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Honorable Arnold Schwarzenegger
Governor of California
Sacramento, CA 95814

TAX BILLS: VOTE KEY - #0909597

Dear Governor Schwarzenegger:

You have asked us to explain the basis upon which this office determines that a bill requires for passage the approval of two-thirds of the membership of each house of the Legislature pursuant to Section 3 of Article XIII A of the California Constitution, and, in particular, the basis upon which this office determines whether a bill changes state taxes for the purpose of increasing revenues within the meaning of that constitutional provision.

By way of background, Article XIII A of the California Constitution,¹ which was added to the Constitution by the electorate's approval of Proposition 13 at the June 6, 1978, statewide primary election, sets forth a two-thirds vote requirement for certain measures increasing state taxes, as part of an interdependent and interrelated system of provisions necessary for effective real property tax relief (Sec. 3, Art. XIII A; see *Amador Valley Joint Union High School Dist. v. State Board of Equalization* (1978) 22 Cal.3d 208, 231 (hereafter *Amador*)). In particular, Section 3 of Article XIII A requires certain changes in state taxes, "enacted for the purpose of increasing revenues collected pursuant thereto," to be passed by a two-thirds vote of the membership in each house of the Legislature, and reads as follows:

"Section 3. From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on

¹ All further article references are to the California Constitution, unless otherwise specified.

real property, or sales or transaction taxes on the sales of real property may be imposed.” (Emphasis added.)

Consistent with its finding that Article XIII A establishes a system of tax relief, the California Supreme Court has held that, because any tax savings resulting from the operation of the property tax limitation sections could be withdrawn or depleted by additional or increased state or local levies of other than property taxes, the sections in Article XIII A relating to state taxes and local special taxes combine to place restrictions upon the imposition of those taxes (*Amador*, supra, at p. 231). Thus, the state tax provisions of Section 3 of Article XIII A must be read in light of the intent of the article to generally limit increases in tax revenues.

However, reading the legislative two-thirds vote requirement of Section 3 of Article XIII A in light of this intent does not compel a specific construction of any of those terms or phrases, used in that requirement, that are not defined by Section 3 or any other section of Article XIII A. Specifically, neither the term “state taxes” nor the larger, inclusive term “changes in state taxes,” as used in Section 3 of Article XIII A, is expressly defined. In connection with the latter term, while the express language of Section 3 of Article XIII A indicates that “changes in state taxes” include changes in state tax rates or changes in the method of computing state taxes, Article XIII A does not specify the scope of those categories of changes or whether “changes in state taxes” consist exclusively of changes in those categories. Furthermore, neither Section 3 nor any other section of Article XIII A specifies those factors that identify those “changes in state taxes” that are “enacted for the purpose of increasing revenues collected thereto.”

As a general rule, taxes are the enforced proportional contribution of persons and property for the support of the government (see *McHenry v. Downer* (1897) 116 Cal. 20, 24). Further, taxes are a compulsory exaction that a government enforces generally on persons or property within its jurisdiction for the purpose of supplying public necessities (see *People ex rel. Attorney Gen. v. Naglee* (1850) 1 Cal. 232, 253). The validity or enforcement of a tax does not depend upon either the individual assent (*Dranga v. Rowe* (1900) 127 Cal. 506, 509, overruled in part for other reasons in *Holland v. Hotchkiss* (1912) 162 Cal. 366, 372-373) or the contractual assent of the taxpayer (*Linnell v. State Dep’t of Finance* (1962) 203 Cal.App.2d 465, 469). It logically follows, therefore, that “state taxes” are those taxes that are a compulsory exaction that state government enforces generally on persons or property within the state for the support of state programs and services.

With respect to the meaning of the term “changes in state taxes,” Section 3 of Article XIII A expressly refers to “changes in state taxes” enacted “whether by increased rates or changes in methods of computation.” In our view, “changes in state taxes” referenced in Section 3 of Article XIII A include changes in law with respect to determining state tax liabilities. In this connection, types of changes that do not modify the rate or method of computation of state taxes or affect the determination of tax liability do not qualify as “changes in state taxes,” as contemplated by Section 3 of Article XIII A. For example, changes with respect to the administration of taxes or timing issues involving payments of taxes are not “changes in state taxes” within the meaning of Section 3 of Article XIII A because those changes do not directly

relate to the provisions affecting the determination of tax liability. To construe “changes in state taxes” as being changes in law that modify determinations of state tax liabilities is consistent with the general purpose of Article XIII A to limit increases in tax revenues.

With respect to the phrase “for purposes of increasing revenues collected pursuant thereto,” the Legislature’s consistent practice of almost 30 years, for purposes of determining the vote requirement for tax legislation, has been to determine whether “changes in state taxes” proposed by a bill would be “enacted for purposes of increasing revenues collected thereto” on the basis of whether those changes in state taxes would, considered in their entirety, result in a cumulative net increase in state tax revenues.

Principles of construction applicable to statutes are also generally applicable to constitutions (see *Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal.3d 402, 407; *Hyatt v. Allen* (1880) 54 Cal. 353, 356) and, whenever possible, effect should be given to a statute as a whole, and to its every word, phrase, and clause, so that no provision will be useless or meaningless (*People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 638). Also, any construction implying that words were used in vain or are surplusage is to be avoided (*People v. Gilbert* (1969) 1 Cal.3d 475; *Prager v. Isreal* (1940) 15 Cal.2d 89). In our view, to read Section 3 of Article XIII A as requiring a two-thirds vote of each house of the Legislature for the passage of any bill containing an increase in any state tax, without regard to the overall revenue impact of all of the changes made by that bill in the rate or method of computation of state taxes, would violate these principles of construction by treating as surplusage the phrase “for the purpose of increasing revenues collected” contained in that section.

Further, if the proponents of Proposition 13 had intended that the two-thirds vote requirement of Section 3 of Article XIII A apply to any single change in the rate or method of computation of any state tax that increases any tax on any person, without regard to whether all of the changes made by the proposing measure in the rate or method of computation of state taxes would, considered in their entirety, increase revenues collected pursuant to state taxes, those provisions could have been written to expressly so provide. The fact that the proponents did not expressly provide for that application in the wording of Section 3 of Article XIII A suggests, in our view, that such an application was not intended.

Our conclusion is well supported by events that have occurred since the adoption of Article XIII A. Subsequent to the adoption of that article, two proposals, a legislative constitutional amendment and a constitutional initiative, sought to revise the language of Section 3 of Article XIII A, so as to make the two-thirds vote requirement expressly applicable to any bill containing any change, in the rate or method of computation of state taxes, that results in an increase in tax revenues, irrespective of the overall effect on the state tax revenues of all of the state tax changes of that nature to be made by the bill. However, Assembly Constitutional Amendment No. 53 of the 1983-84 Regular Session was not approved by the Legislature (Assm. Fin. Hist. 1983-84, at p. 2464), and Proposition 36 was defeated by the voters at the November 6, 1984, statewide general election. Each of those measures would have amended Section 3 of Article XIII A to revise the two-thirds vote requirement in an identical manner, including the removal of the phrase “for the purpose of increasing revenues.”

Specifically, Section 6 of Proposition 36 would have amended Section 3 of Article XIII A as follows, with added language shown in underscore, and deleted language shown in strikeout:

~~Section Sec. 3. From On~~ and after the effective date of this article August 15, 1983, any ~~changes~~ new tax or any change in state taxes ~~any tax~~ enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation ~~must~~ or authorized by the Legislature which increases the amount of any tax levied upon any taxpayer, including but not limited to the imposition of a new tax, an increase in the rate of a tax, a change in the method of computation of a tax or a change in the taxpayers subject to such tax, may be imposed only by an ~~Act~~ act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that, other than the one percent (1%) tax referred to in Section 1(a), no new or increased ad valorem taxes tax on real property, or other tax on or based upon the ownership of real property, or sales or transaction taxes tax on the sales sale or lease of real property, may be imposed."

The ballot analysis of Proposition 36 prepared by the Legislative Analyst stated, in part, that the measure provided that, on or after a specific date, the Legislature could not impose any new tax or make changes in any existing tax that would increase the amount of any tax paid by any taxpayer, unless it did so through an act approved by a two-thirds vote of each house of the Legislature (see California Ballot Pamphlet, November 6, 1984, statewide general election, at p. 67). The ballot analysis also stated that, because Section 3 of Article XIII A already provided that any new or increased state taxes could be imposed only through legislation enacted by a two-thirds vote of each house of the Legislature (Id., at p. 42), the amended version of Section 3 proposed by Proposition 36 was apparently intended to extend the application of Section 3 to state tax legislation "... which increases some taxes and decreases others ... even if on balance the legislation resulted in no net revenue gain" (Id., at p. 67). The ballot analysis cited the interpretation by the Legislature inherent in its practice of treating bills that do not increase state revenues as requiring only a majority vote.

A similarly unsuccessful initiative measure, Proposition 136, which was placed before the voters at the November 6, 1990, statewide general election, would have repealed existing Section 3 of Article XIII A and added a new Section 3 without the phrase "for the purpose of increasing revenues." The California Ballot Pamphlet containing that measure included a ballot analysis of the provisions of Section 3 of Article XIII A that is similar to the analysis prepared for Proposition 36. The ballot analysis for Proposition 136 reads, in pertinent part, as follows:

"If the Legislature increases or imposes new state taxes for the purposes of raising revenue, it must do so with a two-thirds vote. However, changes in the tax law which, on balance, do not raise state revenues may be approved by a majority vote." (California Ballot Pamphlet, Nov. 6, 1990, statewide general election, at p. 52).

Constitutional provisions adopted by the people are to be interpreted to effectuate the voters' intent (*Davis v. City of Berkeley* (1990) 51 Cal.3d 227, 234), and if that intent is clear there is no room for further judicial interpretation (*People v. Taylor* (1986) 180 Cal.App.3d 622, 631). However, if a constitutional provision may have either of two meanings, it is a fundamental rule of statutory construction that if the Legislature has adopted one, its action in this respect is nearly, if not completely, controlling (*Arcadia Redevelopment Agency v. Ikemoto* (1993) 16 Cal.App.4th 444, 452). In this instance, the practice of the Legislature of enacting bills that have no net increase in taxes by a simple majority of the Members of each house has been in effect since 1978, when Proposition 13 was adopted. Even if there was some ambiguity as to what Section 3 of Article XIII A required, ambiguities frequently may be resolved by the contemporaneous construction of the Legislature or of the administrative agencies charged with the implementation of the new enactment (*Amador*, supra, at p. 245). Once the Legislature has construed a provision of the Constitution, for the courts to place a different construction on it means that the court must declare the Legislature's action void, and the court should not and must not annul a statute passed by the Legislature unless it can be said the statute is positively and certainly opposed to the Constitution (*Arcadia Redevelopment Agency v. Ikemoto*, supra, at pp. 452-453).

In view of the above discussion, we conclude that a bill that has the effect of both increasing and decreasing revenues to the state, by changing the rate or the method of computation of one or more state taxes, requires for passage a two-thirds vote of the membership of each house of the Legislature if the result of the various changes in state taxes, when considered in their entirety, is a net revenue gain in state revenues.

In ascertaining the net revenue effect of tax legislation, the Legislature generally utilizes, and thus relies upon, revenue estimates prepared and submitted to the various committees by the Franchise Tax Board and the State Board of Equalization. In our view, that practice is reasonable and, for purposes of determining the probable final fiscal effect of a measure, would not generally be disturbed by the courts even if, subsequent to enactment, the estimates are determined to be inaccurate due to the fact that the economic assumptions upon which they are based, although reasonable at the time the estimates are prepared, are not realized. This office does not make revenue estimates, but, in accordance with the practice indicated above, considers estimates prepared by the state tax boards.

Moreover, this office continually reviews bills that have provisions changing state taxes that increase and decrease revenues and the fiscal analyses prepared for those bills, in order to stay abreast of current revenue estimates. The cover letter this office sends with those bills that have state tax provisions that both increase and decrease revenues states that "if additional facts are presented to indicate that the net effect of the bill is to increase revenues, a two-thirds vote will be required for passage of the bill." The consistent policy and practice of this office since the adoption of Article XIII A has been to revise the vote key of any bill impacting state tax revenues from majority to two-thirds based upon estimates from the appropriate state tax board indicating that the net fiscal effect of the bill is to increase those revenues.

Furthermore, as to the specific manner in which revenue estimates are applied for purposes of Section 3 of Article XIII A, the Legislature's determination of whether changes in

state taxes are enacted for the purpose of increasing revenues derived from those taxes has historically been based upon, and applied by this office in light of, several precepts. First, it has been our view that, in determining whether the overall effect of particular legislation is to increase state tax revenues so as to subject the legislation to the two-thirds vote requirement imposed by Section 3 of Article XIII A, the legislation must be evaluated in terms of the total operation of its provisions that change the rate, base, or method of computation of state taxes. Thus, we think that the evaluation is required to take into consideration all of those provisions contained in the particular legislation, including those that would affect the duration for which the provisions making changes in state taxes are operative, such as provisions that would limit the time period for which a specific tax reduction or increase is operative. Conversely, speculative factors apart from the legislation itself, such as behavioral changes of taxpayers, provisions contained in other pending legislation affecting the same tax or taxes, and possible changes in the same tax or taxes that could be enacted in future legislation, have been excluded from that evaluation.

Moreover, it has been our opinion that the evaluation should attach greater significance to the revenue estimates pertaining to the initial year or years of the legislation's operation, inasmuch as revenue estimates are necessarily more speculative the further into the future they are projected. Also, our position has been that the evaluation must be cognizant of the fact that most financial considerations and operations of the state, the state budget, and most of the revenue estimates utilized by the Legislature in its decisionmaking process are based upon a 12-month fiscal year commencing on July 1 and ending on June 30, and are also based upon a taxable year with respect to personal income taxes and corporation franchise and income taxes. Furthermore, our position has been that the evaluation must be cognizant of the use and role of state tax changes in connection with multiyear concerns.

Thus, in our view, the following general rule is a reasonable and practical synthesis of the considerations and conclusions discussed above: Section 3 of Article XIII A requires a two-thirds vote for the passage of tax legislation that would produce a cumulative net revenue gain either for all years the provisions of the bill that change the rate or method of computation of one or more state taxes will be in operation,² or for the period that begins at the time the bill first commences operation and ends at the close of the first full calendar, fiscal, or taxable year, as applicable, in which all provisions of the bill involving a change in the rate or method of

² As to how a state tax board revenue estimate of the net revenue effect of tax legislation is utilized to determine the revenue effect of that legislation for all the years that the provisions of that bill that change state taxes will be in operation, we point out that a state tax board revenue estimate for tax legislation is typically made only for the first three years for which that legislation would be operative, and otherwise for no more than the first five years for which that legislation would be operative. Thus, in determining the net revenue effect of changes in state taxes proposed in a single bill for all the years for which those changes would be operative, this office typically relies upon a revenue estimate for a three-year period and, otherwise, for no more than a five-year period.

computation of state taxes are operative. Accordingly, the two-thirds vote requirement of Section 3 of Article XIII A does not apply to a tax measure unless the measure changes a rate or method of computation of one or more state taxes, and those changes, considered in their entirety, result in a cumulative net increase in state revenues either over the period ending with the first full year long cycle to which those changes apply, or over the entire period of operation of those changes. Stated alternatively, we think that a tax bill is not subject to the two-thirds vote requirement if the cumulative effect of the "changes in state taxes," within the meaning of Section 3 of Article XIII A, proposed by the bill, when considered in their entirety, would be neutral or would produce a net decrease in state tax revenues over both the period ending with the first full year long cycle to which those changes apply, and the entire period of operation of those changes.

Very truly yours,

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