

Assembly Constitutional Amendment

No. 22

Introduced by Assembly Member Torlakson

April 16, 2009

Assembly Constitutional Amendment No. 22—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding Sections 37 and 38 to Article XIII thereof, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

ACA 22, as introduced, Torlakson. Taxation: cigarettes and other tobacco products.

The Cigarette and Tobacco Products Tax Law imposes a tax on every distributor of cigarettes and tobacco products at specified rates, including additional taxes imposed under the Tobacco Tax and Health Protection Act of 1988 (Proposition 99) and the California Families and Children Act of 1998 (Proposition 10).

This measure would, commencing on and after the first day of the first calendar quarter commencing more than 90 days on or after the effective date of the measure, impose an additional tax on the distribution of cigarettes at the rate of \$0.074 for each cigarette distributed, and upon the distribution of tobacco products at an equivalent tax rate. The revenues collected from the additional tax would be deposited in the Tobacco Excise Tax Fund, which would be created by the measure, and would be allocated, upon appropriation by the Legislature, for certain education-, health-, and child-related purposes. The measure also would impose a floor stock tax on every distributor and wholesaler for each cigarette or tobacco product in his or her possession on the day the excise tax is first imposed.

This measure would prohibit the Legislature, between January 1, 2011, and January 1, 2016, from imposing any additional tax upon the distribution of cigarettes or tobacco products.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 *Resolved by the Assembly, the Senate concurring,* That the
2 Legislature of the State of California at its 2009–10 Regular
3 Session commencing on the first day of December 2008, two-thirds
4 of the membership of each house concurring, hereby proposes to
5 the people of the State of California, that the Constitution of the
6 State be amended as follows:

7 First—That Section 37 is added to Article XIII thereof, to read:

8 SEC. 37. (a) In addition to any tax imposed by the Cigarette
9 and Tobacco Products Tax Law (Part 13 (commencing with Section
10 30001) of Division 2 of the Revenue and Taxation Code), or its
11 successor statute, an excise tax is hereby imposed upon every
12 distributor of cigarettes at the rate of seventy-four mills (\$0.074)
13 for each cigarette distributed on and after the first day of the first
14 calendar quarter commencing more than 90 days after the effective
15 date of this section.

16 (b) (1) In addition to the taxes imposed upon the distribution
17 of tobacco products by the Cigarette and Tobacco Products Tax
18 Law, or its successor statute, an excise tax is hereby imposed upon
19 every distributor of tobacco products, based on the wholesale cost
20 of these products, at a tax rate, as determined annually by the State
21 Board of Equalization, which is equivalent to the rate of tax
22 imposed on cigarettes by subdivision (a).

23 (2) The wholesale cost used to calculate the amount of tax due
24 under paragraph (1) does not include the wholesale cost of tobacco
25 products that were returned by a customer during the same
26 reporting period in which the tobacco products were distributed,
27 when the distributor refunds the entire amount the customer paid
28 for the tobacco products either in cash or credit. For purposes of
29 this paragraph, refund or credit of the entire amount shall be
30 deemed to be given when the purchase price less rehandling and
31 restocking costs is refunded or credited to the customer. The
32 amount withheld for rehandling and restocking costs may be a
33 percentage of the sales price determined by the average cost of

1 rehandling and restocking returned merchandise during the
2 previous accounting cycle.

3 (c) (1) Every dealer and wholesaler, for the privilege of holding
4 or storing cigarettes or tobacco products for sale, use, or
5 consumption, shall pay a floor stock tax for each cigarette or
6 tobacco product in his or her possession or under his or her control
7 in this state at 12:01 a.m. on the first day of the first calendar
8 quarter commencing more than 90 days after the effective date of
9 this section at the rate of seventy-four mills (\$0.074) for each
10 cigarette or the equivalent rate of tax for each tobacco product, as
11 determined by the State Board of Equalization.

12 (2) Every dealer and wholesaler shall file a return with the State
13 Board of Equalization on or before the first day of the first calendar
14 quarter commencing more than 180 days after the effective date
15 of this section on a form prescribed by the board, showing the
16 number of cigarettes or tobacco products in his or her possession
17 or under his or her control at 12:01 a.m. on the first day of the first
18 calendar quarter commencing more than 90 days after the effective
19 date of this section. The amount of tax shall be computed and
20 shown on the return.

21 (d) (1) Every licensed cigarette distributor, for the privilege of
22 distributing cigarettes and for holding or storing cigarettes for sale,
23 use, or consumption, shall pay a cigarette indicia adjustment tax
24 for each California cigarette tax stamp that is affixed to any
25 package of cigarettes and for each unaffixed California cigarette
26 tax stamp in his or her possession or under his or her control at
27 12:01 a.m. on the first day of the first calendar quarter commencing
28 more than 90 days after the effective date of this section at the
29 following rates:

30 (A) One dollar and eighty-five cents (\$1.85) for each stamp
31 bearing the designation “25.”

32 (B) One dollar and forty-eight cents (\$1.48) for each stamp
33 bearing the designation “20.”

34 (C) Seventy-four cents (\$0.74) for each stamp bearing the
35 designation “10.”

36 (2) Every licensed cigarette distributor shall file a return with
37 the board on or before the first day of the first calendar quarter
38 commencing 180 days after the effective date of this section on a
39 form prescribed by the board, showing the number of stamps

described in subparagraphs (A), (B), and (C), of paragraph (1).
The amount of tax shall be computed and shown on the return.

(e) (1) The taxes required to be paid by subdivisions (c) and (d) are due and payable on or before the first day of the first calendar quarter commencing 180 days after the effective date of this section. Payments shall be made by remittances payable to the State Board of Equalization, and payments shall accompany the forms required to be filed by paragraph (2) of subdivision (c) and paragraph (2) of subdivision (d).

(2) Any amount required to be paid pursuant to this subdivision that is not timely paid shall bear interest at the rate and by the method established pursuant to Section 30202 of the Revenue and Taxation Code, or its successor, from the first day of the first calendar quarter commencing 180 days after the effective date of this section, until paid, and shall be subject to determination, and redetermination, and any penalties provided under Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code with respect to determinations and redeterminations.

(f) The taxes imposed under this section shall be administered in accordance with the Cigarette and Tobacco Products Tax Law, or its successor statute, but are not taxes imposed under that part.

(g) All revenues, less refunds, derived from a tax imposed pursuant to this section shall be transferred to the Tobacco Excise Tax Fund, which is hereby created in the State Treasury and shall, upon appropriation by the Legislature, be allocated for each fiscal year exclusively to fund any or all of the following:

- (1) Education.
- (2) Children's health care.
- (3) Tobacco cessation services.
- (4) Lung cancer research.
- (5) General health care.

(h) Revenues derived from the taxes imposed pursuant to this section shall be deemed General Fund revenues or General Fund proceeds of taxes within the meaning of Section 8 of Article XVI.

(i) For purposes of this section, the following definitions apply:

(1) "Cigarette" has the same meaning as in Section 30003 of the Revenue and Taxation Code, as it read on January 1, 2009.

(2) "Tobacco products" includes, but is not limited to, all forms of cigars, smoking tobacco, chewing tobacco, snuff, and any other

1 articles or products made of, or containing at least 50 percent,
2 tobacco, but does not include cigarettes.

3 Second—That Section 38 is added to Article XIII thereof, to
4 read:

5 SEC. 38. On and after January 1, 2011, and before January 1,
6 2016, the Legislature shall not impose by statute any additional
7 tax upon the distribution of cigarettes or tobacco products.

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