

Speaker 1 ([00:00](#)):

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Rob Gutierrez ([00:16](#)):

So the initiative process in California says that you can propose an initiative to amend the Constitution, but the voters, through the initiative process, do not have the power to revise the Constitution.

Nikki Dobay ([00:31](#)):

Hello and welcome to GeTtin' SALTy, a state and local tax policy podcast hosted by Greenberg Traurig. My name is Nikki Dobay, shareholder in the Sacramento, California, and Portland, Oregon, offices. I'm very pleased today to be joined by Rob Gutierrez. He is the president and Chief Executive Officer of the California Taxpayers Association. Rob, thank you so much for joining me today.

Rob Gutierrez ([00:57](#)):

Hi, Nikki. It's great to be with you today and always great to talk to you.

Nikki Dobay ([01:02](#)):

Yeah. Well, we have some catching up on California to do because I'd like to say we're about to get off or maybe we got off the roller coaster, but I feel like we might be at a pause, but we're going to get back on it.

Rob Gutierrez ([01:15](#)):

It's like we're on a broken roller coaster that's going up the hill and it just stopped.

Nikki Dobay ([01:19](#)):

Right, right. So before we get into all things California, which we love to talk about, I started asking my guests a question since the last time I had you, since I was with you, and wondering how did you get into, and I think you come at this from a little bit of a different angle, but how did you get into state tax or California state tax or involved with Cal Tax? So what's the backstory there?

Rob Gutierrez ([01:46](#)):

The backstory? Well, so I've been with Cal Tax for 14 years and I have a little bit of a background in journalism, and so I was brought on board to help with our newsletter and do some of our research, policy research and kind of gotten involved in everything we do over time, and it's been a great 14 years.

Nikki Dobay ([02:09](#)):

Well, that's awesome. And I'm sure you didn't expect to learn quite so much about California taxes, what you got into journalism.

Rob Gutierrez ([02:20](#)):

No.

Nikki Dobay ([02:22](#)):

Well, hopefully that's been a good part of it. I know we, in taxpayer community, definitely appreciate what you and Cal Tax do. So let's get into the nitty gritty on California, and maybe you can start by setting the stage for us. We were all holding our breath through the end of session, which last day was September 14th. We got through that and we'll talk about how everything fell out, but where are we at now with respect to the bills that passed, being on the governor's desk and then kind of bills that didn't pass? Because that's always the scary part for me.

Rob Gutierrez ([03:03](#)):

So we adjourned on September 14th and the governor has until October 14th to sign all bills that are currently on his desk. So today's October 4th, we've got about 10 days left and the legislature is in recess in the two year session until January, unless some sort of special session's called, which no one is expecting. And then we have a number of bills that were made, two year bills, so any sort of bills that folks were tracking, they could still come back in January. We will also probably see, most likely, see a lot of "gut and amends" where contents of bills will be swapped out and we'll see a whole new set of bills come January. So that's the current status of where we're at. So with the big things that happened, I think this year we were tracking a lot of different bills. Just some of the bills outside of the tax space we were watching were kind of interesting, such as \$20 minimum wage for fast food workers, increasing overtime to \$25 an hour and then \$25 an hour for healthcare workers. So a lot of minimum wage type stuff.

([04:28](#)):

Of course, that will make the California economy, labor market even more competitive if those entry level jobs for certain industries get to \$25 an hour. So I think definitely from a business climate standpoint, that's a big impact. And then of course the legislature spent a lot of time talking about homeless housing, fentanyl, and they also made national headlines with legislation like whether the state should make it a serious crime to traffic children. So that was a big discussion in the legislature. But anyways, we obviously look at the tax legislation and what happened there. We can talk a lot about affordable housing and the two thirds vote, but there was, before we get into that, I guess, SB-253 was one that a lot of folks were watching makes a big change.

Nikki Dobay ([05:20](#)):

Right.

Rob Gutierrez ([05:20](#)):

But I don't think the taxpayer community really watched closely, but that sets up a new disclosure requirement for how companies report what their carbon footprint looks like in the state.

Nikki Dobay ([05:39](#)):

This is one that I've got a lot of questions about from folks, and to your point, wasn't necessarily on everybody's radar, but anytime we start seeing, disclosure, always makes us a little bit nervous. And maybe the proponents of the disclosure camp, I don't know if they're getting a little smarter or a little savvier, but if they start kind of picking at it from around the edges makes me nervous we might get to a full disclosure battle again, as we've seen in the past.

Rob Gutierrez ([06:13](#)):

Right, right. Absolutely. And then the other kind of interesting one that we watched too was SB-770, which sort of sets up this framework and timeline for how California moves inches closer to a single payer government funded healthcare system. Obviously there were no mechanics involved for this structure, but in the past, certain legislators have proposed a payroll tax, a sales tax on services, things like that, to fund that type of a system. And so, what the bill does is it really kind of asks the state to go to the federal government, get a waiver saying, okay, you can set up this type of healthcare system, and then go from there. And that's the first step needed to really establish a government funded healthcare system. And so, once you take that step, then you can figure out the mechanics of how do you make it work, how do you fund it? But that is step one.

Nikki Dobay ([07:24](#)):

Yeah. And that's one too are also... Because I got some questions as to why we included that in an alert we put out, but to your point, step one to the creation of a single payer system in California, and to get to step two, which is the actual creation, there has to be that funding mechanism, and where does that come from? And I know there have been various proposals in the past in California about that, and also something we watch very closely up in Oregon, because sometimes what you guys do, they think, "Well, that's a good idea, we should do it too." So it'll be interesting to watch how this legislation unfolds and whether it will in fact remain step one or if there will be subsequent steps.

Rob Gutierrez ([08:16](#)):

The other big bill was SB-799, which the governor just announced a veto for. And what that would've done is it would've authorized employees on strike for more than two weeks to claim on insurance benefits. And of course, California's unemployment insurance fund is set to end the year with the 19.7 billion deficit. If more people were to receive unemployment benefits, that deficit would increase further. We've already triggered a payroll tax increase to help pay down that deficit, and we thought that that bill, had it been signed, would've prolonged how long payroll taxes would've been in place. So that was a veto that did go forward. A few bills that we're watching, there was a lot of local sales tax bills. So in California, you're capped at the local rates, so it's a 2% sales tax rate at the local level.

([09:17](#)):

And a number of cities, counties, special districts had come forward saying, "We want to get rid of that cap and go out to the voters and raise our sales tax." And so, in some localities, you could have sales tax rates approach 10, 11, maybe even 12% throughout the state, and, of course, that would be extremely costly. So there's about 1, 2, 3, 4 bills on the governor's desk currently that would kind of fit that mold, particularly the ones we're watching are in Los Angeles County, so that's AB-1679, and then in Santa Clara County, SB-335. So two big economic engines of the state where you could have sales tax rates increase if the voters go out and approve that.

Nikki Dobay ([10:13](#)):

So if those get signed and then they seek voter approval, that's going to be on some election in 2024. Would it...

Rob Gutierrez ([10:22](#)):

Most likely.

Nikki Dobay ([10:25](#)):

Okay. And that seems like when you start having four or five of something, that starts to seem like a trend. So do you see more localities coming and asking permission, or could there just be a blanket, "We're going to increase the local cap at some point."?

Rob Gutierrez ([10:43](#)):

So far it's been a patchwork approach. We've seen past administrations veto a blanket authorization to increase throughout the state. And I think the rationale for Governor Brown to veto that was that he felt that if locals go out and ask for sales tax approval to increase their sales tax, well then that makes it harder for the state. If there's an earthquake or a wildfire or something like that or some emergency fiscal situation, it makes it harder for the state to go out and ask for voters to approve it if they've already gone and approved local sales taxes. So politically, I think that was the rationale in the past, but I think we are certainly seeing more pressure from locals to raise sales taxes.

Nikki Dobay ([11:39](#)):

Yeah, and probably the subject of another podcast that's likely very intertwined with property taxes and how the California system works there, but that will be, I think, an interesting trend to continue to watch. Were there some other big tax issues you all were watching that did pass?

Rob Gutierrez ([12:04](#)):

The big two that ate up everyone's time and got a lot of attention was ACA one and ACA 13, and it's a very... Let's start with the backstory.

Nikki Dobay ([12:18](#)):

Yeah. Let's start with the backstory.

Rob Gutierrez ([12:20](#)):

So the Taxpayer Protection Act is on the November, 2024 ballot, and it changes the definitions for what is the tax at the state and local level and the process for how those taxes or fees get approved. So at the state level, every legislative change in statute would have to go to the voters for approval. Every regulatory change would need to go to the legislature for approval, and if there's a tax increase, it would also have to be approved by the voters. And that's a big change. At the local level, it restores the definition of what a special tax is. So every special tax would have to be approved by a two thirds vote.

([13:10](#)):

And the Taxpayer Production Initiative was proposed by the California Business Roundtable, the California Business Properties Association, and the Howard Jarvis Taxpayers Association, and the intent was to go back and look at case laws that have occurred since 2010 and really restore what the intent of earlier taxpayer protection initiatives were and what was the voter intent. So that was the intent. They obviously included some other bigger changes, and I think that's really what has driven a lot of the discussion is these bigger changes. And you've got the California Teachers Association, the Labor Federation, SCIU, League of Cities, counties, firefighters, everybody that's part of the establishment is very up in arms about the initiative. As a result, we saw ACA one and ACA 13 both come forward and given the political climate, those two initiatives got wrapped up in this and got some momentum to really propel forward through the legislature. So let's start with ACA one.

Nikki Dobay ([14:29](#)):

Yeah, yeah.

Rob Gutierrez ([14:30](#)):

That is a 55% vote for special taxes and local bonds that fund affordable housing or affordable housing related infrastructure. So that is actually, if you look at the text, it's an actual amendment to Proposition 13 of 1978.

Nikki Dobay ([14:51](#)):

Okay.

Rob Gutierrez ([14:52](#)):

It changes Article 13-A, section four, along with the vote requirement for special taxes. That's been in law for 40 plus years since Prop 13 was enacted. So that's a real Prop 13 change.

Nikki Dobay ([15:08](#)):

And this one, for those that don't live and breathe Prop 13, that provision of Prop 13 currently would subject those votes to a super majority. So this ACA one is going to decrease that vote requirement to 55%, but fairly narrow for these specific special taxes and bonds related to affordable housing. Is that right?

Rob Gutierrez ([15:38](#)):

Absolutely. And so, the idea there is that you would have a lot more special taxes, specifically sales taxes and parcel taxes, I should clarify that. It's just those two types of taxes. You would see a lot more of those pass locally. I think when we went back and kind of ran the average for the past couple election cycles, we were in the hundred, 200 million dollar ballpark.

Nikki Dobay ([16:04](#)):

Wow, okay.

Rob Gutierrez ([16:05](#)):

So locally, it's a huge impact. We'll see a lot more special taxes pass. You have to go back to the intent of Prop 13 and why was this vote threshold even put in place? Well, at the time, Howard Jarvis thought that local governments would push all these new taxes onto taxpayers given the change in how California taxes property. And so that two thirds vote was really meant to curb the tax environment locally. And so this would really kind of undo that. So it did pass the legislature, squeaked out of the Senate, got a number of moderate Democrats to support it as well, and so that will be on the ballot in November, 2024. And so that will be a big fight as well. I have heard that it will have a well-funded yes campaign from some of the affordable housing developers and folks that are in that space.

Nikki Dobay ([17:15](#)):

All right. And then the elephant. These three...

Rob Gutierrez ([17:21](#)):

This was proposed in a direct response to the Taxpayer Protection Initiative that's already on the ballot, and it basically says that if you have an initiative that changes the vote threshold, your initiative has to

also pass by the highest vote threshold that you're proposing. So Taxpayer Protection Initiative changes the vote threshold to two thirds vote for local special taxes, therefore ACA-13 would say that Taxpayer Protection Act needs a two thirds vote at the local level. It gets kind of confusing, and if I have trouble explaining it, I know that the voters are going to be confused as well, and maybe that's the intent.

Nikki Dobay ([18:07](#)):

Yeah. And I don't mean to laugh because it's actually funny, but it's kind of like somebody sticking their tongue out at you and trying to bait you into getting into some sort of a ridiculous fight with them. And we've seen something similar to this in Ohio earlier this year on some non-tax issues.

([18:35](#)):

But yeah, this one, it kind of makes you scratch your head, but it also makes me a little sad that this is where all the politics are right now, is that we are basically doing mental gymnastics to try to combat a ballot initiative where the voters really need to think about, because the Taxpayer Protection Act is a very significant, some big changes and voters really need to think about that. But this just so muddies the water of all that and takes away from those important decisions that the voters should be making. So Rob, why don't we put a bow on the 2024 ballot initiative section of the podcast and then we can kind of come back to maybe what didn't happen and what we'll see in 2024, but what the heck... Well, I guess one thing on Taxpayer Protection Act, there's been a new chapter that just recently unfolded with the governor here.

Rob Gutierrez ([19:43](#)):

Absolutely. It was last week, Governor Gavin Newsom and the California legislature filed suit against the proponents of that initiative to invalidate it, which would mean that it would not appear on the 2024 ballot. They've put in their challenge to have the California Supreme Court review that issue. And so, really, the issue in the lawsuit is whether or not the Taxpayer Protection Act is, one, an unlawful constitutional revision. So the initiative process in California says that you can propose an initiative to amend the Constitution, but the voters, through the initiative process, do not have the power to revise the constitution. So if there's a change in the substantive governance policy or structure for the state, that cannot be made through an initiative proposal. You'd have to call a constitutional convention, get delegates together and revise the state constitution.

([21:00](#)):

The second issue that they're claiming in the lawsuit is that the initiative, Taxpayer Protection Act, results in an impairment of essential government functions. And so basically what that means is it would make California ungovernable at the state and local level and the legislature wouldn't have the ability to raise or spend revenue when services are needed. I read through the lawsuit and it was somewhat ironic because a lot of the citations in the case go back to the Amador Valley decision, which, if we all remember, that is the landmark lawsuit that held up Proposition 13 of 1978...

Nikki Dobay ([21:54](#)):

Okay.

Rob Gutierrez ([21:55](#)):

As [inaudible 00:21:57]. And so in that lawsuit, the issues that the court looked at was single subject rule, does this pass that test? Is Prop 13 a constitutional revision? And so the court kind of walks through what is a constitutional revision and what's not. So it'll be interesting. I think some of the proponents

have called this a phony lawsuit and there's much to do about nothing here, but we'll see what the Supreme Court says. It'll be very interesting.

Nikki Dobay ([22:33](#)):

So the timing on that, does the court have to decide to take it and then if they do, how long would it be? Or do they have to take it?

Rob Gutierrez ([22:46](#)):

I don't think they have to take it, but they have to decide on this issue before June 27th of next year.

Nikki Dobay ([22:51](#)):

Okay, okay, okay. And perhaps even if it is really a big nothing burger, it's going to take time and resources away from the overall campaign and...

Rob Gutierrez ([23:06](#)):

Right. Yeah. And I think it casts a cloud of doubt, potentially, over the future of the initiative. And I think there's some interesting issues there about to what extent does Taxpayer Protection Initiative modify the process for how a tax gets enacted and approved? Versus, are you changing the executive and legislative functions for who has the power to tax in California?

Nikki Dobay ([23:41](#)):

Right, right.

Rob Gutierrez ([23:42](#)):

Where does the power to tax lie?

Nikki Dobay ([23:46](#)):

So California has some soul searching to do, and then the voters are going to have a whole lot of issues to have to work through for the November, 2024 ballot initiative. So I feel like it's going to be a crazy year for you in 2024.

Rob Gutierrez ([24:12](#)):

We're ready.

Nikki Dobay ([24:15](#)):

All right. So that's when the rollercoaster comes back down the hill.

Rob Gutierrez ([24:20](#)):

Exactly.

Nikki Dobay ([24:21](#)):

All right. Any final thoughts on the 2024 ballot initiatives or are we going to have to just be in a little bit of a wait and see mode until sometime early mid next year?

Rob Gutierrez ([24:35](#)):

Yeah, I think we're kind of in a holding pattern. It's still October.

Nikki Dobay ([24:40](#)):

Yeah, I know, and I'm tired already.

Rob Gutierrez ([24:44](#)):

Yeah, right, exactly. But somebody could still file an initiative with the Attorney General, collect signatures and make the November ballot if they kind of have their initiative drafted and ready to go before year end. So we may not know what the ballot looks like yet.

Nikki Dobay ([25:06](#)):

So there could be more to come.

Rob Gutierrez ([25:07](#)):

There will definitely be more to come.

Nikki Dobay ([25:09](#)):

Okay.

Rob Gutierrez ([25:09](#)):

There's always more to come.

Nikki Dobay ([25:09](#)):

All right.

Rob Gutierrez ([25:14](#)):

And I want to mention the fact that we already have a millionaires tax on the ballot, so we would potentially add another surcharge to high income earners in the state. Fun fact, that was drafted and put on the ballot bankrolled by Sam Bankman-Fried's brother, so we've all...

Nikki Dobay ([25:33](#)):

Okay.

Rob Gutierrez ([25:35](#)):

And that's to stop future pandemics.

Nikki Dobay ([25:37](#)):

Okay, okay.

Rob Gutierrez ([25:39](#)):

And then we've got some rent control initiative, there's another minimum wage initiative, and then there's some potential legal tort reform for how companies handle wage disputes. So it'll be a packed ballot.

Nikki Dobay ([25:54](#)):

All right. I'm just kind of wondering if you want to give your younger journalist self some advice, like, "Don't get into taxes." No, just kidding. Okay, so we're going to regroup in 2024 when we know it's actually on the ballot and you can do your crystal balling then. Let's go back to 2023, although I kind of feel like this question is a little bit moot because we are just going to move into 2024 when things could happen. So is there anything that didn't happen that was a big deal that we need to know about, or is that, again, just not a good question because as we head into 2024, everything's back on the table for the most part?

Rob Gutierrez ([26:42](#)):

We still haven't talked about what the revenue condition looks like for the state. Taxpayers still have until October to file personal income taxes due last year, and so we still don't know what California's budget deficit really looks like. How bad is it or are we going to escape that possible fiscal crisis? And that will have a huge impact on what tax legislation we look at in the coming year. SB-220 was proposed, it's a two year bill, it will be around next year, and for everyone listening, that is a corporate tax rate increase proposed by the Senate Budget Committee in the event that the revenue for the state really takes a hit. And so that is an option that could be considered. So I think that's hanging over the legislative climate, the budget, and we'll obviously know with the governor's budget in January how bad things are, if it is indeed bad. So we'll see.

Nikki Dobay ([28:03](#)):

So we've got a little reprieve before we really know if we're going to kind of skate by in 2024, except for the crazy ballot that you're going to have in November, or if that cliff is coming, which, when we discuss revenues nationally, it's kind of like, "Oh, the states are all still doing pretty good. Well, except California." All right. Okay. Well, Rob, I'm happy you made it through the end of session or the adjournment, and we will just have to kind of see how things go with this filing deadline and then figure out how much we need to gear up for battle in 2024. All right. Any final thoughts before we get onto the real fun? The surprise non-tax question?

Rob Gutierrez ([29:02](#)):

I think everyone needs to brace for next year. It's going to be a very difficult year.

Nikki Dobay ([29:09](#)):

All right.

Rob Gutierrez ([29:09](#)):

[inaudible 00:29:10].

Nikki Dobay ([29:09](#)):

Okay. Well on that note... All right. So the surprise non-tax question. So I was thinking about this, we've moved into a new season, fall, and I've been spending more time in Sacramento the last few years and

you all don't have seasons proper. So I just wondered, from your perspective, is there anything about Sacramento in particular in the fall or just something that's your favorite thing to do in the fall? So really, the question is what's your favorite thing about fall? I'll start. I would kind of love Sacramento in the fall because I like warm weather, and so I always keep track of your weather and I think some days you're still in the nineties and I'm like, "Oh, that sounds so lovely," So I think I would love a Sacramento fall, but just fall in general. I do like wearing boots, I think that's really fun, so I go from Birkenstock to boots, so that's kind of when I was just online picking out a new fun pair for this fall. So what's your favorite thing about fall?

Rob Gutierrez ([30:15](#)):

You're talking to the wrong person. I went to school in Santa Barbara...

Nikki Dobay ([30:22](#)):

But I blow onto these questions.

Rob Gutierrez ([30:23](#)):

Yeah. I went to school in Santa Barbara to escape seasons where it was 65, 70 degrees year round and there were no seasons. But I live in Sacramento because this is where the capitol is, and so I do get to experience seasons and probably one of my favorite traditions for fall is going up to the foothills into where... We've got a place called Apple Hill where there's apple season and you get to go pick apples and do all that.

Nikki Dobay ([30:57](#)):

All right. Well, I kind of love that you moved away to get seasons. I don't think there's... See, I would want it to be a little warmer, but I'm all good with perpetual summer, but it'd be hard to wear boots, so there's that part. All right, well, I'll be excited to hear about the apples. Thank you so much for hanging in on this podcast episode with me. What our listeners will never know is some of the craziness that happened behind the scenes on this one. You can find Rob or I at the next event and ask us about that. But thank you again Rob, and thank you to the listeners for joining. Information for Rob and my contact information for Rob and me will be in the show notes and I look forward to being with you again on the next episode of GeTtin' SALTy.

Rob Gutierrez ([31:45](#)):

Thanks so much Nikki.