

How to Defeat Local Sales Taxes

HOWARD JARVIS TAXPAYERS ASSOCIATION

BACKGROUND

Californians have been paying sales taxes since 1933 when the total tax rate was just 2.50%. Sales tax rates have been steadily increasing ever since, with combined state and local sales tax rates beginning to approach 10% in some local jurisdictions.

The combined sales tax rate that taxpayers pay is a combination of tax rates imposed by the State, uniform local tax rates imposed by cities and counties (known as the Bradley-Burns Uniform Local Sales and Use Tax Law which was enacted in 1955), and additional local voter approved sales tax rate increases such as for transportation. It is the local voter approved sales tax rate increases that have resulted in variations in combined sales tax rates throughout California.

Statutory authorization by the Legislature is generally required for a local government to impose a local sales tax increase. The tax authorizing statutes may set forth additional conditions applicable to the imposition of a local sales tax. This often includes a condition that a *two-thirds* vote of the governing body is required to place a sales tax

measure on the ballot. Taxpayers should review the applicable tax authorization statutes to verify that the local government has complied with all applicable conditions. Most of the applicable statutes are contained in the California Revenue and Taxation Code. The California codes can be viewed online at the website of the California Legislature at: <http://www.legislature.ca.gov>.

Sales tax proceeds can be spent on operating expenses such as the salaries of personnel. Sales tax proceeds are typically used to fund local government services and programs like public safety or libraries, but can also be used to finance public improvements such as for transportation.

Local sales taxes are subject to voter approval pursuant to taxpayer protection initiatives approved by California voters over the years. Whether a simple majority or a two-thirds vote is required depends upon the nature of the tax. General taxes (taxes imposed for general governmental purposes) are subject to simple majority voter approval. Special taxes (taxes imposed for specific purposes, including taxes imposed for specific purposes which are placed into a general fund) are subject to two-thirds voter approval. *Any* tax imposed by a special purpose district or agency is a special tax subject to two-thirds voter approval.

In an effort to circumvent the two-thirds vote requirement for special taxes, some cities and counties have placed majority vote general sales tax increase measures on the ballot along with a companion *advisory* measure “advising” local officials how to spend the tax proceeds *without* actually legally dedicating the tax proceeds for the “advised” purposes. With this strategy, local officials can spend the tax proceeds *any way they want* and are *not legally bound* by the contents of the companion advisory measure.

The foregoing is nothing more than a blatant attempt by local government officials to circumvent the two-thirds vote requirement for special taxes and this also circumvents state accountability laws designed to ensure that taxes imposed for specific purposes are spent as intended. If taxpayers encounter such a strategy in their local jurisdiction, they should *fully expose* to local voters what their local govern-

ment officials are doing. Once local voters find out what is going on, these tax increase proposals usually go down to defeat.

THE PROBLEM

There has been a significant increase in the number of sales tax measures being proposed by local government agencies. Many existing voter approved sales taxes are also coming up for renewal, especially sales taxes dedicated for transportation purposes.

It is no longer uncommon for taxpayers to pay higher sales taxes imposed by *several* local government agencies. Some local government agencies have even imposed *more than one* sales tax within their jurisdiction.

Local governments have been placing sales tax measures on the ballot in response to alleged “budgetary problems.” Such “budgetary problems” are often a result of wasteful or excessive spending by local government officials, including high pension costs and excessive personnel costs. Local governments also like to play budgetary shell games in which they place a sales tax measure on the ballot to fund a politically popular purpose, and if the tax passes, it would enable the local government to free up money from the general fund that can then be spent on the pet projects or programs of local politicians.

Sales taxes are very regressive taxes that tend to disproportionately burden the poor. There is often little or no relationship between the amount of increased sales taxes paid and the benefits received by the taxpayer. Local sales tax rate increases create geographical variations in sales tax rates which place local businesses at a competitive disadvantage. Local sales tax increases also result in local governments increasing their reliance on the sales tax as a revenue source, which tends to be an unstable revenue source and also tends to cause local governments to make poor land use decisions in an effort to maximize sales tax revenues.

The passage of SB 566 in 2003 (Chapter 709, Statutes of 2003) has resulted in a significant increase in the number of local sales tax

measures on the ballot. This new law, which became effective on January 1, 2004, authorizes *all* California cities to impose additional local sales taxes. Counties already had the authority to levy a local sales tax on a countywide basis, but SB 566 *significantly* expanded local sales tax authority by allowing *any city* within a county to impose additional sales taxes. SB 566 *also* increased the maximum aggregate local sales tax rate (the so-called “rate cap”) that can be imposed.

What made SB 566 particularly frustrating for taxpayers was that it was snuck through the Legislature near the end of the legislative session on a highly partisan vote without appropriate public scrutiny, and was signed into law by Gray Davis *after* the election in which he was recalled from office.

THE CHALLENGE

In order to stop the deluge of sales taxes being imposed by local governments, taxpayers must defend themselves and take a *more active role* in opposing these taxes when they appear on the ballot in their local community.

Opposing and defeating a sales tax is often not easy, even when a two-thirds vote is required to pass the tax. First of all, the tax proponents will be well organized and will usually have extensive financial and manpower resources at their disposal. Large campaign contributions frequently come from special interest groups that have a vested financial interest in passing a sales tax, such as local public employee unions. Many in the local business community are also frequently supportive of local sales tax measures, especially sales taxes for transportation purposes.

Local governments also frequently hire expensive consultants (at taxpayer expense) to tell them the best way to pass a sales tax. These consultants sometimes advise local officials *not* to publicize the sales tax election to the entire community, but to target only their supporters. This means running a stealth election, communicating only with known tax supporters.

Since it is illegal for local officials to use public resources (including public funds) to urge a vote for or against a ballot measure, consultants frequently counsel sales tax supporters on the best way to wage “information” or “education” campaigns. This often means putting up signs or sending out material stating all the “good things” a sales tax would do, but stopping just short of telling people how to vote. These tactics sometimes occur even before a tax is officially placed on the ballot.

Sales tax supporters also like to frequently engage in scare tactics to enhance their chances of passing a tax measure. Tax supporters attempt to “scare” voters into supporting a tax increase. Such scare tactics are frequently observed with sales tax measures for public safety, transportation, and public health. Taxpayers should neither tolerate nor be intimidated by such scare tactics.

When addressing the public, sales tax backers are frequently encouraged to put the annual cost in simple, friendly sounding terms that usually begin with “it’s only.” “It’s only a few cents a day,” or “it’s only a few dollars per month.” Officials try to make it sound like the coming sales tax increase is trivial and that anyone who is opposed must be a cheapskate.

Newspapers can be another problem for taxpayers. While editors at a few papers may be sympathetic to the taxpayers’ cause, the vast majority of newspapers are almost universally hostile and will support most sales tax increases proposed by local governments regardless of merit.

It is *important* for taxpayers to prevent local sales taxes from being *initially* imposed. Although many sales taxes are imposed for a fixed period of time, statistics reveal that the vast majority of sales taxes initially approved by voters are subsequently placed on the ballot by the local government in order to extend (renew) the tax.

Thus, most sales taxes that are initially approved effectively become *permanent*, and taxpayers should be very wary of claims made by tax proponents that a tax is a “temporary solution” to a funding “problem.” Taxpayers must expect any “temporary” sales tax that is

approved *will* be submitted to the voters for extension at some point in the future.

TAKE ACTION!

While the deck may be stacked against taxpayers, should taxpayers give up? *Absolutely not!* Local sales taxes *can* be defeated *if* opponents are willing to work, but it will take hard work.

MONITOR LOCAL SALES TAX PROPOSALS

The first step is to monitor news from local government agencies within your community. Try to find out in advance if local officials are considering placing a sales tax on the ballot. The local newspaper is one source of information. Another is calling the administrative offices of local government agencies in your community. They should be able to tell you the agenda for any upcoming governing board meetings of the agency. Upcoming agendas may also be posted on the website of a local government agency (if it has one), so you may also want to visit the website of the local government agency.

If you learn that a sales tax will be discussed, alert friends and neighbors to the fact that taxes may be going up and encourage them to join you in attending the local governing board meetings at which the sales tax is discussed. Take advantage of the public comment portion of the meeting to express your concerns and objections.

SUBMIT A BALLOT ARGUMENT

If a local government agency (or agencies) within your community decides to place a sales tax on the ballot, you should write and submit an argument against the measure for publication in the voter information pamphlet that will be sent to all voters residing within the agency. The ballot opposition argument is often the *only* opportunity sales tax opponents will have to reach *all* voters within the jurisdiction to make their case against the sales tax.

Start by contacting the clerk of the governing board of the agency that has placed the sales tax measure on the ballot. The clerk should be able to help you obtain the written rules covering all local requirements for submitting ballot arguments.

You should also contact the applicable local elections official in charge of conducting the election for requirements applicable to submitting ballot arguments. Under California law, *county* election officials (generally the county registrar of voters) conduct nearly all school and community college district elections, special district elections, and county elections. For cities, an election may be conducted either by the local city clerk or by county election officials (typically when a municipal election is consolidated with a statewide election).

Independent verification of the applicable legal requirements is always advisable. California Elections Code sections setting forth ballot argument requirements can be viewed online at the website of the California Legislature at: <http://www.legislature.ca.gov>. It is important to follow *all* requirements applicable to the drafting and submission of ballot arguments since the failure to do so can result in election officials *not* accepting an argument for publication.

Note that more than 100 cities in California are known as charter cities that have their own charter (like a local constitution) setting forth the government structure of the city. Charter cities can have their own requirements applicable to ballot arguments (and other election procedures) that may either be in addition to or supersede the provisions of the California Elections Code. If a city sales tax is being proposed in a charter city (most large cities in California are charter cities -- check with the local city clerk to determine if you live in a charter city), then it is important to make certain that you comply with any applicable local election requirements.

Under California law, arguments submitted by public officials are generally given first priority, followed by citizen groups, and then followed by individual voters. However, it is rare to see public officials submitting arguments against new spending.

Be sure to find out when the arguments are due. Contact your local elections official for the ballot argument deadline. The deadline is generally set by local election officials.

It is very important to note that the initial ballot arguments are generally due shortly after the deadline for placing a measure on the ballot, which is usually some *three months* prior to the election. Hence, you must move *quickly* after a sales tax measure is placed on the ballot in order to write and submit a ballot argument in a timely manner.

Sales tax supporters will be given an opportunity to rebut an opposition argument, but sales tax opponents will also be given the opportunity to rebut the ballot argument of the sales tax supporters. The rebuttal arguments are generally due 10 days after the deadline for filing the initial arguments. Note that in some cities, including some charter cities, there is no provision for rebuttal arguments. In such cities, only the initial arguments appear on the ballot.

Arguments can generally be signed by up to five persons. If possible, recruit others to sign. Officers or members of local homeowner, neighborhood, or taxpayers associations are good candidates. If none of these are available, don't hesitate to have signers use the title "homeowner" or "taxpayer."

In ballot arguments it is *not* a good idea to attack the local agency or local officials without pointing to *specific* acts of mismanagement (or questionable expenditures) that demonstrate that local board members are unqualified to handle (or are undeserving to receive) the additional money a sales tax would provide.

Be sure you are able to document any and all accusations or incidents included in an argument. If an argument is challenged in court, sales tax opponents do not want to risk having a judge rule that the argument is "false and misleading" and have it removed from the ballot or otherwise modified. If this occurs, those submitting a "false and misleading" argument may be liable for court costs and even the attorney fees for the other side that challenged the argument.

If the local agency has passed other tax increases and/or bonds recently, mention this as evidence that the sales tax may be unnecessary or too burdensome on taxpayers. Note that it is not uncommon for a local government placing a sales tax measure on the ballot to have previously passed one or more tax increases (including bond measures involving property tax increases) in recent years.

Incidents of excessive or wasteful spending should be reviewed and exposed to the voters. Many local governments have incurred substantial cost increases over the past few years in such areas as salary increases, substantial overtime costs, and excessive benefits to public employees. Increased pension costs have been especially acute in some local jurisdictions. Some local governments seek to pass through these costs to taxpayers in the form of higher taxes. If such cost increases have become a problem within a particular local jurisdiction, they must be exposed to the voters.

Arguments are usually limited to about 300 words and rebuttals to 250 words. Arguments should always be clear, simple, and direct. They do not have to be the maximum length allowed.

There is generally no charge to file an opposition argument or a rebuttal argument. Costs of printing the ballot arguments are generally paid by the local agency as an election cost.

GET THE WORD OUT

Every political movement begins with only a few people. Your friends, neighbors, relatives, co-workers, fellow club members, and members of homeowner associations are always an excellent source of support for taxpayer issues. Share the information you gather with them. Many people don't keep up with what is happening in politics, especially local politics, but it is a rare person who doesn't want to know if their taxes are about to go up. Once people are informed, the word will spread.

ASK FOR VOLUNTEERS

Some people will be willing to volunteer their time to help fight a sales tax. Make up a fact sheet that describes the issues and ask them to distribute copies in their neighborhoods. When making up a fact sheet, just like the ballot argument, make it clear, simple, and direct. Try and limit the length to one page, and use a type size that is large enough for voters to read, especially for those voters who are senior citizens.

For those who are less ambitious, set a realistic goal. Ask them to talk to, before election day, at least five other voters who reside within the territory of the local agency. Keep the discussion short and simple, and focus on the key arguments for opposing the sales tax.

LETTERS TO THE EDITOR

Another cost-effective way to get out the word and help protect taxpayers is through letters to the editor in your local newspaper. Reader surveys show that the letters to the editor section is one of the most read sections of the newspaper. It is an excellent forum for taxpayers because it allows you to bypass reporters and editors and to express your message directly.

The following are some suggestions for writing and submitting letters to the editor :

- Keep your letter short and to the point – 250 words maximum. Follow any applicable word limit that the newspaper may have.
- Stick to making one or two major points in your letter.
- Tying the letter to a recent story in the newspaper will increase the chances it will be published. If the newspaper editorializes on the sales tax, either for or against, consider this too an opportunity to send in a letter to the editor.

FORM AN OPPOSITION CAMPAIGN

Consider forming an opposition campaign (or joining the campaign if one has already been formed), especially if it appears that there is widespread community opposition to a sales tax. A formal opposition campaign can enhance the credibility of the opposition which can lead to such things as greater newspaper coverage and participation in campaign forums. A formal campaign can also help to focus and coordinate the activities of those who are against the sales tax, including the receipt of campaign contributions.

Note that under the California Political Reform Act, campaign filing obligations will generally be incurred if \$1,000 or more is received or spent in a calendar year in connection with opposing a local ballot measure. For additional information and/or forms in connection with campaign filing obligations, you can contact the local elections official responsible for conducting the sales tax election. You can also contact the California Fair Political Practices Commission. The FPPC website is at: <http://www.fppc.ca.gov>.

CAMPAIGN FORUMS

Campaign forums are often held in connection with a local sales tax measure. At such forums, the proponents and the opponents have an opportunity to present their case to the public and debate the merits of the sales tax measure. Such forums are often covered by local newspapers and are sometimes televised on local cable television.

Consider participating in a campaign forum if one has been scheduled. It is a cost-effective way to make your case to the electorate. It is important to make certain that you are adequately prepared on the issues. Strong preparation will enhance the chances of success.

Note, however, that the proponents of some local sales tax measures do not want to schedule campaign forums for the very reason that it might give “undue” public attention to the measure, or give sales tax opponents a forum to make their case. If there is a formal opposition campaign, the opponents should not hesitate to push for a

campaign forum if one has not been scheduled, or if the sales tax proponents refuse to debate the merits of a sales tax measure.

RADIO TALK SHOWS

Radio talk shows are another excellent way to get the message out. By calling programs devoted to current affairs and politics, your views will be heard by thousands of potential voters. This approach can be particularly effective in some of the larger local government agencies that have a sales tax measure on the ballot, especially with respect to countywide sales tax measures.

It is best for callers to be prepared on the issues surrounding the sales tax, especially the specific issues under discussion, before calling a program. This may necessitate quickly reviewing such items as fact sheets, the text of the ballot measure, or the ballot pamphlet before calling in.

EDITORIAL REBUTTALS

Local radio stations that air editorial comment usually offer free time to members of the public with differing viewpoints. Individuals selected by the stations are usually those who call first and can demonstrate knowledge of the issue. As a taxpayer, you are as qualified to talk about tax issues as any other citizen.

WHAT ELSE CAN TAXPAYERS DO?

SUPPORT GOOD LOCAL CANDIDATES

An excellent way to help taxpayers is to become involved in local government elections such as for the local city council and the county board of supervisors. Find out where the various candidates stand on taxation issues and support only those candidates who pledge to *oppose* local tax increases. Remember, placing a sales tax measure on the bal-

lot is a *discretionary political act* by a local government in which at least a majority of the governing body votes to support a local tax increase. Unfortunately, too many local elected officials believe that raising taxes is an acceptable “solution” to a budgetary “problem.”

PURSUE A LOCAL INITIATIVE TO REDUCE OR REPEAL A LOCAL SALES TAX

In 1996, California voters overwhelmingly approved Proposition 218 (known as the “Right to Vote on Taxes Act”), an initiative constitutional amendment sponsored by the Howard Jarvis Taxpayers Association. Besides giving voters the constitutional right to vote on all local government tax increases, Proposition 218 also included provisions (Section 3 of Article XIII C of the California Constitution) allowing local voters to use the *initiative* power to *reduce or repeal* local government taxes. This includes local sales taxes.

Under Proposition 218, local tax initiatives are generally subject to a *reduced* signature gathering requirement which is set at 5% of the local votes for all candidates for Governor at the last gubernatorial election. This number is *approximately* equal to 3% of the registered voters.

If a local sales tax passes by a very close margin, or if local taxpayers are otherwise unhappy with a voter approved local sales tax, then a tax reduction or repeal initiative can be pursued under the provisions of Proposition 218. Such local initiatives are generally the *only* tool taxpayers have to *reduce* the tax burden within their community since it is rare for local elected officials to voluntarily reduce or repeal taxes once they have been imposed.

Local initiative procedures are generally set forth in the California Elections Code. Elections Code sections can be viewed online at the website of the California Legislature at: <http://www.legislature.ca.gov>. Charter cities often have their own separate procedures for the exercise of the local initiative power.

The proponents of a tax reduction or repeal initiative must follow all procedures applicable to the exercise of the local initiative power without deviation. Failure to follow all procedures can result in a measure not being placed on the ballot, even if a sufficient number of signatures have been obtained. Once placed on the ballot, local tax reduction or repeal initiatives are subject to majority vote approval.

START A LOCAL TAXPAYER ORGANIZATION

As you work, you are likely to find that others are as fed up as you are with out-of-control spending and the little respect most local officials and bureaucrats show for the taxpayer. Consider forming your own local taxpayer group to coordinate efforts in dealing with city councils or county boards of supervisors, as well as school boards and special district governing boards. If you start with only a few members, don't worry. As local tax issues become more prominent, membership will expand.

JOIN HJTA

Join the Howard Jarvis Taxpayers Association. HJTA is the State's foremost taxpayer advocacy organization. HJTA is dedicated to the protection of Proposition 13 and the advancement of taxpayers' rights. Your membership will assure that you are kept informed of developing issues that concern taxpayers throughout the state. In addition, HJTA can assist local individuals and groups with political advice and legal opinions that can be invaluable in local battles against unreasonable taxation. You can visit the HJTA website at: <http://www.hjta.org>.

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