

Opinion: Legal action could extinguish fire tax

By Jon Coupal

By now, most rural homeowners have become accustomed to receiving an annual bill of \$150—or higher—for what is euphemistically called a “fire prevention fee.” However, this familiarity does not make writing out the check to the state Board of Equalization any more palatable. Many property owners, who are receiving no additional fire protection services, recognize this as the rip-off that it is.

It is hard to believe that those in the Legislature, who created this tax in 2011 with a simple majority vote while calling it a fee, did so with a straight face. Even Gov. Jerry Brown questioned its legality while signing it into law. And we at the Howard Jarvis Taxpayers Association saw clearly that it was not a fee—which requires that a specific service be provided in return for the payment—but a tax, which under Proposition 13 requires a two-thirds vote of each house of the Legislature.

Of course, the “fee” was established, not so more money could be provided to the Department of Forestry, the stated beneficiary of the new revenue, but to allow lawmakers to divert money previously spent for this purpose to pet projects. Basically it was a switcheroo, with the new money being used to backfill for the money diverted to other programs.

In response, HJTA filed a class-action lawsuit to provide relief to nearly 1 million California property owners who received bills for the illegal “fire prevention fee.” The complaint was filed against the California Department of Forestry and the Board of Equalization, which is the

collection agency for the “fee.”

The class action complaint seeks to overturn the fire “fee,” which costs property owners an extra \$150 per year charge for each habitable structure. It challenges the constitutionality of the fee on the grounds it is really a tax that needed a two-thirds vote of the Legislature, but garnered a bare majority and therefore should never have become law.

On the legal front, progress has been slow, although there has been progress.

The delay in reaching a resolution is primarily due to two reasons: First, the California courts are struggling with a backlog of cases. But the biggest problem has been a powerful opponent, the state of California, which is determined to hang on to every ill-gotten nickel.

State bureaucrats, fearing that a successful class action suit would require refunds to those taxpayers who filed a protest, used delaying tactics. State attorneys filed repeated motions to postpone trial, including motions to dismiss the case and motions challenging the “class action” status of the suit.

After HJTA responded to each of the state’s challenges—nearly four years of legal work—the court ruled that the case may proceed as a class action. We have just completed the public notification process that a class action suit requires. It is our hope and intention that the legal process will now proceed rapidly.

Some will ask, “If the fire tax is illegal, should I pay it?” Although HJTA attorneys are confident of the eventual outcome, we strongly urge homeowners to pay the bill. Property owners have 30 days from the mailing of the bill to pay it. If you are late, there is a 20 percent penalty, plus interest. For every 30 days after that, another 20 percent penalty is added, plus interest. The fee is a lien on property, and failure to pay can result in foreclosure.

If the Howard Jarvis Taxpayers Association lawsuit is successful, the court may order refunds to people who have filed a Petition for Redetermination. For instructions on how to file this form, go **online** and click on the Fire Tax Protest banner. Once there, you can also sign up for free informational bulletins on progress of the suit against the fire tax.

Rural property owners have been paying this illegal tax for years, but we remain optimistic that a court will ultimately grant relief from this unconstitutional money grab.

Jon Coupal is president of the Howard Jarvis Taxpayers Association in Sacramento. This column was originally written for the California Farm Bureau Federation.