



# Proposition 218 – Legal Perspectives

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## Proposition 218 – Background for Adoption

- Adopted November 1996
- Sponsored by Howard Jarvis Taxpayers
- Follow-up to Proposition 13
  - Findings and Declarations: “local governments have subjected taxpayers to excessive tax... increases that.. frustrate the purposes of voter approval.... This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.”
- Added Articles XIIC and XIID to California Constitution

# Constitutional Provisions

- **Article XIIC of Constitution**
  - Constitutionalized Proposition 62's statutory requirement for voter approval of general taxes (applying to charter cities)
  - Provided for initiative power to reduce or repeal taxes, assessments, fees and charges
  - Expanded Definition of Special Taxes
- **Article XIID of Constitution**
  - Formal balloting for assessment proceedings
  - Burden of proof on the local agency to demonstrate special benefit
  - Created concept of "property-related service"
  - Voter approval for certain types of fees for "property-related services"

## Definition of “Taxes”

- **General Tax**
  - An economic burden imposed by government to raise revenue for general government purposes.
- **Special Tax**
  - An economic burden imposed by government and earmarked for a specific purpose.

## Impact on “Taxes”

- **General Taxes**
  - Imposed for general government purposes
  - Must be approved by majority of electorate
- **Special Taxes**
  - Required for special purposes (i.e. education)
  - Must be approved by 2/3 of electorate
  - Includes taxes that go into general fund but are imposed for special purpose

## Definition of “Assessments”

- Monetary exactions for improvements that are beneficial to certain properties or individuals and are imposed in proportion to the special benefit conferred on such properties or persons.

## Court Interpretations of “Assessments” Subject to Proposition 218

- Assessment levied on businesses within a Business Improvement District was imposed on businesses, not property (*Howard Jarvis Taxpayer’s Assn. v. City of San Diego* (4<sup>th</sup> Dist. 1999) 72 Cal.App.4<sup>th</sup> 230.)
- Assessment must confer special benefit, and be imposed on identifiable parcels of real property (*Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4<sup>th</sup> 409.)

## Impact on “Assessments”

- Limits assessments on real property for special benefits conferred on that property
- Assessment must be proportional to value of the special benefit of the burdened property
- Specified procedures for assessments subject to Proposition 218

## Applicable Requirements

- 1) Determine if assessment confers distinct benefit on burdened properties
- 2) Benefit must be beyond that provided to public at large
- 3) Estimate value of benefit to parcels v. benefits provided to general public
- 4) Value estimates must be supported by detailed report from registered professional engineer
- 5) Assessment may not exceed reasonable cost of proportional special benefit

## Applicable Procedures

- Affected parcels must be notified by U.S. Mail
- Notice must contain a mail-in ballot allowing owner to indicate approval or disapproval
- Public agency must hold a public hearing not less than 45-days after mailing notice
- Assessment may not be imposed if majority of ballots, weighted according to financial obligations of property owners submitting them, oppose the assessment

## Definition of “Fees”

- Fee or charge means any levy other than an ad valorem tax, a special tax, or an assessment imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service
- Property related service means any public service having a direct relationship to property ownership

## Impact on “Fees”

- No fee or charge may be imposed on a parcel in excess of the proportional cost of the service attributed to the parcel
- Revenue from a fee or charge may not exceed the costs to provide the services for which the fee is assessed
- All new fees or increases of fees (except sewer, water & refuse collection) must be approved by majority of property owners of affected parcels, or 2/3 of electorate

## Applicable Procedures

- Notice & hearing requirements, similar to those for assessments
- Weighted balloting system does not apply
- If majority of owners of parcels subject to the fee submit protests, the agency may not impose the fee

## Limitations on Types of Fees

- Prohibits certain fees from being levied on parcels, or upon owners incident to property ownership
  - Costs of general services such as fire, police, or ambulance service
  - Services not used by or immediately available to the property owner subject to the fees
  - Programs other than property-related services

# SRF Loan Funding Requirements

- If need to raise rates, and rate increases are subject to Proposition 218
  - Must submit evidence that rate increase has been approved, or
  - Legal opinion explaining why Prop. 218 does not apply
- If revenue for project is subject to Proposition 218 but not yet approved
  - Financing agreement may be executed but funds for construction will not be disbursed until rates are approved
- If awarded construction contract as of September 16, 2008
  - State may execute agreement, but may not disburse more than 25% of financing until evidence of compliance with Prop. 218, or legal opinion as to why not applicable



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