

# Prop 10 and Tax Increases by Majority Vote

**Summary:** The Legislature may, by **majority vote**, place **tax increases** before the voters which go towards promoting, supporting, and improving early childhood development from the prenatal stage to five years of age. These revenues are **exempt** from the **Gann Limit** and **Prop 98**.

---

**BACKGROUND:** Since the passage of Prop 13, the Legislature has generally needed a 2/3 supermajority to pass any legislation which includes a tax increase. From subsection (a) of Section 3 of Article XIII A of the California Constitution:

*Any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature...*

This means, in most cases, the Legislature cannot, by majority vote:

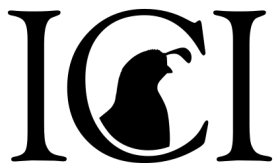
- enact revenue-neutral tax reforms (“lower the rates, broaden the base”)
- close tax loopholes previously enacted by majority vote of the Legislature
- **place tax increases before the voters**

In addition, the Gann Limit (Article XIII B) places a ceiling on the state government’s total revenues from taxes, and Prop 98 automatically allocates about 40% of new General Fund revenues to education.

**PROP 10 EXEMPTIONS:** Prop 10, also known as the Children and Families First Act of 1998, exempts itself from both the supermajority requirement (Section 7 of Article XIII A) and Prop 98 and the Gann Limit (Section 13 of Article XIII B).

What this means is that the Legislature may, by **simple majority**, place amendments to Prop 10 on the ballot, like they could for any other voter-enacted statute, *even if these amendments include a tax increase*.

(over)



by Dave Marin, *Director of Research* and Drew Lehman Esq., *Executive Director*

© 2019 Independent California Institute, CC-BY-4.0

© 2017 California Freedom Coalition Education Fund, CC-BY-4.0

Thank you to Dale Fountain (Enact Universal Healthcare for CA)

## How to use the Prop 10 exemptions:

(a) Add sections to the statutory language created by Prop 10. These are **Division 108** (commencing with Section 130100) **of the Health and Safety Code** and **Article 3** (commencing with Section 30131) **of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code**

(b) Assign new revenues to the **California Children and Families First Trust Fund** created by Prop 10.

(c) Stay within the original intent of Prop 10. From Section 9 of Prop 10:

*The provisions of this act shall be liberally construed to effectuate its purposes of promoting, supporting, and improving early childhood development from the prenatal stage to five years of age.*

For example:

- health care (prenatal and ages 0-4)
- preschool/child care
- preventing asthma in young children (air quality)
- lead abatement
- playground equipment for children under 5

**Q: Would these revenues be exempt from the Gann Limit and Prop 98?**

**A: Yes.** Section 13 of Article XIII B exempts it from the Gann Limit. As voter-approved special fund revenues, they are exempt from Prop 98 as a matter of course.

**Q: Can the money raised be spent on children 5 and up and their families?**

**A: Maybe not.** Courts would need to weigh the voters' intent to limit the Legislature's ability to place tax increases on the ballot (Section 3 of Article XIII A) against their intent to exempt Prop 10 (Section 7 of Article XIII A), which has a broad but clearly defined scope (Section 9 of Prop 10, above).

If you did wish to test these limits in court, you would want to make the parts of your legislation which are clearly in-scope **severable** from the parts that are not.

---

Please contact Dave Marin at [dave.marin@independentca.org](mailto:dave.marin@independentca.org) with any further questions.