The Update
All About Municipal Revenues

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The California Local Government Finance Almanac

The Mechanics of Government Revenue

Who pays?
visitors, residents, businesses, etc.

What rate / base?
$per gallon, % per price, depreciated value, etc

Who collects? & enforces payment?

How’s it allocated?
situs; pooled/population, etc.

What is the $ used for?
general, water, roads, parks etc.

Who decides?
o Statewide voters / Constitution
o State law / Legislature
o Local voters
o Local law / City Council

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Taxes

- Charges which pay for public services and facilities that provide general benefits. No need for a direct relationship between a taxpayer’s benefit and the tax paid.
- Cities may impose any tax not otherwise prohibited by state law. (Gov Code § 37100.5)
- The state has reserved a number of taxes for its own purposes including: cigarette taxes, alcohol taxes, personal income taxes.
- General & Special
  - General Tax - revenues may be used for any purpose.
    - Majority voter approval required for new or increased local tax
  - Special Taxes - revenues must be used for a specific purpose.
    - 2/3 voter approval required for new or increased local tax
    - Parcel tax - requires 2/3 vote

Fees and the Rest

Any levy, charge or exaction of any kind imposed by a California government, is a tax except:

- User Fees and Assessments: for a privilege/benefit, service/product
  - Planning permits, development fees, parking permits, user fees, copying fees, recreation classes, etc.
- Regulatory Fees: regulation, permits, inspections
  - Permits for regulated commercial activities (e.g., dance hall, bingo, card room, check cashing, taxicab, peddlers, catering trucks, massage parlor, firearm dealers, etc.); fire, health, environmental, safety permits; police background checks; pet licenses; bicycle licenses.
- Rents: charge for entrance, use or rental of government property
  - Facility/room rental fees, room rental fees, equipment rental fees, on and off-street parking, tolls, franchise, park entrance, museum admission, zoo admission, tipping fees, golf green fees, etc
- Penalties for illegal activity, fines and forfeitures, etc.
  - Parking fines, late payment fees, interest charges and other charges for violation of the law.
- A payment that is not imposed by government
  - Includes payments made pursuant to a voluntary contract or other agreement that are not otherwise “imposed” by a government’s power to coerce.
California City Revenues

- **Taxes**
- **Fees**
- **State/Fed Aid**
- **Rents, penalties**
- **Other**

- **Property Tax**: 13%
- **Sales Tax**: 7%
- **BusnLicTax**: 2%
- **Utility User Tax**: 3%
- **TransOccTax**: 2%
- **Other Tax**: 3%
- **Franchises**: 2%
- **State&Fed**: 1%
- **Other**: 3%

- **Benefit Assessments**: 2%
- **Special Taxes**: 4%
- **State Grants**: 4%
- **Federal Grants**: 5%
- **Investments, Rents, Royalties**: 1%
- **Fines & Forfeitures**: 1%
- **Licenses & Permits**: <1%
- **Devpt Fees & Permits**: 2%

- **Utility Fees (Water, Sewer, Refuse, Electr, Gas, etc.)**: 28%
- **Other Fees**: 12%
- **Other**: 6%
- **Not Restricted**: 35%

Source: CaliforniaCityFinance.com computations from data from California State Controller (revenues).

Discretionary Revenues and Spending

Typical Full Service City

- **Property Tax**
- **Sales & Use Tax**
- **Franchises**
- **Utility User Tax**
- **BusnLic Tax**
- **Hotel Tax**
- **Other**
- **Fire**
- **Police**
- **Parks&Rec**
- **Library**
- **Streets**
- **Planning**
- **Other**

Source: Coleman Advisory Services computations from State Controller reports.
## Taxes and Fees/etc. Approval Requirements
(California Constitution)

<table>
<thead>
<tr>
<th></th>
<th>TAX-General</th>
<th>TAX- Parcel or Special (earmarked)</th>
<th>G.O.BOND (w/tax)</th>
<th>Fee / fine / rent</th>
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</thead>
<tbody>
<tr>
<td>City / County</td>
<td>Majority voter approval</td>
<td>Two-thirds voter approval</td>
<td>Two-thirds voter approval</td>
<td>Majority of the governing board.*</td>
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<tr>
<td>Special District</td>
<td>n/a</td>
<td>Two-thirds voter approval</td>
<td>Two-thirds voter approval</td>
<td>Majority of the governing board.*</td>
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<tr>
<td>K-14 School</td>
<td>n/a</td>
<td>Two-thirds voter approval (parcel tax)</td>
<td>55% voter approval*</td>
<td>Majority of the governing board.*</td>
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<tr>
<td>State</td>
<td>For any law that will increase the taxes of any taxpayer, two-thirds of each house of the Legislature ...or approval of majority of statewide voters.</td>
<td>Statewide majority voter approval</td>
<td>Majority of each house.</td>
<td></td>
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</tbody>
</table>

### Property Tax

- **An ad valorem** tax imposed on real property and tangible personal property.
- Maximum 1% rate (Article XIII A) of assessed value, **plus** voter approved rates to fund debt.
- Assessed value capped at 1975-76 base year plus CPI or 2%/year, whichever is less.
- Property that declines in value is reassessed to the lower market value.
- Reassessed to current full value upon change in ownership (with certain exemptions).
- **Allocation:** shared among cities, counties and school districts according to state law.
Where Your Property Tax Goes

Typical city resident

- City: 27%
- County: 27%
- Local Schools: 45%
- Special Districts: 7%

Shares Vary!
- Non-Full service cities: portion of city shares go to special districts (e.g. fire)
- Pre-prop13 tax rates

Includes Property Tax in-lieu of VLF.

Typical homeowner in a full service city not in a redevelopment area.

Source: Coleman Advisory Services computations from Board of Equalization and State Controller data.
CaliforniaCityFinance.com

Where Your Sales Tax Goes

Full rate 2014 (ignoring “Triple Flip”)

<table>
<thead>
<tr>
<th>Source</th>
<th>County</th>
<th>Transp</th>
<th>Realignment</th>
<th>Transp &amp; Use (varies)</th>
<th>Add-On</th>
<th>Total Base</th>
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<tbody>
<tr>
<td>City*</td>
<td>1.00</td>
<td>0.25</td>
<td>0.50</td>
<td>1.5625</td>
<td>3.9375</td>
<td>7.50%</td>
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<tr>
<td>Prop172</td>
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<tr>
<td>Co Realign</td>
<td>1.5625</td>
<td></td>
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</tr>
<tr>
<td>State GF</td>
<td>3.9375</td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>Prop30**</td>
<td></td>
<td>0.25</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Total Base</td>
<td>7.50%</td>
<td></td>
<td></td>
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</tbody>
</table>

* Local 1% rate includes 1/4% Triple Flip reimbursement.
For taxable sales in unincorporated areas, the local 1% rate goes to the county.

** ¼% Proposition 30 state sales tax effective 1/1/2013 expires 12/31/2016

CaliforniaCityFinance.com
ALL YOU WANTED TO KNOW ABOUT MUNICIPAL REVENUES

September 4, 2014
League of California Cities

GENERAL REVENUE SOURCES 2011-12*
*California State Controller’s Report

- Property Tax, 24.3%
- Sales & Use Tax, 20.0%
- Utility Users Tax, 9.3%
- Transit Lodging Fees, 6.0%
- Business License Revenues, 5.7%
- Franchise Fees, 4.7%
- Property Tax, 24.3%
- Other, 30.0%
Property Tax

1% of Assessed Value **Plus**......

+ Debt and retirement bonds approved by voters before 1978.
+ General obligation bonds approved by voters after 1986 (Proposition 42).
+ Annual water obligations incurred by Water Districts via 1960 voter approved State Water Project.

Property Tax Valuation

1975-76 cash value (or most recent purchase price) **Plus**:

+ Value of subsequent improvements and assessed personal property.
+ CPI growth (capped at 2% annually).
Where It Came From - 2013-14

- Owner Occupied Residential [VALUE]
- State Assessed [VALUE]
- Residential Commerce, industrial [VALUE]
- Rental & Investment Residential [VALUE]

Where It Went - 2013-2014

- Cities, 19%
- Special Districts, 8%
- Former RDA Obligations, 8%
- Schools & Community Colleges, 40%
- Counties, 24%

Source: Legislative Analyst

Proposition 8 Recovery

- Market Value of Property
- Proposition 13 Value
- Assessed Value
Percent of Single Family Residential Valuation Recaptured

Maximization of Property Tax Revenues

- Proper coding of Tax Rate Areas (TRAs).
- Proper Coding of Unsecured Personal Property.
- Proper Identification of Possessory Interests.
- Communicate new development to County Assessor.
- Evaluation of Teeter Option.
Sales, Use and Transactions Taxes...

- One Cent Local Tax (Point of Sale)
  - County State and Allocation Pools
  - State Administrative Fees
  - Triple Flip Deduction/Reimbursement
  - County Bite
- Transactions Tax Overrides (Point of Purchase)
- Proposition 172 Public Safety (Via Counties)

STATEWIDE LOCAL SALES TAX AND USE TAX

Adjusted Per Capita  Local SUT (Hdl)
Maximization of Sales and Use Tax

Sales Tax........
Accurate coding of sales offices and order desks, “over the counter” transactions vs. installation sales, warehouses.

Use Tax........
Out-of-State purchases over $500,000, Construction contracts exceeding $5 million, Direct Payment Permits.

Economic Development Tool........
Track who is growing and may need expansion room, Analyze market voids, Identify leveraging opportunities
Maximizing Utility Users Tax

- 154 Cities – rates of 1% to 11% ...... Gas, water, sanitation, electricity, telecommunications
- Constantly evolving technology – need to keep ordinances current with changing times.
- Key audit concerns:
  - All city users properly identified and captured.
  - All charges included & levied in-line with city ordinances.
  - Subpoenas often required particularly for telecommunications data.

Maximizing Business License Revenues

- Simple/Transparent/Equitable............
  Periodic review & update of classifications, Review & rebalance fees,
  Build in CPI increases
- Consistent and Equal Enforcement........
  Track unlicensed businesses, Follow-up on delinquencies
  Verify exemption claims
- Make It Easy on Taxpayer...........
  On-line applications and renewals, Log in for emergency contact
  updates, free listing on City Business Directory
Maximizing Transient Occupancy Tax

- Three Year Audit Cycles
  - Miscoded or understated fees & charges
  - Accurate reporting of exemptions and comps

- Update Ordinances with Changing Times
  - Collaborative Economy (Airbnb, Homeaway, onefinestay, etc.)
  - Online travel companies (Expedia, Orbitz, Hotwire, etc.)

Maximizing Franchise Fees

- Proper coding of City Boundaries
- Proper reporting of all sources of revenues – Franchisee & affiliate companies
- Track utility easements – gas, water, electric, oil
The Bottom Line........

- Continuous updating and rebalancing with evolving business concepts and trends.
- Thorough and consistent monitoring & enforcement.
- Keep it simple...easy to comply, easy to enforce.
LEGISLATIVE AND LEGAL UPDATE / TRENDS

- 2/3 approval for parcel taxes and CFDs
- Assessments still viable
- General Fee “right sizing”

SPECIAL FINANCING DISTRICTS – SPECIAL ASSESSMENTS AND TAXES

- Courts looking over our shoulders…
- Best practices for assessment engineering
- Be selective in feasibility analysis
SPECIAL ASSESSMENT:
Burlingame – Downtown Improvements

- Downtown Burlingame Avenue years of deterioration
- Funding challenges
- Disparate interests coalesce

SPECIAL TAX / COMMUNITY FACILITIES DISTRICT:
Pacheco Valle / City of Novato

- Community led effort
- CFD tax on area parcels
- 95% voter approval
PARCEL TAXES:
Santa Clara Valley Water District, 
Marin Emergency Radio Authority, 
Greater Vallejo Recreation District

- Focused needs
- EXTENSIVE outreach is key
- Stay on point

GENERAL GOVERNMENT FEES:

- Cost Allocation is the foundation
- Have a robust policy discussion
- Understand the numbers and subsidies
- Develop a Master Fee Schedule
- Review and update on regular timeframe
GENERAL GOVERNMENT FEES:
City of Seaside

- Brutal budget and staffing cuts
- Years since fees reviewed
- Education with council and public

WATER RATES

- Conservation rates
- Recycled water rates
- Volumetric trends and challenges
- “Social Justice” rates?
WASTEWATER RATES

- To be volumetric or not to be?
- Public education and outreach
- Capital investment

WASTEWATER RATES:
City of Sausalito

- Enhanced analysis of usage and customer classes
- Public education and outreach
- New Volumetric rate structure syncs residential and commercial rates
- Notable Marin Grand Jury comments
SUMMARY

- Do the analysis and know the numbers
- Have robust policy discussions
- Take action(s)
- Repeat often!

Q & A

BUY THE 2014 HANDBOOK!
THANK YOU FOR ATTENDING

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Update on the Law of Public Revenues

League of California Cities Annual Conference
September 4, 2014

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Taxes

- Many proposals to amend Prop. 13 to allow some or all special taxes on 55% rather than 2/3 vote
  - ACA 3 police and fire services and facilities, SCA 4 & 8 transportation, SCA 7 libraries, SCA 9 economic development, SCA 11 for all special taxes
  - SCA 7, 9, and 11 passed committee, pending in Senate Appropriations as of 8/3/14
Constitutional Amendment re Initiatives

- SCA-6 (DeSaulnier & Wolk)
  - Would prohibit initiative that would increase government costs unless it provides additional revenue as determined by DOF and Leg. Analyst
  - Exception for bond measures
  - Has attracted some GOP support, but required 2/3 vote uncertain
  - On Senate Floor as of 8/3/14

Utility Users Taxes

- *McWilliams v. Long Beach* (Cal. S. Ct. 2013)
  - Gov’t Claims Act preempts local claiming ordinances
  - Legislative fix possible
Utility Users Taxes (Cont.)

- **Sipple v. City of Hayward & 134 other UUT Agencies**
  - AT&T / New Cingular Wireless settled consumer class action in IL, agreeing to refund taxes on packages including internet due to Internet Tax Freedom Act of 2009
  - Sued all California UUT agencies; lost on standing and claiming compliance
  - DCA reversed, S. Ct. denied review, returns to trial court

August 13, 2014

Utility Users Taxes (Cont.)

- **J2 Global Communications, Inc. v. City of LA (2013) 2nd DCA**
  - E-fax service is not “internet access” for purposes of tax exemption required by the federal Internet Tax Freedom Act (ITFA)

August 13, 2014
Utility Users Taxes (cont.)

- Wireless Tax Fairness Act of 2013
  - 5-year Bar on New or Amended Cell Taxes above 1%
  - HR 2309 (Lofgren, D-San Jose) (220 co-sponsors); S 1235 (Wyden, D-OR) (17 co-sponsors)
  - Exempt taxes “imposed and actually enforced on mobile services … prior to the date of enactment of this Act.”
  - Exempt “a local jurisdiction tax that may not be imposed without voter approval, provides for at least 90 days’ prior notice to mobile service providers, and is required by law to be collected from mobile service customers.”

August 13, 2014

Utility Users Taxes (Cont.)

- S. 31 (Ayotte, R-NH), S. 1431 (Wyden, D-OR), HR 434 (Chabot, R-OH), HR 3086 (Goodlatte, R-VA)
  - Internet Tax Freedom Forever Act
  - Would extend indefinitely current internet tax ban which expires 11/1/14
  - 1, 29, 0 and 228 co-sponsors
  - HR 3086 passed House, others in committee
  - S 2609 combine “Amazon-tax” bill w/ 10-year extension of ITFA

August 13, 2014
Utility Users Taxes (Cont.)

- A.B. 1717 (Perea, D-Fresno)
  - Reprise of AB 330 to provide for SBE collection of State & local telephony taxes on calling cards and other prepaid services at point of sale
  - Preempts local taxation authority
  - AB 330 Vetoed at SBE’s request
  - AB 1717 pending in Senate Appropriations as of 8/3/14

Utility Users Taxes (Cont.)

- AB 792 (Mullin, D-So. SF)
  - R&TC 7284.5: Mandatory exemption from UUTs of power generated by "clean energy resource .... for the use of a single customer or the customer’s tenants."
  - Includes solar, generators that run on renewable fuel, etc.
  - Effective 1/1/14 to 1/1/20
Tax Elections

  - Prop. 218 requires general taxes to be on general election ballots when council or board seats are contested absent unanimous vote to declare fiscal emergency
  - This case holds both primary and runoff elections are “general” elections even if all races resolved in primary.

Property Tax Administration Fees

  - Counties overcharged cities for PTAF wrt VLF Swap and Triple Flip
- *Clovis et al. v. County of Fresno* (2014) 222 CA4th 1469
  - interest on PTAF and other tax- and fee refunds
  - 7% / 10% until 12/31/13; T-Bill rate and T-Bill rate plus 2% thereafter
RDA Pass-Throughs

  - VLF Swap & Triple Flip reduce ERAF payments to schools but do not reduce property tax base on which RDA pass-throughs are calculated
  - First case citing & applying *Alhambra* PTA case

Property Tax

- **Cal STRS v. Co. of Los Angeles (2013) 216 Cal.App.4th 41**
  - STRS had standing to challenge possessory interest tax on its tenant b/c STRS paid it
  - No duty to pay under protest
  - Less deference to agency interpretation of statute than regulation
Property Tax

  - Possessory interest tax on fractionally owned aircraft complies with Commerce Clause but may not be applied retroactively

Property Tax

- *William Jefferson & Co., Inc. v. Board of Assessments & Appeals No. 3 (2012) 695 F.3d 960 (9th Cir.)*
  - Co. Counsel representation of assessor & appeals board didn’t violate federal due process b/c ethical wall was sufficient
  - *Sabey v. Pomona (2012) 215 CA4th 489* does not allow this as to partners in private firm; might be vitiated by *Today’s Fresh Start v. LA Co. Office of Ed. (2013) 57 Cal.4th 197*
Property Tax

- **Western States Petroleum Assn. v. SBE (2012) 57 C.4th 401**
  - New rule allowing separate assessment of land and fixtures for oil refineries did not violate Prop. 13, but rule-making failed to comply with economic impact analysis requirement of APA

Property Tax

- **Duea v. County of San Diego (2012) 204 CA4th 691 (4th DCA)**
  - Taxpayer sued to challenge County refusal to transfer base year value, claiming he sold under threat of condemnation
  - Failed to exhaust administrative remedies by alleging before County appeal board that buyer was agent of County of San Diego and its RDA
Property Tax

- *Holland v. Assessment Appeals Board No. 1* (2014) 58 Cal.4th 482
  - Statute authorizing reassessment of fractional share in coop mobilehome park on sale of a unit did not specify how that share is to be valued
  - Permissible to use sales price, less book value of mobilehome as value

- Benson v. Marin Co. Assessment Appeals Board (2013) 219 CA4th 1445
  - Termination of family joint tenancy and creation of tenancy in common was “change of ownership” triggering reassessment
Property Tax

- AB 2372 (Ammiano, D-SF, Bocanegra, D-San Fernando Valley)
  - would widen definition of the “changes of ownership” which trigger reassessment of commercial property to capture 90% change in ownership of 3 years even if no 50% owner
  - In Senate Appropriations as of 8/3/14
  - CTA seeks wider reform and opposes this bill; HJTA neutral, Cal.Tax opposed

Parcel Taxes

  - Statute authorizing school parcel taxes requires uniform taxation — no distinction by land use
  - Many special districts have comparable statutes
  - Related to debate re split roll under Prop. 13
  - Legislative fix died in committee
Mello-Roos Special Taxes

- City of San Diego v. Shapiro, et al. 4th DCA Case No. D063997
  - City imposed tax on hotels to fund convention center, allowed only hotel owners to vote
  - Trial court upheld special tax; DCA reversed on 8/1/14
  - S. Ct. review possible

Mello-Roos Special Taxes

- Building Industry Assn. v. City of San Ramon, Contra Costa S. Ct. Case No. MSC 14-00603
  - BIA claims that a citywide CFD to fund supplemental municipal services violates Mello Roos Act because it does not provide new services
  - City answered 5/14/14 and CMC set for 8/19/14
Income Taxes

- *Cutler v. FTB* (2012) 208 CA4th 1247 (2d DCA)
  - Deferral of income for sale of stock in corps. w/ CA assets and payroll, but not others violates commerce clause
  - FTB imposed remedy by disallowing deduction for others
  - Public outcry led to legislative fix

Payroll Taxes

  - SF Initiative treats partnership distributions as taxable “payroll”
  - Several lawsuits sued; most cases stayed
  - Lead case fully briefed as of February 2013 and awaiting oral argument
Under-Collection of Bed Tax by Online Resellers

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

Options for Cities & Counties
- Let the money go
- Seek voter approval of an amended ordinance
- Enforce your existing ordinance provisions requiring disclosure to hotel guest of tax paid

Under-Collection of Bed Tax by Online Resellers

- *In re Transient Occupancy Tax Cases (San Diego v. Hotels.com)*, CA S. Ct. Case No. s218400
  - Review granted 7/30/14, briefing underway
  - Do terms of San Diego’s ordinance make online resellers of hotel rooms liable to collect and remit tax?
  - LCC provided support for petition for review and will provide amicus brief on merits

Sales & Use Taxes

- S 1364 (Wyden, D-OR); HR 3724 (Lamar Smith, R-TX)
  - Digital Goods and Services Tax Fairness Act of 2013
  - Facilitates collection of sales taxes on internet transactions but limits collection to a single, uniform tax
  - 5 & 9 cosponsors as of 8/3/14, pending in Senate Finance & House Judiciary Committees

August 13, 2014
**Sales & Use Taxes**

- **Marketplace Fairness Act, S 743 (Enzi, R-WY)**
  - Passed Senate 69-27
  - internet retailers w/ sales >$1m to collect sales & use taxes consistently w/ Streamlined Sales & Use Tax Agreement
  - HR 684 (Womack, R-AZ), S 336 , S2609 companion bills
  - S 743 in House Committee, S 2609 on Senate Floor

- **AB 155 (Calderon, D-Whittier)**
  - Adopted R&T 6203 to require web retailers grossing more than $1m to collect sales & use taxes; effective 1/1/13

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**Sales & Use Taxes**

- **Palmdale v. SBE (2012) 206 CA4th 329 (2d DCA)**
  - 7 cities challenged SBE decision to allocate sales taxes to Pomona rather than county pool under “warehouse rule.”
  - 3 trial court writs against SBE resulted
  - DCA refused to vacate trial court ruling after settlement, publishing opinion to whack SBE
Sales & Use Taxes

- *Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081
  - Class action challenge to alleged misapplication of sales taxes preempted by SBE sales tax regulations
  - art. XIII, § 32 bars injunctive as well as declaratory or mandamus relief pending tax litigation

Sales & Use Taxes

- AB 576 (V.M. Perez, D-Indio)
  - Signed into law October 2013
  - 9 state agencies to collaborate to enforce sales and use taxes
Transactions & Use Tax

- *Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865 (1st DCA. Divn. 5)
  - Paying sales taxes in Napa County and holding lien on property in Calistoga did not confer taxpayer standing to challenge expenditure of special sales tax
  - Sales taxes are legally incident on seller, not buyer

Tax Enforcement

- SB 211 (Hernandez, D-West Covina)
  - Eliminates sunset on enforcement collaboration between cities / counties and the FTB
  - Effective 1/1/14
Prop. 218 & Annexation

Citizen’s Ass’n of Sunset Beach v. Orange County LAFCO (4th DCA 2012)
- Ass’n challenged LAFCO approval of island annexation for lack of election to approve extension of Huntington Beach’s taxes into annexation area
  - Citing Prop. 13 precedent, Court found no election required
  - Supreme Court denied review

Interest on Tax Judgments

- AB 748 (Eggman, D-Stockton)
  - Lowers interest rate on judgments against local governments from 7% to T-bill rate pre-judgment and T-bill plus 2% post-judgment
  - Sought by local govts for many years
  - Effective 1/1/14
  - Clovis v. Fresno found no retroactivity
Groundwater Extraction Charges

  - Groundwater augmentation / extraction charges are property related fees subject to Prop. 218

Groundwater Extraction Charges

  - 220 CA4th 586 (6th DCA)
    - Charge is a fee for "water service" exempt from 13D, 6(c) election requirement
    - Omnibus Act’s definitions are good authority notwithstanding *HJTA v. Salinas*
    - Notice of protest hearing can be given to property owners alone
Groundwater Extraction Charges

- *Griffith* (continued)
  - Debt service, GA&O, service planning all permissible uses of fee
  - AWWA M-1 Manual’s cost-accounting process complies w/ Prop. 218
  - Parcel-by-parcel cost analysis is not required; class-by-class is okay provided the classes are rationally drawn

Stormwater Recapture

- AB 2403 (Rendon, D-So. Gate)
  - Codifies *Griffith v. Pajaro*
  - Amends GC 53750(m) to add “from any source” to definition of “water” in Prop. 218 Omnibus Implementation Act
  - Chaptered 6/28/14
Stormwater Planning

- SB 985 (Pavley, D-Agoura Hills)
  - Standards for voluntary storm water capture planning
  - Repeals requirement of consistent with IWRMP
  - May have impact on grant funding
  - In Assembly Appropriations as of 8/3/14

Groundwater Extraction Charges

- Cerritos, Downey & Signal Hill v. Water Replenishment District of So. Cal. LA Superior Court Case No. BS128136
  - Trial court invalidated WRD’s charges for non-compliance w/ 218 in 2011; appeal likely when remedies resolved
- Ventura v. United Water Conservation Dist., 2nd DCA No. B251810
  - Trial court found Prop. 218 violation and awarded $1.3m refund; appeal and cross-appeal filed; appeal fully briefed and awaiting argument
  - Argued 6/18/14, decision due by 9/16/14
Groundwater Extraction Charges

  - Revisits *AmRhein v. Pajaro* and application of 218
  - Did SCVWD comply w/ 218?
  - Fully briefed 12/8/11

August 13, 2014

Groundwater Extraction Charges

  - “Pay first, litigate later” rule applies to local government
  - Dicta suggests remedy for illegal revenue measure is not full refund, but refund of difference between lawful charge and what was paid

August 13, 2014
Groundwater Extraction Charges

- AB 2189 (Garcia, D-Bell Gardens)
  - Would clarify duty of WRDSC to comply with Prop. 218 and to allow protests only by pumpers
  - Passed policy committee and pending in Assembly Appropriations as of 8/3/14

Water Fees

- City of Palmdale v. Palmdale Water District (2011) 198 CA4th 926 (2nd DCA)
  - City challenged conservation water rates, claiming Prop. 218 disallows them
  - DCA found 218 and Constitutional provision against wasting water could be harmonized, but struck down PWD rates as insufficiently justified
  - Caution required when constructing conservation rates
Water Fees

- *Brooktrails Township CSD v. Board of Supervisors* (2013) 218 CA4th 195 (1st DCA)
  - Initiative requiring District to end policy of charging inactive accounts minimum monthly service charge was not a tax on other water customers requiring 2/3 voter approval
  - Later phase of fight in *Paland v. Brooktrails CSD* which found the policy not to violate Prop. 218
  - Prop. 26 not retroactive as to local governments

Prop. 218 & Water Rates

  - Farmers not entitled to separate rate protest
  - Applied deferential substantial evidence review and independent judgment review to trial rulings
  - Allowed secrecy of protests
  - Rates can be less than cost
Prop. 218 & Water Rates

- AB 1434 (Yamada, D-Yolo)
  - Seeks to promote low-income water rates
  - Dependent on a funding source yet to be identified
  - Pending in Senate Appropriations as of 8/3/14

Initiatives & Water Rates

218 CA4th 82

- Initiative to reduce water rates, bar increases for a year & limit future increases
  - Registrar certified petition & District filed decl. relief action to prevent election; trial court denied HJTA’s demurrer & anti-SLAPP motion
  - SLAPP and decl. relief both OK
  - Initiative invalid b/c set rates too low
Initiatives & Water Rates

- **Vagim et al. v. City of Fresno**, Fresno Superior Court Case No. CECG03206
  - City sought declaration relying on *Mission Springs*
  - Trial court granted writ ordered City to provide title & summary for rate repeal initiative
  - 5th DCA dismissed City’s appeal as moot
  - Related declaratory relief case dismissed,
  - City settled

Sewer Fees & Equal Protection

- **Armour v. City of Indianapolis** (2012) 132 S. Ct. 2073
  - City mandated sewer connections and allowed owners to pay up front or over 30 years
  - Then cancelled program without refund to those who paid up front
  - USSC found rational basis in administrative need to terminate all districts without tail liability; Scalia forceful dissent
Sewer Fees

- AB 2567 (Carter, D-Rialto)
  - Amended GC 53756 to add “wastewater” and “wastewater treatment” effective 1/1/13
  - Allows rates under Prop. 218 to include inflation-adjustment mechanisms until sooner of:
    - 5 years
    - Increase beyond the inflation-adjusted rate

Solid Waste Fees

Torres v. Arakelian Enterprises, 2nd DCA Case No. B246515

- Trial court invalidated award of exclusive franchise for failure to comply with Prop. 218 in setting rates
  - Residential fee collected by city
  - Reply brief due 8/18/14
Solid Waste Fees

- SB 713 (Wolk, D-Davis)
  - Prevents enforcement of solid waste franchise provisions requiring hauler to indemnify franchising city or county for violations of Prop. 218 with respect to rate-setting
  - Effective 7/1/12

- Chung v. City of Monterey Park (2012) 210 CA4th 394
  - Ballot measure placed on ballot by City Council without initiative petition to require competitive procurement of trash franchises not subject to CEQA
  - Helpful discussion of CEQA exemption for government actions which raise money
Development Impact Fees

- *Cresta Bella, LP v. Poway USD (2013) 4th DCA*
  - School impact fees may not be collected on gross area of new construction, but must net out prior construction on site demolished for the project

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Development Impact Fees

*CBIA v. City of San Jose, Cal. S. Ct. Case No. S212072*

- DCA held inclusionary housing fees benefit from rebuttable presumption they are reasonably related to City housing objectives
- Developer bears burden to provide otherwise
- Amici briefing completed 4/28/14, awaiting argument
Public Records Act Fees

- *Sierra Club v. Superior Court (County of Orange)* (2013) 57 C.4th 157
  - County could not impose fee for use of its GIS system because products of that system constitute public records subject to disclosure at cost under Public Records Act

Property Related Fees

- SB 553 (Yee, D-SF)
  - Fee elections (such as flood control fees) require 2/3-voter or majority property owner approval
  - Sets standards for property owner elections similar to those for assessments
    - “OFFICIAL BALLOT ENCLOSED” on envelope
    - Tabulation in public
    - Ballots secret till tallied
  - Effective 7/1/14
PILOTs on Affordable Housing

- Some Assessors concluded PILOT agreement with affordable housing developer voided welfare exemption from property tax
- 12/13 SBE opinion concluded otherwise
- AB 1760 (Chau, D-Monterey Park) & SB 1203 (Jackson, D-Sta. Barbara) would prohibit new PILOTs, both pending on 2d house floor as of 8/3/14

Vehicle License Fees

- Two proposals to restore VLF-revenue support for new cities and annexations
  - AB 1521 (Fox, D-Palmdale) in Senate Appropriations as of 8/3/14
  - SB 69 (Roth, D-Riverside) in Assembly Appropriations as of 8/3/14
Franchise Fees

- PUC Proceeding R.14-03-016
  - Cities questioned utilities’ calculation of franchise fees under local franchise ordinances
  - IOUs asked PUC to impose a “single methodology to calculate remittance under Municipal Surcharge Act”
  - PUC initiative proceeding

Prop. 26

*Griffith v. City of Santa Cruz* (2012) 207 CA4th 982

- Challenge to fee on landlords for housing code enforcement
  - No violation of equal protection, 218 or 13
  - Helpful discussion of burden of proof under 26, practical application of licensing exception, applies pre-26 regulatory fee case law
Prop. 26 Litigation

- **Citizens for Fair REU Rates v. City of Redding** (3d DCA Case No. C071906)
  - Challenge to electric utility PILOT
  - City won on ground that 26 not retroactive
  - Appeal to be argued 9/17/14

- **Bauer v. Harris** (E.D. CA No. 11 CV 01440)
  - Challenge to gun registration fees under 2nd Amendment and Prop. 26; to be tried 3/24/15

Prop. 26 Litigation (cont.)

- **Schmeer v. County of Los Angeles** (2013) 213 CA4th 1310
  - Challenge to provision of plastic bag ban requiring retailers to charge $0.10 for paper bags
  - Trial court concluded this was not a government fee subject to Prop. 26
  - Prop. 26 does not apply to fees not paid to govt.
Obamacare is not a Tax

  - “the essential feature of any tax … produces at least some revenue for the government.”
  - Will be useful in disputes like *Schmeir*.

Prop. 26 Litigation (cont.)

- *Cal. Chamber of Commerce v. CARB*, 3rd DCA Case No. C075930
  - Challenges AB 32 implementation under Prop. 13
  - Court ruled for State; AOB due 10/20/14

- *Morning Star Packing Co. v. CARB*, 3rd DCA Case No. C075954
  - Related to the Chamber case; same result & status, appeals consolidated
Prop. 26 & State Fire Fee

- State imposed $150 / structure fee on State Responsibility Areas
- HJTA challenged under Prop. 26 b/c not approved by 2/3 of each house
- *HJTA v. CDF*, Sacto Superior Case No. 34-2012-00133197
- State answered third amended complaint 2/28/14; in discovery as of August 2014

Prop. 26 Legislation

- AB 483 (Ting, D-SF)
  - Proposed by CA Travel Association to help defend tourism marketing district (TMD) assessments; also helpful for non-property BIDs
  - Incidental benefits to non-payors does not disqualify assessment under Prop. 26 provided they do not cost payors more
  - Effective 1/1/14, adds GC 53758
Assessments

Silicon Valley Taxpayer’s Ass’n v. Sta. Clara Co. Open Space Auth. (2008) 44 Cal.4th 431
- Independent judicial review of assessments
- Tighter definition of special benefit
- Open space and other services that benefit public broadly harder to justify
- Proportionality requirement unclear

BID Assessments

Dahms v. Downtown Pomona PBID
(2009) 174 CA4th 708 allows:
- exemption of residential pty from assessment for security, streetscape maintenance & marketing
- discounted assessments for non-profits
- use of front-street frontage for apportionment, along with lot & building size
- Very generous to agency; later cases less so
Utility Undergrounding Assessments

- No general benefit for utility undergrounding
- Court can look outside agency’s own record
- Invalidated allocation of assessment and establishment of zones of benefit

Park Assessments

*Beutz v. Riverside Co.* (2010) 184 CA4th 1516
- Park M&O can be 100% assessment financed b/c capital provided w/ other $ 
- Agency must always prove special benefit and proportional allocation even if challenger doesn’t raise these points 
- Questions use of cost to allocate benefit
Fire Suppression Assessments

- Sufficiency of engineer’s report to show special benefit or proportionality
- Use of cost to allocate benefit
- Dismissed as moot and DCA opinion not republished

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Maintenance Assessments

- *Golden Hill Neighborhood Ass’n v. City of San Diego* (2011) 199 CA4th 416
  - Invalidated maintenance district under 1972 Lighting & Landscaping Act for inadequate engineer’s report (no basis for allocation of votes to City property)
  - Helpfully limited DCA’s *West Point* decision and provides guidance for engineers’ reports

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PBIDs and BIDs

- Property based business improvement districts have engendered litigation
- AB 2618 (Pérez, D-LA) would codify Dahms as to PBIDs, on Senate Floor as of 8/3/14
- BID assessments have generated litigation under Prop. 26. Ontario prevailed on standing grounds and is on appeal; San Diego’s litigation is ongoing.

Advice re Assessments

- Use a strong, current engineer’s report
- Get legal review of reports at least until assessment law stabilizes
- Watch for current developments
Ballot Labels

*McDonough v. Superior Court*
(2012) 204 CA4th 1169

- Unions challenged ballot label for City of San Jose’s pension reform measure
  - 6th DCA took emergency appeal, ordered Registrar to revise label
  - Deleted list of general fund services which might benefit from pension savings; changed “reform” to “modification.”

Audits

- **AB 941 (Rendon, D-So. Gate)**
  - Independent JPAs must report audits to Controller
  - Controller may audit local governments if finds not complying w/ financial requirements of law, grants, local charter or ordinance
  - If misconduct found, local government pays for audit
  - Died in Assembly Appropriations 1/31/14
Audits

- AB 1035 (Muratsuchi, D-Torrance)
  - Doubles fines for audit late for 2 years in a row, triples if late for 3 years
  - Controller may conduct audit at local expense after 3 years’ delay
  - Hearing before Senate Government & Finance cancelled in June 2013

- AB 1345 (Lara, D-Bell Gardens) effective 1/1/13
  - SAA audits due to SCO w/in 9 mos. of FY end
  - If late, SCO can hire auditor at local expense
  - SCO must report unprofessional conduct or multiple failures to comply w/ standards to Bd. of Accountancy
  - All audits by CPAs in good standing
  - 6-yr limit (post FY 12–13) on relationships w/ “lead audit partner, coordinating audit partner … or audit partner responsible for reviewing the audit”
Internal Controls

- AB 1248 (Cooley, D-Rancho Cordova)
  - Adopts GC 12422.5 to require State Controller to adopt model internal control guidelines “to assist a local agency … in establishing a system of internal controls to safeguard asset and prevent and detect financial errors and fraud”
  - Must post to web by 1/1/15
  - Not legally binding, but may be politically so

Financial Management Training

- AB 1235 (Gordon, D-Menlo Park)
  - AB 1234-style training requirement for local officials on financial management
    - Councilmembers, paid elected officials, staff designated by local policy
  - One training session per term of office and may be taken at home, in person or online
  - Providers must consult Treasurer & Controller
  - Vetoed
Fiscal Ballot Measures

- **Owens v. Co. of Los Angeles** (2013) 220 CA4th 107
  - Post-election challenges to ballot materials disfavored and must show voters misled
  - Identifying benefited services did not make a special tax
  - Not misleading to call this a continuation and reduction of tax even though failure of measure would have ended tax

Mandates

- **Dept. of Finance v. Comm’n on State Mandates**, Cal. S. Ct. Case No. S214855
  - LA Court of Appeal found that NPDES mandates are imposed under federal rather than state law, and thus were not reimbursable mandates
  - S. Ct. granted review, vacating that ruling
  - Answer brief due 8/22/14
Questions?