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Legislative Vote Requirement for Taxes. Redefinition of Tax. Initiative Constitutional Amendment.

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SA2005RF0068

February 8, 2005

VIA PERSONAL DELIVERY

The Honorable Bill Lockyear
Attorney General
1300 I Street
Sacramento, CA 95814

RECEIVED
FEB - 8 2005

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Request for Title and Summary – Initiative Constitutional Amendment

Dear Mr. Lockyear:

Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request that a title and summary be prepared for the attached initiative constitutional amendment. Enclosed is a check for \$200.00. My residence address is attached.

Thank you for your assistance.

Sincerely,

Allan S. Zaremberg, ~~Proponent~~

Enclosure: Proposed Initiative

SECTION 1. Title

This shall be known and cited as the "Two-Thirds Vote Preservation Act of 2005."

SECTION 2. Findings and Declarations of Purpose

The People of the State of California Find and declare:

(a) The California Constitution prohibits the California Legislature from imposing a state tax or local tax without a two-thirds vote of the California Legislature.

(b) The California Constitution also prohibits local governments from imposing a local tax without a majority vote of the voters if it is a tax for general purposes or a two-thirds vote of the voters if it is a tax for special purposes.

(c) These vote requirements do not apply to legitimate fees that may be adopted by a majority vote of the Legislature or local legislative bodies.

(d) There have been increasing efforts by state and local governments to disguise new taxes as fees in order to avoid the two-thirds vote requirement for the Legislature and a vote of the people at the local level.

(e) In order to prevent these efforts, it is necessary to establish the distinction between fees and taxes.

SECTION 3. Article XIII A, section 3 of the California Constitution is amended to read:

Sec. 3. (a) From and after *January 1, 2005* ~~the effective date of this article~~, any changes in state statute taxes enacted for the purpose of increasing revenues collected pursuant thereto which results in any taxpayer paying a higher tax, 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 real property, or sales or transaction taxes on the sales of real property may be imposed.

(b) *As used in this section, "tax" means any charge or exaction of any kind imposed by the state, except:*

(1) *a charge imposed for a specific service provided directly to the payer by the state or provided by a private contractor on behalf of the state, and not provided to those not charged, but only if (A) the amount of the charge does not exceed the reasonable costs of the service provided, and (B) except in the case of the judicial branch, the service was not financed in the preceding year by tax revenue.*

(2) *a charge imposed for the reasonable regulatory costs to the state of issuing licenses, permitting, inspection, audit, and administrative adjudication.*

(3) *a charge imposed for entrance to or use of state property, except charges governed by Article XI, section 15.*

(4) *a fine, penalty, or other monetary charge imposed by the judicial branch of government, or state or local administrative agency, as a result of any violation of a statute or regulation.*

(c) *Any tax, charge or exaction of any kind adopted after January 1, 2005, but prior to the effective date of this Act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this Act unless the tax, charge or exaction is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this section.*

SECTION 3 Article XIII C, section 2 of the California Constitution is amended to read:

Sec. 2. Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

(e) *From and after January 1, 2005, as used in this section, "tax" means any charge or exaction of any kind imposed by the local government, except:*

(1) *a charge imposed for a specific service provided directly to the payer by the local government or a private contractor on behalf of the local government, and not provided to those not charged, but only if the amount of the charge does not exceed the reasonable costs of the service*

provided, and only to the extent that the service was not financed in the preceding year by tax revenue.

(2) a charge imposed for the reasonable regulatory costs to the local government of issuing licenses, permitting, inspection, audit, and administrative adjudication.

(3) a charge imposed as a condition of property development .

(4) a charge imposed for entrance to or use of local government property.

(5) a fine, penalty, or other monetary charge imposed by the judicial branch of government, or state or local administrative agency, as a result of any violation of a statute or regulation.

(6) assessments and property related fees imposed in accordance with the provisions of Article XIII D.

(f) Any tax, charge or exaction of any kind adopted after January 1, 2005, but prior to the effective date of this Act, that was not adopted in compliance with the requirements of subsection (e) is void 12 months after the effective date of this Act unless the tax, charge or exaction is reenacted in compliance with the requirements of this section.

SECTION 4. Conflicting Ballot Measures

In the event that this measure and another measure or measures relating to what monetary charges constitute fees or taxes is approved by a majority of votes at the same election, and this measure receives a greater number of affirmative votes than any other such measure or measures, this measure shall control in its entirety and said other measures shall be rendered void and without legal effect. If this measure is approved but does not receive a greater number of affirmative votes than said other measure or measures, this measure shall take effect to the extent permitted by law.