PERSPECTIVE

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California's Billionaire Tax Puts Residency Under the Microscope

By Robert W. Wood

There has been considerable talk and plenty of news coverage about California's proposed tax on billionaires. There were major efforts from proponents to get it on the November ballot, and equally major efforts from opponents (including Gavin Newsom) to keep it off. In the end, of course, the proponents won out, and it is on California's ballot for voting in November. Everybody gets a vote, yet the direct and immediate targets of the new tax allegedly number only a couple of hundred people.

The polls have been puzzling, with some suggesting that most people are for it, and most people are against it. But just looking at the lopsided numbers and the attractive target that billionaires seem to make, it seems hard to imagine that it will not pass. If it does, we can expect litigation over the constitutionality and administration of the tax. We can also expect an army of advisers who will help billionaires to minimize its impact.

Some billionaires already have left the state, including Mark Zuckerberg, Sergey Brin and others. But even if they left well before the tax is passed, it is not clear whether their moves during early 2026 will be considered early enough to exempt them. One of the many controversial features of the billionaire tax is that it is retroactive. The obligation to pay the tax is triggered on January 1, 2026, as a one-time tax on billionaires who live in California on that date.

Yet the date on which the value of their assets is assessed is nearly a year later, December 31, 2026. The initiative was filed with the state attorney general's office on October 22, 2025, by the Service Employees International Union-United Healthcare Workers West (SEIU-UHW). Then, on December 26, 2025, the measure received formal clearance to begin collecting voter signatures. It was only in June 2026 that there were sufficient signatures to get it on the ballot.

In view of this timeline, if a billionaire left sometime during 2026, are they safe? There will be litigation over the retroactivity of the tax, but California has successfully passed and enforced retroactive tax legislation before. There will also be numerous interpretive and administrative issues to iron out, including many involving valuations, and various moves designed to thwart or reduce the tax.

The tax is on one's net worth, which suggests that incurring debt may help to reduce the tax. Incurring debt may help, and so may buying real estate. Since real estate holdings are expressly excluded from the billionaire tax, putting money into real estate is another strategy being actively discussed. The goal is to bring down one's overall asset value subject to the tax as of December 31, 2026. However, there is an anti-abuse rule in the law that allows the FTB to disregard transactions that lack economic substance, or whose purpose was to obtain a tax benefit.

Who Wants to Be a Billionaire?

If you aren't a billionaire, how could any of this impact you? For one thing, every California income tax return will now have a box to check about the size of your assets. By checking the required box, non-billionaire Californians will need to certify that they do *not* possess $1 billion or more in assets. This will be a very easy and maybe even amusing certification for all but a few Californians to make.

Some opponents of the tax claim that Californians will have to disclose all their assets, but the box to check is simpler than that. But what it you are wealthy enough that it is a close call? Wealthy Californians who are getting close to the billionaire dollar mark may need advice about valuations and how to answer. All tax returns are signed under penalty of perjury, and in other contexts, incorrectly checking a simple yes or no on a tax return has been used by the government as evidence of fraud or tax evasion.

Examples are the box asking if you have a foreign bank account, and the box about crypto transactions. The latter asks: "At any time during [the tax year], did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, or otherwise dispose of a digital asset (or a financial interest in a digital asset)?" In short, a simple yes or no on a tax return can matter.

There could be other spillover effects of the billionaire tax. As noted, because real estate is exempt, billionaires have an incentive to convert stock and other investment assets into real estate. It is unclear whether this incentive could have an impact on the housing market. Wealthy Californians not in the rarified billionaire class, may also fear the floodgates aspects of any new tax. The tax is enunciated as a one-time tax, but that may turn out to be just good salesmanship.

Apart from the few billionaires this tax will impact, could the wealth threshold be lowered in the future? After all, California has proposed wealth taxes before. In 2022, a bill was introduced to tax households worth more than $50 million with a 1% annual wealth tax. For those worth over $1 billion, the rate would go up to 1.5%. This didn't pass, but like the billionaire tax on the ballot, it was proposed as a wealth tax, added on top of California's 13.3% state income tax.

Back in 2020, California proposed a wealth tax that would have kicked in at only $30 million in assets. That didn't pass either, but this series of proposals might cause some Californians who are quite successful but still a long way from being billionaires to assume that sooner or later, bigger taxes will be levied on them too. That, together with the retroactivity of the billionaire tax, may cause some Californians to consider getting out while they can.

For Californians considering a move or watching the state's tax landscape evolve, the billionaire tax is a reminder that where you live, and how well you document your state of domicile, can have lasting tax consequences. Even individuals who move for lifestyle, retirement, or family reasons rather than taxes may face increased scrutiny from the California

Franchise Tax Board. Coming from high-tax California, some of the most alluring states are those without an income tax: Alaska, Florida, Nevada, South Dakota, Tennessee, Texas, and Wyoming. But just about *every* state has lower taxes and lower costs of living. California's tough Franchise Tax Board has always scrutinized moves to make sure that the state is getting its fair share of tax revenue.

One of the biggest targets for the FTB is people who move away shortly before a major income event. By the time there is an audit, it may be clear that in fact the person established residency in another state. But not every event in a move occurs on the same day, so the exact timing of the move is a frequent source of controversy. If the Franchise Tax Board can successfully argue that the effective date of the move was a few months or even a few days later, the tax impact may be severe.

If voters approve the tax in November, the debate over the tax is unlikely to end. And the various moves and countermoves about its impact are unlikely to either. Still, it may be understating the importance of the tax if we view it as impacting only 200 people.

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