

California Commentary

The “Container Tax:” Just Another Proposition 13 Avoidance Scheme

By Jon Coupal

Now that football season has begun, optimistic fans dream of winning the big game and a world championship. Coaches devise game plans that will keep the opposing team off balance and maximize their chances of victory. For the unlucky teams who don't have the best talent, deception and misdirection plays are the only chance they have to succeed.

The same is true in the California Legislature. The beginning of games on the gridiron also signals the end of games under the Capitol dome, where politicians seek to gain advantage with creative scheming and an assortment of trick plays. The legislative “end run” is one of the most popular tactics in the political playbook.

One egregious example is the recent passage of a half-billion dollar container tax. The bill, which would amount to a massive new consumer tax, now sits on Governor Arnold Schwarzenegger's desk, awaiting a swift veto by a leader who has rightly stood firm against all new taxes.

Senate Bill 927, authored by State Senator Alan Lowenthal attempts an end run around the people of California, Proposition 13, and the Constitution. How so? The purpose of this bill is to impose a “fee” on every shipping container off-loaded in the Los Angeles and Long Beach Ports. Revenue from the fund would, ostensibly, be used to improve the rail system, enhance port

security, and mitigate the environmental pollution which results from the transport of these containers.

But is this new levy really a “fee” with a close connection between the fee payer and the regulatory program sought to be financed? Of course not. This is just another transparent attempt by government to collect more revenue just because it can.

The real clue that this proposed “fee” is a tax is clear from the language of the bill itself. In order to qualify as a true fee, we have to know, with some specificity, what it is that the fee will be paying for. General categories of expenditure are not sufficient and strongly suggest that the money will disappear into the various black holes of government bureaucracies.

In this case, it is even *worse*. Various agencies are asked to come up with lists of projects that should be funded. This is backwards. In order to qualify as a true fee, the projects should be known in advance. That way, the legitimacy of the fee can be tested against the actual government programs or improvements sought to be financed. Excuse us if we don't trust government, but when it comes to legitimate “fees,” government has a *horrible* track record.

Supporters of the new tax return to the argument that more revenue is needed to increase safety at ports and build new infrastructure to

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keep goods moving. If that is true, then why not simply follow the law which requires that new taxes be voted on by the people? Tax increases have been approved by voters throughout California, including conservative Orange County to liberal San Francisco. The people of California are smart and have demonstrated their willingness to invest when there is a need. Container tax proponents should have a greater trust in the people and a willingness to make the case that their proposal is needed and appropriate.

Unfortunately, a straightforward approach is no longer the way state and local politicians play the game. Over the past five years, the California Legislature and local government have tried to raise more than *\$7 Billion* in new taxes using creative strategies like the legislative end run.

The good news is that the Governor has already affirmed his opposition to new taxes and underscored his commitment to protecting jobs and the economy. He has zealously promoted California agriculture to the world. If this measure becomes law, California's economic competitiveness would be damaged as other ports in competing states and countries would immediately capitalize on the increased transportation costs of doing business with California.

Meanwhile, the precedent established by passing an illegal tax would open the door to new taxes of all kinds, passed *without* a vote of the people. Indeed, new supposed "fees" have already been proposed on just about everything imaginable — on phone bills, electric bills, beer, bottled water, wine, soda, diapers, prescription drugs, health care facilities, bicycles, and groceries (even on grocery bags themselves)!

The Legislature has failed to call a tax a tax. Senate Bill 927's "user fee" is a *tax* — and not an insignificant one either. It should be spiked by

Governor Schwarzenegger before it can harm California families who deserve better.

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