

1946

## CREATION OF COURT FOR TAX APPEALS

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**5 CREATION OF COURT FOR TAX APPEALS. Assembly Constitutional Amendment No. 39.** Adds Sections 4d and 4e to, and amends Section 1 of, Article VI of the Constitution. Creates Court of Tax Appeals consisting of three judges selected in the same manner as Justices of the Supreme Court. Gives court jurisdiction over appeals from the superior court in all cases involving the legality, imposition or collection of taxes and assessments. Decisions of court to be subject to review by the Supreme Court. Authorizes Legislature to provide for review by this new court of State administrative agencies' determinations in tax matters.

YES	
NO	

(For full text of measure, see page 8, Part II)

**Argument in Favor of Assembly Constitutional Amendment No. 39**

Californians paid more than \$900,000,000 last year in State and local taxes. Most of this money was raised under laws nonexistent 15 years ago. Indications are that in 1947 our total taxes, exclusive of Federal levies, will exceed \$1,000,000,000.

Despite this phenomenal development, our basic law governing tax appeals has remained unchanged since 1904. Now there are 10 times as many taxpayers, paying 30 times as much taxes. No longer can the courts afford adequate consideration of tax questions under antiquated procedure established 42 years ago.

This proposal recognizes the urgent need for an appellate court with primary responsibility for prompt and efficient administration of justice in tax cases. Only in this way can taxpayers' rights be protected adequately.

Under the 1904 procedure all tax questions must be litigated at length in the superior courts after the disputed amounts have been paid. Although tax appeals go to the Supreme Court, they do not remain there. Pressure of work has caused that court to transfer practically all tax cases to the district courts of appeal, of which there are seven.

Instead of securing prompt tax rulings from a single court as the Constitution contemplates, Californians must look to a variety of appellate courts. If any such matters are heard eventually by the Supreme Court, further delays are inevitable. At least two or three years pass before a final decision.

By adopting this measure we shall be assured of a single court whose business it will be to hear tax appeals promptly. Composed of three judges whose major responsibility will be consistent and sound interpretation of tax laws, the court can achieve an effective public service now denied California taxpayers. As a part of the State's judicial department, the Court of Tax Appeals will be under the supervision of the Supreme Court where opportunity for further hearing will be afforded.

Avoiding prevalent cumbersome procedure, taxpayers can secure judicial review of State tax obligations without necessity of superior court action. Such disputes usually turn on legal questions which can be submitted directly to the tax court after the administrative agencies have ruled. Where factual questions are involved, the Legislature can provide for a review of the facts by the court through hearings before a referee or a single judge, thus assuring full consideration of the taxpayers' evidence.

Californians have everything to gain and nothing to lose through adopting this amendment. Any suggestion that the court will not have enough to

do ignores the fact that, given a reasonable access to the court, taxpayers will take more appeals than they do now.

Excessive litigation will not be encouraged but administrative agencies will be subject to wholesome judicial restraint. Only those hopelessly addicted to "things as they are" can object to this meritorious change in the basic law regulating tax litigation.

A "Yes" vote on this amendment is a vote for a square deal for taxpayers.

HARRISON W. CALL  
Assemblyman, 27th Dist.

LESTER A. McMILLAN  
Assemblyman, 61st Dist.

**Argument Against Assembly Constitutional Amendment No. 39**

The proposed amendment would create a new court of three judges to have exclusive jurisdiction on appeal from the superior court in cases involving taxes and to have such jurisdiction appeal from decisions of State taxing agencies the Legislature sees fit to give it.

Honorable Phil S. Gibson, Chief Justice of the State Supreme Court and Chairman of the Judicial Council, in stating his views, said:

"There is no need for the so-called tax court, either as an appellate court or as a substitute for the superior court; the adoption of the amendment would result in a sheer waste of manpower and money, and serve only to complicate our judicial system and confuse and inconvenience litigants and attorneys."

That the new court is unnecessary is obvious from the fact that there would not be enough business to keep it busy. Cases involving taxes amount to less than 4 per cent of the total appellate business of our courts or about 30 cases per year. Even if all these cases were handled by the Court of Tax Appeals, it would only be kept busy for approximately one-fifth of its working time. The argument that cases could be assigned from other appellate courts to keep the new court busy is fallacious: (1) The appellate courts are current in their work so that assignments are not necessary; (2) the claimed advantages of specialization could not be achieved if four-fifths of the cases necessary to keep the court busy involved every kind of legal problem but taxes.

While the new court would be similar to a division of the district courts of appeal in that it would have three judges, it would be far more expensive to operate than any of these divisions. In the first place, there would be the annual salaries of each of the judges—\$13,000 apiece. Furthermore, if the new court is to give a ser to litigants and lawyers comparable to that

rendered by the district courts of appeal, it will be required to hold sessions in at least six cities—Sacramento, San Francisco, Los Angeles, Fresno, Bernardino and San Diego. It has been conservatively estimated that it would cost the State \$1,000,000 per year, at the minimum, to operate the new court as an appellate court. For this expenditure the State would have 28 tax cases decided each year. This means that it would cost the State \$4,464.28 for each tax case decided—a per case cost far in excess of that in any appellate court in the United States. And the expenditure would, of course, be for judicial work already being handled satisfactorily and expeditiously by existing appellate tribunals.

Because of the exceedingly broad grant of jurisdiction, the proposed court would not be limited to suits between taxpayers and the taxing author-

ities but would also be obliged to hear cases between private citizens or even criminal cases collaterally involving taxes. In every such case attorneys would have to make the correct choice of court and the errors which are bound to occur will only delay and increase the cost of litigation. The proposed court does not attack the real defects in our tax structure but only the handful of cases which reach the appellate courts; it does this not only at great direct expense, but also at the great and dangerous risk of upsetting our judicial structure. The work of many years in simplifying our court system should not be undone. Vote "No" on A. C. A. No. 39.

THOMAS H. WERDEL  
Assemblyman, 39th Dist.

<b>6</b>	<b>ANNUAL SESSIONS OF THE LEGISLATURE. Assembly Constitutional Amendment No. 10.</b> Amends Sections 2, 34 and 34a, Article IV of the Constitution. Provides that Legislature shall meet annually. Limits sessions during the even-numbered years to consideration of the Budget Bill and certain special matters. Provides that State Budget shall be for a one-year rather than a two-year period.	YES	
		NO	

(For full text of measure, see page 9, Part II)

**Argument in Favor of  
Assembly Constitutional Amendment No. 10**

The Legislature now meets every odd-numbered year to pass laws and adopt a Budget covering a period of *two years*.

To eliminate excessive spending and waste in government, legislators know it is necessary to prepare a budget on an *annual* basis. More than three-fourths of them voted for an annual "Budget" *on*.

A "yes" vote on this amendment will put annual "Budget" sessions into effect. This means the State can draft its financial plans once a year, for the year ahead, just like the Federal Government, the county and business organizations.

**1. Annual "Budget" sessions will save money.**

Today, State Budgets are presented in January of odd-numbered years and estimate expenditures and revenues for a two-year period commencing on the following July. Thus the budget-makers have to "guess" two and one-half years in advance—an impossible job in this fast moving world. That such method has its weaknesses is attested to by a recent budget. In the biennium 1943-1945, despite a careful estimate of revenues, the *excess* revenues accumulating to the State from general tax sources, over and above the adjusted budget figures, amounted to \$200,223,077, or over 54 per cent.

**2. Annual "Budget" sessions will put the State on a sound business basis.**

The State of California is the largest business enterprise in the State. Its Budget exceeds \$700,000,000. Yet this, the biggest business of all, has to budget on a clumsy two-year basis. No private business enterprise would be foolish enough to budget on a similar basis.

**3. Annual "Budget" sessions will keep financial controls closer to the people.**

The Governor of California, in his last Budget Message to the Legislature, said: "If we were operating under an annual Budget, I believe the controls could reasonably be more strict than at the present time."

**4. Annual "Budget" sessions enable the Legislature to meet emergencies.**

During the "Budget" sessions the Legislature is also empowered to consider "urgency measures." These are measures necessary for the immediate preservation of the public peace, health or safety. They require a two-thirds vote so that the public is adequately protected against hasty and ill-advised legislation.

**5. Annual "Budget" sessions NOT the same plan defeated by the people.**

You will be told the people turned down the plan for annual sessions in previous elections. This is *not* the same plan.

The primary purpose of this proposal is to deal annually with State fiscal affairs. It will *not* throw the session open to all types of legislation. Regular law-making sessions of the Legislature will remain on a two-year basis.

Don't dismiss annual "Budget" sessions as unnecessary. Recall this: The Legislature has *had* to meet to deal with urgency matters at least *once every year* since 1933. In other words, we have had "annual" sessions for over 13 years. But those unexpected meetings did not include the Budget. They couldn't. There was no constitutional provision providing for it.

Both the Republican and the Democratic Parties have officially endorsed Proposition No. 6.

**Take crystal-ball gazing out of State Finance! Vote "yes"!**

JULIAN BECK, Assemblyman 41st Dist.

**BUSINESS LOANS FOR VETERANS. Assembly Constitutional Amendment No. 37.**  
 Amends Section 31, Article IV of the Constitution. Permits loans to veterans for purpose of enabling veterans to buy a business, land, buildings, supplies, equipment, machinery or tools, to be used by the veteran in pursuing a gainful occupation. Provides that such aid is exempt from prohibition against giving or lending the credit of the State in aid of any person.

YES	
NO	

(This proposed amendment expressly amends an existing section of the Constitution, therefore, **NEW PROVISIONS** proposed to be **INSERTED** are printed in **BLACK-FACED TYPE**.)

PROPOSED AMENDMENT TO THE CONSTITUTION

"Provided, further, that nothing contained in this Constitution shall prohibit the use of State money or credit, in aiding veterans

who served in the military or naval service of the United States during time of war, in the acquisition of, or payments for, (1) farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans, or (2) any business, land or any interest therein, buildings, supplies, equipment, machinery, or tools, to be used by the veteran in pursuing a gainful occupation."

**CREATION OF COURT FOR TAX APPEALS. ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 39.** Adds Sections 4d and 4e to, and amends Section 1 of, Article VI of the Constitution. Creates Court of Tax Appeals consisting of three judges selected in the same manner as Justices of the Supreme Court. Gives court jurisdiction over appeals from the superior court in all cases involving the legality, imposition or collection of taxes and assessments. Decisions of court to be subject to review by the Supreme Court. Authorizes Legislature to provide for review by this new court of State administrative agencies' determinations in tax matters.

YES	
NO	

(This proposed amendment expressly amends an existing section of the Constitution, and adds new sections thereto; therefore, **EXISTING PROVISIONS** proposed to be **DELETED** are printed in **STRIKE-OUT TYPE**; and **NEW PROVISIONS** proposed to be **INSERTED** or **ADDED** are printed in **BLACK-FACED TYPE**.)

PROPOSED AMENDMENT TO THE CONSTITUTION

First—That Section 1 of Article VI be amended to read:

Section 1. The judicial power of the State shall be vested in the Senate, sitting as a court of impeachment, in a Supreme Court, District Courts of Appeal, a Court of Tax Appeals, superior courts, such municipal courts as may be established in any city or city and county, and such inferior courts as the Legislature may establish in any incorporated city or town, township, county or city and county

Second—That Section 4d be added to Article VI, to read:

Sec. 4d. The Court of Tax Appeals shall consist of three justices, one of whom shall be the presiding justice thereof, and as such shall be nominated, appointed, and elected, as the case may be.

The justices of the court shall be nominated, appointed, and elected in the same manner as are the justices of the Supreme Court and shall serve for the same terms of office, except that when the court is first established, the term of office of one justice shall be four years, of another justice, eight years, and of the third justice, 12 years. When he nominates each justice upon the establishment of the court, the Governor shall designate the term of office for which the appointment is proposed. For the purpose only of determining the expiration of each such term, each term shall be deemed to commence on the first day of January, 1947.

Justices of the Court of Tax Appeals shall be subject to impeachment as provided in Section 18 of Article IV of this Constitution. The provisions of Sections 4, 4c, 10, 12, 16, 18, 21, 23, and 24 of Article VI of this Constitution shall be applicable to the Court of Tax Appeals and to the justices thereof to the same extent and in the same manner as said provisions are applicable to the District Courts of Appeal and the justices thereof.

The salaries of the justices shall be the same as the salaries of the justices of District Courts of Appeal and shall be paid at the same time and in the same manner.

The presence of two justices shall be necessary for the transaction of any business by the court except such as may be done in

chambers and the concurrence of two justices shall be necessary to pronounce a judgment.

In cases wherein the presiding justice is not acting, the other justices shall designate one of their number to perform the duties and exercise the powers of presiding justice.

Third—That Section 4e be added to Article VI, to read:

Sec. 4e. The Court of Tax Appeals shall have appellate jurisdiction on appeal from the superior courts in all causes involving the legality, imposition or collection of taxes and assessments in which the superior courts are given original jurisdiction, notwithstanding any other provision of law. In addition to any of its powers prior to the adoption of this section, the Legislature shall have power unrestricted by other provisions of this Constitution to provide that the determination of any public officer or board of state-wide jurisdiction involving the legality, imposition or collection of taxes or assessments shall be reviewed in the first instance by the Court of Tax Appeals and to establish the nature and extent of such review.

The Court of Tax Appeals shall also have jurisdiction in all cases, matters, and proceedings pending before the Supreme Court or District Courts of Appeal that may be ordered by the Supreme Court to be transferred to the Court of Tax Appeals for hearing and decision. The Court of Tax Appeals shall have the power to issue all writs necessary or proper to the complete exercise of its jurisdiction.

No appeal taken to the Court of Tax Appeals shall be dismissed for the reason only that the same was not taken to the proper court, but the cause shall be transferred to the proper court upon such terms as to costs or otherwise as may be just, and shall be proceeded with therein as if regularly appealed thereto.

All laws allowing, providing for or regulating appeals to the Supreme Court and District Courts of Appeal, including rules made in pursuance thereof, shall apply to the Court of Tax Appeals insofar as such laws and rules are consistent with the provisions of this Constitution pertaining to the Court of Tax Appeals until the Legislature shall provide otherwise. If the Legislature authorizes proceedings in the Court of Tax Appeals for the review in the first instance by said court of the determination of any public officer or board of state-wide jurisdiction involving the legality, imposition or collection of taxes or assessments, such proceedings shall be in accordance with rules of procedure specially provided for that purpose.