Proposition 40: A measured look at the billionaire tax

Overview

This article looks at what's potentially good and bad about Proposition 40, "One-Time Wealth Tax for State-Funded Healthcare, Education, and Food Assistance Programs Initiative," on the November 2026 ballot, and explains why it may be more difficult to implement than its proponents understand.[1] This is not the first wealth tax that has been proposed in the U.S., nor the first in California. Like other tax-the-rich proposals, Proposition 40 promises a lot ($100 billion for healthcare, food assistance, and education) — but nearly everything underneath that promise is still an open question. Can California actually collect the money, what would it do to the state's economy, and does it hold up legally? The answers are unclear, which suggests that voters should pause and take stock of how this is likely to play out if it passes.

Analysis

Proposition 40 would institute a one-time 5% tax on taxpayers and trusts with "covered assets" valued over $1 billion. Taxpayers may pay the tax in five equal installments beginning in 2027, with each subsequent payment subject to an annual deferral charge of 7.5% of the remaining unpaid balance, raising the total tax to 5.75% if the installment method is elected.[2] Proponents of Proposition 40 estimate that the measure could raise around $100 billion over five years, with 90% of that revenue allocated to health care. The tax would be collected in the upcoming April 2027 tax filing; it is retroactive and applies to taxpayers residing in the state as of January 1, 2026.

A brief tax lesson

Understanding the nuances of a wealth tax requires defining *realization*, which is the concept that separates a wealth tax from an ordinary income tax. Tax is built on the idea that something must happen to trigger it. That trigger is called a *realization*

event: a transaction, exchange, or change that leaves a person in a materially different position than before, whether that's selling a home for cash or performing services and earning income.

Many fundamental tax arbitrage strategies hinge on avoiding this realization event; the simplest strategy is just not selling the asset. Holding stock is the easiest way to see this. Say you buy $100 of Apple stock, and a few years later it's worth $150. You've done nothing in that time but hold it, yet your wealth has grown by $50. That increase won't show up anywhere on your tax return. It's only when you sell the stock that you incur a realization event and recognize the gain of $50.

The realization requirement answered a question Congress grappled with when it instituted the income tax: when should someone actually be taxed? The requirement was written into constitutional doctrine just a few years after the 16th Amendment first authorized income taxation. In *Eisner v. Macomber*, the quintessential tax case that every good tax lawyer has read, the Supreme Court built realization directly into the meaning of "income" under the 16th Amendment, defining it as "a gain, a profit, something of exchangeable value proceeding from the property, severed from the capital however invested or employed, and coming in, being 'derived'. . . for his separate use, benefit and disposal."[3]

This is what makes a wealth tax fundamentally different from an income tax: it dispenses with realization entirely. A wealth tax measures net worth at a single moment and taxes it, whether or not any of it was ever sold, transacted, exchanged or changed. Going back to the Apple stock, the tax would apply to that $150 regardless of whether you ever cashed out.

Supporting and opposing views, summarized

The "Yes on 40 — Billionaire Tax Now" coalition, sponsored by the Service Employees International Union-United Healthcare Workers West (SEIU-UHW), is leading the campaign for Proposition 40. Notable supporters include Senator Bernie Sanders and California's Superintendent of Public Instruction, Tony Thurmond.[4] Alex Skopic, associate editor of *Current Affairs*, argues in favor of the measure: "Ordinary people are taxed this way all the time: . . . a property tax on the value of

your house is also a tax on 'unrealized gains,' because you haven't actually sold the house and received the money. Pretending that houses are fair game, but mammoth stock portfolios and Caravaggios aren't, is just incoherent."[5]

The opposition is led by California's own governor. Gavin Newsom is joined by Democratic gubernatorial nominee Xavier Becerra, along with a broad coalition that includes the state's largest teachers' and firefighters' unions, its leading physician and hospital groups, and Planned Parenthood Affiliates of California. Planned Parenthood's president Jodi Hicks captures a common thread within the healthcare world, arguing against: "The initiative's uncertain impacts on the state budget and lack of specificity on health care allocations will do more harm than good in the long term."[6]

There isn't a clear split among party lines here. Proposition 40 has divided California's Democratic coalition down the middle, pitting Sanders and the state party's own endorsement against Newsom and several traditional Democratic allies. Yet recent polling suggests that support for the measure among voters does split along party lines, with neither for nor against holding a clear majority: "Proposition 40, the controversial measure to impose a one-time tax on California billionaires, has the support of 48% of likely voters ahead of November's election, with 41% opposed, according to a new report by the UC Berkeley IGS Poll."[7]

Interplay with other measures on the ballot

Proposition 40 faces more than widespread opposition. It is also in direct competition with two other measures on the November ballot. Propositions 41 and 42 were placed there by Building a Better California, a committee funded primarily by Google co-founder Sergey Brin along with investors John Doerr and Michael Moritz, specifically formed to oppose Proposition 40.[8] Notably, Brin himself would be subject to the billionaire tax if it passes.

Proposition 41, the Improving Transparency, Effectiveness, and Efficiency in California Government Act, requires pre-election audits for ballot initiatives proposing special taxes once they report collecting 25% of the required signatures.[9]

It also requires any state law or ballot initiative enacted after January 1, 2026 that levies a new special tax to undergo a state audit every four years to evaluate program effectiveness and identify cost-saving measures.[10] And it would prohibit the state from enforcing any tax exempted or excluded from the state spending limit if enacted on or after January 1, 2026, a provision aimed primarily at Proposition 40's carve-out from the Gann Limit.[11]

Proposition 42, the Retirement and Personal Savings Protection Act, would amend the California constitution to prohibit new taxes enacted after January 1, 2026 on the ownership or control of retirement holdings, individually owned assets, and other forms of personal savings.[12] It would also prohibit retroactive taxes that impose liability based on conduct, activity, or status that existed before the tax's effective date, a provision aimed at Proposition 40's January 1, 2026 residency determination date.[13]

Both measures contain competing-measure provisions stating that if either receives more votes than Proposition 40, the billionaire tax would be nullified. And California constitution article II, section 10(b) provides that the higher-vote-getter of two conflicting measures prevails. So even if voters approve Proposition 40, it could still be quashed if either Proposition 41 or 42 passes with more votes.

Revenue and administrability

Advocates estimate the tax imposed by Proposition 40 could generate $100 billion over five years.[14] That claim raises the first big question, and it's a purely administrative one: can California actually collect that money, and how?

Remember that this is a tax on net worth, not income. Proposition 40 calculates net worth based on a person's worldwide assets. That casts a wide net, including publicly traded securities valued as of December 31, 2026, private business interests, assets held under a sole proprietorship, and holdings in grantor trusts. [15] It also includes catch-all items like art (that's your Caravaggios), collectibles, intellectual property, vehicles, and other non-publicly-traded financial

instruments.[16] Proposition 40 reaches further than many people might expect: Roth IRAs or similar Roth-type retirement accounts valued above $10 million count toward net worth, as do dependents' assets exceeding $50,000, and even property worth more than $1 million transferred for less than fair market value after October 15, 2025 (a provision aimed at preventing last-minute asset shuffling ahead of the tax). Real estate, protected by Proposition 13, and pensions are excluded, as is certain tangible personal property held outside California.

Listing the asset categories is the easy part. Valuing each one is not. To understand why, a private interest in a company that isn't publicly traded is a good example. Unlike Apple stock, there's no ticker on the New York Stock Exchange telling you today it's worth $200 a share; a stake in a startup that's never traded on an open market is a fundamentally harder thing to price. Proposition 40 tries to solve this with detailed formulas and valuation rules for different asset types, but a white paper from the California Tax Foundation challenges those calculations, along with a host of other issues with the measure.[17]

The valuation piece of a wealth tax is usually enough of an administrative headache that it can cost more to administer than the revenue it generates. Hoover Institution's wealth tax primer notes that of the 12 countries that levied wealth taxes in 1990, nine had repealed them by 2025, attributing the retreat to administrative complexity and the capital flight it motivated.[18] Closer to home, when an annual wealth tax was proposed in California in 2023, the Franchise Tax Board estimated it would cost at least $200 to $300 million a year to administer, using the FTB's current operating costs as a baseline. The estimate voters will actually see is far lower. The LAO's ballot analysis puts administrative costs at "tens of millions of dollars per year for several years." Part of the gap is structural: AB 259 would have created an annual tax, while Proposition 40 is a one-time levy. But the gap also shows how uncertain the cost of administering any wealth tax is.[19]

The key thing to understand here is that the administrative burden isn't actually about the overhead costs. Other studies back this up. The most widely cited example is France, which implemented a wealth tax (the ISF) in 1988 and repealed it in

2018.[20] A study on the ISF found collection costs were only 1.6% of revenue, low and in line with the cost of administering any other French tax.[21] The problem wasn't bureaucracy, but how much revenue was lost to valuation gaming.[22] California's own analysis of the 2023 wealth tax bill found the same structural issue. FTB flagged that it has no comparable federal reporting infrastructure to cross-check filer-reported asset values, unlike income tax where W-2s and 1099s have built-in third-party verification.[23] That gives the Proposition 40 wealth the same problem as the ISF: low bureaucratic cost, but no independent way to check whether the number a taxpayer reports is real.

Taking a step back, remember this tax affects fewer than 250 people.[24] Proponents keep returning to that fact: for all the hoopla opponents raise about the administrative burden, we're talking about an agency that already processes nearly 18 million tax returns a year for close to 40 million residents.[25] And they're only being asked to do this once. A sizable chunk of that wealth may not even be hard to value in the first place. A Forbes article estimates that 61% of California billionaires' wealth sits in large-cap, publicly traded stock, like Zuckerberg's Meta shares, where prices update in real time and ownership is already on record with the SEC.[26]

The measure also has real teeth for anyone tempted to game valuations. Understating net worth by more than $1 million or by 20% of tax due triggers a 20% penalty, with the fine for larger understatements climbing to 40%.[27] Appraisers who sign off on lowball numbers face their own penalty: 2% to 4% of the understatement.[28] Still, the real challenge is not headcount. The challenge is the complexity of what the billionaire taxpayers hold, which makes their assets harder to untangle than a typical tax return.

Where the money goes

The next big question is where the money actually ends up. The Congressional Budget Office's latest cost estimate shows the federal reconciliation package (OBBBA) would reduce federal Medicaid spending over a decade by an estimated

$911 billion, leaving California with an estimated $112 billion hole.[29] California is the hardest-hit state by a large margin — New York comes in second at about $63 billion.[30] The measure would create a special fund, the 2026 Billionaire Tax Reserve Fund, to hold the revenue.[31] After accounting for FTB's administrative costs, the fund's revenue would be split between two subaccounts: 90% into the Billionaire Tax Health Account and 10% into the Billionaire Tax Education and Food Assistance Account.[32]

The structure of where the revenue goes raises its own set of questions. On one hand, flexibility is arguably necessary. The OBBB's Medicaid cuts hit different programs differently and in different years, so locking the legislature into a rigid statutory spending formula could make the fund less responsive to wherever the gap is worse in a given year. On the other hand, "health care funding" and "education-related and food assistance expenditures" are broad enough to leave room for the money to go to health programs unrelated to the Medicaid and Medi-Cal hole the measure is pitched as solving. That matters if you're evaluating whether Proposition 40 actually offsets the OBBBA cuts or just becomes general-purpose health spending. There's also a scale mismatch worth noting. The appropriation caps ($22.5 billion a year for the health account) are set well above what the measure is actually expected to raise.[33] Revenue estimates range widely, so in practice the caps aren't close to binding.

California already has a reserve built for this purpose. The Safety Net Reserve, created in 2018, was set aside specifically for Medi-Cal and CalWORKs costs during a downturn. But the state used its entire $900 million balance to help close the 2024–25 budget gap.[34] Proposition 40's Health Account would be harder to spend down, since its money can't be borrowed or transferred to the General Fund. That protection is arguably the point, but it also raises the question of why voters are being asked to build a new account rather than restore the one the legislature already emptied.

Impact on California's economy

The next big question that comes up whenever California raises taxes is whether it will do more harm than good for the economy. As Governor Newsom put it, “You may not be able to pick up and move to Texas or Florida to shelter your income from taxation, but I promise you that billionaires can, and do. Wealth is movable, and it shops for the state with the lowest taxes.”[35] This is where France’s experience with a wealth tax, and the economic studies that followed it, provide the most useful data.

France tracked departures versus returns of wealth-tax-liable households year by year. In 2016, the last full year of the ISF, 1,020 ISF-liable households left France, while only 470 returned.[36] After the 2018 reform, that flipped: returns exceeded departures for the first time. The same Pichet study that found the ISF’s collection costs were low also tracked the toll of the tax itself.[37] Capital flight — meaning wealth pulled out of the country entirely, not just people who left — totaled roughly €200 billion since the ISF’s creation in 1988.[38]

Other economists say the fear of mass departure is overblown. Massachusetts passed a permanent 4% surtax on income over $1 million in 2022.[39] Critics predicted a millionaire exodus — but instead revenue came in at roughly double projections, with the millionaire population growing rather than shrinking.[40] Sweden backs this up: economists Emmanuel Saez and David Seim found a negligible migration response to that country’s wealth tax.[41] But California isn’t Sweden or Massachusetts, and the evidence on the ground already cuts the other way. At least six billionaires, including Sergey Brin and Larry Page, left the state between the measure’s filing date and the January 1, 2026 snapshot date.[42] Whether California will follow France or Massachusetts is an open question.

The answer is of critical importance. California already has the highest state income tax rate in the country, topping out at 13.3%.[43] Most of the state’s revenue runs on a boom-or-bust cycle because it leans so heavily on income taxes from a small group of high earners.[44] High-earner income depends heavily on volatile capital gains, so it rises and falls with the stock market more than with the broader economy.[45] The top

1% of Californians have accounted for as much as half of the state's personal income tax revenue in recent years, meaning a remarkably small number of households effectively underwrite a huge share of the state's budget.[46] There's no clear answer on whether Proposition 40 would trigger a wealth exodus, but given how much the state already depends on this small group of taxpayers, the consequences of getting it wrong could be serious. So yes, this affects fewer than 250 people — but they pay the bills.

Other states are watching, and a few have already moved on their own wealth-tax proposals. But most of what's actually passed into law so far (Massachusetts's 2022 surtax, Washington's 2026 millionaire's tax, Maine's 2026 surcharge, Minnesota's net investment income tax) are annual income surtaxes on high earners, not one-time net-worth taxes like Proposition 40. California would be the trailblazer here. Either California absorbs the first-mover risk, or it builds the template every other state copies (or perhaps both may become true).

There's a second open question for economic impact: what happens when illiquid billionaires must liquidate assets to pay the tax. Returning to the Apple stock example, no realization event means there's been no exchange and there's no cash to extract from. A founder holding most of their wealth in company stock is in the same position. On paper, these founders are worth billions, but they have no cash on hand to cover a 5% tax on that wealth. They likely would have to sell shares to pay it, which creates its own problem. Who buys stock in a company that isn't publicly traded, especially in the volume a multi-billion-dollar tax bill would require? Forced sales often mean taking a discount on the price of those shares. That lower price doesn't just affect the billionaire paying the tax, it affects all the shareholders of that company.

Legality of Proposition 40

If Proposition 40 passes it is unclear whether it will hold up in the courts. The measure faces challenges on two separate fronts: whether it oversteps what a voter initiative is allowed to do under California's constitution, and whether it violates protections under the federal constitution.

Unlike previous wealth tax proposals, Proposition 40 is a fundamentally different vehicle. AB 2088 (2020), AB 310 (2021), and AB 259 (2023) all relied on constitutional amendments that never materialized. Those bills started in the legislature and needed a two-thirds majority just to put the constitutional question to voters, and none of them ever cleared that bar. Because Proposition 40 skips the legislature it has to address all other conflicting constitutional limits on taxes in one stroke — like the Gann limit,[47] the 0.4% cap on taxing intangible property, and the Proposition 98[48] guarantee that would normally direct a share of new revenue to schools.[49] Proposition 40's drafters built the amendment directly into the measure itself, authorizing this specific one-time tax to override other constitutional limits with "notwithstanding any other provision of the constitution with which it might conflict" language.[50]

This is a strength of the proposition, but also a weakness. A key limit to voter initiative power is that voters can *amend* the constitution but they cannot *revise* it.[51] Courts have developed the amendment-revision doctrine to evaluate the meaning and scope of the constitutional changes and gauge whether they are substantial enough to constitute a revision. Opponents argue Proposition 40's attempt to override multiple constitutional limits at once makes it sweeping enough to count as a revision.[52] But California courts have only found something to violate this doctrine twice since the doctrine was established in 1948, making this a low-percentage play.[53]

A stronger argument concerns the potential disconnect between the title and substance of Proposition 40. The wealth tax is technically defined as an "excise tax" — often a flat tax imposed on certain goods, services, and activities — which is about *ownership*.[54] But Proposition 40 is an excise tax on the *activity* of "sustaining excessive accumulations of wealth."[55] That framing is intentional — it references the constitutional cap on taxing intangible property. Since this is not a tax on property but on *activity*, the two taxes do not conflict. Whether that flies is up for debate. Courts generally look at the substance of the tax rather than just the label. If a court decides this is a property tax in substance, the "notwithstanding any other provision

of the constitution" clause will have to do a lot of work to save it.

And there are federal constitutionality questions. Under the Commerce Clause, a tax must be fairly apportioned.[56] The retroactive design is aimed at curbing tax avoidance, but it comes with serious concerns of its own. Someone who's a California resident on January 1, 2026, and leaves the state the next day still owes the tax on 100% of their worldwide net worth. Most states use a bright-line rule, often called a "statutory residency" test, that treats someone as a tax resident once they've spent roughly 183 days (about half the year) in the state.[57] Proposition 40 claims the entire year based on a single day. This also raises a due process argument: residency is locked in on January 1, 2026 before the tax has even been voted on, let alone passed. Retroactivity alone isn't automatically unconstitutional, but courts have generally been skeptical of it when applied to a new tax.[58] Weaker secondary arguments exist too, including takings clause and equal protection claims tied to how narrowly the tax targets a small group of individuals, though none of these carry the weight of the apportionment and due process issues.

Regardless of the legal merits, there's no question the targeted taxpayers will fight this in court. Anticipating that, the drafters built a litigation clock directly into the bill. The measure requires its own expedited legal review: facial challenges must be filed within 60 days, heard in Sacramento Superior Court, and appealed directly to the California Supreme Court, skipping the Court of Appeal entirely, with the goal of a final ruling by around November 2027. That timeline is designed to resolve the tax's legality before the state spends billions in collected revenue, since a later court loss could force the state to refund that money with interest and trigger a budget crisis of its own. Anticipating a few legal punches, the drafters chose a short timeline to confront them quickly.

Conclusion

Proposition 40 takes a big swing at an even bigger problem. If it works as pitched, the tax could raise close to $100 billion over five years toward the $112 billion gap that OBBBA left in California's Medicaid funding. Proponents of the proposition see the glass half-full. A few hundred taxpayers, an agency that already processes tens

of millions of returns a year, and penalties with real teeth for anyone who tries to game the numbers. Opponents see the glass half-empty, pointing to the long-lasting effect on the economy, whether the fund's money reaches the healthcare, education, and nutrition gap it's pitched to fill, and whether the courts let any of it stand. Voters will not get answers to any of these questions before they vote; only after. If Proposition 40 passes, the actual verdict on revenue, on flight, and on the law will play out over the next several years — not on election night.

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Chloe Amarilla is an associate in Goodwin's Technology group. This article takes no position on whether anyone should vote for or against Proposition 40.

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