

Speaker 1 ([00:01](#)):

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Peter Blocker ([00:16](#)):

This is a California problem. There isn't a nationwide cataclysmic economic event that is causing our economic issues here, or anything like that. The deficit here is simply made by the government, by the legislature.

Nikki Dobay ([00:33](#)):

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 am very pleased to once again be joined by Peter Blocker, vice president of policy at the California Taxpayers Association, also known as CalTax. Peter, you are quite the regular these days.

Peter Blocker ([01:00](#)):

Nikki, thanks for having me back. I'm glad you're having me back after the last time.

Nikki Dobay ([01:04](#)):

Well, it's not that I don't enjoy our conversations, but California has just been a little off the rails this year. So thank you so much for being willing to be the bearer of bad news for our listeners, and talk about all of the crazy stuff that California is doing. And we wanted to make this very timely. California just passed its budget, and so Peter, tell me nothing bad happened in the budget.

Peter Blocker ([01:32](#)):

I wish I could do that. This has to be the most difficult budget I've ever dealt with in California.

Nikki Dobay ([01:38](#)):

Great.

Peter Blocker ([01:39](#)):

I know, talking to others, they agree. I think maybe during the Arnold Schwarzenegger years, when the state was in a lot of trouble, I think there was a lot of reason for... You can imagine why things were bad. This is a California problem. There isn't a nationwide cataclysmic economic event that is causing our economic issues here, or anything like that. The deficit here is simply made by the government, by the legislature, and which is unfortunate. The governor presented his budget in January, and we knew there would be a shortfall. And he said there would be no tax increases. He said in May, when he proposed his revised budget, he's not interested in tax increases, and there were, I think at least around \$20 billion in tax increases in the budget.

Nikki Dobay ([02:31](#)):

All right, so let's talk about those. What's your favorite? Pick your favorite. Where are we starting today?

Peter Blocker ([02:40](#)):

The one that got the most news, I would say, was, of course, the repeat from 2020, which is the limitation on tax credits to \$5 million, and suspension of net operating losses. The governor proposed to do that for 25, 26 and 27. So it was very frustrating, because in 2020, the height of COVID, the Department of Finance here was projecting a huge deficit. We encouraged legislators to reject this proposal to do something similar, because we said it was too early to determine that there would be a shortfall. It turns out we were right. There was a record historic surplus. The state passed this, so you would think, well, they would just roll it back, and they didn't. They kept it for two years, and it was scheduled for three. In 2022, taxpayers finally were able to...

[\(03:34\)](#):

They lifted the suspension, and the limitation, and now, the state's doing it again. Once again, this was typically done, it was usually two years, not three, and it was done every 10 to 12 years. This time, it's twice within less than a decade, and within five years. It's like I said before, it's a California problem, and they're doing it again. We have expressed to legislators what kind of message this sends to California businesses, but what made this worse is that the legislature adopted these proposals, but instead, made them retroactive to January 1 of this year. So we were hoping to make some progress in the legislature, and there you go. They made it worse.

Nikki Dobay [\(04:27\)](#):

And they didn't build in because I know there was also a discussion of building in that relief valve, that if things improve, and there's greater revenue than expected, this wouldn't go into effect, and those provisions didn't make it in as well. Is that correct?

Peter Blocker [\(04:44\)](#):

Yes and there was also intent language to have some sort of refundability, and this was driven by an effort to try and preserve the R&D tax credit, I think was the main driver behind this. And unfortunately, in dealing with this spread very thin on, there's so many tax proposals in the budget, as you can imagine, with so many different industries, it wasn't like everyone was equally behind each measure. Everyone was split up, and it made it very difficult to fight. I think that this community didn't have a lot of leverage, and what they got was intent language, but it's unclear.

[\(05:26\)](#):

The governor doesn't have to fulfill any promise to do that. There's no language now. I think the legislature said that they would plan to take this up in August, and for those that don't know, the deadline for approving the budget was the 15th. The legislature is going to be in town until I think it's July 3rd, so to the beginning of July. They come back in August, there's one final month of session for the two-year session. So that final month, great time to take up important policy, at a time when policy committees actually are not allowed to meet. They can weigh rules and do all sorts of things, and the budget committee, there's all sorts of different things they can do, but typically, there's nothing scheduled for August.

Nikki Dobay [\(06:16\)](#):

All right, but there's a lot scheduled this year.

Peter Blocker [\(06:19\)](#):

Yeah [inaudible 00:06:21]. If you had a couple of hours, I could tell you about the whole year, but I'm going to try and stay focused on the budget. I'm not going to use this as a venting session about how things have gone.

Nikki Dobay (06:28):

Okay. All right, so that wasn't a tax increase. Check that one off. What's the next one?

Peter Blocker (06:35):

The governor described that as a timing difference.

Nikki Dobay (06:37):

Yes, yes.

Peter Blocker (06:39):

There are several provisions. There was an elimination of the bad debt deduction, and some other various provisions, but I think the one that garnered the most attention, at least for us, was the apportionment of foreign dividends issue. The budget, or they described it as a clarification, again, not a tax increase.

Nikki Dobay (07:00):

Right, right. And yeah, Let me set the stage a little on this one. There was a case that the OTA, Office of Tax Appeals, decided earlier this year, which was a very significant win, to my mind, the absolute right decision for a taxpayer, related to apportionment. That case did deal with the 965 income that was part of TCJA, and there was that taxpayer repatriated income under that program and the question there was whether the gross amount of receipts that were repatriated would go into the denominator, or a net amount that was taxable for federal purposes. There again, significant win for the taxpayer, and the OTA.

(07:51):

This is not a standalone decision, they've been pretty strong on this as of late, saying that gross means gross, and for purposes of apportionment, you include the gross amount in your factor. That's historically the way apportionment works. We think of, we've got our taxable income, which is determined on a net basis because there are all sorts of deductions and things that go into that calculation. But apportionment, everybody's statute pretty much reads gross receipts. And so now California is, I'm using air quotes, their words, not ours, Peter and I take no responsibility for this, they're clarifying that really, what gross receipts mean is net income. I mean, that's my read of this new provision.

Peter Blocker (08:41):

Yeah. Part of what CalTax does is, of course, I think we do work in the legislature and we research all sorts of different broad spectrum of stuff. But one big one is trying to alert the business community of some of these more complex tax issues that they may miss. I wouldn't blame you if you are unfamiliar with tax policy or you very familiar with tax policy you would've missed in the governor's budget, it was one sentence in his summary and it described it as a clarification, I mean, very easy to miss. I can't remember an issue that I talked to legislators about, there I didn't get any pushback. We would go

through the budget issues and maybe legislators would say, "We have to fill this gap. What else can we do?"

[\(09:32\)](#):

But on this apportionment issue, and they would write down, "We would love to help you with that. This sounds crazy." And for this decision to be the message even as to the legislature as a complex tax issue, it's just the story behind. And some legislators who are here now, were there then when the Office of Tax Appeals was created, just the idea that what is the point of OTA if this is how decisions are treated? So they were very receptive to that message. I think everyone was. One of the only proposals that got beat up in budget committees. But like I said, at the end of the day, all of these proposals I'm talking about, by the way, it's SB 167, so everybody could object to this one thing-

Nikki Dobay [\(10:24\)](#):

But they can't. Yeah, it's all in there.

Peter Blocker [\(10:27\)](#):

And there's a timing issue where when legislature finally put it into print, there's a 72-hour rule. So then when it's finally in print, there were two days to try and fix things. And anyway, here we are.

Nikki Dobay [\(10:41\)](#):

This issue is absolutely not a clarification. I've told clients when I worked at COST, I would tell members, "The legislature can put anything they want into a bill. It doesn't mean that it's right or constitutional." So yes, it very clearly says that this is a clarification, but this really upends how taxpayers will apportion income in California at a time when also California is a single sales market-based sourcing state, the apportionment factor, what a gross receipt or what a receipt is is key. So I think this is going to result in so much litigation. We've got the separation of powers issue, we've got who does this apply for? Because we've heard, if you got your money, you're good, but if you didn't get your money because there's a lot of refund claims pending, this will impact you. So what is the effective date? How is that going to be determined? I think that one's a big one. And then I think there's due process, commerce clause, could be contracts, clause, claims. Peter, I see this one taking a long, long time before we understand where it all shakes out.

Peter Blocker [\(12:04\)](#):

And I think many companies who would be affected by this change were even late in dealing within the legislature. And so I don't know if even there was a realization of just how big a change this would be and how broad it is. And I think there's also, there is a strong interest in, even if you think you're a taxpayer who wouldn't be affected by this decision, I think there is a big concern with how OTA decisions are treated. And so I think there's got to be a line somewhere. I cannot overstate how appalled even people at the Capitol were, how this happened.

Nikki Dobay [\(12:49\)](#):

Yeah. And to your point, because this was in the budget and nobody could just stop this one thing, it makes it really hard to understand what the OTAs role is. So had this gone through the policy, the regular process, because again, if the legislature wanted to really upend and change California apportionment, it's completely within their purview. They could draft a bill, they could take it through the appropriate committees where there's comment and debate about it and then make a decision. But

this process, there was no other than the very truncated, and I've never been a part of the budget process. So it all seems to be a blur when you're not in the capitol, but it just doesn't get the same level of scrutiny.

Peter Blocker ([13:45](#)):

Yeah. At the bare minimum. That was our ask to legislators and to the governor, which was, this is not something that belongs in the budget. It's obvious that it doesn't look like anything else that's in the budget. And our ask was not only should it be rejected, but if you're not going to reject it, if you're skeptical, you're very sympathetic to their arguments to finance and FTB, this should be a policy committee issue. And for those who don't know who are listening, beginning of the year, starting January and bills introduced last year can also be heard of certain bills, various different restrictions on that. But if this was a bill, it would go through one or two policy committees, go to a fiscal committee, get a floor vote in its house of origin, go over to the other side, one or two more policy committees.

([14:32](#)):

All of them have a different analysis then into a fiscal committee, then onto the floor again before it would have to be approved. A big long process. And this bill was in print on, I think a Saturday and it was passed on Thursday. And yeah, just rushed through, little to no policy debate when there was RN language. So there was a budget trailer bill language from finance earlier, most of the time, that language does not end up being exactly verbatim what's in the bill. But when it was a standalone proposal, alleged counsel here keyed it as a majority vote and one which means that they don't believe as a tax increase, so it made messaging very difficult. But then in the budget committees, there was the legislative analysts who is usually very good on, they're usually with us, they're nonpartisan.

([15:33](#)):

But when they are doing their analysis and presentation to the legislature on various budget proposals, more often they're not, they're with us and making similar arguments. In this case, it was just legislators kept asking them questions about this proposal, and it was that they were very unhelpful, I guess is the best way to put it. They were, any questions about retroactivity? Would this affect any decision? Would this affect an [inaudible 00:16:00]? LAO was basically using the exact same, I don't want to say arguments, they were making the same points as finance was, and that made it very difficult. I think at the end of the hearing finance and the LAO made a comment or two, which I don't know if it was unintentional, but it was making our point, which was telling.

Nikki Dobay ([16:22](#)):

Yeah. Well, this one, again, I just think there's going to be challenges likely by individual taxpayers as their refund claims are denied. I think going forward, even if this had gone through the proper channels, I think we will still see a lot of challenges just because this really turns apportionment on its head. And you're going to have a lot of situations where people are going to say, "It's no longer fair, this isn't fair apportionment." And then we've got this retroactivity issue, which again, I don't know that we've seen much retroactivity litigation in California, but I think you guys are going to get to do some of that. So that'll be cool. So okay.

Peter Blocker ([17:08](#)):

And SB 167 and the budget AB 107, they are not yet on the governor's desk, they will be any day now. When it reaches his desk 12 days to sign it. So that's the other part where it's not done, done. I mean, very rarely does anything change at this point. But just so you know, it's not been inked in.

Nikki Dobay ([17:30](#)):

Does he have a line item veto power or anything like that?

Peter Blocker ([17:34](#)):

Yes.

Nikki Dobay ([17:34](#)):

Okay.

Peter Blocker ([17:36](#)):

But I wouldn't expect anything like that.

Nikki Dobay ([17:37](#)):

All right, Peter, you got to work your magic and get that crossed out. No, just kidding. No pressure. All right, any closing thoughts on the budget? So there were known tax increases. I mean, I think that's the takeaway.

Peter Blocker ([17:50](#)):

One takeaway was we always view the budget in this very narrow way of, I shouldn't say narrow, the tax issues not narrow. I mean it affects everything in the budget, but there was just a lot of other noise because there obviously were a lot of cuts to future spending on issues. So the legislature is not in the capitol right now. There's this building referred to as the swing space where the legislators are, while they're doing construction on the capitol, which I'm looking at right now, I don't see any cranes moving. So not a lot of progress this morning, but it's taking years. This never happened to me before, but there were long lines outside the building and there was me, one person advocating and trying to make people aware of issues like this apportionment issue.

([18:40](#)):

And there were over a hundred people in purple shirts and other things who were trying to get legislators to not make cuts. And so I guess that's the last thing. People forget sometimes that not only is it rushed through, but this is just a small piece of the... And so there's a lot working against taxpayers when things are done like this. And generally it seems like it's become the norm now. I have heard from legislators that they feel like there should be a change after this year was so bad because in other proposals they were rushed through. But it just, it's treated kind of business as usual that all major policy is put through the budget and it gives the governor a lot of leverage in trying to force these things through.

Nikki Dobay ([19:35](#)):

Well, and again, I think there was a lot of messaging that got twisted, and not that we went into the session feeling okay because of the governor's statements early on. There were a lot of other fights that you've been here talking about, but I just don't think anybody expected it to be ultimately the bloodbath that it was.

Peter Blocker ([19:59](#)):

Not to say I told you so to anyone, but if you've ever heard me talk about this legislative session or others, because I hear from others, "Well, the governor says he's 90% tax increases." There's been a tax increase almost every year in the budget since the governor's been in office. And most people don't realize their tax increases. And he gets away with calling it, he had a conformity bill that every single provision in it raised revenue, but that's not a tax increase. That's conformity.

Nikki Dobay ([20:27](#)):

Right, right, right. He's good. He's good at what he does. [inaudible 00:20:32]/ Well just leave it at that. So you said folks are back till about the first couple days of July. Any action before that? I think there's one other bill you've been keeping an eye on. I'm sure there's several, but there's What other ones that we were talking about?

Peter Blocker ([20:50](#)):

So last year, and by the way, one of the reasons why we didn't have high expectations for this year in terms of what the legislature would pass, end of last year was terrible. I mean, I think every industry took a big hit. A lot of the moderate Democrats that the taxpayer community, business community relies on to stand up for taxpayers, they did not. And one of the big ones was ACA 1, if it's the constitutional amendment, which, so if it's approved, it does not need the governor's signature, if approved by the legislature it goes to the ballot in November. So ACA 1, it passed by voters would lower the vote threshold for bonds and special taxes. That fund infrastructure are very broadly defined, more broadly defined than we see in other proposals and then also affordable housing.

([21:44](#)):

And that broad definition of infrastructure is problematic because you can make a case for a lot of things under this definition of the infrastructure. And we track all local taxes. I don't think anyone's ever looked at California and thought, "Gee, it must be too hard to pass tax increases there." This is a big change, change to Prop 13. And that past was a big fight. It's a longer story about what happened with other measures that played a part. But since then, from what we understand, local governments started putting pressure on the author because polling has showed that this is not popular with voters. And it is very, very, very unlikely that it will pass. And many local governments have bonds that they would like to pass this next election.

Nikki Dobay ([22:31](#)):

I see.

Peter Blocker ([22:33](#)):

They pressured assembly member Aguiar-Curry, the author, to amend this constitutional amendment to only deal with bonds.

Nikki Dobay ([22:42](#)):

I see. Okay.

Peter Blocker ([22:45](#)):

It's lowered the vote threshold for bonds that fund these affordable housing and a little bit more of a narrower definition of what infrastructure is. As far as I've worked in California, the legislature, I don't think I've ever seen this where, and I don't think I've talked to anyone who's familiar with how this

works, but so ACA 10 is what this new bill is, or constitutional amendment, if they passed ACA 10 that would then amend ACA 1 and they want to keep it in ACA 1 because that has a more advantageous position on the ballot in November.

Nikki Dobay ([23:20](#)):

I see. I see. Okay.

Peter Blocker ([23:23](#)):

And so they have until the 27th to get that done. Because by the 27th it's the last day that the legislature can put things in the ballot. So there you go. That's the next big fight.

Nikki Dobay ([23:35](#)):

Okay. So that would completely replace, well, the language would be amended essentially in ACA 1. So it would stay ACA 1, but the lower vote threshold would apply only to these bonds and not... Okay. Okay.

Peter Blocker ([23:52](#)):

We've got a lot of questions for how we are treating it and as well as other associations here. And we are all treating it like, this is pretend ACA 1 didn't exist.

Nikki Dobay ([24:03](#)):

Got it. Okay.

Peter Blocker ([24:04](#)):

Because it doesn't, it's going to be pulled or it's going to lose, or it won't get any funding. So I think that most organizations aren't... If the local government wants to pass a bond, that's fine, but lowering the vote threshold makes it very, yeah, it's going to lead to a lot of higher property taxes for [inaudible 00:24:22].

Nikki Dobay ([24:22](#)):

Okay. Which they love. No, they don't.

Peter Blocker ([24:25](#)):

Love it, oh yeah.

Nikki Dobay ([24:27](#)):

All right, Peter, well I think you've done a wonderful job so far at this session. You've been getting beat up all over the place. Thank you again.

Peter Blocker ([24:38](#)):

Yeah, I should say this is a very successful session for CalTax. I mean, there's a lot of bad bills and we beat them all.

Nikki Dobay ([24:47](#)):

I know, I know.

Peter Blocker ([24:47](#)):

Until this budget. Until the budget.

Nikki Dobay ([24:49](#)):

Yeah. No, I know. It's been a crazy busy year. Not that I don't enjoy talking to you, but I don't think there's been a year probably since 2020 where we've talked as much as we have. But it's just like, "Wait, what's this?" So hopefully you'll get a little rest in July. And so we're going to pivot to our surprise non-tax question. Okay.

Peter Blocker ([25:12](#)):

I brought the surprise.

Nikki Dobay ([25:16](#)):

In July-

Peter Blocker ([25:17](#)):

Really, it is a surprise.

Nikki Dobay ([25:18](#)):

You're going to hopefully take some time off and maybe you'll go on a road trip and while you're on a road trip, when you have to stop to get gas or maybe charge your car, whichever these days, if you go into a convenience store, what is your guilty pleasure food? I really like Cheez-Its so, I always get Cheez-Its sometimes I get beef jerky, but those are a couple of my guilty pleasure food. So what is your convenience store guilty pleasure food?

Peter Blocker ([25:51](#)):

Always hit the energy drinks first, depending on how I'm feeling. It's either the Zero Carb Monster or zero Calorie Monster or a Rockstar. I really like Red Bull, but the cans usually aren't big enough. They make big ones out. My favorite F1 team. So sometimes I feel like even if it's more expensive, I need to support my F1 team. And then always go for beef jerky. Love beef jerky, go there's. And then you wouldn't feel that guilty about it but when I love trail mix, but only when it has lots of chocolate in it, it's like this is how I get out of, I'm not getting peanut M&Ms, I'm just doing trail mix. That's must be much better for you. I eat it in a quantity that is unacceptable. It's way too much trail mix. So that would be my other one. Yeah.

Nikki Dobay ([26:41](#)):

All right, well hopefully you will get out there and at least have some vacation or a road trip or do something fun. Because unfortunately it sounds like August is not going to be a cakewalk.

Peter Blocker ([26:55](#)):

Rob has not asked me. He has told me to take July off, so, that's what's happening.

Nikki Dobay ([27:00](#)):

All right. No, podcast in July, so awesome. Well, Peter, thank you again so much for joining me and walking us through the budget. I'm sure we're going to be talking later this summer after your month off and well deserved. And thank you to the listeners for joining us. If you have any questions or comments, please check out the show notes. Feel free to leave some comments or questions there, and we will get back to you. Thank you again, Peter, and thank you for listening. I'll be back with you soon. On the next Gettin' Salty.