

The Washington Report

Special Edition

This Washington Report is prepared exclusively for Finseca Influencer members by Tom West (Partner) at Capitol Tax Partners.

Discussion of California Wealth Tax Proposal

Background

California has a ballot proposal that would amend its constitution and impose a so-called “Billionaire’s Tax” on certain residents. Key features of the proposal are:

- Would apply to California residents (individuals and trusts) with a net worth of \$1 billion or more.
 - It is estimated that the tax would apply to approximately 200 taxpayers.
 - It is estimated the tax would raise \$100 billion over 5 years.
- Would impose a one-time tax of 5% on net worth as of December 31, 2026 (with certain carve-outs from net worth for real estate, retirement assets, and certain personal property).
- Would apply to those who were California residents as of Jan. 1, 2026.
- Payments would be required beginning in 2027, with options to pay over five years with an additional interest charge.

In order to make it onto the California ballot for the November election, the initiative requires approximately 875,000 signatures by June 24, 2026.

Potential Implications

California has already seen many HNW individuals and families leave the state ahead of the potential enactment of this measure (the proposal was filed in October 2025). While several prominent billionaires have very publicly left the state, there are an unknown number of similarly situated taxpayers who have left (and perhaps will leave) the state in an attempt to escape tax nexus.

- There are many questions about the efficacy of escaping tax jurisdiction and whether or not residents who nominally left or leave during 2026 can argue that they would not be liable for this tax should the measure pass.

An exodus of high-income, HNW individuals could seriously erode California's tax base, in what is already a revenue constrained situation.

- The Tax Foundation estimates that the individuals who have preemptively left California ahead of this potential tax have taken upwards of \$1 trillion of assets with them (the source of this estimate is unclear).
- While the tax as proposed on the ballot measure would not apply to those who move into California after January 2026, if and when the tax is passed one time, it would seem to make future assessments more likely, thus discouraging relocation to California for individuals and/or businesses who may logically be wary of a new proposal in a few years.

For taxpayers whose wealth is tied to a privately held business, the billionaire tax could present significant cash flow problems, forcing owners to potential divest of their businesses, or parts thereof, at inopportune and/or inefficient times. This could significantly disrupt long-term planning and investment at non-public companies.

More broadly, if California passes a wealth tax along these lines, it could create momentum for a similar or analogous tax at the federal level. While there have been federal proposals for wealth taxes discussed in the past, none of these has gained traction in Congress, see for example the proposal for a "billionaires tax" floated by the Biden Administration during the BBBA legislative debate in 2022.

There is however also the possibility that the ramifications of the passage of this tax in California could prove a warning for similar attempts at the federal level.

- First there is the possibility that legal challenges to the California law (see discussion below) are successful and a precedent is established that rules these types of taxes to be unconstitutional at the federal level.
- In addition, it is possible that the most dire forecasts about the erosion of the California tax base and the general exodus of HNW taxpayers and/or businesses from California demonstrates that a significant wealth tax is counter to revenue raising. (Obviously there are higher barriers to exiting the U.S. tax net than there are to leaving California, but nevertheless, the California experiment could give policy makers pause if it proves unsuccessful.)



Likelihood of Enactment

Obviously hard to predict at this time. Polling from February 2026 shows anywhere from 48% to 60% of Californians support the proposal. However, many politicians in CA, including the Democratic governor, oppose the measure.

It is relevant to observe that there have been previous wealth tax proposals along these lines in California, and they have failed. Prior proposals have been legislative rather than ballot measures to amend the state constitution, but they may nonetheless be informative. Most recently, in 2024, a wealth tax bill did not advance out of the California Assembly because of staunch bipartisan opposition, including by Governor Newsom. At that time, California legislators voiced concern that a wealth tax would deter people from moving to the state and also drive away existing high net worth residents. The experience of European countries that have adopted wealth taxes was cited as evidence of this unintended outcome (although it should be noted that there are non-U.S. jurisdictions where wealth taxes, albeit relatively smaller ones, have proved more durable, see e.g. Switzerland).

It is unclear at this time how many signatures the measure has accumulated, but it does not yet have a sufficient number to be placed on the November ballot.

Potential Legal Challenges

While the authors of the California ballot measure insist that it was carefully crafted to avoid constitutional issues, there will inevitably be challenges if it is enacted. The law, both federal and state, surrounding these questions is unsettled. Much of the debate about potential federal wealth taxes in recent years has been about the legality of such taxes under the Constitution. Some of those arguments are not relevant when discussing a California tax because there are certain taxing powers left to the states under the Constitution. In addition, California law may present certain unique state-level challenges when it comes to a tax along the lines proposed.

a. Federal

- **Violation of the Commerce Clause.** Generally, to comply with the Commerce Clause, a tax must (1) apply to an activity with a substantial nexus with the taxing state; (2) be fairly apportioned; (3) be nondiscriminatory against interstate commerce; and (4) be fairly related to the services the state provides.
 - The proposed California wealth tax could be challenged because an applicable resident's worldwide assets would be subject to the tax.
 - Additionally, taxpayers could argue that this tax is not fairly apportioned, as the tax could reach wealth generated outside California.



- **Retroactivity and Due Process.** Both the U.S. and California Constitutions require due process, and retroactive taxes may violate due process. The tax could be deemed retroactive because the date for determining applicability of the tax, January 1, 2026, precedes when the tax can be enacted, after the November 2026 election.
 - Some retroactivity is generally allowed under the Constitution and tax common law, and the California proposal might fit within the general category of “modest” retroactivity. However, when addressing not merely retroactivity but retroactivity of “a wholly new tax,” the U.S. Supreme Court has shown discomfort. See *U.S. v Carlton*.
- **Violation of the Takings Clause.** Both the U.S. and California Constitutions have so-called takings clauses that prohibit the governments from taking private property without providing just compensation.
 - It is long-settled that taxes are generally not considered takings, but there is an argument under the Supreme Court’s decision in *Armstrong v. United States* that if a tax requires “some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole,” then the tax may qualify as an unconstitutional taking.
- **Illegal Bill of Attainder.** The U.S. Constitution forbids states from enacting bills of attainder which are laws that (1) single out a specific individual or group, (2) impose punishment on that individual or group, and (3) impose the punishment without trial.
 - It can be argued that the California wealth tax targets a group of individuals – i.e., approximately 200 billionaires who would be subject to the wealth tax – and it unquestionably does not provide for a trial. Therefore, the question is whether the tax can be considered a punishment.
 - Taxpayers could argue that the tax is intended to punish the wealthy.
 - Taxpayers could also argue that the tax is similar to historical bills of attainder that involved the punitive taking of property.

b. California

- **Property Tax Cap.** The California Constitution prohibits a property tax that exceeds 0.04% of the property’s value on “any interest in notes, debentures, shares of capital stock, bonds, solvent credits, deeds of trust, or mortgages.” Although the California ballot measure is termed an “excise tax,” a court could find it should be more properly considered a property tax. If so presumably the billionaires’ tax would be subject to state constitutional limitations on property taxation.



- **Violation of the Uniformity Clause. California** Constitution includes a Uniformity Clause which requires all property taxes to “be assessed at the same percentage of fair market value,” or, if another value standard is used, “the same percentage shall be applied to determine the assessed value.” The ballot initiative allows some but not all liabilities to be taken into account in computing net worth. Arguably, taking only certain liabilities into account could result in different tax rates which would violate the Uniformity Clause.

