337] Banks and Other Financial Institutions.

Banks are taxed at the same rate as corporations under Rev.C. 23151, plus 2%. (Rev.C. 23186.) (On alternative minimum tax, see Rev.C. 23400; *First City Bank v. Franchise Tax Bd.* (1977) 70 C.A.3d 444, 455, 139 C.R. 12 [limitation on deductibility of designated items does not constitute prohibited tax].)

The tax is in lieu of all other state and local taxes except real property taxes, sales and use taxes, vehicle taxes and fees, certain utility taxes and charges, and state energy resources surcharges. (Rev.C. 23182; see Rev.C. 10751 [vehicles of bank are subject to vehicle license fees]; *Western States Bankcard Assn. v. San Francisco* (1977) 19 C.3d 208, 216, 219, 137 C.R. 183, 561 P.2d 273 [in lieu exemption does not apply to nonprofit corporation performing banking functions for banks exclusively, nor are local payroll and gross receipts taxes on those corporations taxes on participating exempt banks]; *California Fed. Savings & Loan Assn. v. Los Angeles* (1991) 54 C.3d 1, 7, 283 C.R. 569, 812 P.2d 916 [Rev.C. 23182 prohibits levy of city license tax on savings association; taxation of financial corporations is subject of statewide concern, rather than municipal affair immune from state interference by virtue of municipal home rule]; *Los Angeles v. Furman Selz Capital Management, L.L.C.* (2004) 121 C.A.4th 505, 515, 17 C.R.3d 139 [city could not impose business tax on limited liability company that was wholly owned by financial corporation; company had elected to be disregarded as separate entity for tax purposes and its net income was already subject to tax at higher, in lieu rate of Rev.C. 23182]; 1 Ehrman 3d, §10:4.)

Other financial corporations are similarly taxed. (Rev.C. 23183(a); on what constitutes "financial corporation," see *Marble Mortg. Co. v. Franchise Tax Bd.* (1966) 241 C.A.2d 26, 41, 50 C.R. 345; Rev.C. 23183(b) [financial corporation does not include corporation, including wholly owned subsidiary of bank or bank holding company, if entity's principal business activity consists of leasing tangible personal property].)

National banks are subject to the tax by express Congressional permission (see 12 U.S.C., §548). And the California taxing formula and procedure have been upheld against strong substantive and procedural challenges. (See *Security-First Nat. Bank of Los Angeles v. Franchise Tax Bd.* (1961) 55 C.2d 407, 413, 11 C.R. 289, 359 P.2d 625; *First Fed. Savings & Loan Assn. of Altadena v. Johnson* (1942) 49 C.A.2d 465, 470, 122 P.2d 84 .)

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SUPPLEMENT: [This section is current through the latest supplement]



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3. General Corporations.

9 *Witkin Sum. Cal. Law Tax* § 338

[§ 338] General Corporations.

Corporations other than financial corporations (see *supra*, §337) are taxed at a rate of 8.84% of net income. (Rev.C. 23151(e), 23151(f)(2).) The minimum tax is \$ 800. (Rev.C. 23153(d).) A corporation incorporated on or after January 1, 1999, and before January 1, 2000, that estimates its gross receipts for a taxable year to be less than \$ 1 million pays a minimum franchise tax of \$ 500 for the second taxable year. The corporation must be incorporated in California or qualified to transact intrastate business in California and must begin business operations at or after the time of its incorporation. (Rev.C. 23153(e).) A corporation that incorporates or qualifies to do business in California on or after January 1, 2000, does not pay any minimum franchise tax for its first taxable year. (Rev.C. 23153(f)(1).)

Holding companies are not considered as doing business within the meaning of the Act, but are subject to the corporation income tax. (See Rev.C. 23102; *infra*, §340.) (See 76 *So. Cal. L. Rev.* 1237 [corporations' use of abusive tax shelters; effect of contingent fee compensation for accountants]; on taxation of intercorporate dividends, see Rev.C. 25106; *Safeway Stores v. Franchise Tax Bd.* (1970) 3 C.3d 745, 752, 91 C.R. 616, 478 P.2d 48; *Willamette Industries v. Franchise Tax Bd.* (1995) 33 C.A.4th 1242, 1249, 39 C.R.2d 757 [Rev.C. 25106 dividend exclusion did not apply where payor and recipient corporations were not engaged in unitary business]; on whether corporation is "doing business" under Act, see *Golden State Theatre & Realty Corp. v. Johnson* (1943) 21 C.2d 493, 495, 133 P.2d 395; *Carson Estate Co. v. McColgan* (1943) 21 C.2d 516, 517, 133 P.2d 636; *People v. Birch Sec. Co.* (1948) 86 C.A.2d 703, 709, 196 P.2d 143; on taxation of dissolving corporations, see Rev.C. 23151.2.)

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SUPPLEMENT: [This section is current through the latest supplement]
See 11 *A.L.R.6th* 543 [state income tax treatment of intangible holding companies].



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XII. STATE TAXATION

C. Bank and Corporation Taxes.

4. Methods of Apportioning Income.

9 *Witkin Sum. Cal. Law Tax* § 339

[§ 339] Methods of Apportioning Income.

(1) *In General.* When corporations do interstate or foreign as well as intrastate business as part of a "unitary" business, the income on which the tax is based may be computed in two ways:

(a) *Unitary method.* Corporations are taxed on the portion of income attributable to sources within this state. (Rev.C. 25101; see *Container Corp. of America v. Franchise Tax Bd.* (1983) 463 U.S. 159, 103 S.Ct. 2933, 77 L.Ed.2d 545, supra, §99 [constitutionality of California's apportionment formula using unitary business approach]; *Handlery v. Franchise Tax Bd.* (1972) 26 C.A.3d 970, 977, 103 C.R. 465; *Citicorp North America v. Franchise Tax Bd.* (2000) 83 C.A.4th 1403, 1414, 100 C.R.2d 509 [administrative rule, which determined proportion of combined income in California by treating all affiliates of corporation as unitary taxpayer and including income generated in California from affiliates located outside of California as long as one affiliate was taxable in California, was reasonable, consistent with unitary principles, and constitutional; rule was properly applied to financial institution whose out-of-state affiliate had credit card customers in California, even though rule was later changed to allow attribution of affiliate's income to California only when affiliate has nexus in state]; 20 *Santa Clara L. Rev.* 123 [taxation of foreign source income].)

(b) *Water's edge method.* Qualifying taxpayers may elect to determine California source income under the water's edge method, which excludes foreign operations of a unitary business from the computation of income. (Rev.C. 25110 et seq.) The election requires a 84-month contract with the Franchise Tax Board. (Rev.C. 25111.) (See *Barclays Bank PLC v. Franchise Tax Bd. of Calif.* (1994) 512 U.S. 298, 114 S.Ct. 2268, 129 L.Ed.2d 244, supra, §100 [constitutionality of "worldwide combined reporting" for multinational corporations, which was required in California before 1988 amendments allowed election of "water's edge" reporting]; *Fujitsu IT Holdings v. Franchise Tax Bd.* (2004) 120 C.A.4th 459, 480, 15 C.R.3d 473 [California's water's edge method of apportionment of income does not facially discriminate against foreign commerce].) Rev.C 25111 is generally applicable to taxable years beginning before January 1, 2003. (Rev.C 25111(a).) If a taxpayer would have been required to file on a water's edge basis in its first taxable year beginning on or after January 1, 2003, pursuant to an election made in a prior year under Rev.C 25111, the terms of Rev.C 25111 no longer apply, and the earlier election is deemed to have been made under Rev.C. 25113. (Rev.C 25111(f).)

(2) *Uniform Act.* The Uniform Division of Income Tax for Tax Purposes Act (UDIPTA) (7A (Part I) U.L.A. (Master Ed.), p. 141) provides an equitable and uniform formula for the apportionment of unitary income. The Act was

adopted by California in 1966 as Rev.C. 25120 et seq., and now provides the basis for the allocation required by Rev.C. 25101. (See 22 *Hastings L. J.* 31 [proposal for uniform regulation on business income under UDITPA]; 18 *U.C.L.A. L. Rev.* 478 [separate accounting in California and uniformity in apportioning corporate income]; 8 *A.L.R.4th* 934 [construction and application of UDITPA]; for the Multistate Tax Compact, governing apportionment, see Rev.C. 38006; 6 *Pacific L. J.* 406.)

Although the Franchise Tax Board has discretion to select appropriate factors to be used in a tax formula, its determination is subject to review. (*McDonnell Douglas Corp. v. Franchise Tax Bd.* (1968) 69 *C.2d* 506, 510, 514, 72 *C.R.* 465, 446 *P.2d* 313 [finding that taxpayer sustained burden of showing intrinsically arbitrary use of property factor]; see *Communications Satellite Corp. v. Franchise Tax Bd.* (1984) 156 *C.A.3d* 726, 748, 749, 750, 203 *C.R.* 779 [board properly recalculated factors in apportionment formula provided by Uniform Act in order to more accurately reflect taxpayer's in-state business activity].)

(3) *Illustrations.* The following are among the cases discussing the allocation of unitary income:

Edison Calif. Stores v. McColgan (1947) 30 *C.2d* 472, 480, 183 *P.2d* 16.

El Dorado Oil Works v. McColgan (1950) 34 *C.2d* 731, 739, 215 *P.2d* 4.

John Deere Plow Co. of Moline v. Franchise Tax Bd. of Calif. (1951) 38 *C.2d* 214, 223, 238 *P.2d* 569.

Hoechst Celanese Corp. v. Franchise Tax Bd. (2001) 25 *C.4th* 508, 527, 535, 106 *C.R.2d* 548, 22 *P.3d* 324 [reversion of corporation's surplus pension plan assets was taxable business income was apportionable to California under functional test; property maintained and used by taxpayer to retain and attract employees is integral to business operations].

RKO Teleradio Pictures v. Franchise Tax Bd. (1966) 246 *C.A.2d* 812, 816, 55 *C.R.* 299 [business of producing and distributing own films and distributing films of others was unitary, and single allocation formula was proper].

Montgomery Ward & Co. v. Franchise Tax Bd. (1970) 6 *C.A.3d* 149, 155, 158, 85 *C.R.* 890.

Max Factor & Co. v. Franchise Tax Bd. (1973) 35 *C.A.3d* 7, 13, 110 *C.R.* 536 [foreign taxes must be charged against dividends of foreign subsidiary insofar as they reflect taxes on income allocated to the subsidiary for purposes of the parent's tax].

Chase Brass & Copper Co. v. Franchise Tax Bd. (1977) 70 *C.A.3d* 457, 469, 472, 138 *C.R.* 901 [traditional property-payroll-sales formula was properly applied; relative productivity of in-state and out-of-state employees is irrelevant].

Hoffmann-LaRoche v. Franchise Tax Bd. (1980) 101 *C.A.3d* 691, 696, 161 *C.R.* 838.

Times Mirror Co. v. Franchise Tax Bd. (1980) 102 *C.A.3d* 872, 877, 162 *C.R.* 630.

Hugo Neu-Proler Int. Sales Corp. v. Franchise Tax Bd. (1987) 195 *C.A.3d* 326, 332, 240 *C.R.* 635 [unity of ownership between two corporate partners and corporate subsidiary controlled entirely by partnership].

Rain Bird Sprinkler Mfg. Corp. v. Franchise Tax Bd. (1991) 229 *C.A.3d* 784, 791, 280 *C.R.* 362 [unity of ownership by family with controlling interest in each corporation in unitary group; controlling interest in single individual is not required; following reasoning of *Hugo Neu-Proler Int. Sales Corp.*].

Robert Half Int. v. Franchise Tax Bd. (1998) 66 *C.A.4th* 1020, 1023, 78 *C.R.2d* 453 [corporation's repurchase and cancellation of warrant was "nonbusiness" loss under Rev.C. 25120(a), (d), and thus should be allocated in full to California (domicile state)].

Citicorp North America v. Franchise Tax Bd., *supra*, 83 C.A.4th 1426 [gain on sales of corporation's real property was business income under Rev.C. 25120(a), whether judged under functional test or transactional test, and thus was subject to UDITPA apportionment formula; corporation had separate department that acquired, managed, leased, and ultimately sold corporate real property, and properties sold had been used by corporation in its regular trade or business operations].

In *McDonnell Douglas Corp. v. Franchise Tax Bd.* (1994) 26 C.A.4th 1789, 33 C.R.2d 129, plaintiff aircraft manufacturer sought a refund of franchise taxes. Plaintiff sold aircraft in an international market and owned a California facility. It delivered the aircraft to customers in California and Arizona, and the customers then arranged for transportation of the aircraft to their final destination. In calculating plaintiff's tax liability, the trial court excluded, from the "sales factor" portion of the apportionment formula, plaintiff's sale of aircraft delivered to purchasers in California but destined for use outside of California. *Held*, judgment for plaintiff affirmed.

(a) The trial court properly excluded sales of aircraft delivered to purchasers in California, but destined for use elsewhere, when it computed the franchise tax owed. Rev.C. 25135(a) provides that sales of tangible personal property are in California if the property is delivered or shipped to a purchaser within this state. (26 C.A.4th 1796.)

(b) Other states interpreting statutes similar or identical to Rev.C. 25135(a) have concluded that the emphasis in the statute should be placed on the words "purchaser ... within this state" and that therefore the statute excludes from the sales factor sales from aircraft delivered in California but destined for use in other states, because the purchaser is not "within this state." Following the lead of other states that have interpreted the statute helps ensure uniformity among the states in tax matters, a primary purpose of the Act. (26 C.A.4th 1796.)

(c) The Board's argument that Rev.C. 25135(a) should be read to include property "delivered or shipped ... within this state," regardless of the location of the purchaser or the ultimate destination of the goods, is supported only by its own administrative rulings and regulations. Although these sources are entitled to great weight, following them would be completely contrary to the uniformity purpose of the Act. (26 C.A.4th 1796.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *In General.* See 17 A.L.R.6th 623 [state corporate income taxation of foreign dividends].(3) *Illustrations.* The following cases discuss the allocation of unitary income:

Microsoft Corp. v. Franchise Tax Bd. (2006) 39 C.4th 750, 758, 47 C.R.3d 216, 139 P.3d 1169 [entire amount received on redemption of marketable securities at maturity was includable in calculation of corporation's business income, but board met burden of establishing that alternative formula under Rev.C. 25137 should be used to calculate amount of tax].

General Motors Corp. v. Franchise Tax Bd. (2006) 39 C.4th 773, 781, 47 C.R.3d 233, 139 P.3d 1183 [entire amount received on redemption of marketable securities at maturity was includable in calculation of corporation's business income, but only interest portion of proceeds from repurchase agreements was includable].

Jim Beam Brands Co. v. Franchise Tax Bd. (2005) 133 C.A.4th 514, 522, 34 C.R.3d 874 [sale of stock of wholly owned subsidiary was business income under Rev.C. 25120(a); taxpayer's control and use of subsidiary were integral parts of its regular business operation and disposition of proceeds of sale did not affect determination of business income; following *Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 C.4th 508, 106 C.R.2d 548, 22 P.3d 324, text, p. 490].

Limited Stores v. Franchise Tax Bd. (2007) 152 C.A.4th 1491, 1496, 62 C.R.3d 191 [although entire redemption price of debt instruments held to maturity by retailer was gross receipt under UDITPA, inclusion of full redemption price as gross receipt did not fairly represent extent of retailer's business activity in California, and board could apply alternative calculation under Rev.C. 25137; relying on *Microsoft Corp.*].



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C. Bank and Corporation Taxes.

5. Foreign Corporation Income Tax.

9 Witkin Sum. Cal. Law Tax § 340

[§ 340] Foreign Corporation Income Tax.

The corporation income tax supplements the corporation franchise tax by reaching foreign corporations doing exclusively interstate business in California. (See Rev.C. 23040, 23501; *West Publishing Co. v. McColgan* (1946) 27 C.2d 705, 708, 166 P.2d 861; *Luckenbach Steamship Co. v. Franchise Tax Bd.* (1963) 219 C.A.2d 710, 714, 33 C.R. 544 [intercoastal interstate commerce]; *supra*, §72.) It also covers associations, business (Massachusetts) trusts, professional corporations, and trusts operated exclusively for religious or charitable purposes that qualify for exemption under Rev.C. 23701d (Rev.C. 23038), and holding companies (see Rev.C. 23102, 23501).

A number of types of associations and corporations are exempt, e.g., labor and fraternal organizations, religious and charitable corporations, nonprofit civic and business leagues, pleasure clubs, employees' beneficiary organizations, and teachers' retirement fund organizations. (Rev.C. 23701 et seq.) A corporation is given an offset for any tax imposed, and a credit for any tax paid, under the other act (Rev.C. 23101 et seq.). (Rev.C. 23503.)

The rate is the same as that provided by the corporate franchise tax (see Rev.C. 23151, *supra*, §338). (Rev.C. 23501.)

West's Key Number Digest, Taxation k.162

SUPPLEMENT: [This section is current through the latest supplement]



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D. Gross Premiums Tax on Insurance Companies.
1. Nature and Scope of Tax.

9 Witkin Sum. Cal. Law Tax § 341

[§ 341] Nature and Scope of Tax.

Cal. Const., Art. XIII, §28, provides for an annual tax to be levied on insurers doing business in California. It is an excise or franchise tax, measured by the gross premiums, and is assessed by the State Board of Equalization. (See Rev.C. 13201 et seq. [gross premiums tax on persons who effect coverage on their own property from nonadmitted insurers]; on payment of insurance taxes by electronic funds transfer, see *Ins.C. 45, 685(b), 1531, 1775.8, 12976.5* and Rev.C. 12602.) A life insurer or life insurance agent must inform the insured of the gross premiums tax (Rev.C. 12210(a)), unless the insurer or agent quotes only one price that includes the tax (Rev.C. 12210(b)).

Numerous cases have discussed the gross premiums tax, including the following:

Consolidated Title Sec. Co. v. Hopkins (1934) 1 C.2d 414, 416, 35 P.2d 320.

Carpenter v. Peoples Mut. Life Ins. Co. (1937) 10 C.2d 299, 301, 74 P.2d 508.

Industrial Indem. Exchange v. State Bd. of Equalization (1945) 26 C.2d 772, 774, 161 P.2d 222 [taxation of insurance exchanges under *Ins.C. 1530*].

Metropolitan Life Ins. Co. v. State Bd. of Equalization (1982) 32 C.3d 649, 662, 186 C.R. 578, 652 P.2d 426 [with respect to employee health insurance plan, "gross premiums" include both premiums paid to insurer by employer ("load") and claims paid to employees by employer ("net premiums") where employer acts as insurer's agent].

Camden Fire Ins. Assn. v. Johnson (1941) 42 C.A.2d 528, 529, 109 P.2d 447.

Equitable Life Assur. Soc. of U.S. v. Johnson (1942) 53 C.A.2d 49, 58, 127 P.2d 95 [annuity payment as gross premium].

People v. Alliance Life Ins. Co. (1944) 65 C.A.2d 808, 811, 151 P.2d 868 [tax on foreign insurer].

Occidental Life Ins. Co. of Calif. v. State Bd. of Equalization (1956) 139 C.A.2d 468, 472, 293 P.2d 870 [tax was properly imposed for business done in California although premiums were collected in another state].

Allstate Ins. Co. v. State Bd. of Equalization (1959) 169 C.A.2d 165, 168, 336 P.2d 961 [meaning of "gross premium"].

Mercury Cas. Co. v. State Bd. of Equalization (1983) 141 C.A.3d 43, 45, 190 C.R. 72 ["gross premiums" do not include interest paid by insureds on deferred payment of premiums].

Interinsurance Exchange of the Auto. Club of Southern Calif. v. State Bd. of Equalization (1984) 156 C.A.3d 606, 612, 614, 203 C.R. 74 ["gross premiums" include service fees paid by subscribers for electing installment plan option in purchase of insurance].

Aetna Life Ins. Co. v. State Bd. of Equalization (1992) 11 C.A.4th 1207, 1213, 15 C.R.2d 26 [health insurance claims paid by employer under "split funded group plan" were not taxable as gross premiums received by insurer; *Metropolitan Life Ins. Co.* distinguished].

Great-West Life Assur. Co. v. State Bd. of Equalization (1993) 19 C.A.4th 1553, 1561, 25 C.R.2d 1 [tax imposed on insurer's "minimum premium plan," which allowed policyholders to pay claims up to a certain point, did not violate insurer's equal protection rights, even though similar plans were not taxed].

Prudential Ins. Co. v. State Bd. of Equalization (1993) 21 C.A.4th 458, 26 C.R.2d 287 [health insurance claims below annual "trigger-point" amount paid by employer were not taxable as gross premiums received by insurer; citing *Aetna* and distinguishing *Metropolitan*].

Lincoln Nat. Life Ins. Co. v. State Bd. of Equalization (1994) 30 C.A.4th 1411, 1416, 36 C.R.2d 397 [employer-paid claims were not taxable as gross premiums, even though insurer provided administrative services, where evidence showed that employer, not insurer, actually assumed risk and provided primary level of insurance; following *Aetna* and *Prudential*, and distinguishing *Metropolitan*].

In *Illinois Commercial Men's Assn. v. State Bd. of Equalization* (1983) 34 C.3d 839, 849, 850, 196 C.R. 198, 671 P.2d 349, the court upheld the tax on a foreign insurer soliciting business by mail on the ground that the investigation and settlement services performed for the company in California constituted a minimum connection sufficient to justify the tax even though the company's representatives were described as "independent contractors."

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2. Rates.

9 Witkin Sum. Cal. Law Tax § 342

[§ 342] Rates.

Rev.C. 12001 et seq. implement the gross premiums tax and establish the following rates:

(1) *Ocean marine insurers* pay an annual tax of 5% of a proportionate part of their underwriting profit; i.e., that portion of the profit that the gross premiums written in California bear to the gross premiums from insurance written within the United States. (Cal. Const., Art. XIII, §28(g); Rev.C. 12101 et seq.)

(2) *Title insurers* pay a tax of 2.35% on all income from business done in California, except that there is excluded from the tax base interest and dividends, rents from real property, profits from the sale of investments, and income from investments. (Cal. Const., Art. XIII, §28(c), (d); Rev.C. 12202, 12231.)

In *Title Ins. Co. of Minnesota v. State Bd. of Equalization* (1992) 4 C.4th 715, 14 C.R.2d 822, 842 P.2d 121, plaintiff title insurers, who issued policies through title companies, challenged assessments based on the inclusion in income of claim payments made by the title companies. Under underwriting agreements between the insurers and the title companies, the title company agreed to act as an agent of the insurer, conduct a title search and examination, prepare a preliminary report, and collect premiums, for which the title company would retain most of the premium. However, the agreements also obligated the title company to pay a portion of certain title insurance claims. Defendant State Board of Equalization characterized the payments by the title companies as income to the insurers. *Held*, plaintiff title insurers may not be taxed on the claims paid by the title companies.

(a) Gross income may include income from discharge of indebtedness. However, for the title insurers to be taxed on the claims, it is not sufficient that the insurers remain ultimately liable to the insured for the amount of the claims. The title insurers must also realize income. (4 C.4th 724.)

(b) Although defendant argued that the title company is not authorized to issue title insurance policies, and thus only the title insurer is liable to the insured, this is not the case. The underwriting agreement is an arm's length contract under which a portion of the risk is allocated to the title company in return for a portion of the premium. (4 C.4th 725.)

(c) The arrangement under which the insurer and the title company allocate the risks between them does not make the underwriting agreement an illegal contract of insurance. An insurance contract requires (1) a risk of loss to which

one party is subject and a shifting of that risk to another party; and (2) distribution of risk among similarly situated persons. The underwriting agreement does not meet the second requirement. Even if it did, the main function of the agreement is not to require the title company to provide insurance, but to perform a title search and examination and carry out the formalities in issuing the title insurance policy. (4 C.4th 726.)

(d) Thus when the title company fulfills its obligation by paying its portion of the claims, the insurer does not realize any additional gain. Since there is no gain, there is no income. (4 C.4th 728.) (See 21 *Pepperdine L. Rev.* 359 [Title Ins. Co. of Minnesota].)

(3) *Other insurers* pay an annual tax of 2.35% on gross premiums (less return premiums) received during the preceding year from business done in California, other than premiums for reinsurance and ocean marine insurance. (Cal. Const., Art. XIII, §28(c), (d); Rev.C. 12201 et seq.; see Cal. Const., Art. XIII, §28(a) [insurer defined]; Rev.C. 12003 [insurer defined]; Rev.C. 12203 [State Compensation Insurance Fund subject to tax]; *State Comp. Ins. Fund v. State Bd. of Equalization* (1993) 14 C.A.4th 1295, 1299, 18 C.R.2d 526 [Rev.C. 12202.1, permitting State Board of Equalization to adjust premium rates to compensate for change in revenues, is not unconstitutional delegation of legislative power]; *Pacific Mut. Life Ins. Co. v. State Bd. of Equalization* (1996) 41 C.A.4th 1153, 1158, 1163, 49 C.R.2d 99 [Rev.C. 12202.1 is not unconstitutionally vague; however, board erred in computing 1990 premiums tax rate when it failed to consider all factors set out in statute].)

By majority vote, the Legislature may change the tax rates specified in the Constitution. (Cal. Const., Art. XIII, §28(i).) It has done so occasionally. (See Rev.C. 12202 [rate from 1982 to 1985 was 2.33%]; on annual adjustment of rate, see Rev.C. 12202.1.)

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3. Other Taxes on Insurers.

9 Witkin Sum. Cal. Law Tax § 343

[§ 343] Other Taxes on Insurers.

The gross premiums tax on insurers is in lieu of all other state and local taxes and licenses, on any company or its property, except the following:

- (1) Real estate taxes. (Cal. Const., Art. XIII, §28(f)(1); Rev.C. 12204(a).)
- (2) Taxes on trust business done by title insurance companies. (Cal. Const., Art. XIII, §28(f)(2).)
- (3) Retaliatory taxes. (Cal. Const., Art. XIII, §28(f)(3); Rev.C. 12204(b); see Rev.C. 12281 et seq.; *Franklin Life Ins. Co. v. State Bd. of Equalization* (1965) 63 C.2d 222, 230, 45 C.R. 869, 404 P.2d 477, supra, §43; *Western & Southern Life Ins. Co. v. State Bd. of Equalization* (1979) 99 C.A.3d 410, 415, 159 C.R. 539, affirmed *Western & Southern Life Ins. Co. v. State Bd. of Equalization of Calif.* (1981) 451 U.S. 648, 101 S.Ct. 2070, 68 L.Ed.2d 514 [constitutionality of retaliatory tax]; *American Alliance Ins. Co. v. State Bd. of Equalization* (1982) 134 C.A.3d 601, 604, 184 C.R. 674, supra, §43; 1 Ehrman 3d, §10:4.)
- (4) The tax on ocean marine insurance. (Cal. Const., Art. XIII, §28(f)(4); Rev.C. 12204(c).)
- (5) Motor vehicle taxes. (Cal. Const., Art. XIII, §28(f)(5); Rev.C. 12204(d).)
- (6) Franchise tax on corporate insurance agent. (See *Edward Brown & Sons v. McColgan* (1942) 53 C.A.2d 504, 506, 128 P.2d 186 [tax on insurance agent for privilege of doing business is not direct tax on insurers agent represents].)
- (7) Sales tax on retail sale of personal property to insurer. (See *Occidental Life Ins. Co. v. State Bd. of Equalization* (1982) 135 C.A.3d 845, 185 C.R. 779 [legal incidence of tax is on retailer, even though economic burden may be on insurer].)

Massachusetts Mut. Life Ins. Co. v. San Francisco (1982) 129 C.A.3d 876, 885, 181 C.R. 370, held that personal property taxes applicable to a business activity unrelated to insurance (the operation of a hotel) could be imposed in addition to the gross premiums tax. However, *Massachusetts Mut. Life Ins. Co.* was disapproved in *Mutual Life Ins. Co. v. Los Angeles* (1990) 50 C.3d 402, 412, 267 C.R. 589, 787 P.2d 996, holding that, under Cal. Const., Art. XIII, §28(f), the gross premiums tax is in lieu of municipal utility taxes and taxes on revenue derived from business activity

unrelated to insurance (the ownership of office buildings and parking lots). (See 18 *Pepperdine L. Rev.* 828 [*Mutual Life Ins. Co. v. Los Angeles*].)

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XII. STATE TAXATION

E. Sales and Use Taxes.

1. Sales Tax.

a. Privilege Tax on Retailer.

9 Witkin Sum. Cal. Law Tax § 344

[§ 344] Privilege Tax on Retailer.

(1) *Nature of Tax.* The Sales and Use Tax Law (Rev.C. 6001 et seq.) covers both the sales tax and the use tax (infra, §355). The sales tax is not a property tax on the buyer, but an excise or privilege tax on the retail seller, based on the gross receipts of retail sales of tangible personal property in California. (Rev.C. 6051; see *Roth Drug v. Johnson* (1936) 13 C.A.2d 720, 756, 57 P.2d 1022 [upholding constitutionality of act]; *Western Lithograph Co. v. State Bd. of Equalization* (1938) 11 C.2d 156, 161, 78 P.2d 731; *De Aryan v. Akers* (1939) 12 C.2d 781, 783, 87 P.2d 695; *Kamp v. Johnson* (1940) 15 C.2d 187, 190, 99 P.2d 274; *Livingston Rock & Gravel Co. v. De Salvo* (1955) 136 C.A.2d 156, 160, 288 P.2d 317; *Xerox Corp. v. Orange* (1977) 66 C.A.3d 746, 756, 136 C.R. 583; 68 Am.Jur.2d (2000 ed.), *Sales and Use Taxes* §7 et seq.; C.E.B., 2 Bankruptcy Practice in California, §17.9 [whether sales tax should be treated as excise tax for purpose of determining if it is dischargeable in bankruptcy].)

(2) *Tax Rate.* The rate is established as a percentage of gross receipts, and it may include city, county, and rapid transit district taxes in addition to the state sales tax. (On state rate, see Rev.C. 6051; on local sales taxes, see Rev.C. 7200 et seq., supra, §315 et seq.; on temporary adjustments to state rate, see Rev.C. 6051.2, 6051.3, 6051.4, 6051.45, 6051.5; on additional one-half percent sales tax for public safety services of local agencies, see Cal. Const., Art. XIII, §35.)

(3) *Collection and Reimbursement.* Former Rev.C. 6052 et seq. authorized collection of the tax from the purchaser (i.e., the retailer could reimburse himself). Any improper or excessive collection had to be returned. The retailer could not represent that he would absorb any of the tax himself, but if he neglected to pass the tax on to the purchaser, he waived any subsequent right to reimbursement against the purchaser. (See *Roth Drug v. Johnson*, supra, 13 C.A.2d 736; *De Aryan v. Akers*, supra, 12 C.2d 786; *Clary v. Basalt Rock Co.* (1950) 99 C.A.2d 458, 461, 222 P.2d 24; *Pacific Coast Engineering Co. v. California* (1952) 111 C.A.2d 31, 35, 244 P.2d 21; *Livingston Rock & Gravel Co. v. De Salvo*, supra; 68 Am.Jur.2d (2000 ed.), *Sales and Use Taxes* §240 et seq.; on allocation of revenues from sales tax on motor vehicle fuel to specified transportation projects, see Cal. Const., Art. XIX B, §1.)

Despite prior state law and decisions, the United States Supreme Court, in *Diamond Nat. Corp. v. State Bd. of Equalization* (1976) 425 U.S. 268, 96 S.Ct. 1530, 47 L.Ed.2d 780, held that for federal purposes, the sales tax is imposed on the purchaser. In specific response to this and other federal decisions, the 1978 Legislature declared that

"[t]his act provides for changes in the California Sales and Use Tax Law to make it clear that for both federal and state tax purposes the incidence of the California sales tax is upon the retailer for the privilege of selling tangible personal property at retail and is not upon the purchaser. This act is not intended to affect any litigation or claims for refund relating to taxable periods prior to the effective date hereof." (Stats. 1978, Chap. 1211, §19.)

In conformity with the legislative declaration, *supra*, many sections were amended and former Rev.C. 6052 et seq. were repealed. (See *10 Pacific L. J. 585*.) In their place, C.C. 1656.1 provides that reimbursement of the tax from the purchaser depends entirely on agreement, and establishes certain presumptions. The Legislature recognized that "[m]ost sales transactions involve small amounts of money, are oral, and do not disclose the parties' intention with respect to reimbursement for sales tax. Ascertainment of this intention is necessary to a determination of a proper measure of sales tax and for other purposes. Accordingly, the purpose of ... Section 1656.1 is to create a rebuttable presumption as to the intention of the parties for use in the absence of evidence of other intention by those who have occasion to use this information." (Stats. 1978, Chap. 1211, §22.)

It is presumed that the sales tax is to be added to the price of a product if (a) it is expressly so provided, (b) the tax is separately stated on the sales check or other proof of sale, or (c) the seller posts notice, or otherwise indicates on price tags, in advertisements, etc., that the tax will be added to the price. (C.C. 1656.1(a); for form of notices, see C.C. 1656.1(b); for tables of reimbursement rates, see C.C. 1656.1(c).) The presumption is rebuttable. (C.C. 1656.1(d).) (See *11 Pacific L. J. 169* [argument that C.C. 1656.1 cannot withstand constitutional attack based on *Diamond*].)

SUPPLEMENT: [This section is current through the latest supplement]



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E. Sales and Use Taxes.

1. Sales Tax.

b. Administration.

9 *Witkin Sum. Cal. Law Tax* § 345

[§ 345] Administration.

The Act is administered by the State Board of Equalization, which has the power to make rules and regulations on administration and enforcement. (Rev.C. 7051; see *Coca-Cola Co. v. State Bd. of Equalization* (1945) 25 C.2d 918, 921, 156 P.2d 1; *Anders v. State Bd. of Equalization* (1947) 82 C.A.2d 88, 98, 185 P.2d 883; *Coast Elevator Co. v. State Bd. of Equalization* (1975) 44 C.A.3d 576, 587, 118 C.R. 818; for regulations, see 18 *Cal. Code Reg.* §1500 et seq.)

In certain circumstances, payment of the tax may be shifted from the retailer to the ultimate consumer. Under Rev.C. 7051.1, the State Board of Equalization may provide for a direct payment permit precluding collection of the tax by the retailer and authorizing direct payment to the Board by the permit holder. A direct payment permit must facilitate collection of the tax, must serve the mutual convenience of the Board, the permit holder, and the retailers, and must not result in a tax loss. (On penalties, see Rev.C. 7051.2.)

SUPPLEMENT: [This section is current through the latest supplement]



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E. Sales and Use Taxes.

1. Sales Tax.

c. Gross Receipts.

9 Witkin Sum. Cal. Law Tax § 346

[§ 346] Gross Receipts.

(1) *Definition.* The term "gross receipts" means "the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise." (Rev.C. 6012(a).) The "total amount" includes services that are a part of the sale, all receipts, cash, credits, and property of any kind, and any amount for which credit is allowed by the seller to the purchaser. (Rev.C. 6012(b); see *Hawley v. Johnson* (1943) 58 C.A.2d 232, 235, 136 P.2d 638 [agreed turn-in value of used car]; *Anders v. State Bd. of Equalization* (1947) 82 C.A.2d 88, 92, 96, 185 P.2d 883 [tips that employer by agreement with employees credited against their statutory minimum wage were part of gross receipts]; 4 A.L.R.2d 1059 [computation of sales tax where property is turned in by purchaser]; 73 A.L.R.3d 1226 [applicability of sales tax to tips or service charges added in lieu of tips]; for special definitions of "gross receipts," see Rev.C. 6012.1 [sale of tangible personal property by consumer cooperative]; Rev.C. 6012.2, 6012.8, 6012.9 [mobilehomes]; Rev.C. 6012.7 [factory-built housing]; Rev.C. 6012.6 [factory-built school buildings]; for special definition of "sales price" applicable to mobilehomes, see Rev.C. 6276.1.)

The terms "gross receipts" and "sales price" refer to the price agreed on at the initial sales transaction, not to the net amount which the buyer ultimately pays for the goods purchased, such as a fictitious adjusted price later conceived by the parties. (*Southern Calif. Edison Co. v. State Bd. of Equalization* (1972) 7 C.3d 652, 661, 662, 102 C.R. 766, 498 P.2d 1014.)

Whether a retailer has absorbed the sales tax is determined according to C.C. 1656.1 (supra, §344). If a retailer establishes that the tax has been added to the total amount of the sale and has not been absorbed, the total amount of the sale price is deemed to be the amount received exclusive of the tax imposed. (Rev.C. 6012.)

(2) *No Deduction.* No deduction is allowed for the cost of property sold (except for special resale under board regulations), the cost of materials, labor, or services, the cost of transportation before sale, interest paid, losses, or any other expense. (Rev.C. 6012(a); see *Select Base Materials v. Board of Equalization* (1959) 51 C.2d 640, 647, 335 P.2d 672 [transportation charges].)

(3) *Exclusions.* Gross receipts do not include the following:

(a) Cash discounts allowed and taken on sales. (Rev.C. 6012(c)(1); see *Eisenberg's White House v. State Bd. of Equalization* (1945) 72 C.A.2d 8, 11, 164 P.2d 57 [trading stamps are cash discounts]; *Botney v. Sperry & Hutchinson Co.* (1976) 55 C.A.3d 49, 55, 127 C.R. 263 [collection of tax by S & H on basis of valuation of \$ 3 per book of stamps was proper despite distribution of some free stamps for promotional purposes and some discounts to licensees with high volume use]; 90 A.L.R.2d 338 [deduction or exemption of discount or premium in computing amount of sales].)

(b) The sale price refunded when property is returned (unless the customer is required to purchase other property at greater price). (Rev.C. 6012(c)(2).)

(c) The price received for labor or services in installing or applying the property. (Rev.C. 6012(c)(3).)

(d) The amount of federal retailer or consumer tax (not a manufacturers' or importers' excise tax unless the purchaser is entitled to an income tax refund or credit or if the purchaser issues a certificate for the tax). (Rev.C. 6012(c)(4).)

(e) The amount of a local sales or use tax. (Rev.C. 6012(c)(5), 6012(c)(6); on credit for local sales and use taxes, see *supra*, §317.)

(f) Transportation charges separately stated and occurring after the sale. (Rev.C. 6012(c)(7); see 2 A.L.R.4th 1124 [transportation, freight, mailing, or handling charges separately billed to purchaser of goods as subject to sales or use taxes].)

(g) Charges for transporting landfill from an excavation site. (Rev.C. 6012(c)(8).)

(h) State motor vehicle, mobilehome, or commercial coach fees or taxes. (Rev.C. 6012(c)(9).)

(i) The cost of intangible personal property transferred with tangible personal property under specified technology transfer agreements. (Rev.C. 6012(c)(10).)

(j) Tax imposed on diesel fuel under Rev.C. 60001 et seq. (*infra*, §382). (Rev.C. 6012(c)(11).)

(k) Tax imposed by an Indian tribe within California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed on the retailer or the consumer. (Rev.C. 6012(c)(12)(A); see Rev.C. 6012(c)(12)(B) [exclusion only applies to those retailers who are in substantial compliance with Rev.C. 6001 et seq.].)

In *Preston v. State Bd. of Equalization* (2001) 25 C.4th 197, 105 C.R.2d 407, 19 P.3d 1148, plaintiff, a professional artist, entered into a number of written agreements to provide manufacturers with artwork for use as book illustrations and rubber stamp designs. Under the agreements, plaintiff transferred finished artwork in tangible form and the transferees copied or reproduced images from this finished artwork for use in their products and returned the tangible artwork to plaintiff. Defendant board determined that plaintiff owed sales tax based on the amount of royalties she received from the agreements. Plaintiff paid the tax and timely submitted a claim for refund, which defendant denied. In plaintiff's subsequent action seeking a refund, the trial court found that the "items sold by plaintiff were tangible personal property, and not intangible property" and entered judgment for defendant. The Court of Appeal affirmed. *Held*, reversed and remanded.

(a) Together, *Simplicity Pattern Co. v. State Bd. of Equalization* (1980) 27 C.3d 900, 167 C.R. 366, 615 P.2d 555, *infra*, §347, *Capitol Records v. State Bd. of Equalization* (1984) 158 C.A.3d 582, 204 C.R. 802, and *A&M Records v. State Bd. of Equalization* (1988) 204 C.A.3d 358, 250 C.R. 915, establish that any transfer of tangible property physically useful in the manufacturing process is subject to sales tax, even though the true object of the transfer is an intangible property right like a copyright. Thus, the temporary transfers of plaintiff's tangible artwork are taxable transfers of tangible property. Because the agreements transferred the artwork for use in a manufacturing process

performed outside plaintiff's personal or business premises, they fall within the statutory definition of a taxable lease provided in Rev.C. 6006(g) and 6006.3 (*infra*, §348). (25 C.4th 211.) Like printing plates, master recordings, and film negatives, the tangible artwork was physically useful and essential in the ultimate production of books and rubber stamps incorporating the copyright in the artwork. Without the physical artwork, the contracts were essentially worthless. (25 C.4th 212.)

(b) However, plaintiff's agreements also involved transfers of intangible property, the copyrights in the artwork. The language of Rev.C. 6011(c)(10) and 6012(c)(10) unambiguously establishes that the value of a patent or copyright interest is excluded from taxation whenever the owner of a patent or copyright transfers it to another person so the transferee can make and sell a product embodying the patent or copyright. Plaintiff owned the copyrights in the transferred artwork. Under the agreements, she separately and distinctly transferred one of the rights comprised in a copyright, the right to reproduce, and the transferees manufactured and sold products subject to the transferred copyright interest. Thus the agreements were technology transfer agreements under Rev.C. 6011(c)(10)(D) and 6012(c)(10)(D), and the copyright transfers were excluded from sales tax. (25 C.4th 214.)

(c) The fact that the agreements involved the transfer of artwork and not technology does not place them outside the purview of Rev.C. 6011(c)(10)(D) and 6012(c)(10)(D). The Legislature broadly defined "technology transfer agreement" to encompass the transfer of any copyright interest which, by definition in 17 U.S.C., §102(a)(5), includes copyrights in artwork. It did not limit the definition to transfers of high technology. (25 C.4th 215.) Moreover, the legislative history of Rev.C. 6011(c)(10) and 6012(c)(10) supports the interpretation that the provisions were intended to apply to copyrights in artwork. (25 C.4th 216.)

(d) Because the agreements do not state a separate price for the tangible personal property, the amount subject to taxation, according to Rev.C. 6011(c)(10)(B), (c)(10)(C) and 6012(c)(10)(B), (c)(10)(C), is either "the price at which the tangible personal property was sold, leased, or offered to third parties," or "200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax." Remand is necessary to calculate the sales tax owed by plaintiff under the agreements and the resulting refund owed to her. (25 C.4th 225.)

West's Key Number Digest, Taxation k.1232.5-

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Definition.* "Gross receipts" and "sales price" do not include the portion of the sales price returned to the purchaser of a used motor vehicle or the purchase price for a contract cancellation option under *Veh.C. 11713.21* (4 *Summary* (10th), *Sales*, Supp., §396B). (Rev.C. 6012.3, added in 2005.)



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1. Sales Tax.

d. Sale.

1. In General.

9 *Witkin Sum. Cal. Law Tax* § 347

[§ 347] In General.

(1) *Definitions.* The term "sale" is broadly defined to include any "transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration." (Rev.C. 6006(a); see Rev.C. 6010 [similarly defining "purchase" for purposes of use tax]; *Diebold v. State Bd. of Equalization* (1959) 168 C.A.2d 628, 636, 336 P.2d 650; *Cedars-Sinai Med. Center v. State Bd. of Equalization* (1984) 162 C.A.3d 1182, 1188, 1189, 208 C.R. 837 [purchaser's transfer of new equipment to leasing company and subsequent leaseback, for purpose of acquiring financing to purchase equipment, was not sale for sales and use tax purposes]; 68 *Am.Jur.2d* (2000 ed.), *Sales and Use Taxes* §64 et seq.; 80 A.L.R.2d 1221 [redemption of trading stamps for merchandise is not sale]; 91 A.L.R.2d 1138 [sales by automatic vending machines]; 5 A.L.R.4th 754 [cable television equipment or services]; 10 A.L.R.4th 1209 [motion pictures and videotapes]; 40 A.L.R.4th 1114 [sale of advertising space or services]; 80 A.L.R.4th 1126 [sale or lease of mailing or customer list]; 36 A.L.R.5th 133 [computer software or printout transactions].)

The place of sale of tangible personal property is the place where it is physically located at the time of sale. (Rev.C. 6010.5.)

(2) *Sale to Corporate Subsidiary.* In *Beatrice Co. v. State Bd. of Equalization* (1993) 6 C.4th 767, 25 C.R.2d 438, 863 P.2d 683, plaintiff corporation created a subsidiary and transferred to it assets and liabilities of a former corporate division in exchange for shares of the subsidiary's stock. Defendant Board treated the transaction as a taxable retail sale. Plaintiff paid under protest and sought a refund. *Held*, the subsidiary's assumption of the parent's liability was consideration for the transfer, even though the parent remained primarily and jointly liable, and thus the transaction was a taxable sale.

(a) The general rule that a transfer of property in exchange for stock is a taxable sale under Rev.C. 6006(a) is subject to an exception provided by 18 *Cal. Code Reg. §1595(b)(4)*: The transfer of property to a commencing corporation in exchange for the first issue of stock is not taxable unless the transferor receives consideration, such as cash, notes, or an assumption of indebtedness. (6 C.4th 775.)

(b) Whether the continuing liability of a transferor for debts assumed by a transferee precludes finding consideration for a sale has been the subject of conflicting Court of Appeal decisions. (6 C.4th 779, following *Cal-Metal Corp. v. State Bd. of Equalization* (1984) 161 C.A.3d 759, 207 C.R. 783, text, p. 356, and *Industrial Asphalt v. State Bd. of Equalization* (1992) 5 C.A.4th 1237, 7 C.R.2d 444, and disapproving *Macrodyne Industries v. State Bd. of Equalization* (1987) 192 C.A.3d 579, 237 C.R. 537.) The effort of the *Asphalt* decision to distinguish *Macrodyne* has added "unnecessary complexity to the law." Whether the transaction is a taxable sale turns on whether there is consideration for the transfer of assets, not on the relationship of the parties. And that issue is more a matter of contract law than tax law. (6 C.4th 782.) Here, the subsidiary's assumption of liabilities is a contractual promise to perform plaintiff's obligations, notwithstanding plaintiff's continuing primary liability for the same obligation. It is a benefit of value to plaintiff because plaintiff may compel the subsidiary to perform or recover damages for its failure to do so. Thus, the agreement has value equal to the cost to plaintiff of paying its debts or fulfilling its obligations. That value constitutes consideration, and the sale is taxable. (6 C.4th 783.) (See *Macrodyne Industries v. State Bd. of Equalization* [no consideration and thus no sale in parent corporation's transfer of operating division's assets and liabilities to corporate subsidiary where parent remained jointly liable]; 22 *Pepperdine L. Rev.* 885 [Beatrice].)

(3) *Other Illustrations.* The term "sales" has been applied to numerous transactions, including the following:

(a) Transfer of film negatives and master recording for training medical personnel is a sale of tangible personal property for sales tax purposes; although valued in part for their intellectual content, they are also physically useful in the manufacturing process. (*Simplicity Pattern Co. v. State Bd. of Equalization* (1980) 27 C.3d 900, 906, 912, 167 C.R. 366, 615 P.2d 555; see *A&M Records v. State Bd. of Equalization* (1988) 204 C.A.3d 358, 376, 250 C.R. 915 [following *Simplicity Pattern Co.*; master tape used in production of records and tapes was taxable; acquisition was not incidental to recording artists' personal service contracts]; *Navistar Int. Trans. Corp. v. State Bd. of Equalization* (1994) 8 C.4th 868, 878, 879, 35 C.R.2d 651, 884 P.2d 108, *infra*, §348 [characteristic of physical usefulness mentioned in *Simplicity Pattern Co.* and *A&M Records*, is not prerequisite to taxation of property that is valued for its intellectual content]; *Preston v. State Bd. of Equalization* (2001) 25 C.4th 197, 211, 105 C.R.2d 407, 19 P.3d 1148, *supra*, §346 [citing *Simplicity Pattern Co.* and *A&M Records*; temporary transfer of tangible artwork for use as book illustrations and rubber stamp designs was taxable transfer of tangible property; artwork was physically useful and essential in ultimate production of books and rubber stamps incorporating copyright in artwork].)

(b) Transfer of title to tooling used by the seller in manufacturing airplane parts is a taxable sale under Rev.C. 6006(a). (*Northrop Corp. v. State Bd. of Equalization* (1980) 110 C.A.3d 132, 135, 137, 139, 167 C.R. 707.)

(c) Transfer of equipment to a commencing partnership in exchange for an assumption of the indebtedness on the equipment is a sale for sales tax purposes, measured by the full amount of the debt assumed by the partnership. (*Cal-Metal Corp. v. State Bd. of Equalization*, *supra*, 161 C.A.3d 765, 769; see *Industrial Asphalt*, *supra*, 5 C.A.4th 1239 [following *Cal-Metal Corp.*].)

(4) *Distinction: Service.* Although a lease of tangible personal property is a sale for purposes of the sales tax (see *infra*, §348), a transfer of tangible personal property purely incidental to the provision of services is not subject to the tax. The test for determining whether a sale or a service is involved is the "true object" of the transaction. (*MCI Airsignal v. State Bd. of Equalization* (1991) 1 C.A.4th 1527, 1530, 2 C.R.2d 746 [transfer of telephone paging devices to purchasers of paging services was incidental to those services and thus not subject to tax; citing *General Business Systems v. State Bd. of Equalization* (1984) 162 C.A.3d 50, 208 C.R. 374, *Culligan Water Conditioning v. State Bd. of Equalization* (1976) 17 C.3d 86, 130 C.R. 321, 550 P.2d 593, and 18 *Cal. Code Reg.* §1501]; see *Navistar Int. Trans. Corp. v. State Bd. of Equalization*, *supra* ["true object" test does not apply when property is not purchased incidental to service]; 27 *A.L.R.5th* 794 [classification of architectural drawings as either product or service for purposes of sales and use tax exemption].)

SUPPLEMENT: [This section is current through the latest supplement]

(4) *Distinction: Service.* See *Dell v. Superior Court* (2008) 159 C.A.4th 911, 921, 71 C.R.3d 905 [optional service

contract sold with computer was not taxable, whether classified as service or as intangible personal property; even though contract was sold at same time as computer, for single undifferentiated price on single invoice, contract was separate object of transaction with readily ascertainable value].



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2. Statutory Expansion of Definition.

9 Witkin Sum. Cal. Law Tax § 348

[§ 348] Statutory Expansion of Definition.

The term "sale" has been explicitly extended to several borderline transactions:

(1) Producing, fabricating, processing, printing, or imprinting of materials furnished by consumers. (Rev.C. 6006(b); see *Banken v. State Bd. of Equalization* (1947) 79 C.A.2d 572, 573, 180 P.2d 400 [dyeing of fabrics furnished by customers]; *Mapo v. State Bd. of Equalization* (1975) 53 C.A.3d 245, 249, 125 C.R. 727, 9 Summary (10th), Corporations, §18 [transactions between corporation and wholly owned subsidiary were not sales under Rev.C. 6006(b)]; *Duffy v. State Bd. of Equalization* (1984) 152 C.A.3d 1156, 1167, 199 C.R. 886 [alteration of new clothing furnished by customers].)

(2) Furnishing and distributing of property by social and fraternal organizations. (Rev.C. 6006(c).)

(3) Furnishing, preparing, or serving of food, meals, or drinks. (Rev.C. 6006(d).) In *Automatic Canteen Co. v. State Bd. of Equalization* (1965) 238 C.A.2d 372, 47 C.R. 848, plaintiff and its predecessor operated cafeterias at six large plants. To avoid sales taxes, it entered into contracts with the companies, the general object of which was to make the transactions sales for resale, and hence, outside the scope of the act (Rev.C. 6007, infra, §350). But both under the contracts and in actual operation, plaintiff bought the food, prepared it, and served it directly to the customers; the employers never took title or possession. *Held*, plaintiff's activities constituted a taxable sale. (238 C.A.2d 384.)

(4) Transactions involving transfer of possession with retention of title by the seller for security. (Rev.C. 6006(e).)

(5) Leases of property, "in any manner or by any means whatsoever," with specified exceptions. (See Rev.C. 6006(g), 6010.7; *Culligan Water Conditioning v. State Bd. of Equalization* (1976) 17 C.3d 86, 95, 96, 130 C.R. 321, 550 P.2d 593 [installation and maintenance of water softening units in homes was not service and was properly taxed as lease]; *International Business Machines v. State Bd. of Equalization* (1980) 26 C.3d 923, 163 C.R. 782, 609 P.2d 1 [leases executed before 1965 statutory changes, but extended after that date]; *Universal Engineering Co. v. State Bd. of Equalization* (1953) 118 C.A.2d 36, 41, 256 P.2d 1059 [lease of tools substantially consumed were properly classified as transaction in lieu of sale]; *Ladd v. State Bd. of Equalization* (1973) 31 C.A.3d 35, 38, 106 C.R. 885; *Action Trailer*

Sales v. State Bd. of Equalization (1975) 54 C.A.3d 125, 131, 126 C.R. 339 [election to pay tax measured by purchase price of leased property under Rev.C. 6006(g)(5) must be made when property is first leased]; *Debtor Reorganizers v. State Bd. of Equalization* (1976) 58 C.A.3d 691, 698, 130 C.R. 64 [tax on lessee's use was measured by rental receipts]; *A&M Records v. State Bd. of Equalization* (1988) 204 C.A.3d 358, 377, 250 C.R. 915 [duplicate master recording tapes were not "in substantially the same form" as original master tape for purposes of Rev.C. 6006(g)(5) exception]; *Continental Water Conditioning Co. v. State Bd. of Equalization* (1989) 207 C.A.3d 783, 786, 255 C.R. 98 [replacement of water purification tanks sold to hospital and industrial users; following *Culligan Water Conditioning v. State Bd. of Equalization*]; 2 A.L.R.4th 859 [sales and use taxes on leased tangible personal property].)

A contract that binds the lessee for a fixed time and provides for title in the lessee at the end of the term on completion of the payments, or grants an option to purchase the property for a nominal amount is, from its inception, considered a sale under a security agreement rather than a lease. (Rev.C. 6006.3.)

(6) Transfers of property produced, fabricated or printed to the customer's special order, or transfers of any publication. (Rev.C. 6006(f); see Rev.C. 6010.3 [exempting fabrications or transfers of composed type or reproduction proofs]; Rev.C. 6010.9 [exempting custom computer programs other than basic operational programs]; *Intellidata v. State Bd. of Equalization* (1983) 139 C.A.3d 594, 598, 599, 188 C.R. 850 [Rev.C. 6006(f) is applicable to full value of keypunch cards even though primary value is attributable to intangible service element]; *General Business Systems v. State Bd. of Equalization* (1984) 162 C.A.3d 50, 56, 208 C.R. 374 [distinguishing *Intellidata*; design and development of custom computer programs implemented in form of keypunch cards were not subject to sales tax].)

In *Navistar Int. Trans. Corp. v. State Bd. of Equalization* (1994) 8 C.4th 868, 35 C.R.2d 651, 884 P.2d 108, plaintiff sold all the assets of its subsidiary, including drawings and designs, manuals and procedures, and computer programs. After determining that these three categories of assets were tangible personal property subject to sales tax, the State Board of Equalization assessed a deficiency. Plaintiff paid the deficiency, and subsequently sought a refund. The trial court found that these assets were tangible property transferred as part of a sale and were therefore taxable. *Held*, affirmed.

(a) The sale of the documents containing drawings, designs, manuals, and procedures was a taxable transfer of property. The "true object" test of 18 Cal. Code Reg. §1501 (supra, §347) does not require a contrary conclusion. Regulation 1501, by focusing on the buyer's true object in entering a transaction, distinguishes between the sale of tangible personal property, which is taxable, and the transfer of tangible personal property incidental to the performance of a service, which is not. Here, the sale of the documents was not incidental to the performance of a service, and Regulation 1501 does not apply. (8 C.4th 877.)

(b) A sale does not necessarily become nontaxable whenever its principal purpose is to transfer the intangible or intellectual content of a physical object. (8 C.4th 877, citing *Simplicity Pattern Co. v. State Bd. of Equalization* (1980) 27 C.3d 900, 167 C.R. 366, 615 P.2d 555, supra, §347.) Unlike a manuscript that is sold for purposes of publication, these documents were purchased for their own sake, even though the buyer received the intellectual content embodied in the documents. There was no separate and distinct transfer of an intangible property right. (8 C.4th 877, 878.)

(c) Property that is valued for its intellectual content does not have to be "physically useful" in the buyer's manufacturing process in order to be taxable upon sale. Although this characteristic was mentioned in *Simplicity*, supra, and in two subsequent cases, *Capitol Records v. State Bd. of Equalization* (1984) 158 C.A.3d 582, 204 C.R. 802, and *A&M Records v. State Bd. of Equalization* (1988) 204 C.A.3d 358, 250 C.R. 915, it is not a prerequisite to taxation. (8 C.4th 879.)

(d) Even though the buyer characterized the documents as intangible property in its federal tax returns, without challenge from the Internal Revenue Service, that characterization is not binding for the purpose of assessing sales tax. The federal tax issues concerned valuation of the assets, whereas the issue for the board was classification of the assets. (8 C.4th 880.)

(e) The sale of the computer programs was a taxable event because the programs are not "custom" computer programs, exempt from sales tax under Rev.C. 6010.9. Custom programs are programs prepared to a customer's special order. (Rev.C. 6010.9(d).) The programs in this case originally were prepared for the specific in-house use of the seller and the seller was not taxed for the initial development of the programs. At the time the programs were sold to the buyer, however, the original transaction, the development of custom programs, had been completed. The subsequent sale of the programs was taxable. (8 C.4th 882.)

One justice dissented from the holding that the computer programs were subject to sales tax, reasoning that computer programs are either custom or "canned." Because the majority did not classify the programs in this case as "canned," the dissent concluded that the programs are by definition "custom," and thus not subject to sales tax. (8 C.4th 884.) (See 23 *Pepperdine L. Rev.* 766 [Navistar].)

SUPPLEMENT: [This section is current through the latest supplement]



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3. Labor as Element of Sale.

9 Witkin Sum. Cal. Law Tax § 349

[§ 349] Labor as Element of Sale.

In *Coast Elevator Co. v. State Bd. of Equalization* (1986) 186 C.A.3d 206, 230 C.R. 376, plaintiff contractor purchased elevator components, assembled them before installation, and installed them on-site. Under protest, plaintiff paid sales tax on the labor cost of the preinstallation assembly. *Held*, preinstallation labor was properly subject to the tax.

(a) A construction contractor is a retailer (see *infra*, §353) of fixtures furnished and installed in the performance of construction contracts. (186 C.A.3d 209.) And the cost of labor for assembling a fixture is part of the cost of generating the finished product; under Rev.C. 6011(a)(2), it is part of the sales price, and thus is subject to the sales tax. (186 C.A.3d 210.)

(b) Because plaintiff is a retailer of the fixtures it installs, the sale occurs for sales tax purposes at the moment of installation. At that time, the price of the fixture ready for installation includes labor expended in preparing it for installation. (186 C.A.3d 211.)

SUPPLEMENT: [This section is current through the latest supplement]



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CHAPTER XI - Taxation

Witkin Summary of California Law

XII. STATE TAXATION

E. Sales and Use Taxes.

1. Sales Tax.

e. Retail Sale.

1. In General.

9 *Witkin Sum. Cal. Law Tax* § 350

[§ 350] In General.

(1) *Definition.* A retail sale is generally defined as a sale for any purpose other than resale in the regular course of business. (Rev.C. 6007; see *Chapman Chinchilla Sales Co. v. Johnson* (1942) 49 C.A.2d 195, 197, 121 P.2d 69 [sale of chinchillas for breeding purposes]; *American Distilling Co. v. State Bd. of Equalization* (1942) 55 C.A.2d 799, 802, 131 P.2d 609 [chemicals used in manufacture of alcohol, with only small proportion in finished product, were retail sales]; 68 *Am.Jur.2d* (2000 ed.), *Sales and Use Taxes* §67; on occasional sales, see *infra*, §364.)

(2) *Sale of Entire Business.* In *Market Street Ry. Co. v. California State Bd. of Equalization* (1955) 137 C.A.2d 87, 290 P.2d 20, a private street railway company sold its operative properties to the city of San Francisco. The transfer (made before enactment of the "occasional sale" exemption) was held subject to tax; i.e., the tax is equally applicable to transactions while engaging in business and the transaction of liquidation of a business. (137 C.A.2d 96.) (See *Sutter Packing Co. v. State Bd. of Equalization* (1956) 139 C.A.2d 889, 894, 896, 294 P.2d 1083; 45 *Cal. L. Rev.* 450 [exhaustive study of sales tax and capital transactions].)

(3) *Transfers Pursuant to Reorganization.* A transfer of machinery and equipment from one related corporation to another, pursuant to a reorganization and territorial division of business, was subject to tax. (*Pacific Pipeline Const. Co. v. State Bd. of Equalization* (1958) 49 C.2d 729, 732, 321 P.2d 729.)

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SUPPLEMENT: [This section is current through the latest supplement]



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XII. STATE TAXATION

E. Sales and Use Taxes.

1. Sales Tax.

e. Retail Sale.

2. Sales for Resale Excluded.

9 *Witkin Sum. Cal. Law Tax* § 351

[§ 351] Sales for Resale Excluded.

By definition (Rev.C. 6007, *supra*, §350), sales solely for resale are not subject to tax. (See *Lockheed Aircraft Corp. v. State Bd. of Equalization* (1978) 81 C.A.3d 257, 267, 146 C.R. 283 [sale of special tooling and test equipment purchased for resale to federal government under defense contracts was excluded]; *Modern Paint & Body Supply v. State Bd. of Equalization* (2001) 87 C.A.4th 703, 708, 104 C.R.2d 784 [sales of items that auto repair shops consumed during auto repair process and that were not physically incorporated into repaired cars, such as sandpaper, masking tape, and paint thinner, were not sales for resale]; 113 A.L.R.5th 313 [applicability of sales and use taxes to parts and supplies used in repair of item or as replacement part].) But the burden of proving the exclusion is on the seller unless the seller takes a certificate from the buyer showing that the buyer intends to resell the goods in the regular course of business. (Rev.C. 6091; see Rev.C. 6095 [where fungibles purchased for resale are commingled with like goods that were not purchased for resale, first sales from mass are deemed sales of part purchased for resale]; Rev.C. 6094 [measure of tax where purchaser makes use of property while holding it for sale]; *Yamaha Corp. of America v. State Bd. of Equalization* (1999) 73 C.A.4th 338, 369, 86 C.R.2d 362 [seller of musical instruments was liable for sales tax on promotional literature it purchased "ex-tax" under resale certificates for purpose of giving merchandise away as promotional gifts; use of resale certificates with that intent was improper].) And if the property is bought for present use, the sale is taxable despite an intention to resell at some future time. (See *Kirk v. Johnson* (1940) 37 C.A.2d 224, 226, 99 P.2d 279.)

In *Kaiser Steel Corp. v. State Bd. of Equalization* (1979) 24 C.3d 188, 154 C.R. 919, 593 P.2d 864, plaintiff purchased limestone and other materials for use in its steel furnaces. Part of the materials remained in the steel product and part combined with impurities in the metal to form slag, which plaintiff sold to an independent company for reprocessing. Plaintiff contended that it purchased the materials for the purpose of resale in the form of slag. *Held*, the transaction was a taxable sale. Plaintiff's primary purpose was to use the materials in its manufacturing process; resale of the slag was only a collateral purpose. (24 C.3d 193, 195.) "Although Kaiser intended to eventually resell the materials in the form of slag, Kaiser first *used* all of the materials in question in a nonexempt manner." (24 C.3d 196.) (See *Simplicity Pattern Co. v. State Bd. of Equalization* (1980) 27 C.3d 900, 913, 167 C.R. 366, 615 P.2d 555; *Burroughs Corp. v. State Bd. of Equalization* (1984) 153 C.A.3d 1152, 1165, 200 C.R. 816 [following *Kaiser*; taxpayer failed to carry burden of proof that primary purpose in manufacturing computer components was resale where

components were used extensively to test other components, even though testing components were eventually refurbished and sold].)

In *Lyon Metal Products v. State Bd. of Equalization* (1997) 58 C.A.4th 906, 68 C.R.2d 285, plaintiff shipped goods subject to the retail sales tax from its California warehouse directly to California retail customers. In each case, plaintiff made this in-state delivery at the request of an out-of-state retailer, who had bought the goods at wholesale from plaintiff and then resold them at retail to the California retail customer. Defendant Board considered these shipments to be subject to tax under the "drop shipment" rule of Rev.C. 6007, but plaintiff contended that the drop shipment rule is invalid on both statutory and constitutional grounds. The trial court agreed with plaintiff. *Held*, reversed.

(a) The transactions here are "drop shipments," i.e., direct deliveries of goods to a consumer within this state from a warehouse within this state. Rev.C. 6007 includes drop shipments as retail sales subject to sales tax; the person making the delivery of goods to a California consumer "shall be deemed the retailer of that property." (58 C.A.4th 910.)

(b) Rev.C. 6091 does not grant an exception from sales tax for drop shipments. Instead, it provides a statutory presumption that all sales, including drop shipments, are retail sales subject to sales tax. Plaintiff here does not contend that its purchasers certified that the goods sold were purchased for resale, as required to rebut the presumption in Rev.C. 6091. Moreover, plaintiff's showing that the deliveries were preceded by sales at wholesale of the same goods to out-of-state retailers did not rebut the presumption. (58 C.A.4th 912.)

(c) The drop shipment rule is valid. Since its enactment in 1939, the drop shipment rule in California has apparently not been subject to a successful legal challenge. No California decision, nor any decision from a sister state with a similar law, holds that the drop shipment rule is invalid. (58 C.A.4th 911.) Moreover, the rule does not unconstitutionally discriminate against interstate commerce. The same sales tax would be imposed on the transaction if it had happened entirely within California, i.e., a California consumer purchasing directly from a California wholesaler without involvement of an out-of-state intermediary, because the California wholesaler would charge the sales tax and forward it to the state, as plaintiff should have done here. Similarly, the same amount of tax would be imposed on the transaction if both the wholesaler and the retailer were outside the state, in the form of a use tax to be paid by the California consumer-customer. (58 C.A.4th 912.) Finally, the drop shipment rule satisfies each of the four conditions set forth in *Complete Auto Transit v. Brady* (1977) 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326, supra, §§83, 93. (58 C.A.4th 913.)

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SUPPLEMENT: [This section is current through the latest supplement]

See *Searles Valley Minerals Operations v. State Bd. of Equalization* (2008) 160 C.A.4th 514, 523, 72 C.R.3d 857 [coal purchased outside California and used by purchaser to produce electricity in California was subject to use tax; resale exception did not apply; citing *Kaiser Steel Corp. v. State Bd. of Equalization* (1979) 24 C.3d 188, 154 C.R. 919, 593 P.2d 864, text, p. 510].



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XII. STATE TAXATION

E. Sales and Use Taxes.

1. Sales Tax.

e. Retail Sale.

3. Sale of Equipment.

9 Witkin Sum. Cal. Law Tax § 352

[§ 352] Sale of Equipment.

(1) *In General.* A sale may be covered by the sales tax even though it does not involve the regular merchandise of the business. Thus, a sale of equipment may be taxable. (See *Bigsby v. Johnson* (1941) 18 C.2d 860, 862, 118 P.2d 289 [printer's sale of obsolete press was taxable]; *Northwestern Pac. R. Co. v. State Bd. of Equalization of Calif.* (1943) 21 C.2d 524, 528, 133 P.2d 400 [transfers of rolling stock by railroad to parent company]; *Market Street Ry. Co. v. California State Bd. of Equalization* (1955) 137 C.A.2d 87, 94, 290 P.2d 20, supra, §350; on "occasional sale" exemption, see *infra*, §364.)

(2) *Sale of Fixtures.* A sale of fixtures may also be taxable. In *Standard Oil Co. of Calif. v. State Bd. of Equalization* (1965) 232 C.A.2d 91, 42 C.R. 543, P Corp. was a retailer with a seller's permit. It leased land, installed service station equipment, and operated service stations under lease provisions giving it the right to remove all equipment on termination. Then it sold all its assets to plaintiff. The equipment remained in place, as intended, and the stations continued in operation. *Held*, the transfer was a sale by a retailer, subject to sales tax.

(a) Plaintiff's theory was that under Rev.C. 104 and 105, improvements include fixtures, which makes them real property; and plaintiff also relied on *Trabue Pittman Corp. v. Los Angeles* (1946) 29 C.2d 385, 401, 175 P.2d 512. But the definitions and decisions on real property taxation are not determinative of sales tax issues. The transaction was a retail sale; i.e., the buyer intended to use the equipment, not resell it. The parties agreed that this affixed equipment was removable and replaceable, thus making it personal property. Hence, in the transfer by P Corp. to plaintiff, (1) the lease itself, a chattel real, was not taxable, because though personal property, it was not tangible personal property, but (2) the tools and other equipment were tangible property and the gross receipts were taxable. (232 C.A.2d 96.)

(b) Affixation was not a significant factor. If the property had been ordinary personalty, it would have been taxable even if the buyer intended to make it a fixture, and if it had been a fixture that the buyer intended to sever on the sale, it would likewise have been taxable. "[W]e cannot conceive that the Legislature intended that gross receipts from the sale of the very same property should escape taxation simply because, although readily removable by the owner as a matter of right, it was sold in place and with a present intent that it remain in place." (232 C.A.2d 102.)

In *United States Lines v. State Bd. of Equalization* (1986) 182 C.A.3d 529, 227 C.R. 347, plaintiff taxpayer sold two cranes to a municipal port district and simultaneously leased them back. On passage of title, the cranes became real property fixtures in which plaintiff possessed a taxable possessory interest. *Held*, the transaction was a taxable sale. "[C]lassification of affixed equipment as real property 'fixtures' for property taxation purposes does not preclude classification of the same equipment as tangible personal property for sales tax purposes." (182 C.A.3d 535, citing *Standard Oil*.) The cranes were personal property in plaintiff's hands at the time of sale, even though they had become part of the port's real property. (182 C.A.3d 536.) (See *Richard Boyd Industries v. State Bd. of Equalization* (2001) 89 C.A.4th 706, 712, 107 C.R.2d 520 [board's characterization of signs that contractor permanently affixed or attached to realty, structures, or buildings as "fixtures" subject to sales tax was not arbitrary, capricious, unreasonable, or irrational; chattel becomes fixture if it is annexed in relatively permanent manner and is suitable for use as part of land to which it is annexed].)

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E. Sales and Use Taxes.

1. Sales Tax.

f. Retailer.

1. In General.

9 *Witkin Sum. Cal. Law Tax* § 353

[§ 353] In General.

The term "retailer" includes every seller who makes a retail sale of tangible personal property, every person engaged in the business of making retail sales at auction (Rev.C. 6015(a)(1)), and every person engaged in the business of making sales for storage, use, or other consumption (Rev.C. 6015(a)(2)). Business includes any activity with the object of "gain, benefit, or advantage, either direct or indirect." (Rev.C. 6013; see *Davis Wire Corp. v. State Bd. of Equalization* (1976) 17 C.3d 761, 765, 132 C.R. 133, 553 P.2d 229 [single sale of capital assets, sold at retail]; *Market Street Ry. Co. v. California State Bd. of Equalization* (1955) 137 C.A.2d 87, 95, 290 P.2d 20; *Bank of America v. State Bd. of Equalization* (1962) 209 C.A.2d 780, 794, 26 C.R. 348.)

The object need only be "gain, benefit, or advantage." It is not essential that the sale be made by a private businessperson with the intention of making a profit. (See *Union League Club v. Johnson* (1941) 18 C.2d 275, 278, 115 P.2d 425 [nonprofit social club making sales in its dining room]; *Los Angeles City High School Dist. v. State Bd. of Equalization* (1945) 71 C.A.2d 486, 488, 163 P.2d 45 [school district made sales of equipment that was no longer needed for school purposes].)

Under Rev.C. 6015, the Board of Equalization, when necessary for the efficient administration of the Sales and Use Tax Law, may regard sellers, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property they sell. Pursuant to this authority, the Board, by regulation, treats vending machine operators who fail to provide resale certificates as agents of the seller, who is then regarded as the retailer and is liable for the tax. (See *Associated Beverage Co. v. Board of Equalization* (1990) 224 C.A.3d 192, 201, 208, 273 C.R. 639 [regulation properly applied to soft drink distributor].)

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XII. STATE TAXATION

E. Sales and Use Taxes.

1. Sales Tax.

f. Retailer.

2. Consumers Distinguished.

9 Witkin Sum. Cal. Law Tax § 354

[§ 354] Consumers Distinguished.

Specific exemptions for "consumers" include the following:

(1) Optometrists, physicians, surgeons, pharmacists, and opticians, with respect to ophthalmic materials, and licensed pharmacists who dispense replacement contact lenses, are consumers of materials used in performance of their professional services, as are veterinarians, chiropractors, podiatrists, and hearing aid dispensers. (See Rev.C. 6018, 6018.1, 6018.4, 6018.5, 6018.7; *Kamp v. Johnson (1940) 15 C.2d 187, 191, 99 P.2d 274* [before Rev.C. 6018, optometrist was characterized as retailer of glasses furnished to patients].)

(2) Licensed garment cleaners and dyers receiving no more than 20% of gross receipts from altering garments are consumers of materials used or furnished in altering garments. (Rev.C. 6018.6.)

(3) Preparers of diagnostic X-rays and photographs are consumers of materials and supplies used to produce them. (Rev.C. 6020.)

(4) Certain charitable, nonprofit, and educational organizations are consumers of specified property sold by those organizations. (Rev.C. 6359.3, 6359.45(a), 6360, 6361, 6361.1.)

(5) Vending machine operators are consumers of (a) food products retailing for 15 cents or less, and (b) food products (other than beverages and hot prepared food) retailing for 25 cents or less in coin-operated bulk vending machines. (Rev.C. 6359.4.)

(6) Public libraries are consumers of photocopies sold through coin-operated machines. (Rev.C. 6359.45(b).)

(7) Schools, school districts, county offices of education, and student organizations are consumers of yearbooks and catalogs distributed to students. (Rev.C. 6361.5.)

(8) Nonprofit parent-teacher associations, parent cooperative nursery schools, and library auxiliary organizations are consumers of property sold for benefit of those organizations. (Rev.C. 6370.)

(9) Museum auxiliary organizations are consumers of property sold at rummage sales for benefit of museums. (Rev.C. 6370.5.)

(10) A wholesaler of goods who supplies free marketing aids (e.g., display racks) to retailers is a consumer of that property and is liable for use tax based on its use. (See *Wallace Berrie & Co. v. State Bd. of Equalization* (1985) 40 C.3d 60, 71, 219 C.R. 142, 707 P.2d 204 [board regulation making suppliers of marketing aids who do not receive reimbursement of at least 50% of purchase price consumers of the property is neither arbitrary, nor capricious, nor without rational basis]; *Parfums-Corday v. State Bd. of Equalization* (1986) 187 C.A.3d 630, 636, 232 C.R. 56 [following *Wallace Berrie & Co.*; there was no sale of promotional cosmetics by wholesaler where retailers were not separately billed and regular merchandise price was not increased].)

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XII. STATE TAXATION

E. Sales and Use Taxes.

2. Use Tax.

a. Excise Tax on Use.

9 Witkin Sum. Cal. Law Tax § 355

[§ 355] Excise Tax on Use.

(1) *Similarity to Sales Tax.* The use tax is an excise tax imposed, at the same rate as the sales tax, on the storage, use, or other consumption in California of tangible personal property purchased from a retailer, where the sales tax would not be imposed on the sale of the property. (Rev.C. 6201, 6401; see Rev.C. 6008, 6009 [definitions of "storage" and "use"]; Rev.C. 6010 [definition of "purchase" similar to sales tax definition of "sale," supra, §347]; on temporary adjustments to state rate, see Rev.C. 6201.2, 6201.3, 6201.4, 6201.5; on use tax for public safety services of local agencies, see Cal. Const., Art. XIII, §35; on allocation of revenues from sales tax on motor vehicle fuel to specified transportation projects, see Cal. Const., Art. XIX B, §1.)

When necessary for the "efficient administration" of the sales and use tax, the State Board of Equalization may regard salesmen, representatives, peddlers, or canvassers as the agents of their dealers, distributors, supervisors, or employers, and may regard dealers, distributors, supervisors, or employers as retailers. (Rev.C. 6015(b).) However, a newspaper publisher or distributor, not the carrier, is the retailer and is responsible for the tax, which is measured by the price charged to the customer by the carrier. (Rev.C. 6015(c).)

(2) *Purpose of Use Tax.* The chief purpose of the use tax is to reach property purchased from outside the state, where the taxable event of a sales tax (the sale) occurs outside the territorial boundaries of California or is immune under the Commerce Clause. (See *Southern Pac. Co. v. Gallagher* (1939) 306 U.S. 167, 59 S.Ct. 389, 83 L.Ed. 586; *Douglas Aircraft Co. v. Johnson* (1939) 13 C.2d 545, 547, 90 P.2d 572 [constitutional]; *Chicago Bridge & Iron Co. v. Johnson* (1941) 19 C.2d 162, 165, 119 P.2d 945 [sales and use taxes complementary]; *People v. West Publishing Co.* (1950) 35 C.2d 80, 89, 216 P.2d 441; *National Geographic Soc. v. State Bd. of Equalization* (1976) 16 C.3d 637, 641, 128 C.R. 682, 547 P.2d 458, supra, §83; *Atchison, Topeka & Santa Fe Ry. Co. v. State Bd. of Equalization* (1956) 139 C.A.2d 411, 422, 294 P.2d 181; *Bank of America v. State Bd. of Equalization* (1962) 209 C.A.2d 780, 791, 792, 26 C.R. 348, citing the text; *American Airlines v. State Bd. of Equalization* (1963) 216 C.A.2d 180, 189, 30 C.R. 590; *McConville v. State Bd. of Equalization* (1978) 85 C.A.3d 156, 159, 149 C.R. 194 [keeping breeding mares for sale is reasonable incident to sale and renders use taxable]; 41 A.L.R.2d 535 [use tax on property purchased by nonresident in another state]; on power of state to impose use tax, see supra, §§82, 83.)

A further purpose and effect of the statute is to ensure collection where the property is purchased with intent to

resell (a nontaxable sale, *supra*, §351), and the buyer later changes his or her mind and puts the property to a taxable use. (See Rev.C. 6094, 6244; *Levine v. State Bd. of Equalization* (1956) 142 C.A.2d 760, 766, 299 P.2d 738.)

In *Union Oil Co. of Calif. v. State Bd. of Equalization* (1963) 60 C.2d 441, 34 C.R. 872, 386 P.2d 496, *infra*, §357, the court described the purpose of the tax as follows:

"If the California businessman, intending to buy property for use in California, could avoid the sales tax merely by purchasing the product outside the state, the local retailer would suffer a severe commercial disadvantage. Hence California imposes an excise tax upon the purchaser of tangible personal property in the event that, having paid no sales tax to California on the purchase, he proposes to and actually does store, use, or otherwise consume such property in this state." (60 C.2d 449.)

"In substance, the sales and use tax laws constitute a double filter designed to catch all transactions which result in tangible personal property joining the aggregate of capital assets within this state. In modern commercial practice capital assets available for lease compete with those available for ownership. ... [T]he Legislature designed the Sales and Use Tax Law as an integrated whole. Such a design is incompatible with an interpretation of the statutes which would leave a loophole of competitive advantage for the interstate over the intrastate lessor. The use tax, correctly applied, constitutes a legitimate expense exacted for the privilege of enjoying the advantages of the California economy." (60 C.2d 449.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Similarity to Sales Tax.* Under Rev.C. 6008 and 6009, the use tax, like the sales tax, does not apply to tangible personal property that is purchased for resale purposes. (*Searles Valley Minerals Operations v. State Bd. of Equalization* (2008) 160 C.A.4th 514, 523, 72 C.R.3d 857 [coal purchased outside California and used by purchaser to produce electricity in California was subject to use tax; electricity is tangible personal property, but coal is used as catalyst to make electricity, rather than incorporated into electricity for resale; citing *Kaiser Steel Corp. v. State Bd. of Equalization* (1979) 24 C.3d 188, 154 C.R. 919, 593 P.2d 864, text, §351].)



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E. Sales and Use Taxes.

2. Use Tax.

b. Tax on Buyer Collected by Retailer.

9 *Witkin Sum. Cal. Law Tax* § 356

[§ 356] Tax on Buyer Collected by Retailer.

(1) *Collection.* The tax is imposed on the person storing, using, or otherwise consuming the property, and that person is primarily liable for it. (Rev.C. 6202.) But it is the duty of the retailer engaged in business in this state to collect the tax at the time of sale, if the storage, use, or consumption is then taxable, otherwise at the time the storage, use, or consumption becomes taxable. (Rev.C. 6203; see *West Publishing Co. v. Superior Court* (1942) 20 C.2d 720, 731, 128 P.2d 777; *People v. West Publishing Co.* (1950) 35 C.2d 80, 89, 216 P.2d 441; *Brandtjen & Kluge v. Fincher* (1941) 44 C.A.2d Supp. 939, 942, 111 P.2d 979.)

The tax required to be collected by the retailer together with "any amount unreturned to the customer which is not tax but was collected from the customer under the representation by the retailer that it was tax," constitutes a debt of the retailer to the state. (Rev.C. 6204; see *Bank of America v. State Bd. of Equalization* (1962) 209 C.A.2d 780, 798, 26 C.R. 348.) The retailer is prohibited from representing that he or she will absorb or refund any part of the tax. (Rev.C. 6205.)

The statute applies to all sales or use within the exterior limits of the state, including all territory owned by or ceded to the federal government. (Rev.C. 6017.) By federal statute (4 U.S.C., §105 et seq.), consent has been given to levy and collect the taxes within any federal area, but the consent does not apply to the federal Government or its agencies, or to a sales made by them (*infra*, §358).

(2) *Retailers Subject to Collection Requirement.* Retailers engaged in business in this state include the following:

(a) A retailer who maintains an office, place of distribution, sales or sample room, warehouse or storage place, or other place of business in California. The retailer may maintain the place of business directly or indirectly or through a subsidiary or agent. (Rev.C. 6203(c)(1).)

(b) A retailer who has an authorized representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in California for the purpose of selling, delivering, installing, assembling, or taking orders for tangible personal property. (Rev.C. 6203(c)(2).) This does not include someone who is in California solely to engage in convention and trade show activities for no more than 15 days over the course of a year and who does not derive more than \$ 100,000 a year in net income from these activities. Nevertheless, the person is liable for collection of use tax with

respect to any tangible personal property sold, including by order, during the convention or trade show. (Rev.C. 6203(e).)

(c) A retailer deriving rentals from a lease of tangible personal property situated in California. (Rev.C. 6203(c)(3).)

(d) A retailer who solicits orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from banking, financing, debt collection, telecommunication, or marketing activities occurring in California or benefits from the location in this state of authorized installation, servicing, or repair facilities. (Rev.C. 6203(c)(4)(A).) This definition will become operative on enactment of a congressional act that authorizes states to compel the collection of state sales and use taxes by out-of-state retailers. (Rev.C. 6203(c)(4)(B).)

The limitations created by Rev.C. 6203 on the definition of "retailer engaged in business in the state" apply only for purposes of tax liability under the Revenue and Taxation Code. Nothing in Rev.C. 6203 is intended to affect or limit civil liability or jurisdiction under *C.C.P. 410.10* (see 2 *Cal. Proc. (4th), Jurisdiction*, §7 et seq.). (Rev.C. 6203(f).) (See *Current v. State Bd. of Equalization (1994) 24 C.A.4th 382, 29 C.R.2d 407*, supra, §86 [former Rev.C. 6203(g) did not apply to out-of-state, mail-order, stationery company that was acquired by check printing company with California contacts; even if applicable, statute would have been unconstitutional as applied to out-of-state company].)

(3) *Exclusion for Orders Taken Through Computer Telecommunications Network.* The definition of "engaged in business in this state" excludes the taking of orders from California customers "through a computer telecommunications network located in this state which is not directly or indirectly owned by the retailer when the orders result from the electronic display of products on that same network." The exclusion applies only to a network that consists substantially of on-line communications services other than the displaying and taking of orders for products. The exclusion will remain in effect until the operative date of a superseding act of Congress that authorizes states to compel the collection of state sales and use taxes by out-of-state retailers. (Rev.C. 6203(d).)

The Legislature's stated intent in enacting the exclusion was to clarify the impact of *Quill Corp. v. North Dakota (1992) 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91*, supra, §86, which, pending Congressional authorization to the contrary, prohibits the states from collecting sales and use taxes from out-of-state retailers who have no physical presence in California. (Stats. 1994, Chap. 851, §1.)

SUPPLEMENT: [This section is current through the latest supplement]
(2) *Retailers Subject to Collection Requirement.*

(b) *Agent for purpose of selling:* See *Borders Online, LLC v. State Bd. of Equalization (2005) 129 C.A.4th 1179, 1188, 29 C.R.3d 176* [out-of-state online retailer that allowed its customers to return items purchased on line to stores in California was required to collect and remit use tax under Rev.C. 6203(c)(2); by accepting returns, stores acted as retailer's agent for purpose of selling because return policy was integral part of retailer's sales efforts]; 30 *A.L.R.6th 341* [validity and application of sales and use taxes on retail transactions of Internet sellers]. *Jurisdiction under C.C.P. 410.10:*

Cross-Reference: 2 *Cal. Proc. (5th), Jurisdiction*, §8 et seq.



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2. Use Tax.

c. Nature of Use.

9 *Witkin Sum. Cal. Law Tax* § 357

[§ 357] Nature of Use.

The tax does not depend on the duration of use but only on the fact of any substantial use in California. Hence, it was properly imposed on the costs of a dredge constructed by a foreign corporation outside of California, where use in California was contemplated and occurred. It was immaterial that the dredge was used here for only 4.5 years of its 35-year life. (*Western Contracting Corp. v. State Bd. of Equalization* (1968) 265 C.A.2d 568, 574, 71 C.R. 472.)

In *Union Oil Co. of Calif. v. State Bd. of Equalization* (1963) 60 C.2d 441, 34 C.R. 872, 386 P.2d 496, Union Oil Company used two tankers, priced at \$ 2.2 million each, mainly in intrastate commerce in California. It entered into a contract in New Jersey (which has no sales or use tax) to sell them to C Tanker Corp. for immediate leaseback to Union, physical transfer to take place at a port in Oregon (which has no sales or use tax). Thereafter, Union used the vessels in California in the same manner. *Held*, Union was properly required to collect a use tax from C. The term "use" covers more than physical manipulation; it includes use for profit by means of leasing. (60 C.2d 446.) And the trial judge's finding, that the buyer (C) anticipated that the lessee would use the vessels in California, made the transactions purchases for use in this state. "The contract, consummated outside the state, provided theoretically for the use of the vessels in all states, but the formality of the phrase cannot block out the reality of the transaction. The facts of the arrangement demonstrate that the parties anticipated the use of the property in California; subsequent history confirms that use. If we hold that in these circumstances the technique of the extraterritorial sale and leaseback transaction wins use-tax immunity, we invite a wholesale emigration of parties to other states for the consummation of such tax-saving contracts." (60 C.2d 459.)

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SUPPLEMENT: [This section is current through the latest supplement]



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XII. STATE TAXATION

E. Sales and Use Taxes.

3. Immunities and Exemptions.

a. Constitutional Immunity.

1. In General.

9 *Witkin Sum. Cal. Law Tax* § 358

[§ 358] In General.

(1) *Chief Immunities.* Rev.C. 6352 exempts from the sales and use taxes any sale, storage, use, or other consumption that the state is prohibited from taxing under the federal or state Constitutions, or under federal law. The chief immunities are as follows:

(a) *Immunity of federal Government.* To avoid problems of governmental immunity (*supra*, §6), sales to the federal Government or certain of its agencies and instrumentalities are exempted. (See Rev.C. 6381; Rev.C. 6402 [use tax exemption where property is purchased from federal agency or instrumentality]; 4 U.S.C., §105 et seq. [no immunity for sale or use within federal area, unless tax imposed on United States or on sale by United States]; *C.R. Fedrick v. State Bd. of Equalization* (1974) 38 C.A.3d 385, 390, 120 C.R. 434.)

However, a sale to a contractor is taxable although the property is to be used in performing a government contract for construction of improvements on real property in California. (Rev.C. 6007.5, 6384.) (See *Chula Vista Elec. Co. v. State Bd. of Equalization* (1975) 53 C.A.3d 445, 451, 125 C.R. 827 [cable installed under contract with United States; use tax proper under Rev.C. 6384]; *Fischbach & Moore v. State Bd. of Equalization* (1981) 117 C.A.3d 627, 631, 172 C.R. 923 [same]; *C.R. Fedrick v. State Bd. of Equalization* (1988) 204 C.A.3d 252, 267, 251 C.R. 305 [pipes, tank settings, and compressor stations purchased by contractor to modify equipment at petroleum reserve owned by U.S. were materials and fixtures taxable as improvements under Rev.C. 6384]; *Aerospace Corp. v. State Bd. of Equalization* (1990) 218 C.A.3d 1300, 1311, 1314, 267 C.R. 685 [for purposes of sales and use tax, title to property acquired for performance of contract with federal government is determined by title provisions of contract; conflicting regulation was invalid]; *Overhead Elec. Co. v. State Bd. of Equalization* (1991) 227 C.A.3d 1230, 1236, 278 C.R. 112 [uninterrupted power supply systems and generators installed at U.S. Air Force Base were, by attachment, bulk, and integration into facility's operation, fixtures on which contractor could be subjected to sales or use tax]; *TRW Space & Defense Sector v. Los Angeles* (1996) 50 C.A.4th 1703, 1710, 1721, 58 C.R.2d 602, *supra*, §181 [distinguishing *Aerospace Corp. v. State Bd. of Equalization*; property tax was constitutionally imposed on federal contractor's "overhead" property].)

(b) *Interstate or foreign commerce.* The tax cannot be applied in a manner that imposes an unreasonable burden on

interstate commerce. (See *American Airlines v. State Bd. of Equalization* (1963) 216 C.A.2d 180, 193, 30 C.R. 590; *National Geographic Soc. v. State Bd. of Equalization* (1976) 16 C.3d 637, 644, 128 C.R. 682, 547 P.2d 458, supra, §83 [rejecting claim of immunity]; *Current v. State Bd. of Equalization* (1994) 24 C.A.4th 382, 29 C.R.2d 407, supra, §86 [use tax was unconstitutional as applied to out-of-state mail-order company]; 45 A.L.R.3d 1270 [motor vehicle purchased out of state]; on state taxation of interstate commerce generally, see supra, §66 et seq.)

(c) *Imports and exports.* A state cannot tax imports or exports at all. (See supra, §§55, 59.)

(d) *National banks.* Prior to 1969, the federal statute (12 U.S.C., §548, see supra, §337) permitted taxes on shares and income of national banks, but the immunity from sales and use taxes remained. (See *Diamond Nat. Corp. v. State Bd. of Equalization* (1976) 425 U.S. 268, 96 S.Ct. 1530, 47 L.Ed.2d 780 [incidence of tax fell on bank as purchaser]; *Diamond Nat. Corp. v. State Bd. of Equalization* (1976) 60 C.A.3d 283, 287, 131 C.R. 528 [applying Supreme Court decision and holding tax invalid].) The federal statute was amended in 1969 to remove the exemption. (For legislative response to Supreme Court's decision in *Diamond*, see supra, §344.) (See *Hibernia Bank v. State Bd. of Equalization* (1985) 166 C.A.3d 393, 402, 212 C.R. 556 [for state purposes, incidence of tax is on retailer; tax was applicable to sales to state banks, despite alleged unequal economic burden on state and national banks].)

(2) *Presumptions To Prevent Tax Evasion.* To prevent evasion of the tax, the burden of proving a constitutionally immune transaction is placed on the seller as follows:

(a) It is presumed that goods sold for delivery in California are sold for storage, use, or other consumption here. (Rev.C. 6241.)

(b) It is presumed that goods shipped or brought to California by the buyer were purchased for storage, use, or other consumption here. (Rev.C. 6246.) This presumption is subject to a statutory exemption for the first \$ 400 of retail goods hand carried from abroad within a 30-day period. (See Rev.C. 6405, infra, §365.)

(c) It is presumed that goods delivered outside California to a buyer known by the retailer to be a California resident were purchased for storage, use, or other consumption in California. (Rev.C. 6247.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Presumptions To Prevent Tax Evasion.*

(b) *Hand carried retail goods:* Rev.C. 6405 was amended in 2007 to change the amount of the retail goods exemption from \$ 400 to \$ 800.



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a. Constitutional Immunity.

2. First Amendment Religion Clause.

9 *Witkin Sum. Cal. Law Tax* § 359

[§ 359] First Amendment Religion Clause.

In *Institute in Basic Youth Conflicts v. State Bd. of Equalization* (1985) 166 C.A.3d 1093, 213 C.R. 98, plaintiff nonprofit religious corporation conducted seminars and charged a separate fee for the course materials and syllabus. *Held*, the sales tax imposed was unconstitutional as applied to plaintiff, but the use tax was valid.

(a) The sales tax is a privilege tax on the sale of tangible personal property at retail, imposed on the retailer, for the purpose of raising revenue. "That interest alone, however, cannot justify a privilege or occupation tax as a condition of engaging in protected activity if there is 'an alternative means of achieving the same interest without raising concerns under the First Amendment.' " (166 C.A.3d 1106, quoting *Minneapolis Star & Tribune Co. v. Minnesota Commr. of Revenue* (1983) 460 U.S. 575, 103 S.Ct. 1365, 75 L.Ed.2d 295, 7 Summary (10th), *Constitutional Law*, §362.) "We do not hold that the Legislature cannot impose a generally applicable sales tax on respondent herein but simply that the method it has chosen, a privilege or occupation tax, is constitutionally infirm under the First Amendment as applied to respondent." The privilege of selling religious materials arises not from state authority but from the federal Constitution, and "respondent cannot be taxed for the privilege of doing that which it already has the right to do." (166 C.A.3d 1106.)

(b) The use tax is an excise tax on the storage, use, or consumption of tangible personal property, imposed on the consumer; as such, it does not raise concerns under the First Amendment. If plaintiff is a consumer of religious materials, it is liable for the tax; if it is a retailer, it is required to collect the tax from the consumer, in the absence of a receipt under Rev.C. 6203 (supra, §356). (166 C.A.3d 1106, 1107.)

Jimmy Swaggart Ministries v. State Bd. of Equalization (1988) 204 C.A.3d 1269, 250 C.R. 891, disagreed with the reasoning in *Institute in Basic Youth Conflicts* and reached a contrary result on the sales tax issue. Plaintiff nonprofit religious corporation conducted "evangelistic crusades" at which it sold religious books, records, and other materials. It sold similar items by mail. *Held*, the sales tax, imposed on the "crusade" sales, and the use tax, imposed on mail sales, were both constitutional.

(a) In determining whether the sales tax violated the Free Exercise Clause of the First Amendment, the *Institute* court improperly focused on the Legislature's characterization of the sales tax as a privilege tax. Since *Complete Auto*

Transit v. Brady (1977) 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326, supra, §93, the critical question has been whether the tax had a "forbidden effect." (204 C.A.3d 1282.) Here, the imposition of the sales tax on a religious corporation produces no forbidden effect. Under *Minneapolis Star & Tribune Co. v. Minnesota Commr. of Revenue*, supra, a generally applicable sales tax is constitutionally permissible. "While *Minneapolis Star* involved newspaper sales rather than sales by a religious organization, we see no reason to distinguish between the two in this situation." (204 C.A.3d 1283.) A religious organization disseminating a message through the sale of books should not enjoy rights greater than other organizations, such as newspapers, with social, political, or ideological messages. (204 C.A.3d 1284.) In addition, the tax does not impose a prior restraint on the dissemination of a religious message. The tax is imposed only after the message has been disseminated (i.e., the sale has been made). (204 C.A.3d 1285.)

(b) Imposition of the use tax does not offend the Establishment Clause of the First Amendment by creating excessive government entanglement in plaintiff organization. State employees are not involved in plaintiff's day-to-day operation, and there is no continuing on-site inspection. Nor does the government question the religious nature of the materials involved. The critical question involves a secular matter, whether there has been a sale or use. (204 C.A.3d 1288, 1289.) (See *Jimmy Swaggart Ministries v. Board of Equalization of Calif.* (1990) 493 U.S. 378, 110 S.Ct. 688, 107 L.Ed.2d 796 [affirming Court of Appeal decision].)

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b. Statutory Exemptions.

1. In General.

9 Witkin Sum. Cal. Law Tax § 360

[§ 360] In General.

In addition to the constitutionally immune transactions (*supra*, §§358, 359), a number of types of sale and use are expressly exempted from either or both of the taxes. (See Rev.C. 6351 et seq. [general exemptions]; Rev.C. 6381 et seq. [sales tax exemptions]; Rev.C. 6401 et seq. [use tax exemptions]; *68 Am.Jur.2d (2000 ed.)*, *Sales and Use Taxes §110* et seq.; on characterization of certain persons as "consumers" rather than retailers, see *supra*, §354; on Multistate Tax Compact, see Rev.C. 38006; *6 Pacific L. J. 406*.)

There is no tax on the sale or use of property by a charitable organization qualifying for the welfare exemption (*supra*, §187) and making sales or donations to assist the purchasers and donees. (Rev.C. 6375; see *Good Shepherd Lutheran Home v. State Bd. of Equalization (1983) 139 C.A.3d 876, 885, 189 C.R. 242* [charitable thrift store was not entitled to exemption under Rev.C. 6375 where sales were made to general public, not to assist needy purchasers]; *54 A.L.R.3d 1204* [exemption of religious organizations]; *69 A.L.R.5th 477* [exemption of charitable or educational organizations from sales or use tax]; *89 A.L.R.5th 493* [exemption from sales or use tax for tangible personal property used in manufacturing that becomes ingredient or component part of taxpayer's final product].)

The exemption of nonresident servicemen provided in the Servicemembers' Civil Relief Act (*50 U.S.C. Appx., §571*) is for ad valorem property taxes (and under a special subsection, for automobile license taxes). State sales or use taxes--not on the property, but on the transfer of title for sale--are not precluded. (*Sullivan v. United States (1969) 395 U.S. 169, 89 S.Ct. 1648, 23 L.Ed.2d 182*.)

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E. Sales and Use Taxes.

3. Immunities and Exemptions.

b. Statutory Exemptions.

2. Food and Food Products.

9 Witkin Sum. Cal. Law Tax § 361

[§ 361] Food and Food Products.

(1) *Unprepared Foods*. The sale or use of "food products for human consumption" is exempt. (Rev.C. 6359(a).) The term is elaborately defined to include cereals, meat, fish, dairy products, vegetables, fruits, candy, gum, snack food, sugar, spices, and bottled water. (Rev.C. 6359(b).) Medicines (subject to a separate exemption; see *infra*, §362) and dietary supplements or adjuncts are specifically excluded from the definition (Rev.C. 6359(c)), as are alcoholic and carbonated beverages (Rev.C. 6359(c)). (See *Luer Packing Co. v. State Bd. of Equalization* (1950) 101 C.A.2d 99, 224 P.2d 744 [inedible cellulose sausage casings were not exempt].)

Where the ultimate product is food, sales of any form of animal life, animals' feed or medicine, seeds and plants used to produce food, and fertilizer to be used in producing food are also exempt. (Rev.C. 6358.)

(2) *Prepared Foods*. Restaurant meals are subject to the sales tax even though their component foods are exempt. The growth of the "take out" food industry has emphasized the inherent difficulty in this distinction. (See *Treasure Island Catering Co. v. State Bd. of Equalization* (1941) 19 C.2d 181, 187, 120 P.2d 1 [hamburger sandwich and paper napkin, without tableware, chairs, or counter, were not a "meal" and were immune]; *Hart's Drive-In Corp. v. State Bd. of Equalization* (1956) 145 C.A.2d 657, 658, 303 P.2d 348 [prepared food served through window and frequently consumed by customers in parking area maintained by seller was taxable as meals]; *Henry's Restaurants of Pomona v. State Bd. of Equalization* (1973) 30 C.A.3d 1009, 1013, 106 C.R. 867 [various legislative and regulatory formulae that have been applied].)

The food exemption is not applicable in the following circumstances:

- (a) When the food products are served as meals on or off the premises of the retailer. (Rev.C. 6359(d)(1).)
- (b) When the food products are furnished, prepared, or served for consumption at tables or from trays or dishes, etc., provided by the retailer or by a person with whom the retailer contracts for that service. (Rev.C. 6359(d)(2).)
- (c) When the food products are ordinarily sold for immediate consumption at a location where parking facilities are

provided for the use of patrons in consuming the products, even though they are sold on a "take out" or "to go" order and are wrapped and taken from the premises. (Rev.C. 6359(d)(3); see *Henry's Restaurants v. State Bd. of Equalization*, *supra*, 30 C.A.3d 1016 [sustaining constitutionality of "take out" provision and implementing regulations].)

(d) When the food products are sold through vending machines. (Rev.C. 6359(d)(5).)

(e) When the food products are sold for consumption within a place subject to an admission charge (except national and state parks and monuments, marinas, campgrounds and recreational parks). (Rev.C. 6359(d)(4).)

(f) When the food products are furnished in the form suitable for consumption on the seller's premises, and over 80% of the seller's gross receipts are from the sale of food products and over 80% of the seller's retail sales of food products are subject to tax under Rev.C. 6359(d)(1), (d)(2),

(d)(3), or

(d)(7). (Rev.C. 6359(d)(6); see Rev.C. 6359(f) [seller may separately account for sales of products specified in Rev.C. 6359(f) to receive exemption].)

(g) When the food product is a "hot prepared food product." (Rev.C. 6359(d)(7); for definition of "hot prepared food product," see Rev.C. 6359(e).)

(3) *Specially Exempted Meals*. The "meals" limitation is lifted, and the exemption is granted for the following:

(a) Hot prepared food products sold to air carriers for consumption by passengers. (Rev.C. 6359.1.)

(b) Meals and food products served by schools, student organizations, parent-teacher associations, etc., to students, or by a blind person operating a restaurant or vending stand in an educational institution. (Rev.C. 6363.)

(c) Meals served by a religious organization at a social or other gathering to obtain revenue for its purposes. (Rev.C. 6363.5.)

(d) Meals served to patients or residents of licensed health facilities, licensed community care facilities, or residential care facilities exclusively for elderly persons. (Rev.C. 6363.6; see *American Hosp. Supply Corp. v. State Bd. of Equalization* (1985) 169 C.A.3d 1088, 1093, 215 C.R. 744 [Board of Equalization regulations, distinguishing between exempt paper cups, straws, napkins, and other "components of meals," and nonexempt paper menus used by hospital patients to order meals, were reasonable].)

(e) Meals served to low-income elderly persons by nonprofit organizations or governmental agencies. (Rev.C. 6374.)

(f) Meals and food products served regularly to persons over 62 years old residing in condominiums and owning equal shares in a common kitchen. (Rev.C. 6376.5.)

(4) *Vending Machine Sales*. Cold food products and certain hot beverages sold in vending machines are partially exempt from the sales tax: 33% of a retailer's gross receipts from vending machine sales is subject to the tax. (Rev.C. 6359.2.) (See *Associated Beverage Co. v. Board of Equalization* (1990) 224 C.A.3d 192, 201, 208, 273 C.R. 639, *infra*, §363; for circumstances in which vending machine operators are consumers rather than retailers, see Rev.C. 6359.4; for circumstances in which specified nonprofit, charitable, and educational organizations are consumers rather than retailers, see Rev.C. 6359.45, 6363, 6370; *supra*, §354.)

(5) *Food Stamp Sales*. Federal law prohibits a state from participating in the food stamp program if a sales tax is imposed on food stamp purchases. (7 U.S.C., §2013(a).) Under Rev.C. 6373, property purchased with food stamps is exempt. However, in the event that the federal sales tax prohibition is repealed, Rev.C. 6373 is also repealed by its own

terms. (Rev.C. 6373(e).)

(6) *No Changes to Sales Tax on Foods.* Cal. Const., Art. XIII, §34, precludes future changes in the sales and use tax on food products: "Neither the State of California nor any of its political subdivisions shall levy or collect a sales or use tax on the sale of, or the storage, use or other consumption in this State of food products for human consumption except as provided by statute" on January 1, 1993.

(7) *Food Used To Raise Money for Veteran's Organization.* Meals and food products furnished or served by a nonprofit veteran's organization at a gathering conducted by the organization or under its auspices are exempt, if the purpose is to obtain revenue for the organization's functions and activities and the revenue obtained is actually used for that purpose. (Rev.C. 6363.8.)

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3. Immunities and Exemptions.

b. Statutory Exemptions.

3. Medicines and Health Care Materials.

9 Witkin Sum. Cal. Law Tax § 362

[§ 362] Medicines and Health Care Materials.

(1) *Exempt Uses.* The following uses of medicine are exempt from sales and use taxes:

(a) Medicines prescribed for treatment and dispensed on prescription by a registered pharmacist. (Rev.C. 6369(a)(1).) Insulin, orthotic and prosthetic devices, mammary prostheses, and appliances necessary as a result of surgical procedures for the elimination of natural waste are "deemed to be dispensed on prescription." (Rev.C. 6369(e), (f), (g).)

(b) Medicines furnished by a doctor to the doctor's own patient for treatment. (Rev.C. 6369(a)(2).) (See *Purdue Frederick Co. v. State Bd. of Equalization* (1990) 218 C.A.3d 1021, 1027, 267 C.R. 482 [antiseptic lotion was exempt medicine when used both by patients and medical personnel].)

(c) Medicines furnished by a health facility for treatment under order of a doctor. (Rev.C. 6369(a)(3).)

(d) Medicines sold to a doctor or health facility for treatment. (Rev.C. 6369(a)(4).)

(e) Medicines sold to the state or other governmental agency for treatment, or furnished for treatment by a governmental medical facility or clinic. (Rev.C. 6369(a)(5).)

(f) Free samples of prescription medicines furnished by pharmaceutical manufacturers to doctors, health facilities, and institutions of higher learning. (Rev.C. 6369(a)(6).)

(2) *Definition of Medicine.* "Medicine," as used in Rev.C. 6369, means a substance or preparation intended for external or internal use by humans for the diagnosis, cure, mitigation, treatment, or prevention of disease and commonly recognized as a substance or preparation intended for that use. (Rev.C. 6369(b).) Medicine includes the following:

(a) Sutures. (Rev.C. 6369(c)(1).)

(b) Bone screws, pacemakers and other articles, other than dentures, permanently implanted in the human body.

(Rev.C. 6369(c)(2).)

(c) Orthotic devices other than orthodontic devices and orthopedic shoes. (Rev.C. 6369(c)(3).)

(d) Prosthetic devices other than auditory, ophthalmic, and ocular devices or dental prosthetic materials. (Rev.C. 6369(c)(4).)

(e) Artificial limbs and eyes for human beings. (Rev.C. 6369(c)(5).)

(f) Programmable drug infusion devices worn on or implanted in the human body. (Rev.C. 6369(c)(6).)

Medicine does not include any of the following:

(a) Auditory, prosthetic, ophthalmic, or ocular devices or appliances. (Rev.C. 6369(b)(1).)

(b) Splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices, or other mechanical, electronic, optical, or physical equipment. (Rev.C. 6369(b)(2).)

(c) Alcoholic beverages. (Rev.C. 6369(b)(3).)

(3) *Other Health Care Materials*. The sale, storage, use, or other consumption of the following items is also exempt:

(a) Hemodialysis products supplied to a patient on the order of a doctor. (Rev.C. 6369.1.)

(b) Wheelchairs, crutches, canes, quad canes, white canes for the blind, and walkers sold to an individual for personal use as directed by a doctor. (Rev.C. 6369.2.)

(c) Items and materials used to modify a vehicle for physically handicapped persons, and on sale of the vehicle to a handicapped person, that portion of the modified vehicle attributable to the modifications. (Rev.C. 6369.4.)

(d) Medical oxygen delivery systems, including liquid oxygen containers, high pressure cylinders, and regulators, when furnished to an individual for personal use as directed by a doctor. (Rev.C. 6369.5.)

Under Rev.C. 6018 et seq., optometrists, physicians, surgeons, opticians, veterinarians, podiatrists, and chiropractors are considered consumers, not retailers, of specified medical and health care materials supplied in their professional capacity. (See *supra*, §354.) (See *14 A.L.R.4th 1370* [application of sales or use tax to eyeglasses or other optical accessories]; *30 A.L.R.5th 494* [sales and use tax exemption for medical supplies].)

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b. Statutory Exemptions.

4. Containers.

9 Witkin Sum. Cal. Law Tax § 363

[§ 363] Containers.

The following types of containers are exempt from sales and use taxes:

(1) Nonreturnable containers when the buyer is to fill the container and sell the container and contents. (Rev.C. 6364(a).)

(2) Containers when sold with their contents if the contents are exempt. (Rev.C. 6364(b).)

(3) Returnable containers when sold with contents or when resold for refilling. (Rev.C. 6364(c).)

(4) Empty containers that are sold or leased to persons who place food products for human consumption into the containers for shipment, as long as the food products will be sold, whether in the same container or not. The food products may be remanufactured or repackaged before sale. (Rev.C. 6364(d).)

(5) Containers used to collect or store human whole blood, plasma, blood products, or blood derivatives. (Rev.C. 6364.5; on exemption of blood products from property taxation, see *supra*, §210.)

In *Associated Beverage Co. v. Board of Equalization* (1990) 224 C.A.3d 192, 273 C.R. 639, plaintiff bottler of soft drinks challenged the imposition of use tax on its purchase of reusable bottles from retailers. *Held*, the purchase was taxable.

(a) If the initial purpose of purchasing containers is to fill them with product in preparation for reselling the product, the initial use is taxable unless specifically exempted. Where the resale is merely an incident of the activity of selling the product, it is not exempt as a sale made for resale. (224 C.A.3d 215.)

(b) Plaintiff's primary purpose in purchasing returnable containers was not to resell them, but to "obtain a convenient and reusable means of purveying those beverages for sale to retailers." (224 C.A.3d 215.)

(c) Because the bottles are reusable, they do not become a component of the product sold and thereby excluded

from the category of a retail sale. (224 C.A.3d 216.)

(d) Rev.C. 6364 suggests that returnable containers are put to a taxable intervening use after the initial sale to the bottler and before their sale at retail. Thus, the sale here is not exempt. (224 C.A.3d 216.) (See *Coca-Cola Co. v. State Bd. of Equalization* (1945) 25 C.2d 918, 920, 156 P.2d 1; *Luer Packing Co. v. State Bd. of Equalization* (1950) 101 C.A.2d 99, 104, 224 P.2d 744 [cellulose sausage casings were not containers]; *Safeway Stores v. State Bd. of Equalization* (1957) 148 C.A.2d 299, 303, 306 P.2d 597 [packing cartons used in deliveries were not containers]; *Canteen Corp. v. State Bd. of Equalization* (1985) 174 C.A.3d 952, 959, 220 C.R. 306 [paper cups used in beverage vending machines were exempt]; 97 A.L.R.3d 1205 [reusable soft drink bottles]; 4 A.L.R.4th 581 [containers or packaging materials purchased by manufacturer or processor for use with goods being distributed].)

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b. Statutory Exemptions.

5. Occasional Sales.

9 *Witkin Sum. Cal. Law Tax* § 364

[§ 364] Occasional Sales.

Rev.C. 6367 exempts "occasional sales," defined in Rev.C. 6006.5 to include (1) a sale that is not in the course of an activity for which the seller is required to hold a seller's permit, and is not one of a series sufficient in number, scope, and character to constitute an activity requiring a permit; (2) a transfer of all or substantially all the property when thereafter the real or ultimate ownership is substantially the same; (3) a sale of property (other than hay) by a hay producer if the sale is not one of a series sufficient in number, scope, and character to constitute an activity requiring the holding of a permit if the producer were not selling hay. (See *Ontario Community Foundation v. State Bd. of Equalization* (1984) 35 C.3d 811, 821, 822, 201 C.R. 165, 678 P.2d 378 [liquidation sale of hospital was occasional sale; "unitary business" regulation disqualifying seller for exemption where seller also engaged in some nonexempt sales (e.g., cafeteria sales to nonpatients) was invalid]; 45 Cal. L. Rev. 477 [corporate capital transactions as occasional sales]; 42 A.L.R.3d 292 [exemption of casual, isolated, or occasional sales].)

The exemption has been held inapplicable in a number of cases. (See *Pacific Pipeline Const. Co. v. State Bd. of Equalization* (1958) 49 C.2d 729, 732, 321 P.2d 729 [series of sales of machinery and equipment to implement corporate reorganization]; *Davis Wire Corp. v. State Bd. of Equalization* (1976) 17 C.3d 761, 765, 132 C.R. 133, 553 P.2d 229 [sale of capital assets was not exempt under Rev.C. 6006.5; assets were "held or used" by seller required to have seller's permit because seller's products were subject to tax when sold at retail]; *United States Industries v. State Bd. of Equalization* (1962) 198 C.A.2d 775, 787, 18 C.R. 171 [sale by manufacturer of entire business, including office furniture and machinery, was not occasional sale]; *Chemed Corp. v. State Bd. of Equalization* (1987) 192 C.A.3d 967, 972, 237 C.R. 627 [sale was not exempt; transactions of various unincorporated subdivisions of corporate seller were considered in determining series of sales under Rev.C. 6006.5].)

Under Rev.C. 6367, the exemption does not apply to the following:

- (1) Mobilehomes or commercial coaches required to be registered annually under the Health and Safety Code.
- (2) Vehicles required to be registered under the Vehicle Code.

(3) Vehicles that qualify for the permanent trailer identification plate program under *Veh.C. 5014.1(a)*.

(4) Off-highway vehicles required to be identified under Rev.C. 6271 et seq.

(5) Vessels and aircraft defined by Rev.C. 6271 et seq. (See Rev.C. 6294 [sale of undocumented vessel by person not holding seller's permit; purchaser was required to pay tax to Department of Motor Vehicles].)

However, the exemption is allowed for the sale of these items if the sale is in conjunction with the transfer of all or substantially all the property held or used in business activities, and real or ultimate ownership after transfer is "substantially similar to that which existed before such transfer." (Rev.C. 6281.)

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SUPPLEMENT: [This section is current through the latest supplement]



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CHAPTER XI - Taxation

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XII. STATE TAXATION

E. Sales and Use Taxes.

3. Immunities and Exemptions.

b. Statutory Exemptions.

6. Miscellaneous Exemptions.

9 *Witkin Sum. Cal. Law Tax* § 365

[§ 365] Miscellaneous Exemptions.

(1) *Art Works*. Original works of art purchased by public and nonprofit museums as part of their permanent collections or by the state or local government entities as part of their public art collections and pieces purchased to replace pieces destroyed by calamity are exempt from sales and use taxes. (Rev.C. 6365, 6366.3; on exemption of items displayed in designated museums, see Rev.C. 6366.4.)

(2) *Carbon Dioxide*. Carbon dioxide used in packing and shipping fruits and vegetables, and nonreturnable materials containing the carbon dioxide atmosphere, are exempt. (Rev.C. 6359.8.)

(3) *Catalogs and Brochures*. Catalogs, letters, circulars, brochures, and pamphlets "consisting substantially of printed sales messages for goods or services" printed to the special order of the purchaser and mailed or delivered by the seller, by a mailing house, or by a common carrier to another person at no cost to that person are exempt. (Rev.C. 6379.5; see 25 *A.L.R.4th* 750 [what constitutes newspapers, magazines, or periodicals under sales or use tax law exemption].)

(4) *Charitable Donations and Distributions*. The storage, use, or consumption of property donated by a retailer to a charitable organization located in California is exempt from use tax. In order for a donation to a museum to qualify, the museum must be a nonprofit museum that uses the donated property exclusively for display purposes within a museum. (Rev.C. 6403.) New clothing sold to a nonprofit organization for free distribution to elementary school children is exempt. (Rev.C. 6375.5.) Medical health information and health and safety educational materials distributed by certain charitable organizations are exempt. (Rev.C. 6408, 6409.)

(5) *Coins and Bullion*. Commemorative "California Gold" medallions (Rev.C. 6354) and, when sold in bulk, monetized bullion, including metal coins and gold medallions authorized under federal law, numismatic coins, and nonmonetized gold and silver bullion are exempt. (Rev.C. 6355(a); see *Alan van Vliet Enterprises v. State Bd. of Equalization* (1977) 65 *C.A.3d* 964, 970, 135 *C.R.* 716 [Rev.C. 6355 is not limited to transactions in which face value of money qualifies].)

(6) *Computer Programs*. Custom computer programs other than basic operational programs are exempt. (Rev.C. 6010.9; see *Navistar Int. Trans. Corp. v. State Bd. of Equalization* (1994) 8 C.4th 868, 882, 883, 35 C.R.2d 651, 884 P.2d 108, supra, §348 [although initial development of computer programs for company's in-house use was exempt from taxation under Rev.C. 6010.9, subsequent sale of those programs was taxable event]; 36 A.L.R.5th 133 [computer software as tangible personal property subject to state sales and use taxes].)

(7) *Consumer Cooperative Fees*. Membership fees and labor performed in lieu of fees in consumer cooperatives are exempt. (Rev.C. 6011.1, 6012.1.)

(8) *Endangered or Threatened Species*. Endangered or threatened animal or plant species are exempt, if both the seller and the purchaser are nonprofit zoological societies. (Rev.C. 6366.5; Rev.C. 6202.5; for definitions of "endangered or threatened animal or plant species" and "nonprofit zoological society," see Rev.C. 6010.50.)

(9) *Energy Sources*. Also exempt are gas, electricity, water, steam, geothermal steam, brines, or heat, when delivered to consumers through mains, lines, or pipes (Rev.C. 6353(a)), water for residential use when sold in bulk quantities of 50 gallons or more in areas not served by mains, lines, or pipes (Rev.C. 6353(c)), and exhaust steam, waste steam, heat, or resultant energy, produced in connection with cogeneration technology (Rev.C. 6353(c)). (See *Sonoma v. State Bd. of Equalization* (1987) 195 C.A.3d 982, 991, 241 C.R. 215 [retroactive application of amendment exempting geothermal steam]; 15 A.L.R.4th 269 [exemption, from sales or use tax, of water, oil, gas, other fuel, or electricity provided for residential purposes].) Liquefied petroleum gas that the seller delivers to a primary residence, not serviced by gas mains and pipes, for household use in the residence, is exempt, as is liquefied petroleum gas that is purchased for use by specified persons for producing and harvesting agricultural products. For either exemption, the liquefied petroleum gas must be delivered into a tank with at least 30 gallons' storage capacity for liquefied petroleum gas. (Rev.C. 6353(b).)

(10) *Farm Equipment and Machinery*. Farm equipment and machinery, and their parts, purchased for use by specified persons to be used primarily in producing and harvesting agricultural products, are exempt. (Rev.C. 6356.5.)

(11) *Fuel and Fuel Products*. Organic products grown expressly for fuel purposes, waste byproducts used as industrial fuel in lieu of oil, natural gas, or coal (Rev.C. 6358.1(a)), and still gas used in refining crude oil (Rev.C. 6358.1(b)) are exempt. (See *Union Oil Co. of Calif. v. State Bd. of Equalization* (1990) 224 C.A.3d 665, 670, 274 C.R. 76 [petroleum coke is "waste byproduct" under Rev.C. 6358.1].) Fuel and petroleum products sold to an air common carrier for immediate consumption or shipment on an international flight are exempt. (Rev.C. 6357.5(a).) If the federal exemption for these products in 19 U.S.C., §1309 is repealed, Rev.C. 6357.5 will be also. (Rev.C. 6357.5(i).) Diesel fuel used in farming activities and food processing is exempt. (Rev.C. 6357.1.)

(12) *Ice*. Ice and dry ice used in packing, shipping, or transporting exempt food products are exempt. (Rev.C. 6359.7.)

(13) *Lottery Tickets*. No state or local tax may be imposed on the sale of lottery tickets under the California State Lottery. (Govt.C. 8880.68(a); see *Gilroy v. State Bd. of Equalization* (1989) 212 C.A.3d 589, 597, 260 C.R. 723 [for purposes of exemption, "lottery ticket" refers to public sale of tickets, not to sale of printed tickets to Lottery Commission by manufacturer].)

(14) *Mailing Lists*. Mailing lists are exempt if the purchaser is limited to a single use. (Rev.C. 6379.8.)

(15) *Master Tapes and Recordings*. Master tapes and master records, used by the recording industry are exempt. (Rev.C. 6362.5; see *Capitol Records v. State Bd. of Equalization* (1984) 158 C.A.3d 582, 590, 591, 204 C.R. 802 [statutory exemption is not retroactive].)

(16) *Medical Identification Tags*. Medical identification tags are exempt. (Rev.C. 6371.)

(17) *Motion Picture Production Equipment and Services.* Motion picture production equipment loaned by a production partnership to its members is exempt. (Rev.C. 6010.4.) "Sale" and "purchase" do not include the performance of motion picture production services (including film, television, and video production) and motion picture transfers before the date of general exhibition or broadcast or pursuant to exploitation rights obtained before that date. The exclusion does not extend to (a) the sale of raw film or videotapes, (b) the sale or purchase of release prints or tapes for exhibition or broadcast, or (c) the rental or lease of videotapes, cassettes, or discs for private use. (Rev.C. 6010.6.)

(18) *Newspapers.* Newspapers and periodicals distributed without charge and regularly issued at intervals not exceeding 3 months, and property that becomes an ingredient or component of the newspaper or periodical, are exempt (Rev.C. 6362.7(a)), as are newspapers and periodicals sold by subscription and delivered by mail or common carrier, regularly issued at intervals not exceeding 3 months, and property that becomes an ingredient or component of the newspaper or periodical (Rev.C. 6362.7(b)). (For definition of "periodical," see Rev.C. 6362.7(c).) Newspapers and periodicals regularly issued at intervals not exceeding 3 months and published, purchased, or distributed by tax-exempt or nonprofit organizations are exempt where specified criteria are met, as is property that becomes an ingredient or component of the newspaper or periodical. (Rev.C. 6362.8.)

(19) *Original Art for Entertainment.* The transfer of original drawings, sketches, illustrations, or paintings by an artist or designer at a social gathering for entertainment purposes is not a "sale" or "purchase" if 80% or more of the drawings or other items are delivered by the artist to someone other than the purchaser (Rev.C. 6010.30(a)(1), (b)), and are received by someone other than the purchaser, at no cost to the receiver, who then owns the drawings or other items (Rev.C. 6010.30(a)(2), (b)). The charge for the items must be based on a preset fee and must be contingent on a minimum of three items to be produced by the artist or designer at the social gathering. (Rev.C. 6010.30(a)(3), (a)(4).)

(20) *Personal Property Purchased by Entities Investing in Areas of High Unemployment.* The sale, storage, use, or consumption of tangible personal property purchased by an entity that locates or expands a business in a California county with a specified high unemployment rate is exempt. The entity must invest at least \$ 150 million for at least 24 months and must add at least 500 new full-time employees to the county, 175 of which are employed directly by the entity. (Rev.C. 6378.1(f).)

(21) *Personal Property of New Manufacturing Business.* Tangible personal property used in specified manufacturing, processing, refining, fabricating, recycling, research, and development by new businesses is exempt. (Rev.C. 6377; on eventual repeal based on employment levels, see Rev.C. 6377(g).)

(22) *Personal Property Used in Space Flight.* Tangible personal property used in space flight is exempt. (Rev.C. 6380.)

(23) *Pets.* The transfer of a pet from a local government animal shelter or a nonprofit animal welfare organization is not a "sale" or "purchase," nor are charges for services connected to the transfer, such as spaying, neutering, or vaccinating the pet. (Rev.C. 6010.40.)

(24) *Poultry Litter.* Wood shavings, sawdust, rice hulls, and other products that are used as litter in poultry and egg production and that are ultimately resold as fertilizer products are exempt. (Rev.C. 6358.2.)

(25) *Property Used, Stored, or Consumed by Operators of Aircraft.* The storage, use, or other consumption in California of tangible personal property (other than fuel or petroleum products) by operators of aircraft is exempt if the property is to be used or consumed (a) principally outside the county in which the sale is made, and (b) directly and exclusively in the use of the aircraft as common carriers of persons or property. (Rev.C. 6201.6; for similar exemption with respect to sales taxes, see Rev.C. 6051.6.)

(26) *Public Transportation Services.* There is an exemption for sales and leasebacks of vehicles or vessels and related equipment used to provide public transportation services, including bus and van fleets, ferry boats, rail passenger cars, locomotives, other rail vehicles, train control equipment, fare collection equipment, communication systems, and

global positioning systems. (Rev.C. 6368.8, operative until January 1, 2009; see Rev.C. 6368.9 [operative if and when Rev.C. 6368.8 is repealed].)

(27) *Racehorses*. Racehorse breeding stock is exempt. (Rev.C. 6358.5(a).)

(28) *Railroad Equipment*. Component parts installed in railroad equipment in the course of repairing, cleaning, altering, or improving the equipment out of state, and the attendant labor and services charges, are exempt. (Rev.C. 6411.)

(29) *Retail Goods Purchased Abroad*. The first \$ 400 of tangible personal property bought from a retailer in a foreign country and hand carried into California within 30 days of the sale is exempt from use tax. (Rev.C. 6405.)

(30) *Sale and Leaseback Transactions*. For purposes of the Sales and Use Tax Law, "sale" does not include a lease or transfer of title to tangible personal property in an "acquisition sale and leaseback" transaction if the person selling and leasing back the property paid sales or use tax with respect to the purchase of the property and the sale and leaseback is consummated within 90 days of that person's "first functional use" of the property. (Rev.C. 6010.65(a).) Transfer of title to the lessee on termination of the sale and leaseback is a sale. (Rev.C. 6010.65(b).)

(31) *Teleproduction Equipment*. Property to be used primarily in teleproduction or other postproduction services is exempt, as is property used to maintain, test, and repair that property. (Rev.C. 6378(a).) Teleproduction and other postproduction services are services for film or video that include editing, film and video transfers, transcoding, dubbing, subtitling, credits, close captioning, audio production, special effects, graphics, and animation. (Rev.C. 6378(c)(3).)

(32) *Thrift Store Revenue*. Used clothing, household items, and other retail items sold by a thrift store are exempt if (a) the store is operated by a nonprofit organization, (b) the purpose of the store is to obtain revenue for medical, hospice, or social services to chronically ill individuals, and (c) at least 75% of the net revenue is actually spent on those services. (Rev.C. 6363.3.)

(33) *Timber Harvesting Equipment and Machinery*. Equipment and machinery designed primarily for off-road use in commercial timber harvesting operations, and their parts, purchased for use by specified persons to be used primarily in harvesting timber, are exempt. (Rev.C. 6356.6(a).)

(34) *Utility Transmission Equipment*. Telephone and telegraph lines, electrical transmission and distribution lines, and their poles, towers, or conduits are exempt. (Rev.C. 6016.5 [exempted by exclusion from definition of "tangible personal property"]; see *King v. State Bd. of Equalization* (1972) 22 C.A.3d 1006, 1013, 99 C.R. 802 [transaction before enactment of exemption was not taxable]; *A.S. Schulman Elec. Co. v. State Bd. of Equalization* (1975) 49 C.A.3d 180, 184, 122 C.R. 278 [following *King*]; *Chula Vista Elec. Co. v. State Bd. of Equalization* (1975) 53 C.A.3d 445, 453, 125 C.R. 827 [purpose of Rev.C. 6016.5 is to exempt cost or value of installation labor; component parts in construction or repair of transmission lines are not exempt]; *Fischbach & Moore v. State Bd. of Equalization* (1981) 117 C.A.3d 627, 630, 631, 172 C.R. 923 [following *Chula Vista*].)

(35) *Vehicles, Vessels, and Aircraft*. Certain off-highway vehicles and vessels and aircraft sold by a person not required to hold a seller's permit are exempt. (Rev.C. 6283.) Vessels of more than 1,000 tons burden are exempt (Rev.C. 6356), as are certain mass commuting vehicles (Rev.C. 6010.11), and passenger transportation vehicles involved in a sale-leaseback transaction with the Department of Transportation (Rev.C. 6368.7). Loans of automobiles to schools for driver training programs, or of other property for educational programs, and loans of automobiles to veterans hospitals or other institutions for instruction of disabled veterans are exempt. (Rev.C. 6404.) Trailers or semitrailers involved in moving or operations for which the manufacturer or dealer has received a one-trip permit from the Department of Motor Vehicles are exempt. (Rev.C. 6410.) Used mobilehomes subject to property tax under Rev.C. 5800 et seq. (supra, §171) and used floating homes subject to property tax under Rev.C. 229 (supra, §164) are exempt. (Rev.C. 6379.) New motor vehicles are exempt when they are sold to a resident of a foreign country who arranges for the purchase through an

authorized vehicle dealer in the foreign country before arriving in the United States and meets other specified conditions. (Rev.C. 6366.2.)

A variety of transactions otherwise subject to sales and use tax are exempt because specified retailers are deemed to be consumers. (See *supra*, §354.)

West's Key Number Digest, Taxation k.234

SUPPLEMENT: [This section is current through the latest supplement]

(4) *Charitable Donations and Distributions*. Rev.C. 6375.5 was amended in 2007 to apply the exemption to new clothing distributed for free to children under 18, rather than elementary school children.(29) *Retail Goods Purchased Abroad*. Rev.C. 6405 was amended in 2007 to change the amount of the retail goods exemption from \$ 400 to \$ 800.(32) *Thrift Store Revenue*. Rev.C. 6363.3 was amended in 2006 to provide that 75% of the net income derived from operations of the thrift store, rather than 75% of net revenue, must be spent on the specified services.



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3. Immunities and Exemptions.

b. Statutory Exemptions.

7. Exemptions To Avoid Double Taxation.

9 Witkin Sum. Cal. Law Tax § 366

[§ 366] Exemptions To Avoid Double Taxation.

(1) No use tax is imposed where a sales tax is paid (Rev.C. 6401), and credit is allowed for sales or use taxes imposed by other states (Rev.C. 6406). (See 20 U.C. Davis L. Rev. 273 [multiple tax credit and discrimination against interstate commerce].)

(2) Motor vehicle fuel taxed under the gas tax act (infra, §380) is exempt from sales or use taxes. (Rev.C. 6357.)

(3) "Storage" and "use" are defined to exclude any reference to property that is to be exported and thereafter used solely outside the state. (See Rev.C. 6009.1; Rev.C. 6396 [exempting property required by contract of sale to be shipped out of state]; *Atchison, Topeka & Santa Fe Ry. Co. v. State Bd. of Equalization* (1955) 131 C.A.2d 677, 680, 281 P.2d 99; *Engs Motor Truck Co. v. State Bd. of Equalization* (1987) 189 C.A.3d 1458, 1469, 235 C.R. 117 [exemption under Rev.C. 6396 was not available where delivery actually took place in California]; *Pope v. State Bd. of Equalization* (1988) 202 C.A.3d 73, 83, 248 C.R. 246 [same]; *Chevron U.S.A. v. State Bd. of Equalization* (1997) 53 C.A.4th 289, 294, 297, 61 C.R.2d 608 [partially built oil drilling platform was not "delivered" to its purchaser, for purposes of Rev.C. 6396, when construction problems required mid-construction switch to new builder; purchaser did not enter work site to complete construction, move platform, or otherwise suggest that it was taking possession]; *Yamaha Corp. of America v. State Bd. of Equalization* (1999) 73 C.A.4th 338, 349, 86 C.R.2d 362 [stock-in-trade that seller of musical instruments purchased out of state without paying tax, and then transferred from storage to common carrier in California for delivery as gifts to out-of-state donees, did not fall within exclusion provided by Rev.C. 6009.1].)

(4) Specific exemptions are made for various kinds of property intended for use outside of California, including the following:

(a) Aircraft sold to an interstate or foreign carrier or to a foreign government or nonresident. (Rev.C. 6366; Rev.C. 6366.1 [aircraft leased to common carriers or to United States or foreign government, for use outside state]; see *Pan Amer. Airways v. State Bd. of Equalization* (1955) 131 C.A.2d 638, 281 P.2d 23; *Garrett Corp. v. State Bd. of Equalization* (1961) 189 C.A.2d 504, 508, 11 C.R. 421.) Rev.C. 6366 exempts component parts purchased and installed in an exempt aircraft during maintenance, repair, overhaul, or improvement, and the labor and services charges

associated with that maintenance. (Rev.C. 6366(a)(3); see *National Aircraft Leasing v. State Bd. of Equalization* (1979) 90 C.A.3d 549, 555, 153 C.R. 400 [at time of decision, Rev.C. 6366 and 6366.1 did not exempt parts installed in aircraft in course of repairs or modifications].) Also exempt are ground control stations sold to foreign governments or nonresidents. A ground control station is a portable facility used to operate aircraft in the air without a pilot on board. (Rev.C. 6366(a)(2).)

(b) Property (other than fuel and petroleum products) sold to a common carrier for use by the carrier and transported to an out-of-state destination for use, and property (other than fuel and petroleum products) purchased by a foreign air carrier and transported to a foreign destination for use. (Rev.C. 6385(a), (b); see *Southern Pac. Equipment Co. v. State Bd. of Equalization* (1971) 16 C.A.3d 302, 305, 94 C.R. 107 [Rev.C. 6385(a) was inapplicable in particular circumstances]; *Satco v. State Bd. of Equalization* (1983) 144 C.A.3d 12, 18, 192 C.R. 449 [exemption was not available where delivery, as evidenced by shipping documents, took place in California]; *Delta Air Lines v. State Bd. of Equalization* (1989) 214 C.A.3d 518, 528, 262 C.R. 803 [common carrier, treated as retailer for purpose of litigating Rev.C. 6385 exemption, had standing to sue under Rev.C. 6421].) Rev.C 6385(c), effective until January 1, 2014, exempts the sale of fuel and petroleum products to a water common carrier, for immediate shipment outside California for consumption in the conduct of its business as a common carrier after the first out-of-state destination. (See *Lykes Bros. Steamship Co. v. State Bd. of Equalization* (1994) 23 C.A.4th 1421, 1426, 29 C.R.2d 8 [to obtain prior, temporary exemption, water common carrier had to submit bill of lading that was complete and timely and that reflected actual amount of fuel consumed].)

(c) Any property sold to the holder of a valid seller's permit where property is to be used in improvement of real property located outside of the state. (Rev.C. 6386.)

(d) New trucks (including tractors and trailers) of unladen weight in excess of 6,000 pounds, and new trailer coaches or auxiliary dollies, purchased out of state to be used outside of the state. This exemption applies even though they are delivered within the state, provided that they are removed within 30 days. (Rev.C. 6388; see Rev.C. 6388.5 [same rule applies to trailers and semitrailers manufactured and delivered in state but moved out-of-state for use outside state within 75 days].)

(e) Rail freight cars for use in interstate or foreign commerce. (Rev.C. 6368.5.)

(f) Water craft and component parts of a water craft used in interstate or foreign commerce involving transportation for hire or used in commercial deep sea fishing outside the territorial waters of California. (Rev.C. 6368, 6368.1.) (See *Campbell Industries v. State Bd. of Equalization* (1985) 167 C.A.3d 863, 869, 213 C.R. 533 [exemption was not available for sale of commuter ferries that were not "principally used" in interstate commerce].)

SUPPLEMENT: [This section is current through the latest supplement]



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4. Procedure.

a. Permit, Registration, and Returns.

9 Witkin Sum. Cal. Law Tax § 367

[§ 367] Permit, Registration, and Returns.

(1) *Permit and Registration.* A retailer subject to the sales tax must obtain a permit from the State Board of Equalization (Rev.C. 6066 et seq.), and if subject to the use tax, must register with the Board. (Rev.C. 6226.) In some circumstances, persons dealing with specified sellers may be required to verify that those sellers hold valid permits. (See e.g., Rev.C. 6073, 6073.1 [operator of swap meet, flea market, or special event may be required to verify permit of exhibitor]; Rev.C. 6074 [food supplier may be required to verify permit of catering truck operator].) Certain trade shows, educational and informational events, and other shows at which no tangible personal property is actually sold are exempt from the permitting requirements of Rev.C. 6073. (Rev.C. 6073.2(a).)

"A permit shall be held only by persons actively engaging in or conducting a business as a seller of tangible personal property." Unauthorized permits must be surrendered and may be revoked by the Board. (Rev.C. 6072; on liability of permit holder who fails to surrender permit on transfer of business, see Rev.C. 6071.1.)

A person who knowingly issues a resale certificate while not actively engaged in business as a seller, either for personal gain or to evade taxes, is "liable for the taxes that would otherwise have been due on the transaction," a penalty of the greater of 10% or \$ 500, and interest. (Rev.C. 6072.)

(2) *Return and Records.* Taxes are due and payable quarterly. (Rev.C. 6451; on payment of estimated tax by means of electronic funds transfers, see Rev.C. 6479.3 et seq.; on exception to Rev.C. 6451 for use taxes imposed for storage, use, or other consumption, see Rev.C. 6451.5.) Specified persons must file a quarterly return (Rev.C. 6452), showing sales and amount of tax (Rev.C. 6453). Records, open to examination by the Board, must be kept. (Rev.C. 7053, 7054.) But except for the information required to be set forth on the permit, information on registration certificates under Rev.C. 6226, and the terms of settlements made under Rev.C. 19442, the Board may not "make known in any manner whatever the business affairs, operations, or any other information pertaining to any retailer" without official authorization. (Rev.C. 7056(a)(1); see *McCabe v. Snyder* (1999) 75 C.A.4th 337, 345, 89 C.R.2d 315 [Rev.C. 7056(a)(1) prohibited Department of Motor Vehicles from disclosing names and addresses of those who paid smog impact fee (see infra, §384) to individual who wished to bring class action challenging fee].) Disclosure of information to Mexican tax officials is authorized in specified circumstances. (Rev.C. 7056(a).)

SUPPLEMENT: [This section is current through the latest supplement]



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b. Deficiency Determinations.

9 *Witkin Sum. Cal. Law Tax* § 368

[§ 368] Deficiency Determinations.

(1) *In General.* If the board is not satisfied with the showing made in the return, it may increase the amount due by a deficiency determination. (Rev.C. 6481; see *People v. Schwartz* (1947) 31 C.2d 59, 63, 187 P.2d 12 [deficiency determination based on failure to explain excess of disbursements over reported gross receipts]; *People v. Buckles* (1943) 57 C.A.2d 76, 81, 134 P.2d 8 [purchaser of business who did not obtain certificate of no tax was liable for deficiency assessment]; *Riley B's v. State Bd. of Equalization* (1976) 61 C.A.3d 610, 615, 132 C.R. 520 [board may calculate theoretical sales, based on information furnished, even though taxpayer's records are comprehensive and consistent]; 20 A.L.R.4th 952 [retailer's or buyer's defenses against penalty for deficiency or failure to file].) Within 30 days after a deficiency determination has been made, the taxpayer may petition for a redetermination. (See Rev.C. 6561 et seq.; 6 *Pacific L. J.* 418 [notice requirements].)

A deficiency determination bears interest at an adjusted annual rate determined under Rev.C. 6591.5 (Rev.C. 6482), with a 10% penalty for intentional or negligent disregard of rules and regulations (Rev.C. 6484), and a 25% penalty for fraud or intent to evade the tax (Rev.C. 6485).

(2) *Arbitrary Determinations.* If no return is filed, the board may estimate the gross receipts from the transactions, determine the tax, and assess a penalty. (Rev.C. 6511; see Rev.C. 6592 [authorizing Board to relieve taxpayer of penalty, based on taxpayer's statement, on penalty of perjury, of facts excusing failure to make timely return].)

(3) *Jeopardy Determinations.* If the board believes that delay will jeopardize collection, it may make a jeopardy determination, the amount being immediately due and payable. (Rev.C. 6536 et seq.; on petition for redetermination, see Rev.C. 6538; on presale hearing concerning jeopardy determination, see Rev.C. 6538.5; 9 *Pacific L. J.* 668; *Dupuy v. Superior Court* (1975) 15 C.3d 410, 124 C.R. 900, 541 P.2d 540, supra, §23 [invalidity of prehearing sale]; on redetermination procedure, see Rev.C. 6561 et seq.; on increase or decrease in determination, see Rev.C. 6563.)

(4) *Time Limitations.* The following limitation periods govern when notices of deficiency determination must be mailed:

(a) Ordinary cases, 3 years after the last day of the calendar month following the quarterly or annual period or the

filing of return, whichever is later. (Rev.C. 6487(a), (b).) (See *Sprint Communications Co. v. State Bd. of Equalization* (1995) 40 C.A.4th 1254, 1259, 47 C.R.2d 399 [when taxpayer seeks refund of overpayment of use taxes, board may offset underpayments on other transactions during same period for which refund is claimed, even though underpayments are time barred by Rev.C. 6487; however, time barred underpayments occurring after refund period cannot be offset].)

(b) Where no return is filed, 8 years after the last day of the month after the quarterly or annual period for which the amount is determined. (Rev.C. 6487(a), (b).)

(c) For specified, out-of-state "qualifying retailers," within 3 years after the last day of the calendar month following the quarter for which the amount is determined. (Rev.C. 6487.05(a).)

(d) In the case of fraud, or intent to evade the Sales and Use Tax Law or authorized rules and regulations, there is no limitation period. (Rev.C. 6487(a), (b); see *Marchica v. State Bd. of Equalization* (1951) 107 C.A.2d 501, 505, 237 P.2d 725.)

SUPPLEMENT: [This section is current through the latest supplement]

(4) *Time Limitations.*

(c-1) *(New) Qualifying purchasers:* The limitations period is 3 years for notifying an in-state "qualifying purchaser" who files a use tax return for tangible personal property purchased from an out-of-state retailer and who meets specified conditions. (Rev.C. 6487.06, added in 2008.)



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c. Enforcement and Collection.

9 *Witkin Sum. Cal. Law Tax* § 369

[§ 369] Enforcement and Collection.

(1) *Security for Tax.* The Board may require a person subject to the taxing statute to furnish security, within certain statutory limits. (Rev.C. 6701; see *American Fidelity Fire Ins. Co. v. State Bd. of Equalization* (1973) 34 C.A.3d 51, 55, 109 C.R. 545 [liability of surety for tax and penalties].)

(2) *Payment.* Taxpayers whose liability averages \$ 17,000 or more per month may be required to prepay most of the tax, estimating the liability on the basis of the previous year's returns. (See Rev.C. 6471; on contingent increase to \$ 50,000, see Stats. 1987, Chap. 1144, §8.) Failure to make a required prepayment results in a 6% penalty, or a 10% for negligent or intentional violations. (See Rev.C. 6476 et seq.; on relief from penalties, see Rev.C. 6592; on temporary amnesty program for tax liabilities for reporting periods before January 1, 2003, see Rev.C. 7070 et seq.) (On prepayment of sales tax on motor vehicle fuel, see Rev.C. 6480 et seq.)

The board may enter into a written agreement for the payment of taxes, interest, and penalties in installments. (Rev.C. 6832(a).) The board may terminate the agreement if the taxpayer fails to comply fully with its terms. (Rev.C. 6832(b).) Except in the case of fraud, the board must relieve the penalty imposed under Rev.C. 6565 if a person enters into an installment payment agreement within 45 days from the date the tax is due and complies with the agreement's terms. (Rev.C. 6832(e).)

(3) *Warrant, Seizure, and Sale.* Within 3 years after delinquency or within 10 years after recordation of a judgment abstract or lien notice, the Board may issue a warrant for collection and levy and sale as under a writ of execution. (Rev.C. 6776.) Within 3 years after delinquency, the Board may seize and sell at public sale any real or personal property of the taxpayer not exempt from execution. (Rev.C. 6796.) (On supplemental proceedings, see *C.C.P. 688.020*, 8 *Cal. Proc.* (4th), *Enforcement of Judgment*, §§41, 42; on seizure and sale of liquor license to satisfy delinquent taxes of licensee, see *B. & P.C. 24049.5*.) The board may also freeze and collect assets in the possession or control of third persons. (See Rev.C. 6702, 6703; 4 *Pacific L. J.* 651.)

(4) *Summary Judgment.* A special procedure is provided for summary entry of judgment without suit, by the county clerk at the request of the board. (Rev.C. 6736, 6737; see *People v. Skinner* (1941) 18 C.2d 349, 360, 115 P.2d 488, *supra*, §22.) An abstract of this judgment has the effect of a judgment lien good for 10 years (Rev.C. 6738), and

execution may issue as on any other judgment (Rev.C. 6739).

(5) *Suit for Tax*. Within 3 years after delinquency or within the period during which a lien is in force as a result of the recordation of an abstract under Rev.C. 6738, supra, or a notice of state tax lien under Govt.C. 7171 (infra, §370), the board may bring an action in the name of the state to collect the tax with penalties and interest. (Rev.C. 6711; see *People v. Hochwender* (1942) 20 C.2d 181, 183, 124 P.2d 823 [collection from decedent's estate]; *People v. Mahoney* (1939) 13 C.2d 729, 91 P.2d 1029 [Rev.C. 6714: board's certificate of delinquency is prima facie evidence]; *People v. Schwartz* (1947) 31 C.2d 59, 63, 187 P.2d 12 [same]; *People v. Smejkal* (1968) 266 C.A.2d Supp. 971, 71 C.R. 925 [former lien certificate procedure; untimely filing could not be revitalized by filing new certificate]; *People v. United States Fire Ins. Co.* (1976) 61 C.A.3d 231, 235, 132 C.R. 139 [former lien certificate procedure; action within period in which lien was in force was timely]; *People v. Garg* (1993) 16 C.A.4th 357, 360, 363, 20 C.R.2d 80 [action was untimely; recordation of notice of tax lien after 3-year limitation period expired did not revive or extend limitation period]; on board's authority to accept offers in compromise on tax liability, see Rev.C. 7093.6.)

(6) *Criminal Penalties*. The following acts are misdemeanors punishable by a fine of \$ 1,000 to \$ 5,000, imprisonment up to 1 year in the county jail, or both:

(a) Engaging in business as a seller without a permit. (Rev.C. 6071.)

(b) Failing or refusing to make a return or supplemental return or to furnish other data required by the Board. (Rev.C. 6452(c), 6455(c).)

(c) Filing a false or fraudulent return with intent to evade the tax. (Rev.C. 7152, 7153.)

(d) Wilfully assisting in the preparation or presentation of a false or fraudulent return or other document. Liability attaches regardless of whether the person who is required or authorized to present the document knew about or consented to the falsity or fraud. (Rev.C. 7152(b).)

A prosecution must be instituted within 5 years after commission of the offense or within 2 years after the violation is discovered, whichever is later. (Rev.C. 7154; see 8 A.L.R.4th 1068 [retailer's failure to pay sales or use tax funds as constituting larceny or embezzlement].)

A violation of the Sales and Use Tax Law "with intent to defeat or evade the reporting, assessment, or payment of a tax or an amount due" is a felony if the tax liability aggregates \$ 25,000 or more in a 12-month period. (Rev.C. 7153.5.)

(7) *Streamlined Sales Tax Project*. Rev.C. 6025 et seq. provide for the development of a multistate, voluntary, streamlined system for sales and use tax collection and administration.

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SUPPLEMENT: [This section is current through the latest supplement]

(2) *Payment*. A person who knowingly collects sales tax reimbursement, as defined in C.C. 1656.1 (text, §344), or who knowingly collects use tax under Rev.C. 6201 (text, §355), must remit the sales tax reimbursement or use tax to the board in a timely manner. Failure to do so will result in a penalty of 40% of the amount that was not timely remitted. (Rev.C. 6597(a)(1), added in 2006.) Rev.C. 6597(a) does not apply to a person whose liability for the unremitted sales tax reimbursement or use tax averages \$ 1,000 or less per month or does not exceed 5% of the total amount of tax liability for which the tax reimbursement was collected for the period in which tax was due, whichever is greater. (Rev.C. 6597(a)(2)(A), added in 2006.) The penalty does not apply if the person's failure to make a timely remittance of the sales tax reimbursement or use tax was due to a reasonable cause or circumstances beyond the person's control and occurred even though the person exercised ordinary care and was not wilfully neglectful. (Rev.C. 6597(a)(2)(B), added in 2006.) Rev.C. 6597 applies to a determination made by the board under Rev.C. 6481 et seq., Rev.C. 6511 et seq., or Rev.C. 6536 et seq. (Rev.C. 6597(c), added in 2006.)

See 38 A.L.R.6th 255 [recovery of sales taxes remitted by seller to state, where customer who bought on credit or installment later defaults on payment].

(3) *Warrant, Seizure, and Sale.*

Cross-Reference: 8 Cal. Proc. (5th), *Enforcement of Judgment*, §51.(7) *Streamlined Sales Tax Project*. See 40 U.C. Davis L. Rev. 1381 [interstate Streamlined Sales and Use Tax Agreement].



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d. Lien and Priority.

9 *Witkin Sum. Cal. Law Tax* § 370

[§ 370] Lien and Priority.

The amount of any delinquent sales and use taxes and applicable penalties, interest, and costs are a perfected and enforceable state tax lien under *Govt.C. 7150* et seq. (Rev.C. 6757(a); see *Wilkinson v. Wilkinson* (1975) 51 C.A.3d 382, 387, 124 C.R. 870 [lien attached to equitable interest under land sale agreement].) (On judgment lien on real property arising from recordation of abstract of deficiency judgment, see Rev.C. 6738.)

The liability for the tax has priority over ordinary debts in cases of insolvency, voluntary assignment of assets, administration of an insolvent decedent's estate, and where the estate and effects of an absconding, concealed, or absent person are levied on by process of law. (Rev.C. 6756; see *Estate of Morris* (1940) 37 C.A.2d 155, 99 P.2d 294.) But the following are prior to the tax lien:

(1) A lien recorded or a security interest perfected prior to the time the state recorded or filed its lien. (Rev.C. 6756; see *Govt.C. 7170, 7171; Durkin v. Durkin* (1955) 133 C.A.2d 283, 285, 284 P.2d 185.)

(2) Claims for personal services under *C.C.P. 1204* and *1206*. (Rev.C. 6756; see 6 *Cal. Proc.* (4th), *Provisional Remedies*, §187.)

West's Key Number Digest, Taxation k.1320

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Claims for personal services:*

Cross-Reference: 6 *Cal. Proc.* (5th), *Provisional Remedies*, §186.



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9 *Witkin Sum. Cal. Law Tax* § 371

[§ 371] Termination of Business and Successor's Liability.

If a person subject to tax liability sells out a business or stock of goods, or quits the business, the purchaser or successor must withhold sufficient funds from the purchase price to cover taxes until a receipt or certificate is furnished showing payment of the taxes or that none are due. (Rev.C. 6811.) Otherwise, the purchaser becomes personally liable for the tax to the extent of the purchase price. (Rev.C. 6812(a); see *People v. Buckles* (1943) 57 C.A.2d 76, 79, 134 P.2d 8; *People v. Gabriel* (1943) 57 C.A.2d 788, 792, 135 P.2d 378 [retailer ceased business and sold equipment, but not business or goodwill; purchaser was not liable for tax]; *Schnyder v. State Bd. of Equalization* (2002) 101 C.A.4th 538, 546, 124 C.R.2d 571 [purchasers of business in bulk sale, who deposited purchase funds in escrow and later filed interpleader action for funds, did not comply with withholding requirements of Rev.C. 6811 and thus were personally liable under Rev.C. 6812]; on procedure for enforcement of successor's liability, see Rev.C. 6814.)

On termination, dissolution, or abandonment of a partnership, limited liability partnership, limited liability company, or corporate business, a person having control or supervision of the entity, or who is responsible for filing returns or paying tax for the entity, is personally liable for unpaid taxes that became due during the period the person had that responsibility, plus interest and penalties, if the person "willfully fails to pay or to cause to be paid" taxes due from the entity. (Rev.C. 6829(a), (b).) Wilful failure is a failure that "was the result of an intentional, conscious, and voluntary course of action." (Rev.C. 6829(d).) Personal liability may be imposed only where the entity (1) included tax reimbursement in the selling price of tangible personal property sold in the conduct of its business, (2) added tax reimbursement to the selling price of the property, or (3) consumed tangible personal property and failed to pay the tax to the seller or has billed and collected the use tax or has issued a receipt and failed to report and pay use tax. (Rev.C. 6829(c).) (See *State Bd. of Equalization v. Wirick* (2001) 93 C.A.4th 411, 415, 112 C.R.2d 919 [Rev.C. 6829 applied to corporation's former chief financial officer, even though he had resigned over 1 year before corporation ceased business; under Rev.C. 11, present tense in Revenue and Taxation Code provisions includes past and future tenses; because Rev.C. 6829 incorporates statutes of limitations in Rev.C. 6451 et seq. and 6701 et seq., this interpretation does not create indefinite statute of limitations].)

SUPPLEMENT: [This section is current through the latest supplement]

Rev.C. 6829 was amended in 2008 to add "limited partnership" to the list of entities. (On timing of notice of deficiency

under Rev.C. 6829, see Rev.C. 6829(f), added in 2008.)



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f. Taxpayer's Remedies.

1. Claim and Action for Refund.

9 *Witkin Sum. Cal. Law Tax* § 372

[§ 372] Claim and Action for Refund.

(1) *Claim for Refund.* If there has been an illegal or erroneous collection or overpayment, the taxpayer may file a claim for refund or credit. (Rev.C. 6901 et seq.) The time limit is ordinarily 3 years from the last day of the month after the period for which the overpayment was made, but if it was made under a board determination, the time is 6 months from the date the determination became final or the overpayment was made, whichever is later. (Rev.C. 6902; see *Chahine v. State Bd. of Equalization* (1990) 222 C.A.3d 485, 489, 272 C.R. 56 [rejecting contention that 6-month time limit of Rev.C. 6902 does not begin to run until tax liability is fully paid]; *Philips & Ober Elec. Co. v. State Bd. of Equalization* (1991) 231 C.A.3d 723, 728, 282 C.R. 338 [deduction for overpayment of sales tax taken by subcontractor was properly denied and refund was not authorized where taxpayer did not file for refund until after 3-year limitation period of Rev.C. 6902 had expired].) Notwithstanding the limitation periods prescribed by Rev.C. 6902, a claim for refund of an overpayment that the board collected through levy, liens, or other enforcement procedures may be filed within 3 years of the date of overpayment. (Rev.C. 6902.3.)

The claim for refund is an essential condition of an action to recover the tax. (Rev.C. 6905, 6932.) It must state the specific grounds. (Rev.C. 6904(a); see Rev.C. 6933 [action is on grounds set forth in claim]; *Javor v. State Bd. of Equalization* (1977) 73 C.A.3d 939, 946, 141 C.R. 226 [time limit and claim requirement suspended by filing of consumer class action for refund of tax on vehicle sales]; *Jordan v. Department of Motor Vehicles* (1999) 75 C.A.4th 449, 466, 89 C.R.2d 333, *infra*, §384 [Department did not have to file refunds on behalf of taxpayers who had paid unconstitutional motor vehicle smog impact fee but had not filed refunds themselves; distinguishing *Javor v. State Bd. of Equalization*]; on cancellation of excess amounts, see Rev.C. 6981; for claim on behalf of class, see Rev.C. 6904(b); *McCabe v. Snyder* (1999) 75 C.A.4th 337, 340, 89 C.R.2d 315 [although Rev.C. 6904(b) requires that claim filed on behalf of class of taxpayers must be accompanied by written authorization from each taxpayer to be included in class, it does not create express duty to disclose names and addresses of class members; Department of Motor Vehicles did not have to disclose names and addresses of persons who paid motor vehicle smog impact fee on vehicles registered out of state].)

(2) *Action for Refund.* The action must be commenced within 90 days after notice of the board's action on the claim is mailed. (Rev.C. 6933; see *Pacific Gas & Elec. Co. v. State Bd. of Equalization* (1955) 134 C.A.2d 149, 151, 285 P.2d

305.) If the board fails to act within 6 months, the claimant may consider the claim disallowed and sue. (Rev.C. 6934.) (See *Culligan Water Conditioning v. State Bd. of Equalization* (1976) 17 C.3d 86, 92, 130 C.R. 321, 550 P.2d 593 [nature of review of board's assessment]; *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 C.4th 1, 78 C.R.2d 1, 960 P.2d 1031, 9 Cal. Proc. (4th), *Administrative Proceedings*, Supp., §116A [board's published annotation interpreting pertinent statute did not dispose of issue against taxpayer; board's annotations were not entitled to judicial deference due quasi-legislative rules]; *Santa Barbara Optical Co. v. State Bd. of Equalization* (1975) 47 C.A.3d 244, 251, 120 C.R. 609 [action was timely under allegations in class action complaint]; *Honeywell v. State Bd. of Equalization* (1982) 128 C.A.3d 739, 744, 180 C.R. 479 [taxpayer has burden of proof in refund action]; *Paine v. State Bd. of Equalization* (1982) 137 C.A.3d 438, 443, 187 C.R. 47 [records were insufficient to support claimed exemption; taxpayer failed to carry burden of proof].)

The issues that may be considered in a refund action are limited to those raised in the claim for refund. (*Preston v. State Bd. of Equalization* (2001) 25 C.4th 197, 205, 105 C.R.2d 407, 19 P.3d 1148, supra, §346 [taxpayer's contention that agreements to provide artwork for use in books and rubber stamp designs were nontaxable transfers of copyrights was intertwined with and clearly implied from contentions in her refund claim, even though taxpayer did not use word "copyright" or explicitly refer to federal copyright law in her refund claim]; *Atari v. State Bd. of Equalization* (1985) 170 C.A.3d 665, 672, 673, 216 C.R. 267 [manufacturer who alleged in claim for refund that catalogs were exempt "marketing aids" could not allege in refund action that catalogs were exempt under "sale for resale" rule]; *A&M Records v. State Bd. of Equalization* (1988) 204 C.A.3d 358, 368, 250 C.R. 915 [taxpayer could not introduce evidence that master recording tape had been used outside state, where issue of outside use had not been stated in claim for refund].)

(3) *Taxpayers' Bill of Rights*. The 1988 Legislature added Rev.C. 7080 et seq., the Harris-Katz California Taxpayers' Bill of Rights, designed to improve voluntary taxpayer compliance (Rev.C. 7081). It is administered by the State Board of Equalization, and is applicable to the Sales and Use Tax Law (Rev.C. 7082). (See *Tetra Pak v. State Bd. of Equalization* (1991) 234 C.A.3d 1751, 1761, 286 C.R. 529, infra, §374 [nature and purpose of law, and procedural problems arising under it]; supra, §§123, 124.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Claim for Refund*. See 1 A.L.R.6th 1 [validity and applicability of statutory time limits for refund claims]. (2) *Action for Refund*.

Yamaha case:

Cross-Reference: 9 Cal. Proc. (5th), *Administrative Proceedings*, §139.

(*New*) *Venue*: Under Rev.C. 6933, tax refund actions may be brought in any California city or county "in which the Attorney General has an office." For this purpose, "office" includes only those offices that house the Attorney General's legal staff: Sacramento, Los Angeles, San Francisco, San Diego, Oakland, and Fresno. (*State Bd. of Equalization v. Superior Court* (2006) 138 C.A.4th 951, 955, 42 C.R.3d 116 [action could not be brought in San Jose, where Attorney General maintained merely branch office of Bureau of Narcotics Enforcement].)



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2. Relief From Taxes, Penalties, and Interest.

9 Witkin Sum. Cal. Law Tax § 373

[§ 373] Relief From Taxes, Penalties, and Interest.

A person who has failed to make a timely return or payment in "reasonable reliance" on the written advice of the board may be relieved of the taxes imposed by Rev.C. 6051 and 6201. (Rev.C. 6596(a).) The person must file a written statement, under penalty of perjury, setting forth the facts on which the claim is based, along with a copy of the board's written advice and a copy of the person's request for advice. (Rev.C. 6596(c).) If the board finds that the failure is due to "reasonable reliance" according to statutory criteria, the relief may be granted. (Rev.C. 6596(b).) In addition, the board may grant relief from certain penalties where a person's failure to make a timely return or payment "is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of wilful neglect." (Rev.C. 6592(a).) Relief must be based on a statement, under penalty of perjury, setting forth the facts justifying relief. (Rev.C. 6592(b).) The board must establish criteria that provide for efficient resolution of requests for relief under Rev.C. 6592. (Rev.C. 6592(c).)

SUPPLEMENT: [This section is current through the latest supplement]



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3. Recovery of Litigation Costs.

9 *Witkin Sum. Cal. Law Tax* § 374

[§ 374] Recovery of Litigation Costs.

(1) *Authorization for Fees.* In a civil proceeding by or against the State of California, "in connection with the determination, collection, or refund of any tax, interest, or penalty" under the Sales and Use Tax Law, the prevailing party may be awarded reasonable litigation costs (Rev.C. 7156(a)), including court costs, expert witness fees, the cost of engineering reports and tests, and attorneys' fees (Rev.C. 7156(c)(1)). Recovery is limited to costs that are allocable to the state (Rev.C. 7156(b)(2)), and attorneys' fees may not generally exceed \$ 75 per hour (Rev.C. 7156(c)(1)(B)(iii)). The prevailing party must have exhausted administrative remedies. (Rev.C. 7156(b)(1).) The party must demonstrate that the state's position was not "substantially justified" and must substantially prevail with respect to the amount in controversy and the most significant issues presented. (Rev.C. 7156(c)(2)(A).)

In *Tetra Pak v. State Bd. of Equalization* (1991) 234 C.A.3d 1751, 286 C.R. 529, a corporation that prevailed in tax-related litigation against the State Board of Equalization sought attorneys' fees under Rev.C. 7156, alleging that the state's position in the litigation was not substantially justified. The fee request was denied and the corporation appealed. *Held*, although the trial court judgment denying fees was appealable, the corporation failed to establish that the trial court erred in denying its request for attorneys' fees.

(a) Rev.C. 7156(e) requires that an order granting or denying an award for reasonable litigation costs must be incorporated as part of the judgment, and is then subject to appeal in the same manner as the judgment. The trial court's judgment contained no express mention of attorneys' fees. However, the corporation's application for reasonable litigation costs was timely presented to the trial court. Therefore, the judgment could be modified to include a denial of attorneys' fees and was appealable. (234 C.A.3d 1761, 1762.)

(b) Rev.C. 7156(e) requires that an order for attorneys' fees must be in the judgment and, by logical corollary, only in the judgment. Thus, orders made in a cost proceeding in which the corporation also sought attorneys' fees, which would ordinarily be appealable as orders made after judgment within the meaning of former C.C.P. 904.1(b) (now C.C.P. 904.1(a)(2); see 9 Cal. Proc. (4th), *Appeal*, §135 et seq.) could not serve as a basis for appeal from a denial of attorneys' fees under Rev.C. 7156. (234 C.A.3d 1762.)

(c) In challenging the denial of its application for attorneys' fees, the corporation in effect asserted that the trial court abused its discretion in refusing to rule that the board's position was not substantially justified. It could prevail on this contention only by showing that the trial court exceeded the bounds of reason on a record where all reasonable inferences are against the board's action and the trial court's ruling. Because the corporation failed to produce certain evidence admitted at trial and requested by the Court of Appeal, the possibility of an inference favorable to the trial court could not be eliminated, and no clear showing of abuse could be made. (234 C.A.3d 1763, 1764.)

(2) *State Cannot Offset Award of Litigation Costs*. In *Garg v. People* (1997) 53 C.A.4th 199, 61 C.R.2d 376, the State Board of Equalization initiated an action to collect a disputed sales tax claim. The trial court found the board's position to be substantially unjustified and awarded litigation costs under Rev.C. 7156. The board then decided to treat the cost award as a debt owed to the taxpayers by the state and attempted to set off the debt against the still disputed tax claim under *Govt.C. 12419.4* and *12419.5*. Plaintiff taxpayers sued to compel payment of the cost award and to invalidate the offset. The trial court characterized plaintiffs' action as one for a refund, and determined that plaintiffs were exempt from the tax and that the offset was improper. *Held*, the offset was improper.

(a) Under Cal. Const., Art. XIII, §32 (supra, §297), a taxpayer's sole legal avenue for resolving a dispute over the legality of a tax is a postpayment refund action. (53 C.A.4th 208.) Because the disputed tax had not been paid in full, the trial judge lacked jurisdiction to decide the merits of plaintiffs' tax exemption claim, and the exemption determination must be stricken. (53 C.A.4th 209.)

(b) Nevertheless, regardless of the validity or invalidity of the underlying tax claim, the board had no right to offset plaintiffs' cost award against the claim. (53 C.A.4th 211.) The offset would render ineffective the remedial provisions of Rev.C. 7156 and weaken the power of the courts to enforce the Taxpayers' Bill of Rights. Rev.C. 7156 deters overreaching by taxing authorities, and this deterrent effect would be defeated if the board could simply set off litigation costs against the disputed tax claim. (53 C.A.4th 214.)

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SUPPLEMENT: [This section is current through the latest supplement]

(1) *Authorization for Fees*. See *Agnew v. State Bd. of Equalization* (2005) 134 C.A.4th 899, 908, 36 C.R.3d 464 [trial court properly denied fees under Rev.C. 7156(c)(2)(A); although taxpayer succeeded in obtaining refund of almost 90% of taxes paid and board took several unreasonable positions, board received favorable rulings on other matters and many of its positions were justified].

Cross-Reference: 9 Cal. Proc. (5th), *Appeal*, §180 et seq. *Correction:* Page 547, 10th line from top, "amount in controversy and the most significant issues" should be "amount in controversy or the most significant issues".



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4. No Injunction, Mandamus, or Equitable Relief.

9 *Witkin Sum. Cal. Law Tax* § 375

[§ 375] No Injunction, Mandamus, or Equitable Relief.

(1) *Prohibition*. "No injunction or writ of mandate or other legal or equitable process shall issue ... against this State or against any officer of the State to prevent or enjoin" the collection of the tax. (Rev.C. 6931; see Cal. Const., Art. XIII, §32, *supra*, §297; *Helms Bakeries v. State Bd. of Equalization* (1942) 53 C.A.2d 417, 420, 128 P.2d 167; 8 Cal. Proc. (4th), *Extraordinary Writs*, §123.) This rule cannot be evaded by bringing a proceeding for declaratory relief. A declaratory judgment that the tax is not legally collectible would have the same effect as an injunction. (*Casey v. Bonelli* (1949) 93 C.A.2d 253, 254, 208 P.2d 723.)

(2) *Effect of Small, Partial Payment*. Nevertheless, something close to a declaratory judgment was approved in *Schaffer v. State Bd. of Equalization* (1952) 109 C.A.2d 574, 241 P.2d 46. Plaintiff, challenging a tax liability of over \$ 5,000, paid \$ 100 on account, filed a claim for refund, and after its denial, sued to recover the amount paid. The board contended that to allow the issue to be tried and determined after such a token payment would be equivalent to obtaining an injunction. *Held*, (a) there was no statutory bar to an action for refund after part payment of a tax and denial of a claim for refund, and (b) the board has complete control over the situation by reason of its power to refuse to accept installment payments. (109 C.A.2d 577.) (See *Snoozie Shaving v. State Bd. of Equalization* (1979) 97 C.A.3d 771, 773, 158 C.R. 866 [following *Schaffer*].)

Schaffer and *Snoozie* were disapproved in *State Bd. of Equalization v. Superior Court* (1985) 39 C.3d 633, 217 C.R. 238, 703 P.2d 1131. The taxpayer was assessed a sales tax deficiency of approximately \$ 187,000 and made a partial payment of \$ 250. It then filed a refund claim and sued for a refund. *Held*, the action was barred by Cal. Const., Art. XIII, §32, until the full amount of the disputed tax was paid. "[T]he sole legal avenue for resolving tax disputes is a postpayment refund action. A taxpayer may not go into court and obtain adjudication of the validity of a tax which is due but not yet paid." (39 C.3d 638.)

(3) *Payment of Interest Before Challenge May Not Be Required*. In *Agnew v. State Bd. of Equalization* (1999) 21 C.4th 310, 87 C.R.2d 423, 981 P.2d 52, plaintiff taxpayer paid a use tax and accrued interest following the purchase of one racehorse, and a sales tax, but not the accrued interest, following the sale of another racehorse. Plaintiff then sought a declaratory judgment that, when a sales or use tax has been paid in full, defendant board must not require payment of

interest before acting on a refund request. Defendant demurred, contending that because plaintiff was attacking the validity of the interest assessment, the action constituted a piecemeal attack on an aspect of the tax itself, and was an attempt to prevent or enjoin collection of a tax, in violation of Cal. Const., Art. XIII, §32, and Rev.C. 6931. The trial court sustained the demurrer and dismissed the action. The Court of Appeal reversed. *Held*, judgment of Court of Appeal affirmed.

(a) Accrued interest is not part of a "tax" within the meaning of Cal. Const., Art. XIII, §32. (21 C.4th 322.) The constitutional provision clearly and unambiguously states that an action may be maintained after payment of "a tax claimed to be illegal" and makes no mention of interest on the tax. It deprives a court of jurisdiction only to "prevent or enjoin the collection of any tax." (21 C.4th 323.) Furthermore, nothing in the history of Cal. Const., Art. XIII, §32, supports the argument that the reference to "tax" encompasses interest as an integral part of the tax, or that prepayment of interest as well as taxes is a prerequisite to a tax challenge. (21 C.4th 326.)

(b) Accrued interest is not part of a "tax" within the meaning of Rev.C. 6931. (21 C.4th 327.) Rev.C. 6931 states only that a court may not "prevent or enjoin the collection under this part of any tax or any amount of tax required to be collected." Additionally, the definitions of "sales tax" and "use tax" in Rev.C. 6003 and 6004 refer only to "the tax imposed" by chapters 2 and 3 of the Sales and Use Tax Law, respectively. On the other hand, Rev.C. 6757, which creates a lien, does not refer to the unpaid tax, but to the "amount ... including penalties and interest, together with any costs" becoming enforceable as a state tax lien. Thus, in specifying the scope of the lien, the Legislature expressly referred to interest as part of the total "amount" of the lien, rather than simply specifying that the unpaid tax becomes a lien. (21 C.4th 329.) "Were we to accept [defendant's] argument that interest is part of a tax, we would, in effect render surplusage the word 'interest' in many of the statutes in which the Legislature has referred both to interest and tax." (21 C.4th 330.)

(c) Defendant's policy of requiring payment of interest before a challenge to a tax assessment exceeds its authority. It impermissibly burdens a taxpayer's right to seek a refund and may not be enforced. (21 C.4th 333.) (See *Chen v. Franchise Tax Bd.* (1998) 75 C.A.4th 1110, 1121, 90 C.R.2d 268 [payment of interest is not required before action for refund of corporate franchise tax].)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Prohibition.*

Cross-Reference: 8 Cal. Proc. (5th), *Extraordinary Writs*, §124.



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E. Sales and Use Taxes.

4. Procedure.

g. Reimbursement of Overcharged Customers.

9 Witkin Sum. Cal. Law Tax § 376

[§ 376] Reimbursement of Overcharged Customers.

When a customer reimburses a taxpayer for sales or use taxes computed on a nontaxable amount or in excess of the taxable amount, the wrongly computed amount must be returned to the customer, on notification by the board or the customer that the excess has been ascertained. If the taxpayer fails to do so, the excess must be paid to the state. Amounts remitted to the state are credited to any sales and use taxes due and payable on the same transaction, and any balance constitutes an obligation due from the taxpayer. (Rev.C. 6901.5.) (On predecessor reimbursement statute, former Rev.C. 6054.5, see *Decorative Carpets v. State Bd. of Equalization* (1962) 58 C.2d 252, 255, 23 C.R. 589, 373 P.2d 637 [retailer paid to state unlawfully collected money and then sought refund; retailer, having received money from customers by mistake, was constructive trustee for their benefit and board could insist, as condition of refund, that retailer discharge trust obligations to customers, even though they were not parties to the action].)

SUPPLEMENT: [This section is current through the latest supplement]



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F. Liquor Taxes.
1. Exclusive State Power.

9 Witkin Sum. Cal. Law Tax § 377

[§ 377] Exclusive State Power.

The California Constitution gives the state exclusive power to license and regulate the manufacture, sale, possession, and transportation of liquor, subject to federal laws. (Cal. Const., Art. XX, §22; see *Hammond v. McDonald* (1942) 49 C.A.2d 671, 675, 122 P.2d 332; *Oakland v. Superior Court* (1996) 45 C.A.4th 740, 760, 53 C.R.2d 120 [fee imposed by city ordinance regulating nuisances associated with alcoholic beverage establishments was not a tax and did not violate Cal. Const., Art. XX, §22].)

The constitutional provision deprives municipal corporations of any right to impose a license tax on liquor dealers, whether for revenue or regulation. (*Los Angeles Brewing Co. v. Los Angeles* (1935) 8 C.A.2d 391, 398, 48 P.2d 71; see Rev.C. 32010; 6 A.L.R.2d 737 [effect of state regulation of liquor sales on municipal power to impose occupation license or tax for revenue].) But a municipal corporation or county may still levy an ad valorem property tax on liquor (*Three G Distillery Corp. v. Los Angeles* (1941) 46 C.A.2d 498, 501, 116 P.2d 143), and a sales or use tax that retailers, including liquor dealers, are required to collect from their customers (*Ainsworth v. Bryant* (1949) 34 C.2d 465, 475, 211 P.2d 564; see Rev.C. 32010).

Regulation is the responsibility of the Department of Alcoholic Beverage Control. (Cal. Const., Art. XX, §22; B. & P.C. 23000 et seq. [Alcoholic Beverage Control Act].) However, the taxing administration remains with the State Board of Equalization. (Rev.C. 32001 et seq. [Alcoholic Beverage Tax Law]; for regulations, see 18 Cal. Code Reg. §2504 et seq.)

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SUPPLEMENT: [This section is current through the latest supplement]



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XII. STATE TAXATION

F. Liquor Taxes.

2. Rates, Exemptions, and Credits.

9 Witkin Sum. Cal. Law Tax § 378

[§ 378] Rates, Exemptions, and Credits.

(1) *Rates.* An excise tax is imposed on beer and wine (Rev.C. 32151) and distilled spirits (Rev.C. 32201). The following rates apply:

(a) Beer: \$ 1.24 per barrel of 31 gallons. (Rev.C. 32151(a).)

(b) Still wines and hard cider: 1 to 2 cents per gallon. (Rev.C. 32151(b), (c).)

(c) Champagne and sparkling wine: 30 cents per gallon. (Rev.C. 32151(d).)

(d) Liquid distilled spirits: \$ 2.00 per wine gallon. (Rev.C. 32201.) (For statutory definitions, see *B. & P.C. 23003* et seq.; for formulas to convert records maintained in liters to equivalent gallons, see Rev.C. 32452.1.)

Credits are allowed for taxes paid on liquor that is subsequently exported or destroyed. (Rev.C. 32176, 32178.)

There is an additional excise surtax on alcoholic beverages in the following amounts:

(a) Beer: 16 cents per gallon. (Rev.C. 32220.)

(b) Still wines and hard cider: 18 or 19 cents per gallon, depending on percent of alcohol. (Rev.C. 32220.)

(c) Distilled spirits: \$ 1.30 or \$ 2.60, depending on proof strength. (Rev.C. 32220.)

(2) *Exemptions.* Exemptions include the following:

(a) Beverages in continuous transit through California in the possession of common carriers. (Rev.C. 32051.)

(b) Sales for industrial use. (Rev.C. 32052; see *National Distillers Products Corp. v. Board of Equalization* (1947) 83 C.A.2d 35, 39, 187 P.2d 821 [no exemption merely because sale was for medicinal purposes].)

(c) Certain sales of alcohol or distilled spirits for nonbeverage use. (Rev.C. 32053.)

(d) Sales to a common carrier or its licensee for use outside California (Rev.C. 32054), or sales of distilled spirits by manufacturer, etc., to interstate or foreign passenger carriers (Rev.C. 32213).

(e) Beer consumed by manufacturer's employees on premises. (Rev.C. 32172.)

(f) Wine sold or delivered in bond from one grower to another. (Rev.C. 32174.)

(g) Sale of distilled spirits to another manufacturer, rectifier, importer, or wholesaler, or for export. (Rev.C. 32211(b), (c); 32212.)

(h) Distilled spirits sold to specified instrumentalities of the United States Armed Forces located in California. (Rev.C. 32177.5.)

SUPPLEMENT: [This section is current through the latest supplement]



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3. Returns and Collections.

9 Witkin Sum. Cal. Law Tax § 379

[§ 379] Returns and Collections.

A monthly return and payment on or before the 15th day of the following calendar month is required (Rev.C. 32251), with a 10% penalty and monthly interest at a rate set under the terms of Rev.C. 6591.5. (Rev.C. 32252(a).) Rev.C. 32252(b) prescribes a \$ 50 penalty for failing to file a timely return under Rev.C. 32551 or 32551.5. The penalties imposed by Rev.C. 32252 are limited to the greater of the \$ 50 or the 10% penalties. (Rev.C. 32252(c).) (On quarterly or annual returns and payments deemed necessary to facilitate collection of taxes, see Rev.C. 32251.5.) Persons whose estimated tax liability averages \$ 20,000 or more per month must pay by electronic funds transfer. (Rev.C. 32260(a).) Other persons may elect to do so. (Rev.C. 32260(b).)

Provisions are also made for deficiency determinations (Rev.C. 32271), arbitrary determinations and penalties if no return is made (Rev.C. 32291), jeopardy determinations (Rev.C. 32311), and redeterminations (Rev.C. 32301, 32312).

Enforcement procedures are similar to those in the Sales and Use Tax Law. (See Rev.C. 32351 et seq. [action for tax]; Rev.C. 32361 et seq. [special judgment]; Rev.C. 32365 et seq. [warrant for collection]; Rev.C. 32371 et seq. [seizure and sale]; Rev.C. 32383 [freezing assets in possession of third party]; Rev.C. 32401 et seq. [claim and action for refund]; 6 *Pacific L. J.* 418 [notice requirements].)

SUPPLEMENT: [This section is current through the latest supplement]



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G. Taxes on Vehicles and Transportation.
1. Motor Vehicle Fuel License Tax.

9 Witkin Sum. Cal. Law Tax § 380

[§ 380] Motor Vehicle Fuel License Tax.

(1) *Rates.* The Motor Vehicle Fuel Tax Law (Rev.C. 7301 et seq.) imposes an 18 cents per gallon tax on the removal of motor vehicle fuel from a terminal rack (Rev.C. 7360(a), 7362) or a refinery rack (Rev.C. 7363(a)), and this rate may be increased if the federal fuel tax is reduced below 9 cents per gallon (Rev.C. 7360(b)). (For regulations, see *18 Cal. Code Reg. §1101* et seq.) By collecting the tax at the terminal rack level, rather than at the distributor level, the law conforms to federal law. (On tax to be paid by distributors under limited circumstances, see Rev.C. 7361.) The law imposes a tax of 2 cents per gallon for the privilege of using or selling aircraft jet fuel (Rev.C. 7392), to be collected from the aircraft jet fuel dealer (Rev.C. 7393).

Alcohol produced for use as a motor vehicle fuel and not as a beverage is subject to the motor vehicle fuel license tax, not to the alcoholic beverage tax. (Rev.C. 8657.)

Distributors of motor vehicle fuel subject to the motor vehicle fuel license tax are required to collect prepayments of the applicable retail sales tax from the person to whom the fuel is first distributed. (Rev.C. 6480.1)

(2) *Other Provisions.* Rev.C. 7401 et seq. provide for exemptions. (See *Willbarb Petroleum Carriers v. Cory* (1989) 208 C.A.3d 269, 256 C.R. 51 [distributor that purchased "tax-paid fuel" and exported part to Nevada was required to claim refunds under Rev.C. 8101 et seq. for Nevada tax paid; Rev.C. 7401 et seq. exemptions were not applicable].) Certain users are exempted from liability for the tax and are entitled to refunds of taxes paid. (See Rev.C. 8101; on credit in lieu of refund for export distributors, see Rev.C. 8106.5.) The law also provides for licensing of suppliers, industrial users, and pipeline and vessel operators (Rev.C. 7451 et seq.), returns and payments (Rev.C. 7651 et seq.), refunds (Rev.C. 8101 et seq.), and penalties for violations (Rev.C. 8401 et seq.).

(3) *Restrictions on Use of Revenues From Tax.* Under Cal. Const., Art. XIX, §§1(b), 3, and 4, revenues from motor vehicle fuel license taxes and use fuel taxes (infra, §381) cannot be used for mass transit guideway projects related to rail transportation, except for research and planning, unless the money is spent on a project that has been approved by the voters in an election in the area where the project is to be built. (*Professional Engineers in Calif. Government v. Wilson* (1998) 61 C.A.4th 1013, 1026, 1027, 72 C.R.2d 111 [state improperly used gas taxes to reimburse general fund for payments of principal and interest on two rail bond measures].)

Under Cal. Const., Art. XIX, §5, a public entity may use up to 25% of its apportioned share of gas tax revenues for the payment of principal and interest on voter-approved street improvement bonds. Cal. Const., Art. XIX, §1, directs the use of gas tax funds for street and highway improvement purposes, but does not specify any other limitation on expenditure of the funds. Together these provisions permit the expenditure of gas tax funds only on bonds that the voters have approved. (*Costa Mesa v. Connell* (1999) 74 C.A.4th 188, 194, 87 C.R.2d 612 [city could not use restricted state gas tax funds to make lease-back payments to joint powers authority, as part of bond-and-lease plan involving construction of golf course, for funding street widening project; bonds had not been approved by voters].)

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SUPPLEMENT: [This section is current through the latest supplement]

(2) *Other Provisions*. Rev.C. 8106.5 was repealed in 2006.

Licensing: The licensing requirements applicable to pipeline operators and vessel operators were extended to train operators in 2008. (See Rev.C. 7470 et seq., added in 2008.)



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2. Use Fuel License Tax.

9 Witkin Sum. Cal. Law Tax § 381

[§ 381] Use Fuel License Tax.

(1) *Rates.* The Use Fuel Tax Law (Rev.C. 8601 et seq.) imposes a tax on the use of any combustible gas or liquid except fuel subject to the "gas tax" (Motor Vehicle Fuel License Tax Law, supra, §380), diesel fuel subject to Rev.C. 60001 et seq. (infra, §382) and fuel specifically manufactured and used for racing motor vehicles at racetracks. (Rev.C. 8604, 8651.) The rate is 18 cents per gallon and may be increased further, according to a statutory schedule, if the federal fuel tax falls below 15 cents. (Rev.C. 8651.) For ethanol and methanol containing no more than 15% gasoline or diesel fuels, the tax is half the rate provided by Rev.C. 8651. (Rev.C. 8651.8.) In lieu of the per gallon tax, an annual flat rate (related to vehicle weight) may be paid by owners of vehicles using liquefied petroleum gas or liquid or compressed natural gas. (Rev.C. 8651.7.) (See *Professional Engineers in Calif. Government v. Wilson* (1998) 61 C.A.4th 1013, 1026, 1027, 72 C.R.2d 111, supra, §380 [state improperly used gas taxes to reimburse general fund for payments of principal and interest on two rail bond measures]; on board's authority to accept offers in compromise on tax liability, see Rev.C. 9278.)

(2) *Exemptions.* The following are exempted:

- (a) Vehicles used for agricultural purposes and only incidentally on the highway. (Rev.C. 8652(a).)
- (b) Vehicles used on a private road or off the highway. (Rev.C. 8653, 8605.)
- (c) Vehicles used on stationary rails or tracks. (Rev.C. 8603.)
- (d) Special highway construction equipment. (Rev.C. 8652(b).)
- (e) Fuel not used in the operation of a motor vehicle in California. (Rev.C. 8652(c).)
- (f) Fuel used by a publicly owned vehicle operated on a federal highway within a military reservation. (Rev.C. 8654.)
- (g) Fuel used by interstate user whose sole use of fuel in California is "for the propulsion of a motor vehicle that is not a qualified motor vehicle and is operated in connection with an interstate trip." (Rev.C. 8608(b).)

Rev.C. 8655 exempts various public transit uses, including fuel used by transit districts or authorities, municipalities, and certain passenger stage corporations and common carriers, and fuel used by private entities providing passenger transportation under contract with public entities authorized to provide public transportation.

SUPPLEMENT: [This section is current through the latest supplement]



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3. Diesel Fuel Tax.

9 Witkin Sum. Cal. Law Tax § 382

[§ 382] Diesel Fuel Tax.

The Diesel Fuel Tax Law (Rev.C. 60001 et seq.) imposes a tax on specified occurrences of removal, entry, sale, delivery, or use of diesel fuel. (See Rev.C. 60051, 60052, 60058; see 26 *Pacific L. J.* 715 [summary and interpretation of Diesel Fuel Tax Law]; for exemptions, see Rev.C. 60100 et seq.) In conjunction with the repeal of Rev.C. 8736 et seq., which required wholesalers to collect the tax on diesel fuel at the point of sale, the Diesel Fuel Tax Law changes the level at which diesel fuel is taxed, from wholesalers to distributors, refiners, and highway vehicle operators. (See Rev.C. 60053, 60054, 60056.)

A tax of 18 cents is imposed on each gallon of diesel fuel subject to the tax. That rate will increase if the federal fuel tax rate is reduced below 15 cents per gallon. (Rev.C. 60050.) Enforcement procedures include security deposits (Rev.C. 60401 et seq.), collection suits (Rev.C. 60421 et seq.), tax liens (Rev.C. 60441 et seq.), warrants (Rev.C. 60451 et seq.), seizure and sale (Rev.C. 60461 et seq.), and successor withholding (Rev.C. 60471 et seq.).

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4. Vehicle License Tax.

9 Witkin Sum. Cal. Law Tax § 383

[§ 383] Vehicle License Tax.

(1) *In General.* The Vehicle License Fee Law (Rev.C. 10701 et seq.) imposes an annual license fee for the privilege of operating a motor vehicle subject to registration under the Vehicle Code. (Rev.C. 10751.) The fee is collected by the Department of Motor Vehicles. (Rev.C. 10703, 10951; on collection of delinquent fees by Franchise Tax Board, see Rev.C. 10878.) Although it is an excise or privilege tax and not a property tax (*Ingels v. Riley* (1936) 5 C.2d 154, 159, 53 P.2d 939), it is measured by the value of the vehicle. The rate is 0.65% of the market value as determined by the Department. (Rev.C. 10752; on determination of market value, see Rev.C. 10753, 10753.2; see 33 *McGeorge L. Rev.* 445 [criticism of "dual offset program" that provided for partial rebate of fees]; on special treatment of trailer coaches required to be moved under permit, see Rev.C. 10753.3.) Market value does not include the cost of modifying a vehicle for use by a disabled person. (Rev.C. 10753.6.)

The license fee is in lieu of ad valorem taxes "on vehicles of a type subject to registration under the Vehicle Code" (Rev.C. 10758), but vehicles not subject to registration may be locally taxed. (*Bigge Crane Rental Co. v. Alameda* (1972) 7 C.3d 414, 417, 102 C.R. 513, 498 P.2d 193 [truck cranes used in construction work, allowed to operate under trip permits instead of registration].) (See 1 Ehrman 3d, §10:3.)

(2) *Exemptions.* The following vehicles are exempt:

- (a) Vehicles owned by foreign, federal, state, or local governments. (Rev.C. 10781.)
- (b) Vehicles leased by the federal Government or state or local governments. (Rev.C. 10782.)
- (c) Private vehicles owned by certain disabled veterans or veterans who are Medal of Honor recipients or former American prisoners of war. (Rev.C. 10783(a).)
- (d) Vehicles used for fire fighting purposes by nonprofit, public fire departments or by colleges. (Rev.C. 10786.)
- (e) Vehicles owned by a federally recognized Indian tribe, as long as the vehicle is used exclusively within the boundaries of lands under that tribe's jurisdiction. (Rev.C. 10781.1.)

Mobilehomes installed on foundation systems or installed for occupancy are exempt, but are subject to local

property taxation. (Rev.C. 10784, 10785; on property taxation of mobilehomes, see *supra*, §171; on exemption for incremental costs of light-duty motor vehicles propelled by alternative fuels, see Rev.C. 10759.5; on refund of license fee for (a) constructive total loss (repair value exceeds market value less salvage value) or (b) unrecovered total loss (theft), see Rev.C. 10902.)

Formerly, banks were exempt from motor vehicle taxes under the "in lieu" limitation on bank taxes (*supra*, §337). Now, vehicles owned by banks are subject to the same vehicle license fees as other vehicles. (Rev.C. 10751; see Cal. Const., Art. XIII, §27 [authorizing vehicle taxes on banks]; *Thomas v. Department of Motor Vehicles* (1976) 59 C.A.3d 731, 736, 737, 742, 131 C.R. 164 [constitutional provision is not self-executing].)

(3) *Servicemembers*. The Servicemembers Civil Relief Act provides that the personal property of a servicemember is not deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders (50 U.S.C. Appx., §571(c)(1)), unless the jurisdiction is the servicemember's domicile or residence (50 U.S.C. Appx., §571(c)(2)). "Personal property" includes motor vehicles (50 U.S.C. Appx., §571(f)(1)) and "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles, as long as the servicemember has paid those fees in the servicemember's state of residence (50 U.S.C. Appx., §571(f)(2)).

In *People v. Buzard* (1964) 61 C.2d 833, 40 C.R. 681, 395 P.2d 593, defendant, an officer in the Air Force, was domiciled in the state of Washington. He bought a car in Alabama while temporarily stationed there, registered it, and obtained Alabama license plates. He was permanently stationed in California and attempted to register the car here, but refused to make the required payment of more than \$ 100 in fees and penalties. He was arrested and convicted of violation of Veh.C. 4000. Following his arrest, he drove his car to Washington for the first time, and registered it there. *Held*, conviction reversed. The state contended that the purpose of the statutory provision was simply to prevent multiple taxation, and that it should not preclude a tax by the new state where the domicile has not taxed (defendant did not bring the car into his home state until after the arrest). But the court held that the language gave the exemption in all cases. It merely provided that charges "required" by the domicile be paid, and "when there are no charges made there must likewise be no requirement that he pay them." (61 C.2d 836.) Otherwise, every state into which he brought his vehicle could impose fees until he entered his domicile and paid fees there. (61 C.2d 836.)

In *California v. Buzard* (1966) 382 U.S. 386, 86 S.Ct. 478, 482, 15 L.Ed.2d 436, 443, the United States Supreme Court reached the same result, but pointed out that the immunity is only from the tax. Licensing and registration requirements of the host state are valid.

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Exemptions*.(f) *(New) Surviving spouses*: A vehicle owned by the surviving spouse of a former American prisoner of war or a Congressional Medal of Honor recipient may be exempt from the license fee, if the spouse has elected to retain special license plates. (Rev.C. 10783.2, added in 2007.)



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5. Vehicle Smog Impact Fee.

9 Witkin Sum. Cal. Law Tax § 384

[§ 384] Vehicle Smog Impact Fee.

The Vehicle Smog Impact Fee (former Rev.C. 6261 et seq.) was created in 1990. The statute imposed a \$ 300 fee to register a motor vehicle in California if the vehicle was last registered outside California, unless the vehicle was "California-certified." (Former Rev.C. 6262(a).) A California-certified vehicle is one that has met California emissions standards imposed under the authority of the federal Clean Air Act. (See 42 U.S.C., §7543(b)(1) [allowing states to adopt emissions standards for new motor vehicles that are at least as stringent as federal standards].)

The smog impact fee was declared unconstitutional in *Jordan v. Department of Motor Vehicles* (1999) 75 C.A.4th 449, 89 C.R.2d 333. Four individuals brought suit for a refund of the \$ 300 fee and sought a declaration that the fee was unconstitutional. The trial court entered judgment for plaintiffs and ordered defendants, the State of California, the Department of Motor Vehicles, and the State Board of Equalization, to refund plaintiffs' fees and to take certain steps to secure refunds for others who had paid the fee. *Held*, affirmed, except for the order to secure refunds.

(a) The fee violates the Commerce Clause because it discriminates between interstate and local commerce. The fee applies only to out-of-state vehicles being registered in California, unless they are California-certified. "The effect of this fee is similar to the practice of charging license fees and use taxes on vehicles sold outside California that are higher than the license fees and taxes imposed on vehicles sold inside California." (75 C.A.4th 463.) Defendants failed to show that California-certified vehicles and federally certified vehicles serve different markets and thus are different products under *General Motors Corp. v. Tracy* (1997) 519 U.S. 278, 117 S.Ct. 811, 136 L.Ed.2d 761, which would have removed them from Commerce Clause protection. (75 C.A.4th 464.)

(b) Cal. Const., Art. XIX, §2, provides that fees and taxes imposed by the state on vehicles or their use or operation must be used for certain enumerated transportation purposes. Fees or taxes imposed "pursuant to" the Sales and Use Tax Law (see *supra*, §344 et seq.) are exempt from this requirement. (75 C.A.4th 464.) Although the Legislature declared in Rev.C. 6262(f) that it was imposing the fee here "pursuant to" the Sales and Use Tax Law, the terms of the fee indicate it is a tax or fee on motor vehicles, not a sales or use tax. The revenues from the fee are placed in the general fund. Hence, "on its own terms," the fee violates *Cal. Const., Art. XIX*. (75 C.A.4th 466.)

(c) The trial court exceeded its jurisdiction in ordering defendants to file refunds on behalf of taxpayers who paid the fee but did not file refunds themselves. (75 C.A.4th 466.) This is not a class action. The trial court could not fashion

a remedy for taxpayers who were not properly before it. (75 C.A.4th 468.)

Former Rev.C. 6261 and 6262 were repealed in 2000, and the Legislature established a system for distributing refunds. The Department of Motor Vehicles must search its records to identify all persons who paid the smog impact fee and must notify those persons of their eligibility. (See *Veh.C. 1673.2 et seq.*) For taxpayers who were not allowed to deduct the vehicle smog impact fee when paid or incurred, the interest paid with the refund is excluded from gross income. (Rev.C. 17139.5.) (See 32 *McGeorge L. Rev.* 507 [refunding smog impact fee].)

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G. Taxes on Vehicles and Transportation.
6. Private Railroad Car Tax.

9 Witkin Sum. Cal. Law Tax § 385

[§ 385] Private Railroad Car Tax.

The Private Railroad Car Tax Law (Rev.C. 11201 et seq.) imposes a tax on the operation in California of railroad cars that are not owned by or leased to railroad companies operating in California, including the National Railroad Passenger Corporation (AMTRAK). (Rev.C. 11203, 11251; see *People v. Keith Ry. Equipment Co. (1945) 70 C.A.2d 339, 346, 161 P.2d 244*; *Trailer Train Co. v. State Bd. of Equalization (1986) 180 C.A.3d 565, 578, 225 C.R. 717* [tax is applicable to flatcars].) Equipment owned, used, or leased by the National Railroad Passenger Corporation (AMTRAK) is also taxed. (Rev.C. 11203(b).)

The railroad cars are valued by class based on the owner's acquisition cost, less depreciation. (Rev.C. 11251, 11292, 11294 [time in repair facility excluded].) The tax imposed is in lieu of all other ad valorem taxes on the property. (Rev.C. 11252.) The rate is computed at the average rate of general property taxation in the state. (Rev.C. 11401 et seq.) (On valuation method, see *Trailer Train Co. v. State Bd. of Equalization, supra, 180 C.A.3d 589*; on escape assessments, see Rev.C. 11316 et seq.; on jeopardy assessments, see Rev.C. 11351 et seq.; on levy in payment of tax, see Rev.C. 11401 et seq.; on overpayments and refunds, see Rev.C. 11551 et seq.)

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XII. STATE TAXATION
H. Unemployment Insurance Tax.

9 Witkin Sum. Cal. Law Tax § 386

[§ 386] Unemployment Insurance Tax.

The Federal Unemployment Tax Act (26 U.S.C., §3301 et seq.) imposes a payroll tax on employers of about 6%, with a maximum 90% credit for contributions paid under an approved state act. Accordingly, California's Unemployment Insurance Code imposes a payroll tax with varying rates designed to take up the credit. (See *Unemp.Ins.C.* 101, 976; *Masi v. Nagle* (1992) 5 C.A.4th 608, 611, 7 C.R.2d 423 [full payment of assessment covering several reporting periods required for refund action]; on nature of tax, see *Bodinson Mfg. Co. v. California Emp. Com.* (1941) 17 C.2d 321, 325, 109 P.2d 935; on what constitutes employment, see 3 Summary (10th), *Agency and Employment*, §2 et seq.; on conditions of compensation, see 3 Summary (10th), *Agency and Employment*, §452 et seq.; on effect of workers' compensation payments, see 2 Summary (10th), *Workers' Compensation*, §§341, 342.)

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See *First Aid Services of San Diego v. California Emp. Dev. Dept.* (2005) 133 C.A.4th 1470, 1478, 35 C.R.3d 663 [employer's administrative mandamus proceeding, challenging decision that claimant of unemployment benefits was employee, was barred by "pay first, litigate later" rule of Cal. Const., Art. XIII, §32 (text, §297) and *Unemp.Ins.C.* 1851; net result of relief prayed for would be to restrain collection of unemployment insurance contributions allegedly owed by employer; citing *Modern Barber Colleges v. California Emp. Stabilization Com.* (1948) 31 C.2d 720, 192 P.2d 916, 8 Cal. Proc. (5th), *Extraordinary Writs*, §124]; *California Logistics v. California* (2008) 161 C.A.4th 242, 251, 73 C.R.3d 825 ["pay first, litigate later" rule did not violate taxpayer's right to due process, despite taxpayer's contention that it could not afford to pay taxes before challenging state's determination that its delivery drivers were employees; citing *Modern Barber Colleges* and *First Aid Services*].



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Witkin Summary of California Law XII. STATE TAXATION I. Cigarette Tax.

9 Witkin Sum. Cal. Law Tax § 387

[§ 387] Cigarette Tax.

(1) *Primary Tax.* The Cigarette and Tobacco Products Tax Law (Rev.C. 30001 et seq.) imposes a tax on distributors of cigarettes and tobacco products at the rate of 6 mills (\$ 0.006) per cigarette (3 cents to 10 cents per package). (Rev.C. 30101; see Rev.C. 30008 [defining "distribution"].) The revenue from 1 mill per cigarette of the tax is earmarked for breast cancer research and control. (Rev.C. 30461.6.) (For regulations, see *18 Cal. Code Reg. §4011* et seq.)

(2) *Surtaxes.* Rev.C. 30121 et seq. impose a surtax on distributors at a rate of 12 1/2 mills (\$ 0.0125) per cigarette and an equivalent rate on the wholesale cost of tobacco products. (Rev.C. 30123.) The net proceeds of the surtax are credited to various accounts in the Cigarette and Tobacco Products Surtax Fund to support health education programs, tobacco-related disease research, medical and hospital care for low income patients, and a variety of environmental projects. (Rev.C. 30122, 30124 [formula for distribution of proceeds]; see *Kennedy Wholesale v. State Bd. of Equalization* (1991) 53 C.3d 245, 279 C.R. 325, 806 P.2d 1360, supra, §130 [enactment of Rev.C. 30121 et seq. as statutory initiative did not violate two-thirds requirement of Cal. Const., Art. XIII A, §3].)

The tax and the surtax are in lieu of all other state or local taxes on the privilege of distributing cigarettes and tobacco products. (Rev.C. 30111.)

Rev.C. 30131 et seq. impose an additional surtax on distributors at the rate of 25 mills per cigarette and an equivalent rate on the wholesale cost of tobacco products. (Rev.C. 30131.2.) The proceeds of the tax, after subtracting administrative costs, are deposited in the California Children and Families Trust Fund for the exclusive use of the California Children and Families Program (*Health & Saf.C. 130100* et seq.). (Rev.C. 30131.3.) (See *California Assn. of Retail Tobacconists v. California* (2003) 109 C.A.4th 792, 808, 135 C.R.2d 224 [upholding constitutionality of Rev.C. 30131 et seq. against challenge that initiative measure violated "single-subject" rule (*7 Summary* (10th), *Constitutional Law*, §131 et seq.)].)

(3) *Exemptions.* Exemptions include the following:

(a) Sales to armed services exchanges or commissaries. (Rev.C. 30102(a).) However, the armed services exemption will remain in effect "only until the first day of the first calendar month commencing more than 60 days after the existing federal law is amended by Congress to permit state taxation of sales of cigarettes by or through federal military installations." (Rev.C. 30102(b).)

(b) Distributions by the manufacturer to a licensed distributor. (Rev.C. 30103.)

(c) Sales to a common carrier engaged in interstate or foreign commerce. (Rev.C. 30104.)

(d) Sales of foreign cigarettes by the original importer to a distributor. (Rev.C. 30105.)

(4) *Collection.* Distributors and wholesalers are licensed (Rev.C. 30140, 30155), and must make regular reports of purchases, sales, etc., to the State Board of Equalization. (Rev.C. 30182, 30188.)

In order to facilitate the collection of all applicable state cigarette taxes, the Legislature enacted Rev.C. 30101.7. (Rev.C. 30101.7(a).) With certain exceptions, all retail cigarette sales in California must be vendor-assisted, face-to-face sales (Rev.C. 30101.7(b)), in which the purchaser is in the physical presence of the seller or the seller's agent at the time of the sale (Rev.C. 30101.7(c)). (For exceptions, see Rev.C. 30101.7(d).)

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J. Timber Yield Tax.

9 Witkin Sum. Cal. Law Tax § 388

[§ 388] Timber Yield Tax.

(1) *Nature of Tax.* The Timber Yield Tax Law (Rev.C. 38101 et seq.) imposes a timber yield tax, in lieu of local property taxes (see *supra*, §225), at the time timber is harvested on timber owners and persons who, without authorization, harvest timber owned by another. (Rev.C. 38115; see 1 Ehrman 3d, §10:6 et seq.; 6 *Ecology L. Q.* 831 [discussion of background and purposes of law]; for definition of "timber," which includes Christmas trees, see Rev.C. 38103; for definition of "timber owner," see Rev.C. 38104; for regulations, see 18 *Cal. Code Reg.* §1026 et seq.)

(2) *Rate and Computation.* The tax is determined by multiplying the net volume of harvested timber by the immediate harvest value per unit and by the tax rate. (Rev.C. 38110.) (For definition of "immediate harvest value," see Rev.C. 38109.) The rate is annually adjusted in the same proportion that the average rate of general property taxation fluctuates in the counties named in Rev.C. 38105. (Rev.C. 38202.)

(3) *Exemptions.* Timber is exempt if its immediate harvest value is so low that the tax on the timber would amount to less than the cost of administering and collecting the tax. The board must establish the exemption level by rule. (Rev.C. 38116(a).) It may not exempt timber with an estimated immediate harvest value of more than \$ 3,000. (Rev.C. 38116(b).)

(4) *Collection.* The tax is collected by the State Board of Equalization on the basis of quarterly returns. (Rev.C. 38401, 38402.) (On extensions and interest, see Rev.C. 38405; on deficiency determinations, see Rev.C. 38411 et seq.; on determinations when no return is filed, see Rev.C. 38421 et seq.; on redeterminations, see Rev.C. 38441 et seq.; on jeopardy determinations, see Rev.C. 38431 et seq.) Suit for collection may be brought within 3 years from the date the tax became due or within the period a lien (see *infra*, this section) is in force. (Rev.C. 38511.) Security for payment may be required. (Rev.C. 38501, 38502.) (On collection of property or claims in hands of third parties, see Rev.C. 38503; on liability where business is sold or assigned, see Rev.C. 38561 et seq.; on personal liability of corporate officers on termination of business, see Rev.C. 38574.)

(5) *Liens.* A lien against realty may be obtained by recording a copy or abstract of a judgment for the amount due, and the lien remains in force for 10 years, unless extended for an additional 10 years. (Rev.C. 38523; on judgments, see Rev.C. 38521 et seq.) In addition, delinquent amounts, together with penalties, interests, and costs, are a perfected and enforceable state tax lien under *Govt.C.* 7150 et seq. (Rev.C. 38532.) (On priorities, see Rev.C. 38531; on release or subordination of liens, see Rev.C. 38525.)

(6) *Enforcement.* Available procedures include execution (Rev.C. 38524), warrants (Rev.C. 38541 et seq.), and seizure and sale of the taxpayer's real or personal property (Rev.C. 38551 et seq.). There are also criminal penalties. (Rev.C. 38801 et seq.) The state's remedies are cumulative and not mutually exclusive of each other. (Rev.C. 38572.)

(7) *Overpayments and Refunds.* Claims for refunds are governed by Rev.C. 38601 et seq. Actions for refunds are governed by Rev.C. 38612 et seq. Injunctions and writs of mandamus to prevent collection are prohibited. (Rev.C. 38611.) Repayments may also be made pursuant to certificates of excessive collection (Rev.C. 38601), and illegal determinations may be cancelled (Rev.C. 38631). Erroneous refunds are recoverable pursuant to Rev.C. 38621 et seq.

(8) *Disposition of Proceeds of Tax.* The money collected is placed in a timber tax fund. (Rev.C. 38903.) The fund is first used to reimburse the costs of administering the tax and certain costs incurred by the state forester. (Rev.C. 38904.) The remainder of the fund is then redistributed to the counties as prescribed by Rev.C. 38905.1. When so distributed, the local governments "may expend such funds without restriction." (Rev.C. 38908.)

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K. Hazardous Substances Tax.

9 Witkin Sum. Cal. Law Tax § 389

[§ 389] Hazardous Substances Tax.

(1) *Nature of Tax.* The Hazardous Substances Tax Law (Rev.C. 43001 et seq.) governs the collection of hazardous waste disposal fees imposed by *Health & Saf.C. 25174.1*. (Rev.C. 43051.) (For materials subject to tax, see *Health & Saf.C. 25115, 25117*.)

(2) *Collection.* Fees are payable monthly. (Rev.C. 43151(a).) (On returns and payments, see Rev.C. 43151 et seq.; on deficiency determinations, see Rev.C. 43201 et seq.; on redeterminations, see Rev.C. 43301 et seq.; on jeopardy determinations, see Rev.C. 43350 et seq.; on suits for collection, see Rev.C. 43401 et seq.) Security for payment may be required. (Rev.C. 43102.) The amount of any delinquent tax is an enforceable state tax lien. (Rev.C. 43413.)

(3) *Enforcement.* Enforcement procedures include warrants (Rev.C. 43421 et seq.), seizure and sale of the taxpayer's real or personal property (Rev.C. 43431 et seq.) and collection from third-party debtors (Rev.C. 43441 et seq.). The state's remedies are cumulative and not mutually exclusive of each other. (Rev.C. 43445.) Violations of the statute are subject to criminal penalties. (Rev.C. 43602 et seq.)

(4) *Overpayments and Refunds.* Claims for refunds are governed by Rev.C. 43451 et seq. Actions for refund are governed by Rev.C. 43471 et seq. Erroneous refunds may be recovered (Rev.C. 43481), and illegal determinations may be cancelled (Rev.C. 43491).

(5) *Disposition of Proceeds of Tax.* Money collected by the State Board of Equalization is transmitted to the State Treasurer to the credit of the Hazardous Waste Control Account. (Rev.C. 43551.) Specified proceeds collected by the State Board of Equalization (those not transmitted to the credit of the Hazardous Waste Control Account) are transmitted to the State Treasurer to the credit of the Toxic Substances Control Account. (Rev.C. 43552.)

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L. Other Taxes.

9 Witkin Sum. Cal. Law Tax § 390

[§ 390] Other Taxes.

(1) *Energy Resources Surcharge*. The Energy Resources Surcharge Law (Rev.C. 40001 et seq.) imposes a tax on the consumption of electrical energy purchased from an electric utility. (Rev.C. 40016.) The tax is a liability of the consumer (Rev.C. 40018), but is collected by the utility (Rev.C. 40019). Net revenues are credited to the Energy Resources Programs Account to support energy programs and projects, including the activities of the State Energy Resources Conservation and Development Commission. (Rev.C. 40182.)

(2) *Emergency Telephone Users Surcharge*. The Emergency Telephone Users Surcharge Act (Rev.C. 41001 et seq.) imposes a tax on amounts paid for intrastate telephone communication service. (Rev.C. 41020(a); see *GTE Sprint Communications Corp. v. State Bd. of Equalization* (1991) 1 C.A.4th 827, 832, 2 C.R.2d 441 [long-distance provider was not liable for surcharge before imposition of intrastate tariffs].) The tax is a liability of the user (Rev.C. 41024), but is collected by the service supplier (Rev.C. 41021). Net revenues are credited to the State Emergency Telephone Number Account to support the 911 emergency phone number system. (See Rev.C. 41135 et seq.)

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(2) *Emergency Telephone Users Surcharge*. Rev.C. 41020(a) was amended and subdivided in 2008. The surcharge on intrastate telephone communication service is authorized by Rev.C. 41020(a)(1). Rev.C. 41020(a)(2), added in 2008, imposes a surcharge on voice over Internet (VoIP) service that provides access to the 911 emergency system. (For definition of "VoIP service," see Rev.C. 41016.5, added in 2008.)