

Hertzberg again considers state tax on professionals

By Malcolm Maclachlan

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SACRAMENTO — Sen. Robert Hertzberg, D-Van Nuys, is considering pushing a bill next year to tax services — including legal services — in California. For the past four years, he has also maintained a ballot measure committee to push the idea, though he said there are no current plans to put an initiative before voters.

“The reality of the situation is the fundamental aspect of California’s of California’s economy has changed, which requires a rethink of our tax authority,” Hertzberg told The Daily Journal on Friday.

Hertzberg said he is still “thinking about” the idea, but added that taxing services would allow the state to address the “volatility” that comes with the state relying on high-income earners without rebalancing the tax burden onto those who can’t afford it.

Not surprisingly, the idea has faced pushback from services professions, including Hertzberg’s own colleagues in the legal field.

Hertzberg said the opposition he’s heard of has come from other professions, such as accountants and architects. He said he understood why some attorneys might not like it, but added as a lawmaker he has different priorities.

“I’m not big on service tax, I’m a lawyer,” Hertzberg said. “I don’t want to go back into practice if I leave government and have to pay tax on it.”

The likely vehicle would be SB 522, a bill he introduced in February but never fleshed out with specifics or pushed through a committee vote. He declined to say what the specific rates might be.

When and if the bill is amended, Hertzberg said, it would attempt to tax business-to-business services that can be deducted from federal taxes. The goal, he said, would be to draft the bill so it didn’t hit Pilates instructors or small law firms drafting wills for individuals, but which would tax firms say, writing up agreements for large developers or other businesses.

The bill would also address federal tax changes that eliminated the ability to deduct state income taxes.

“If you deduct it, pay taxes on it,” Hertzberg said. “It’s pretty simple to track.”

He also said the idea of service taxes has been widely misunderstood. For one thing, he said, “Forty nine other states have service taxes,” though these take a dizzying array of forms.

A 2018 report from the Tax Foundation, a conservative think tank, identified four states that tax legal services, all small states with unusual tax structures: Alaska, Hawaii, South Dakota and New Mexico. Service taxes were introduced in nearly a dozen state legislatures this year, though the proposals generally didn’t advance very far.

As currently drafted, SB 522 states the need “to modernize and restructure the state’s tax system” and make it less “dependent on the income of its top earners.” It also noted the service sector provided “82 percent of the state’s private gross domestic product in 2017.”

Because it would impose a new tax, SB 522 would require a two-thirds vote in both houses of the Legislature — a high bar, even in a Legislature dominated by Democrats. But Gov. Gavin Newsom has repeatedly stated an interest in the idea as a way to address the state’s volatile up-and-down tax collections. By contrast, in 2012 Gov. Jerry Brown vetoed AB 1963, a bill that merely proposed studying the idea of taxing services.

Lawyers and professional legal organizations have been key fund

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raisers for Hertzberg's political career, noted Diane L. Karpman, principal at Karpman & Associates in Los Angeles.

"This really seems antithetical to the person he has been for so many, many years," said Karpman, who represents attorneys in ethics cases. "Taking a position adverse to those who have supported you for decades seems a bit odd."

Indeed, Hertzberg's political career has had strong support from other attorneys. His 2018 reelection campaign received more than \$50,000 from attorneys, law firms and legal organizations. But that was a fraction of the more than \$1.1 million he raised on his way to winning 78% of the vote in November. He won't face the voters again before terming out of the Senate in 2022.

"He's free to tilt at windmills if he so chooses," said Sam C. Bellicini, a San Rafael-based sole practitioner who specializes in representing attorneys in State Bar discipline cases.

Bellicini added he is skeptical of the premise the tax "would offset a portion of the significant financial benefits provided to businesses under the new federal income tax laws." He said he and many other attorneys are actually paying higher taxes under the new federal tax structure.

But Los Angeles tax lawyer **Bruce Givner** said the idea has several positives: it's easy to collect and avoid regressive taxes on the poor. While it could lead some to leave the state, and give ammunition to those urging businesses to move to Texas, the partner with **Givner & Kaye APC** said his own practice confirms California is booming and wealthy people con-

tinue to move here despite high taxes.

Givner compared the idea to the value added tax (VAT) imposed on goods and services by all countries in the European Union. A tax on services is also seen as more progressive and potentially popular than another idea that has frequently been put forward to address California's tax volatility: lowering taxes on high income earners and raising them on everyone else.

The idea faces immense opposition, though. The California Chamber of Commerce included the bill on its annual "Job Killer" list. A May study from the California Foundation for Commerce & Education warned a tax on services would do little to address volatility.

Hertzberg has been talking about the idea for years. In December 2014, less than a month after first being elected to the Senate, he introduced SB 8. Dubbed the Upward Mobility Act, it never got fleshed out with numbers or received a committee vote, even as it prompted accountants in "No on SB 8" buttons to descend on the Capitol.

In late 2015, Hertzberg filed paperwork with the California Secretary of State to create Californians for Fair Tax Policy. According to campaign spending records, it has taken in \$142,000 from a variety of donors including the Personal Insurance Federation, Indian gaming tribes, utilities including Pacific Gas & Electric Co. and the California Association of Hospitals and Health Systems.

These same records show the committee spent \$81,000 on polling in 2016. Hertzberg said other spending has been used to con-

vene focus groups on the some of his tax ideas, but he has no plans to pursue an initiative at this time.

Last year, he introduced SB 993, which would have imposed a 3% tax on services phased in over three years. It also would have gradually phased in reductions to the state sales tax, though these rates would be subject to adjustment if net revenues came in well above or below projections. In a press release announcing the measure, Hertzberg's office said part of the goal was to lower taxes on middle and lower income Californians.

That bill also never got a hearing. But it did get a legislative analysis.

"SB 993 is likely the most ambitious change to the state's tax system since Proposition 13 (1978)," the analysis said.

But it listed opposition from nearly 100 chambers of commerce and professional organizations, including the California Defense Counsel. Under support, it stated "unknown."

The California Lawyers Association sent an opposition letter warning SB 993 "would have an adverse impact on California consumers" and put "California businesses ... at a competitive disadvantage." It noted the bill applied only to businesses selling more than \$100,000 in services a year but said this would still affect many small business and sole practitioners.

"The purchase of legal services is rarely a choice," warned the letter signed by CLA president Heather Linn Rosing. "The proposed new tax ... would increase costs and diminish access to justice."

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