

ARIZONA SUPREME COURT

KAREN FANN, an individual; RUSSELL
“RUSTY” BOWERS, an individual;
DAVID GOWAN, an individual;
VENDEN LEACH, an individual;
REGINA COBB, an individual; JOHN
KAVANAGH, an individual; MONTIE
LEE, an individual; STEVE PIERCE, an
individual; FRANCIS SURDAKOWSKI,
M.D., an individual; NO ON 208, an
Arizona political action committee;
ARIZONA FREE ENTERPRISE CLUB,
an Arizona non-profit corporation,

Plaintiffs-Appellants,

v.

STATE OF ARIZONA; KIMBERLY
YEE, in her official capacity as Arizona
State Treasurer; ARIZONA
DEPARTMENT OF REVENUE, an
agency of the State of Arizona,

Defendants-Appellees,

and

INVEST IN EDUCATION (SPONSORED
BY AEA AND STAND FOR
CHILDREN), a political action committee,

Intervenor-Defendants-
Appellees.

No. CV 21-0058-T/AP

Arizona Court of Appeals
No. 1 CA-CV-21-0087

Maricopa County Superior Court
No. CV2020-015495
No. CV2020-015509
(Consolidated)

**Appendix to Answering Brief by
Appellees State of Arizona and
Arizona Department of Revenue**

RESPECTFULLY SUBMITTED this 15th day of March, 2021.

Bergin, Frakes, Smalley & Oberholtzer, PLLC

/s/ Brian M. Bergin

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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN THE COUNTY OF MARICOPA**

10 KAREN FANN, *et al.*,
11 Plaintiffs,
12 vs.
13 STATE OF ARIZONA, *et al.*,
14 Defendants.

Case No. CV2020-015495
(consolidated with CV2020-015509)

**STATE DEFENDANTS' RESPONSE
TO MOTION FOR TEMPORARY
RESTRAINING ORDER (WITH
NOTICE) AND PRELIMINARY
INJUNCTIVE RELIEF**

(Assigned to the Hon. John Hannah)

16 ECO-CHIC CONSIGNMENT, INC., *et al.*,
17 Plaintiffs,
18 v.
19 STATE OF ARIZONA, *et al.*,
20 Defendants.

**(Oral Argument Scheduled for
December 23, 2020 at 1:30 p.m.)**

22 INVEST IN EDUCATION (Sponsored by
23 AEA and Stand for Children); and DAVID
24 LUJAN,
25 *Intervenors.*

1 Defendants State of Arizona, Carlton Woodruff, and Arizona Department of
2 Revenue¹ (collectively, the “State”), hereby file this response to the Plaintiffs’ Motion for
3 Temporary Restraining Order (With Notice) and Preliminary Injunctive Relief.

4 Plaintiffs’ request for injunctive relief should be denied because (1) it is not necessary to
5 protect the status quo because Proposition 208’s surcharge that Plaintiffs seek to enjoin
6 the State from collecting is not due until April 15, 2022, (2) it runs afoul of the statutory
7 prohibition against injunctions preventing the State from collecting an imposed or levied
8 tax, and (3) Plaintiffs otherwise have failed to establish the predicate factors compelling
9 issuance of a preliminary injunction.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 In the 2020 general election, Arizona voters approved Proposition 208, a citizen
12 initiative titled the “Invest in Education Act.” According to the text of Proposition 208,
13 its purpose was to address “[y]ears of underfunding by the Arizona Legislature” related
14 to education by generating “[a]dditional permanent funding to develop, recruit and retain
15 qualified teachers, hire counselors, close the achievement gap, improve career and
16 vocational education for Arizona students, prepare Arizona students for good jobs and
17 careers and meet Arizona employers’ need for a skilled workforce.” *See* Section 2 of
18 Proposition 208.

19 Proposition 208 amends A.R.S. Title 15 (Education) and Title 43 (Taxation of
20 Income) and creates an income tax surcharge for public education of 3.5% on taxable
21 income in excess of \$250,000 for taxpayers filing individually, or \$500,000 for taxpayers
22 filing jointly or as heads of household. A.R.S. § 43-1013(A). This surcharge must be
23 collected, and cannot be reduced, regardless of whether the Arizona Legislature changes,
24 replaces, or eliminates, the income tax rate brackets found in Title 43. A.R.S. § 43-

25 ¹ The parties have agreed to dismiss Carlton Woodruff without prejudice and to allow the Arizona Department of Revenue to be designated as a nominal party to this litigation. A stipulation to that effect is forthcoming.

1 1013(C). The revenue collected pursuant to Proposition 208 is to be deposited into a
2 newly-created student support and safety fund for the purpose of hiring and supporting
3 teachers, hiring classroom support personnel and student support personnel, and
4 providing other education-related services. A.R.S. § 15-1281.

5 Plaintiffs argue Proposition 208 violates the Arizona Constitution in four separate
6 ways. They allege Proposition 208 violates (1) Article IX, § 21 of the Arizona
7 Constitution because it seeks to exempt itself from the expenditure limitations for school
8 districts; (2) Article IX, § 22 of the Arizona Constitution because any new tax must be
9 enacted by a two-thirds majority of the Arizona legislature; (3) the Revenue Source Rule
10 in Article IX, § 23 of the Arizona Constitution because its new source of funding does
11 not cover all mandated appropriations; and (4) Article IV of the Arizona Constitution
12 because it attempts to restrict the Arizona legislature’s ability to exercise its constitutional
13 authority to appropriate general funds.

14 Although Plaintiffs acknowledge that the Joint Legislative Budget Committee
15 (“JLBC”) estimates that any revenues collected through Proposition 208 will not be
16 distributed until July 2022, at the earliest, they contend irreparable harm will occur if the
17 State proceeds to implement or enforce Proposition 208. Plaintiffs have requested that
18 this Court enter a preliminary injunction prohibiting Proposition 208’s implementation
19 until a full hearing on the merits can be conducted.

19 **I. Preliminary Injunctive Relief Is Not Needed to Preserve the Status Quo**

20 The primary purpose of a preliminary injunction is to preserve the status quo until
21 a final judgment can be issued. *Perez v. Perez*, 2020 WL 3443451, ¶ 15 (Ariz. App. May
22 23, 2020); *Ramos v. Wolf*, 975 F.3d 872, 887 (9th Cir. 2020). The injunctive relief
23 Plaintiffs seek in this case is not required to maintain the status quo. Specifically,
24 Plaintiffs have requested that this Court enjoin the State from (1) taking any action to
25 enforce Proposition 208; (2) levying any surcharge pursuant to Proposition 208; and (3)

1 appropriating general fund public monies originating from the general fund to pay for
2 costs associated with Proposition 208. *See* Plaintiffs’ Motion at 1:1-7 and the Proposed
3 Order filed concurrently therewith.

4 **A. The State Will Not Act to Enforce Proposition 208 against Taxpayers**
5 **Who Fail to Pay the Surcharge until No Sooner Than April 15, 2022**

6 Plaintiffs’ request to enjoin the State from “taking any action to enforce
7 Proposition 208” is both vague and overbroad. Plaintiffs do not identify what specific
8 actions they want to enjoin the State from conducting. The requested relief does not
9 describe in reasonable detail the act or acts Plaintiffs seek to restrain as required by Rule
10 65(d)(1)(C). Vague injunctions are disfavored and problematic both for the parties being
11 enjoined and the courts tasked with enforcing them. *See Reno Air Racing Ass’n, Inc. v.*
12 *McCord*, 452 F.3d 1126, 1134 (9th Cir. 2006) (the recipient of an injunction should not
13 have to guess what conduct is enjoined); *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974)
14 (“[T]he specificity provisions of Rule 65(d) are no mere technical requirements. The
15 Rule was designed to prevent uncertainty and confusion on the part of those faced with
16 injunctive orders, and to avoid the possible founding of a contempt citation on a decree
too vague to be understood.”)

17 If, by enjoining action to enforce Proposition 208, Plaintiffs are seeking to prevent
18 the Department of Revenue from assessing penalties against, or otherwise pursuing,
19 taxpayers who fail to pay the surcharge, injunctive relief is not required as no such
20 actions would occur until sometime after April 15, 2022 when 2021 income taxes are
21 due. *See* Exhibit 1 at ¶¶ 6. The Department of Revenue will not seek to enforce payment
22 of the Proposition 208 surcharge until sometime after that date for the obvious reason that
23 payment is not due until that time. *Id.* at ¶ 7. There is no indication in Plaintiffs’ request
24 for preliminary injunction that this matter cannot be fully litigated before that time. A
25 preliminary injunction to prevent the State from taking action to enforce Proposition 208,
therefore, is unnecessary.

1 **B. This Court Cannot Enjoin the Department of Revenue from Levying**
2 **the Surcharge**

3 Plaintiffs also seek to enjoin the State from levying any Proposition 208 surcharge.
4 Once again, this request is vague and overbroad. It also reflects a fundamental
5 misunderstanding of how income taxes are administered and collected.

6 The Department of Revenue cannot prevent taxpayers from voluntarily making
7 payments toward the surcharge through payroll withholding or voluntary estimated tax
8 payments. *See* Exhibit 1 at ¶ 8. The only available and inexact way to discourage
9 payment or collection of the surcharge would be for the Department of Revenue to
10 forbear from publishing new Withholding Election Forms (Arizona Form A-4) reflecting
11 an increased withholding percentage option to account for the surcharge. *Id.* at ¶ 9. Even
12 then, the Department of Revenue cannot prevent a taxpayer from withholding from their
13 paychecks, or from submitting an amount with their estimated quarterly tax payments, to
14 account for the surcharge. *Id.* at ¶ 10.

15 Additionally, the Department of Revenue’s initial “collection” activities in 2021
16 will consist simply of receiving withholding and estimated tax payments, as the
17 processing of 2021 tax returns will not begin until 2022. *Id.* at ¶ 11. This process cannot
18 be enjoined. The surcharge generally would be reported, and paid, along with other
19 indisputably lawful taxes. *Id.* at ¶ 12. If a taxpayer chooses to file returns and remit
20 payments attributed to the surcharge, the Department of Revenue must accept those
21 filings and payments, even if the surcharge is being challenged. *Id.* at ¶ 13. Any other
22 approach by the Department of Revenue would impermissibly and unreasonably interfere
23 with taxpayers’ attempts to comply with their self-determined tax obligations. *Id.* at ¶ 14.
24 If Proposition 208 ultimately is determined to be unlawful, any taxpayer who overpaid
25 based on anticipated surcharge liability would not be irreparably harmed. Any taxpayer
 who overpaid their liability in this manner would have a sufficient and complete remedy
 available through the commonplace, and time-honored, refund process. *Id.* at ¶ 15.

1 **C. Any Revenues Collected from Proposition 208 Will Not Be Distributed**
2 **Before July 2022**

3 Finally, Plaintiffs seek to enjoin the State from appropriating general fund public
4 monies originating from the general fund to pay for costs associated with Proposition
5 208. Once again, it is not clear what, precisely, Plaintiffs are seeking to enjoin. Plaintiffs
6 acknowledge that, according to estimates from the JLBC, any revenues collected through
7 Proposition 208 will not be distributed until July 2022 at the earliest. *See* Plaintiffs’
8 Motion at 16:14-17 and at Exhibit 9 (November 2020 JLBC Presentation). To the extent
9 Plaintiffs are concerned there will be costs associated with the administration and
10 implementation of Proposition 208 that will be paid from the general fund, they have not
11 identified what these costs are or when they might be incurred, thereby making this vague
12 request flawed, and ineligible for issuance by this Court.

13 Plaintiffs have not shown a need for an injunction to preserve the status quo until a
14 trial on the merits can be held. Their request for a temporary restraining order and
15 preliminary injunctive relief, therefore, should be denied.

16 **II. The Possibility of Proposition 208 Being Struck Down Does Not Justify**
17 **Injunctive Relief**

18 Injunctions to prevent or enjoin the State from “collecting an imposed or levied
19 tax” are prohibited by A.R.S. §§ 42-11006 and 42-1254(D)(1). The only exception to
20 these statutory prohibitions against injunctive relief recognized by the Arizona Supreme
21 Court is when the challenged taxes have been levied without semblance of authority and
22 resulting injury cannot be adequately provided by proceedings at law. *Church of Isaiah*
23 *58 Project of Arizona, Inc. v. La Paz County*, 233 Ariz. 460, 464-465, ¶ 19 (App. 2013),
24 citing *Crane Co. v. Ariz. State Tax Comm’n*, 63 Ariz. 426, 445 (1945), *overruled in part*
25 *on other ground by Valencia Energy Co. v. Ariz. Dep’t of Revenue*, 191 Ariz. 565 (1998).
An injunction is not available “to restrain the assessment of taxes imposed by law so long
as the tax official acts with a semblance of authority.” *Id.*, quoting *State ex rel. Lane v.*
Superior Court In and For Maricopa County (Struckmeyer), 72 Ariz. 388, 392 (1951).

1 In *Church of Isaiah*, the Supreme Court explained what constitutes a “semblance
2 of authority.”

3 It is clear that a legally or factually erroneous decision,
4 standing alone, does not establish that a taxing authority acted
5 without semblance of authority. *See Bowles*, 62 Ariz. at 180,
6 156 P.2d at 723 (injunctive relief not available “in all cases
7 where the tax is illegally imposed”). If the rule were
8 otherwise, the prohibition against injunctive relief would be
9 meaningless. Any aggrieved taxpayer could allege that a
10 challenged tax was erroneously assessed or collected, making
11 it “illegal.” *See Blubaum v. Cantor*, 21 Ariz.App. 586, 589,
12 522 P.2d 51, 54 (1974) (prohibiting injunction to test legality
13 of assessor's actions; “[t]o hold otherwise would be to elevate
every erroneous, wrongful or illegal action of the assessor to
the status of an act done without ‘semblance of authority’, in
effect nullifying the anti-injunction provisions”); *Bowles*, 62
Ariz. at 180, 156 P.2d at 723 (“To hold that injunction is the
proper remedy here would be equivalent to saying that
injunction would lie in all cases where the tax is illegally
imposed.”).

14 233 Ariz. at 465, ¶ 20.

15 Similarly, the U.S. Supreme Court has also strictly enforced the companion
16 Federal Anti-Injunction Act to preserve the government’s ability to assess and collect
17 taxes expeditiously with “a minimum of preenforcement judicial interference” and “to
18 require that the legal right to the disputed sums be determined in a suit for refund.”
19 *Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1484-85 (9th Cir. 1990),
20 citing *Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974). A narrow exception occurs if
21 (1) it is “clear that under no circumstances could the government ultimately prevail,” and
22 (2) “equity jurisdiction” otherwise exists where the taxpayer shows that he would
23 otherwise suffer irreparable injury. *Comm’r v. Shapiro*, 424 U.S. 614, 627 (1976),
24 quoting *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962).

25 Plaintiffs’ arguments against the constitutionality of Proposition 208 are addressed
in the companion brief filed by intervenors Invest in Education (Sponsored by AEA and

1 Stand for Children) and David Lujan (the “Intervenor-Defendants”). As discussed above,
2 Plaintiffs have not demonstrated that they will suffer irreparable injury if they or other
3 taxpayers have to pay the surcharge, particularly as any taxpayer obligations under
4 Proposition 208 will not ripen until after a trial on the merits can be held. *See* Exhibit 1
5 at ¶¶ 6-7. Any payments made on behalf of anticipated surcharge obligations would be
6 eligible for reimbursement through refund, if appropriate. *Id.* at ¶ 15.

7 Plaintiffs’ requested injunction, therefore, is prohibited by Arizona’s anti-
8 injunction statutes and does not meet any recognized exception.

9 **III. Plaintiffs Have Not Met Their Burden for Injunctive Relief**

10 To obtain a preliminary injunction, Plaintiffs must demonstrate (1) there is a
11 strong likelihood they will succeed at trial on the merits, (2) they will suffer irreparable
12 injury absent the injunction, (3) the balance of hardships favors Plaintiff, and (4) public
13 policy favors the injunction. *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). “The greater
14 and less reparable the harm, the less the showing of a strong likelihood of success on the
15 merits need be. Conversely, if the likelihood of success on the merits is weak, the
16 showing of irreparable harm must be stronger.” *Smith v. Arizona Citizens Clean*
17 *Elections Comm’n*, 212 Ariz. 407, 411 ¶ 10 (2006). Injunctive relief should be granted
18 cautiously: “A court should not wield its injunctive power to disrupt the settled rights of
19 others without first requiring from the applicant significant evidence that he is on legally
20 solid ground.” *P & P Mehta LLC v. Jones*, 211 Ariz. 505, 507 ¶ 9 (App. 2005).

21 **A. Plaintiffs Have Not Demonstrated a Strong Likelihood of Success at** 22 **Trial on the Merits**

23 Plaintiffs make four separate arguments against the constitutionality of Proposition
24 208. The Intervenor-Defendants, who were involved in drafting, advocating, and
25 defending previous legal challenges to Proposition 208, address these arguments in their
separate response to Plaintiffs’ motion for injunctive relief. The State wishes to promote
the efficiency of these proceedings and does not want to burden this Court with

1 duplicative arguments. Although, at the time of this filing, the State has only had a brief
2 opportunity to review the Intervenor-Defendants’ response brief, given their extensive
3 and unique background, the State defers to their arguments concerning how the Plaintiffs
4 have not established a likelihood of prevailing on the merits.²

5 **B. Plaintiffs Will Not Suffer Irreparable Injury**

6 Plaintiffs have not demonstrated that they will suffer irreparable injury if a
7 preliminary injunction is not issued. As discussed in Section I, above, any action the
8 State may take to implement Proposition 208 prior to trial will not cause irreparable
9 injury to Plaintiffs or to Arizona taxpayers. While taxpayers voluntarily may choose to
10 pay amounts in anticipation of Proposition 208’s surcharge at any time, payment is not
11 due until April 15, 2022. *See* Exhibit 1 at ¶¶ 6-7. The Department of Revenue will not
12 seek to enforce payment of the surcharge on taxpayers who owe but fail to pay until
13 sometime after that date. *Id.* at ¶ 6-7 and 11. Similarly, the JLBC estimates that
14 payments of any funds collected through Proposition 208 will not be distributed until July
15 2022, at the earliest. *See* Plaintiffs’ Motion at 16:14-17 and at Exhibit 9 (November 2020
16 JLBC Presentation). Moreover, as is explained above, if Proposition 208 ultimately is
17 deemed unenforceable, any overpayment resulting from payment made on behalf of the
18 surcharge can be recovered via refund. *See* Exhibit 1 at ¶ 15. Plaintiffs have not
19 demonstrated any irreparable injury that will result if the Court does not grant their
20 requested injunctive relief.

21 **C. The Balance of Hardships Does Not Support Imposing Injunctive Relief**

22 Plaintiffs also have not established that the balance of hardships tips sharply in
23 their favor. The only “hardship” identified by Plaintiffs involves their claim that

24 ² The State will immediately seek leave to advise this Court if, after further review of the
25 Intervenor-Defendants’ response, it has a significant reason to depart from any position
taken by the Intervenor-Defendants.

1 Proposition 208 will introduce “chaos and instability into the budgeting and
2 appropriations process.” *See* Plaintiffs’ Motion at Exhibit 4, ¶ 16. The arguments
3 Plaintiffs raise regarding the challenges of incorporating Proposition 208 into the State
4 budget are similar to the routine problems faced whenever a statute impacting revenues
5 or expenditures is enacted. Plaintiffs failed to sufficiently explain why contingencies
6 cannot be established to account for the binary outcomes of whether Proposition 208 is
7 deemed enforceable or unenforceable. While the establishment of such contingencies
8 may require additional legislative and budgetary effort, that does not mean Plaintiffs will
9 suffer a significant and disproportionate hardship necessitating preliminary injunctive
10 relief. Additionally, whatever budgetary challenges may be presented by Proposition 208
11 will be the same today as they will be after a trial on the merits can be held.

12 If Proposition 208 is upheld, Plaintiffs apparently want to delay its enforcement
13 until it can be accounted for in the budgets for fiscal year 2023. There is no legal or
14 equitable justification for such a delay. Any such delay would cause significant
15 hardships to Arizona voters who passed Proposition 208 and for the Arizona schools,
16 teachers and students that Proposition 208 was designed to benefit.

17 **D. Public Policy Favors Upholding Voter-Approved Initiatives**

18 The Arizona Supreme Court has long recognized Arizona’s strong public policy
19 favoring initiatives. *Feldmeier v. Watson*, 211 Ariz. 444, 447, ¶ 11 (2005), citing *W.*
20 *Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 428 (1991). The people’s legislative
21 authority is as great as that of the legislature. *Id.* at ¶ 13. Courts must exercise restraint
22 before imposing unreasonable restrictions on the people’s legislative authority. *Id.*
23 Additionally, every initiative is presumed to be constitutional. *Ruiz v. Hull*, 191 Ariz.
24 441, 448, ¶ 25 (1998).

25 Proposition 208 apparently reflects the voters’ belief that the State’s educational
system is underfunded and requires additional permanent funding that the Legislature has

1 been unable, or unwilling, to provide. See Proposition 208, § 2. The people have spoken
2 in approving Proposition 208. Public policy heavily weighs against imposing injunctive
3 relief.

4 **IV. Conclusion**

5 Injunctive relief is not required to maintain the status quo. A trial on the merits
6 will be held long before the State takes action to enforce Proposition 208 or to distribute
7 any funds collected by the surcharge it imposes on certain taxpayers. The proposed
8 injunctive relief also violates the prohibition against injunctions to prevent or enjoin the
9 State from collecting an imposed or levied tax established by A.R.S. §§ 42-11006 and 42-
10 1254(D)(1). Plaintiffs also have not met their burden for injunctive relief. Plaintiffs'
11 motion should, therefore, be denied.

12 DATED this 16th day of December, 2020.

13 **Bergin, Frakes, Smalley & Oberholtzer**

14 /s/ Brian M. Bergin

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16 Kevin M. Kasarjian

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21 **FORGOING** electronically filed
22 this 16th day of December, 2020, to:

23 Clerk of Court

24 Maricopa County Superior Court

25 <http://www.AZTurboCourt.gov>

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EXHIBIT 1

DECLARATION OF HSIN PAI

I, Hsin Pai, pursuant to Rule 80(i) of the Arizona Rules of Civil Procedure, declare as follows:

1. This Declaration is based on my own personal knowledge and I am competent to testify as to the matters set forth below.

2. I am a Deputy Assistant Director for the Arizona Department of Revenue (the “Department of Revenue”). Both at the Department and in the private sector, I have worked as an attorney specializing in state and local taxation. Cumulatively, I have worked for the Department of Revenue for over thirteen years.

3. The Department of Revenue administers and enforces the collection of Arizona individual and corporate income taxes, state and local transaction privilege and use taxes, state luxury taxes on alcoholic beverages and tobacco products, and other taxes.

4. I am familiar with Proposition 208, the “Invest in Education Act,” that was approved by Arizona voters in the November 3, 2020 general election.

5. The Department of Revenue is the agency responsible for collecting and enforcing the 3.5% surcharge on certain taxpayers as established by Proposition 208.

6. Taxpayers who are subject to the 3.5% surcharge established by Proposition 208 may forgo remitting any portion of the surcharge for the 2021 tax year until April 15, 2022 without the incurrance of a penalty.

7. The Department of Revenue will not seek to enforce payment of the Proposition 208 surcharge until sometime after April 15, 2022, as payment of the surcharge is not due before then.

8. The Department of Revenue cannot prevent taxpayers from voluntarily making payments applicable toward the surcharge by increasing their payroll withholding or making voluntary estimated income tax payments.

9. The only available and inexact means to discourage payment or collection of the surcharge would be for the Department of Revenue to forbear from publishing new Withholding Election Forms (Arizona Form A-4) that provide for an increased withholding percentage option to account for the surcharge.

10. Even then, the Department of Revenue cannot prevent a taxpayer from either withholding from their paychecks or submitting an amount with their estimated quarterly tax payments to account for the surcharge.

11. The Department of Revenue's initial "collection" activities in 2021 will consist simply of receiving withholding and estimated tax payments, as the processing of 2021 tax returns will not begin until 2022.

12. The surcharge generally would be reported and paid along with other lawful taxes.

13. If a taxpayer chooses to file returns and remit payments attributed to the surcharge, the Department of Revenue must accept those filings and payments, even if the surcharge is still being challenged when due.

14. Any other approach by the Department of Revenue would impermissibly and unreasonably interfere with a taxpayer's attempts to comply with their self-determined tax obligations.

15. If Proposition 208 ultimately is determined to be unlawful, any taxpayer who overpaid based on anticipated surcharge liability can recover such amount by requesting a refund.

I declare under penalty of perjury that the foregoing testimony is true and correct.

Dated this 15th day of December, 2020

A handwritten signature in blue ink, consisting of stylized, overlapping loops and lines, positioned above a horizontal line.

Hsin Pai

Deputy Assistant Director, Taxpayer, Executive &
Legislative Issues