

Q&A Session for Proposition 26 Update Webinar

Date: Wednesday, April 06, 2011

Mike Bridges - 9:55 AM

Q: Can you say more about permit fees, e.g. for dance halls, bingo parlors etc.

A: Answered during webinar

Diana Ramos - 9:56 AM

Q: There are no standards for costs. How do we regulate on these ?

A: Answered during webinar

Joan Cassman - 10:00 AM

Q: Do you see Prop. 26 as placing any limits on the ability of a city to lease or sell property for purely commercial uses? Must it charge a "reasonable" rent or purchase price?

A: Answered during webinar

Danielle Kenealey - 10:00 AM

Q: Could speakers expand on the imposed by local government exception that was discussed?

A: Answered during webinar

Ariel Calonne - 10:01 AM

Q: Given that the Prop 26 burden of proof language mirrors Sinclair, what in your view is the essence of the effect of Prop 26 on Sinclair regulatory fees?

A: Answered during webinar

Margaret Kotzebue - 10:01 AM

Q: How does Prop 26 relate to franchise agreements?

A: Answered during webinar

Ann Phung - 10:03 AM

Q: How does proposition 26 impact TMD's?

A: Answered during webinar

Ann Phung - 10:04 AM

Q: An annual CPI change to fees should not reopen the existing fee to interpretation under prop 26, correct? However, a re-evaluation of the program and total fee may require to show "reasonable" charge for any inquiries?

A: Answered during webinar

Greg Hyatt - 10:04 AM

Q: are there any local environmental program fees you guys think may violate Prop. 26?

A: By private email, I found out that Mr. Hyatt was particularly interested in plastic bag fees. I suggested that the type of fee that is imposed on the consumer at the grocery store for using a plastic bag is most likely a "tax" under Proposition 26 because it is not imposed either as a (1) fee for a product (exception #2) or (2) as part of a licensing or permitting program (exception #4). Mr. Hyatt asked about the Los Angeles County ordinance, which (1) prohibits retailers from distributing plastic bags; and (2) requires retailers to charge \$.10 for each of the recyclable bags that the retailer provides. The ordinance allows the retailer to retain the revenues from the \$.10 charge and use the funds to defray the costs of providing recyclable bags or education efforts. L.A. County's approach is not affected by Proposition 26 because (1) the fee is not imposed by the government; and (2) the funds are not paid to the government. [See Chapter 12.85 of the L.A. County Code]

Diana Ramos - 10:05 AM

Q: In the violation of law exception, the language speaks of "fines & penalty assessments" Does the exception also apply to "fees" imposed as a result of criminal violations? (e.g. court security fee)

A: Answered during the webinar. To add to that answer: Most "penalty assessments" are imposed by the courts pursuant to state law. These types of penalty assessments would be an exception to the definition of "state tax" in Article XIII A, section 3(b)(5).

Susan Swain - 10:07 AM

Q: Does Prop. 26 impose a FLOOR (rather than a CEILING) on fees that may be charged that are not deemed to be taxes?

A: Unfortunately I'm not clear on the question. Prop 26 begins by stating that all levies, charges, and exactions are taxes. Therefore the burden is on the city/county to demonstrate how its levy, charge, or exaction fits within one of the exceptions. In order to demonstrate that the levy, charge or exaction fits within one of the exceptions, the city/county must stay strictly within the confines of the exception.

Barbara Baird - 10:09 AM

Q: Would Prop 26 allow a government to impose a greenhouse gas mitigation fee as part of a CEQA approval even if the company does not have a "choice" to reduce emissions itself--i.e. there is no feasible emission reduction on-site that is available?

A: Fees imposed as mitigation measures under CEQA are subject to the same legal limitations as fees imposed in a non-CEQA context. Fees imposed as a condition of property development are not “taxes” under Exception #6. However, any such fee is still subject either to Mitigation Fee Act or reasonableness/nexus standard as recently articulated in *Trinity L.L.P. v. City of Sunnyvale*.

Barbara Baird - 10:11 AM

Q: Would Prop 26 allow the state to impose a fee on heavy duty vehicles to reduce diesel emissions from other heavy duty vehicles--here the impact is "direct", but there is no "choice"

A: My sense of where the law has been and where it's going, is that the more successful fee will be the fee that allows the manufacturer of the vehicle to make changes to reduce emissions or pay a fee. But this is mainly speculation at this point. The easiest way to accomplish this goal would be to place a limit on emissions and then impose a fine (Exception #5 as it applies to the State) if the emissions are exceeded.

Scott Huber - 10:13 AM

Q: Is there a way we can get a copy of the presentation?

A: Copies of the presentations will be posted on the League's website at <http://www.cacities.org/cityattorneyresources>.

Ann Phung - 10:19 AM

Q: tourism marketing districts

A: Answer provided during webinar.

Carol Case - 10:21 AM

Q: Air quality management district...we are governed through the H&S code, and have a permit program and allowed to charge fees to permit holders to recover costs. We have determined to this is reasonable and necessary and is exempt from prop 26. Do you agree?

A: Yes. It sounds like the district's fee is except under Exception #3.

Ann Phung - 10:28 AM

Q: In computation of the GANN limit on an annual basis, does proposition 26's effect on fees being interpreted as taxes require modifying the annual calculation for each jurisdictions appropriation limit?

A: No. The definition of “tax” in Proposition 26 is solely for the purposes of Article XIIC. The Gann limit is found in Article XIIB. Therefore, the definition of “proceeds of taxes” in Article XIIB, section 8(c) remains unaffected by the definition of “tax” in Article XIIC.

Carol Case - 10:31 AM

Q: I missed emails, please send ccase@ysaqmd.org

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