

## Update on the Law of Public Revenues

Annual Conference  
San Jose, CA  
September 18, 2009

1

September 21, 2009

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2

September 21, 2009

## Utility Users Taxes

- *Ardon v. City of LA, McWilliams v. Long Beach, Granados v. County of LA*
  - Class action challenges to UUTs on telephony due to IRS Notice 2006-60
- *TracFone v. City of LA, TracFone v. County of LA*
  - Individual challenge on same theory by phone card seller
  - Trial court found no standing, Court of Appeal reversed in County case
  - Reconsidering issue in pending City appeal

3

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## Utility Users Taxes (Cont.)

- IRS Notice 2006-50
  - Acquiesced in court cases to abandon FET on long distance not billed by time and distance and package plans
  - UUT agencies should de-couple their taxes from the FET
  - Advisable to update taxes with voter approval

4

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## Utility Users Taxes (Cont.)

- *LA County v. Superior Court (Oronoz)*
  - Allowed class action challenges to local taxes and fees
  - Disagreed with other Courts of Appeal, like *Batt v. SF*
- 2<sup>nd</sup> DCA changed its mind in *Los Angeles v. Ardon*, petition for review pending

5

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## Utility Users Taxes (cont.)

- Federal Legislation Proposed to Cap Cell Taxes at 1%
  - HR 1521 (Lofgren, D-San Jose)
  - S 1192 (Wyden, D-OR)
  - House bill co-sponsored by Baca, Bilbray, Bono-Mack, Capps, Cardoza, Costa, Eshoo, Issa, Lungren, Matsui, McCarthy, Radanovich, Roybal-Allard, Royce, and Speier (15)

6

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## Property Tax Administration Fees

- Legislature adopted R&T 97.75 to allow Counties to recover their “actual cost” to implement the Triple Flip and VLF Swap
- Many counties are recovering more than the marginal cost to do so
- 47 Los Angeles County cities and 7 Fresno County cities sued to test this issue
- LA decision for County appealed mid-August

7

September 21, 2009

## Under-Collection of Bed Tax by Online Resellers

- Resellers are subject to bed tax as sellers of hotel nights
- Hotels to pay tax on low rate reseller pays hotel, reseller collects whole tax from customer and pockets the difference
- Class action counsel pursuing this issue for LA, San Diego, Anaheim & W. Hollywood

8

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## Constitutional Challenge to Prop. 13

- Former UC Chancellor filed original action in Cal. Supreme Court arguing requirement for 2/3 vote of Legislature to approve new taxes is a revision of the Constitution which cannot be accomplished by initiative
- Young v. Schmidt, Cal S. Ct. Case No. S174540
- Court denied the writ

9

September 21, 2009

## *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal.4<sup>th</sup> 206 (2006)

- Metered rates for consumption of water (and sewer and gov't-provided trash) are property related fees subject to Prop. 218
- Art. 13D, § 6(a) requires 45-day notice of old-fashioned majority protest in which silence equals consent
- Art. 13D, § 6(c) exempts water, sewer and trash fees from majority-property-owner election or 2/3-voter election required of other property related fees

10

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## AB 1260 and Utility Fees

- 2007 bill allows:
  - Notice of increase in utility bill fee to customers
  - Notice of new utility bill fee to customers if they are billed for another utility fee
  - Notice of utility bill fee to owners, too, if delinquencies collected via lien
  - Protests counted one per parcel
  - Agency which bills for another can give notice for that other agency, too

11

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## More Implications of *Bighorn*

- Solid waste services
  - Gov't services are treated like water & sewer
  - Private services should be exempt
    - Who provides service?
    - Who bills for the service?
    - Does agency set or merely regulate rates?
- A.B. 3030 - CPI adjustments and wholesale pass-throughs okay for 5 years

12

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## More Implications of Bighorn

- A.B. 2882 and tiered water rates
  - Detailed requirements for rates within this safe harbor
  - Supplements other authority to impose such rates
  - May be best to have cost justification for such rates
- Minimum monthly account charges ok:  
*Paland v. Brooktrails Township CSD*, 176 Cal.App.4<sup>th</sup> 158 (2009)

13

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## Storm Water & NPDES

- General & special taxes w/ voter approval
- Assessments if special benefit can be shown
- Property-related fees with Prop. 218 compliance
- Non-property related fees
- Transfers from utility funds?
- But cf. *HJTA v. Salinas* (2002) (property-tax-roll fee was subject to Prop. 218)

14

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## Stormwater and NPDES (Cont.)

- SCA 18 (Liu, D-LaCanada-Flintridge & Yee, D-SF) would treat storm water fees like water fees – majority protest only
  - Unlikely to get required 2/3 support in Legislature
- SB 310 (Ducheny, D-San Diego), would authorized regulatory fees for stormwater
  - Pending on Senate floor in early September

15

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## Groundwater Extraction Charges

- *Pajaro Valley Water Mgmt Auth. v. Amrhein*
  - Subject to Prop. 218
- Are they “water” fees for which only a majority protest is required, or is an election needed, too?
- Subsidy of agriculture plainly violates 218’s proportionality requirement

16

September 21, 2009

## Flood Control & Water Quality Fees

- *Greene v. Marin County Flood Control District*
  - Does ballot secrecy apply to 218 elections on property-related fees for things other than water, sewer and trash
  - Cal. Supreme Court to decide in 2010

17

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## Fee Legislation

- S.B. 681 (Pavley) – SWRCB fees on water rights
- A.B. 1004 (Portantino) – would bar emergency response fees except for DUI incidents
- A.B. 1084 (Adams, R-Hesperia) – hearing requirements for AB 1600 (development impact) fees

18

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## Assessments

- *Silicon Valley Taxpayer's Ass'n v. Sta. Clara Co. Open Space Authority*
  - Independent judicial review of assessment decisions
  - Tighter definition of special benefit
  - Open space and similar services that benefit public at large harder to justify
  - Proportionality requirement unclear

19

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## Assessments (Cont.)

- *Dahms v. Downtown Pomona PBID*
  - Allowed discounted assessments for non-profits
  - Allowed exemption of residential property from assessment for security, streetscape maintenance and marketing
  - Allowed use of front street frontage for apportionment along with lot and bldg size
  - Very generous to agency; further cases may be less so

20

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## Assessment Legislation

- SB 321 (Benoit)
  - Assessment ballots mailed in envelopes marked “Official Ballot Enclosed”
  - Assessment ballots must be counted in public if counted by agency staff or consultant who worked on assessment
  - Information used to weight ballots is disclosable public record once tallying begins

21

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## Bankruptcy

- AB 155 (Mendoza)
  - Federal bankruptcy law allows states to set limits on which local governments may file Ch. 9
  - Current law allows broad local discretion
  - This bill would require CDIAC approval for a local bankruptcy filing
  - Motivated by union reaction to Vallejo’s effort to set aside bargaining agreements

22

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## Fiscal Ballot Measures

- *Vargas v. Salinas*
  - Balanced public education okay; express advocacy and other campaign-like efforts at public expense are not permitted
- *Sta. Barbara County Coalition Against Automobile Subsidies v. SBCAG*
  - Can use public funds to draft a ballot measure

23

September 21, 2009

## Questions?

24

September 21, 2009