

IMPROVEMENT AND TOURISM MARKETING DISTRICT ASSESSMENTS ARE NOT TAXES UNDER PROPOSITION 26

LEGAL ALERTS

Local Government Bears the Burden of Proving that an Assessment is Not a Tax

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Assembly Bill 483, signed as urgency legislation by the Governor on October 4 and effective immediately, clarifies provisions of California Constitution article XIII C governing the imposition of taxes by local governments. The new law provides that assessments imposed on businesses in business improvement and tourism marketing districts are not taxes merely because the services or benefits funded might generate indirect, secondary benefits to others who do not pay the assessments. Importantly, local governments bear the burden of proving that an assessment meets the criteria to not be considered a tax.

Business improvement and tourism marketing districts are often formed by local governments to pay for projects and services that promote and retain businesses in their communities. The assessments are imposed on the businesses within the business improvement or tourism marketing district that receive or benefit from the funded projects and services. These assessments are not subject to the notice and ballot protest procedures of California Constitution article XIII D, section 4 (commonly referred to as Proposition 218) because they are imposed on businesses and not on properties.

In 2010, California voters approved Proposition 26, a ballot initiative that amended provisions of Article XIII C of the California Constitution that govern the imposition of taxes by local governments by providing a new definition of the term "tax." For local governments, "tax" means any levy, charge or exaction of any kind imposed by a local government, except for seven specifically identified exceptions. Two of the exceptions are: (1) a charge imposed for a specific benefit conferred 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; and (2) a charge imposed for a specific government service 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. The adoption of Proposition 26 created some uncertainty as to whether the assessments imposed on businesses are taxes if persons or property who were not assessed receive incidental or secondary benefits from the business improvement and tourism marketing district program and service activities.

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Information presented to
the Commission at the
1-15-14 LAFCO hearing.

AB 483 addresses this uncertainty by providing a definition of the terms “specific benefit” and “specific government service.” According to AB 483, a “specific benefit” is not excluded from the exception of the definition of a tax “merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific benefit to the payor.” As defined, “specific government service” similarly is not excluded from the exception of the definition of a tax. Moreover, AB 483 clarifies that a “specific government service” may include, but is not limited to, “maintenance, landscaping, marketing, events, and promotions.”

Finally, the legislation clarifies the burden of proof provisions of Article XIII C, section 1(e) for fees and charges imposed by local governments for specific benefits conferred and specific government services provided. As amended, Government Code section 53758(c) provides that a “local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction imposed for a specific benefit or specific government service is not a tax, that the amount is no more than necessary to cover the reasonable costs to the local government in providing the specific benefit or specific government service, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the specific benefits or specific government services received by the payor.”

AB 483 amends the Proposition 218 Omnibus implementation Act by adding section 53758 to the California Government Code.

If you have any questions about this legislation or how it may impact your agency, please contact the attorney author of this legal alert listed at right in the Public Finance practice group, or your BB&K attorney.

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