

# PROPOSITION 26

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Webinar Presentation

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# Prop 26's Context



- Adds Section 1(e) to Article XIII C of the Constitution
  - ▣ Amends the *tax* provisions of Proposition 218
  - ▣ Defines “Tax”
  - ▣ Read in context of Proposition 218 & Proposition 218 Omnibus Implementation Act

# Introductory Clause

## TEXT OF PROP 26

As used in this article, 'tax' means any levy, charge, or exaction of any kind imposed by a local government, except the following...

## OBSERVATIONS

- Broad Definition
- Tax = Default Class
- 7 listed exceptions
- "Imposed by a Local Government"

# What's Now A Tax?



- Taxes remain taxes
- But no change to...
  - ▣ Property based assessments (Art. XIII D, §1-5)
  - ▣ Property-related fees (Art. XIII D, §6)
  - ▣ Development charges
  - ▣ Pre-November 3, 2010 fees
  - ▣ Exempt levies, charges, and exactions (Art. XIII C, §1(e)1-1(e)6)
  - ▣ Payments that aren't "Imposed by a local government"
- Otherwise, now a tax

# No Retroactive Application

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- Why are existing levies, charges, and exactions exempt?
  - ▣ General Rule: An initiative measure will not be given retroactive effect unless the measure contains an express retroactivity provision or ‘it is very clear from extrinsic sources that the Legislature or the voters must have intended retroactive application. (*Strauss* 46 Cal. 4th 364)
  - ▣ Unlike state-level provisions (or Prop 218), there is no express retroactivity
  - ▣ Legislative analyst statement

# No Retroactive Application



- But triggered by imposition, extension or increase
- Look to Omnibus Implementation Act for guidance (GC § 53750)
- Omnibus Act specifically applies to Art. XIII C

# No Retroactive Application

## INCREASE (§ 53750(h))

- ❑ Increases any applicable rate
- ❑ Revises methodology to result in an increased amount being levied on any person or parcel
- ❑ Not “schedule of adjustments”
- ❑ Not “events other than an increased rate or revised methodology”

## EXTEND (§ 53750(e))

- ❑ Extend stated effective date
- ❑ Eliminate sunset

# The Exceptions-- Overview



- The 7 exceptions overlap extensively
- Some terms are common to several exceptions



# Exceptions 1(e)1 and 1(e)2

## **BENEFITS/PRIVILEGES (§ 1(e)1)**

“A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.”

## **SERVICE OR PRODUCT (§ 1(e)2)**

“A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.”

# Exceptions 1(e)1 and 1(e)2



- Specific “benefit conferred or privilege granted”/”government service or product”
- Granted directly to the payor and not provided to those not charged
- Concerns
  - ▣ Free/Discounted Service
  - ▣ Charging someone other than “payor”

# Exceptions 1(e)1 and 1(e)2



- Does not exceed the reasonable costs to the local government
- Look for all “reasonable costs”
  - ▣ Occupancy
  - ▣ Overhead
  - ▣ Salaries/Benefits

# Exception 1(e)4

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“A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.”

- Not subject to three elements
- Much broader
- What is “property”?

# Exceptions 1(e)5 and 1(e)6

## FINES & PENALTIES (§ 1(e)5)

“A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law”

## DEVELOPMENT ((§ 1(e)6)

“A charge imposed as a condition of property development”

# Exception 1 (e)7

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“Assessments and property-related fees imposed in accordance with the provisions of Article XIII D”

# Imposed by Gov't Exception



Only “levies, charges, or exactions” “imposed by a local government” are subject