

# California Commentary

## Dead Parrots and Tax Increases

By Jon Coupal

In a classic *Monty Python* sketch, a man is duped into buying a dead parrot from a pet shop. He quickly discovers the expired nature of his purchase and returns to the shop demanding a refund. There, the owner of the shop tries to convince him that the bird is not dead. Finally, in complete exasperation, the buyer emphatically tells the owner that the parrot, “. . . Has passed on. This parrot is no more! It has ceased to be! It’s expired and gone to meet its maker. This is a late parrot. It’s a stiff. Bereft of life, it rests in peace, if you hadn’t nailed it to the perch it would be pushing up the daisies! This is an ex-parrot!”

We feel a bit like the buyer of the dead parrot when we are told by the Schwarzenegger administration that the tax on employers to pay for health care really isn’t a tax, but is really a “fee.”

We *know* taxes. We have dealt with them for our entire professional careers. Without any doubt, the proposed exaction on employers is a *tax*.

The “exaction,” to be precise, is the 4% payroll tax (excuse us, “fee”) imposed on businesses which do not currently provide health care coverage. In a perfect world, all California businesses would flourish in an environment relatively free of government interference and thus could probably afford to provide health insurance. But this is California. For small businesses in particular, the environment feels like

being on the top of Mount Whitney in the middle of winter wearing a T-shirt. Some businesses might survive this new tax increase. Many will not.

That the Governor would jump so quickly on a tax increase that will hurt the economy is surprising. He deserves substantial credit for recognizing — and tackling — the whole workers’ compensation mess. And he has certainly presided over a rebounding economy which has led to record low unemployment and record high tax revenues (with a bit of help from the Bush tax cuts, thank you). But what the Terminator giveth, the Terminator can taketh away.

Perhaps we would not be so offended if there were a bit more intellectual honesty here. If you are going to raise a tax, please say so. But do not attempt to cover this tax increase with the fig leaf nomenclature of a “fee.” A *true* “fee” is an exaction on a person or business in exchange for a direct benefit to the fee payer, to mitigate a harm caused by the fee payer, or to pay for a regulatory program directly related to the fee payer’s activities.

This tax fails on *all* three counts.

An additional payroll tax on small business to offset increased costs to society for the provision of health care services to the uninsured does not benefit small business (at best it benefits those without healthcare coverage), it does not mitigate a harm caused by the small busi-

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ness (operating a small restaurant does not “cause” a need for health care services), and it certainly does not pay for any regulatory activity of the small business.

Now, granted, the notion of a “fee” was substantially liberalized by the California Supreme Court decision in *Sinclair Paint v. State Board of Equalization*. But even in that case, there was found to be a “nexus” between the manufacturers of products containing lead (who had to pay the fee) and the funding of programs to assist lead poisoned children.

For this levy, there is no more “nexus” than that found between Aristotle and Britney Spears.

In proposing this tax, some have said that the Governor has broken his no tax increase pledge in record time. We will simply let the facts speak for themselves. He threw a lot of ideas out there regarding health care reform; some good, some bad, and some ugly. For taxpayers, redemption may be found in quickly deflating the tax increase trial balloon.

But one thing is clear. As a tax increase, this proposal — even assuming it is ever reduced to legislative language — will require a *two-thirds* vote of each house of the Legislature. While others might find ambiguity in the nature of this levy, we doubt the courts will.

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