NORWOOD & ASSOCIATES
This Week in Sacramento

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California Links

State Senate

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State and Federal Tax Legislation Beginning to Take Shape

It is early in this year's legislative session, but tax developments are beginning to come to light. Starting with the relative good news, Senator Bob Hertzberg (D-Los Angeles) may be deferring his sales on services tax to 2018 as he has stated that the timing is not right. For 2017, Hertzberg intends to raise awareness of the tax across the state, including within the business community. This was anticipated, but the Senator could change his mind before the deadline to introduce legislation on February 17. In the past, Senator Hertzberg expressed the view that if it does not raise $10 billion, it may not be worth pursuing.

In a threatening development, Assembly Revenue and Taxation Committee Chair Sebastian Ridley-Thomas (D-Los Angeles) has informed that he will be introducing a package of bills that industry will not favor. This will include a software technology transfer agreement tax. Currently, if an entity purchases non-custom software in a transaction that is subject to use tax from a retailer who holds patent or copyright interests in the software, then a portion of the price paid for the software may be excluded from the sales price of the software that is subject to use tax. The revenue generated from Ridley-Thomas' apparent plan is $20 million to $25 million, as it transcends all industries.

Also of concern, SB 66 – Punitive Damages Income Tax Deductions, sponsored by Senator Bob Wieckowski (D-Fremont), disallows a deduction for amounts paid or incurred for punitive damages, as provided under existing law. Previous versions only applied to large companies. SB 66 has been redrafted to capture small businesses and individuals. As an example of the value of this current deduction, United Parcel Service was subject to a $12 million punitive damages judgment recently. The California Taxpayers Association considers this bill coalition-worthy to fight.

On the telecommunications front, a potential tax on over the top telecommunications (OTT) services is possible. OTT occurs when a telecommunications service provider delivers one or more services across an IP network. The IP network is predominantly the public internet, although sometimes OTT is delivered via telecommunication-run cloud services delivered from a corporation's existing IP-VPN from another provider. It embraces a variety of telco services including communications (e.g. voice and messaging), content (e.g. TV and music), and cloud-based (e.g. compute and storage) offerings.

In terms of California, the last item on the radar is a likely split roll bill but specific provisions are unknown. California's system of property taxation uses an acquisition-value standard in which county assessors determine a property's value when it goes through a change in ownership or undergoes new construction, and tax is assessed at one percent of this value, plus a rate for voter-approved indebtedness. Thereafter, the taxable, or assessed, value of property may increase annually by the lesser of the rate of inflation or two percent. Under a split roll, not all properties on the assessment roll are treated equally. For example, a split roll may require businesses to pay property taxes at a rate higher than the rate imposed on homeowners.

There is no split roll in California for locally assessed real property: property taxes are imposed without distinguishing property used for commercial or industrial purposes. The idea of a split roll property tax has been fully vetted and consistently rejected since the late 1970s. While some believe that a split roll would bring in additional revenue, the reality is it would stifle the state's economic growth in the long term.

Regarding federal tax issues of importance to California, CalTax is closely monitoring the Affordable Care Act repeal and replace effort as well as tax reform. The consensus is that 2017 will be the year that Congress passes comprehensive tax reform. Republicans released a series of blueprint white papers outlining major policy changes, including introduction of a destination based, border adjustable international consumption tax system. CalTax advises that this reform would turn the existing tax structure on its head. The bill is expected to be in print in April. Lastly on federal matters, the potential loss of federal funding should California enact legislation to make the entire state a sanctuary for illegal immigration will require a coalition to defeat, CalTax advocates.

Bill Expanding Workers' Compensation Introduced

This week, a bill aimed at expanding workers' compensation qualifications to include more day laborers was introduced in the Assembly. AB 206, introduced by Assembly Member Lorena Gonzalez Fletcher, would lower the threshold for day laborers to qualify for workers' compensation, regardless of their immigration status. It would do so by eliminating the exemptions that are in place for employees who work fewer than 52 for one employer in the 90 days prior to the injury, as well as the requirement that workers were paid more than $100 for the job.

Assembly Member Gonzalez Fletcher stated that according to a report published by the Public Policy Institute of California, 40,000 people in California perform or seek to perform day labor work, and that of those people 70% do work that is considered hazardous. While most of those laborers would meet the requirement of being paid at least $100 for their job, few meet the requirement of working 52 hours for the same employer that currently exists in law. Furthermore, the report estimated that 600 new claims would be filed if the 52 hour requirement is eliminated.

CalFire and Insurance Department Raise Concern About Homeowners Insurance Covering Downed Trees in Rural Parts of the State

This week, the California Department of Forestry and Fire Protection and California Department of Insurance convened its Tree Mortality Taskforce to discuss homeowners insurance coverage in areas where tree mortality rates are a significant risk. The counties of concern are Placer, Calaveras, Tuolumne, among others. Counties report that local residents are experiencing cancelled homeowners policies and difficulties obtaining such insurance within entire zip codes, despite defensible space. They claim defensible space is not adequately included in the risk analysis, and that the insurer requirement of 1,000 feet of defensible space encroaches on neighboring property.

While the California FAIR plan is considered by the Departments to be serving a key role to address this issue, more coverage by private insurers with lower rates than exist today would be desirable and what is being advocated for by rural residents and elected officials. The California FAIR plan, based out of Los Angeles, is a fire insurance pool set up by the State of California to offer fire insurance to property owners who have been denied insurance through the regular insurance channels. FAIR stands for Fair Access to Insurance Requirements. Department staff raised concern about the prevalence of surplus lines coverage for the homes in question, as they believe this is a sign of inadequate admitted insurer presence in the space. Consumer advocates criticized non-admitted insurers as not being members of the California Insurance Guarantee Association, free to use their own policy forms and not regulated by Proposition 103.

To these last points, those who testified were uninformed. Non-admitted insurers have long had a lower insolvency rate than admitted carriers, and serve a valuable role insuring areas that are too expensive for admitted insurers to spread cost and for homeowners to afford. Furthermore, there are no homes uncovered in the locations of concern.

Regarding next steps, the Personal Insurance Federation of California and other insurance industry trade association representatives will be maintaining a pulse on activities by the Tree Mortality Taskforce Regulation Working Group and have already stressed to CalFire the importance of their stakeholder input and expertise. From a legislative point of view, the Departments say they will not pursue legislation to address their unease but insurance carriers are keeping a cautious eye.

Attorney General Becerra Announces 2018 Campaign

Two weeks after being sworn in as the Attorney General of California, Xavier Becerra has announced that he will run for re-election to the position in 2018. Becerra was nominated by Governor Jerry Brown to fill the vacancy left by U.S. Senator Kamala Harris.

Becerra waited until he was officially sworn in on January 24th to announce whether or not he would run for re-election, and this week he opened a campaign committee for the election and made more of his plans public in email and social media announcements. Even after only two weeks in office, Becerra has already taken a strong stand against the administration of President Trump by criticizing recent executive orders and filing lawsuits over the controversial travel ban. He has also stood firmly by the position of many California cities as “sanctuary cities” in refusing to cooperate with federal orders on immigration and deportation.

There are already two challengers for the position, California Insurance Commissioner Dave Jones and San Bernardino County District Attorney Mike Ramos. Insurance Commissioner Jones will term out of his position in 2018, and at the end of 2016 already had $797,000 cash on hand in his campaign account as well as $2.6 million still remaining from his 2014 re-election campaign for Insurance Commissioner. District Attorney Ramos has $32,000 cash on hand in his campaign account. Although Becerra has not yet begun to fundraise for the 2018 election, he still has around $1.5 million remaining in campaign funds from his time running for his position in the House of Representatives.

NFIB Releases Bill List

The National Federation of Independent Business released their summary of bills introduced in the Legislature so far, titled “The Good, The Bad & The Ugly.” The full list runs through all the bills NIFB feels will have impacts on small and independent businesses in California, both positive and negative. Along with the list NFIB released a statement, saying that “The California Legislature wasted no time introduce hundreds of new bills affecting a wide range of public policy issues, many of which will have a direct impact on small business owners across this state. With over 600 bills already introduced in just the first two months of the two –year session, small business owners have the daunting challenge of tracking significant public policy issues moving through the State Capitol.”

The list so far contains 21 bills, 9 of which are listed as good, 2 as bad, and 10 as ugly. The bills are listed below.

The Good

AB 12 (Cooley): Agency Review of Regulations – Support: Requires all agencies to do a full review of their regulations to see if they are outdated, too costly, or overlap with other rules. Such a full-scale review has not happened in decades.

AB 75 (Steinorth): Earned Income Credits – Support: Expands the earned income credit allowed by the Personal Income Tax Law by providing conformity with federal income tax law regarding net earnings from self-employment.

AB 77 (Fong): Legislative Approval of Costly Regulations – Support: Requires legislative approval for any regulations with an impact of over $50 million.

AB 150 (Mathis): ADA Lawsuits – Support: Establishes notice requirements for a plaintiff to follow before bringing an action against a small business for an alleged violation of the Americans with Disabilities Act (ADA). Requires the plaintiff to provide notice to a business at least 6 months before filing the complaint. The bill would also preclude commencement of an action against a small business for an alleged ADA violation if the small business has made a good faith effort to correct the alleged violation.

AB 278 (Steinorth): CEQA Exemptions for Highway Maintenance – Support: Creates a California Environmental Quality Act exemption for highway and road improvements.

AB 281 (Salas): PAGA Reform – Support: Amends the Private Attorneys General Act to allow aggrieved employees to only collect civil penalties for an employer violation that the employee actually suffered harm from. It also increases the employer's right to cure from 33 to 65 days, and limits the exclusions from the right to cure to only health and safety violations.

SB 13 (Gaines): R&D, Manufacturing, Agricultural Sales Tax Exemption – Support: Expands the research and development, manufacturing, and agricultural sales and use tax exemption.

SB 38 (Roth): New Judgeships – Support: Funds 10 of 50 prior approved new judgeships to help alleviate the overburdened court system.

SB 182 (Bradford): Business Licenses – Support: This is currently an intent bill that will establish a single business license for small business owners that operate in multiple local jurisdictions.

The Bad

AB 20 (Kalra): Public Pension Divestments – Oppose: Requires public employee pensions to liquidate their investments in a company that is constructing, or funding the construction of, the Dakota Access Pipeline. With $500 billion in pension liability, now is not the time for the Legislature to meddle in the investment decisions of the nation's premier public pension funds.

AB 79 (Levine): Ban on Coal-Fired Electricity Generation – Oppose: Establishes benchmarks reducing the purchase of energy derived from coal, with a total ban by 2026. This will only serve to increase energy costs for businesses by eliminating a cheap, viable source.

The Ugly

AB 5 (Gonzalez): Opportunity to Work Act – Oppose: Requires employers with 10 or more total employees to offer more hours to their part-time employees before they can hire new workers, including temporary or seasonal staff. It creates a new right to sue your employer if you don't get more hours.

AB 43 (Thurmond): Department of Corrections Contracting Tax – Oppose: Imposes an as yet to be determined tax on businesses that contract with CDCR for the "privilege" of having a state contract in order to fund education programs designed to prevent future criminals.

AB 151 (Burke): Cap-and-Trade – Oppose: Statutorily authorizes cap-and-trade beyond 2020.

AB 168 (Eggman): Employee Wages – Oppose: Prohibits employers from asking applicants about their salary history. It effectively eliminates the ability of an employer to negotiate wages, and creates a new cause of action for lawsuits.

AB 274 (C. Garcia): Sales Tax on Snack Foods – Oppose: Reinstates a sales tax on snack foods by reversing a 1992 voter initiative that repealed a previous tax. This is the implementation bill for ACA 2 by the same author, and will define “snack foods.”

ACA 2 (C. Garcia): Sales Tax on Snack Foods – Oppose: Reinstates a sales tax on snack foods by reversing a 1992 voter initiative that repealed a previous tax.

SB 2 (Atkins): Transfer Document Fee – Oppose: Creates a new $75 per document fee (or tax) for the transfer of real property in order to fund affordable housing programs. It caps a $225.

SB 33 (Dodd): Arbitration Agreements – Oppose: Prohibits arbitration agreements made as a condition of entering into any contract for goods or services. This is in conflict with established federal law and legal rulings of the United States and California Supreme Courts, and will lead to costly litigation, as well as further straining our over-burdened court system.

SB 62 (Jackson): Family Leave – Oppose: Significantly expands the reasons for which employees can take protected leave under the California Family Rights Act (CFRA), allowing California employees to take up to 24 weeks/6 months of protected leave in a 12-month period to care for an ever-expanding list of people. The statute allows employees to sue their bosses.

SB 63 (Jackson): Family Leave – Oppose: Requires employers with as few as 20 employees within a 75-mile radius to provide 12 weeks of parental bonding leave, in addition to the other leaves of absence California already imposes, including maternity leave. Creates new legal liabilities for employers.