

"Proposition 13 and Local Tax Authority"

AN INFORMATIONAL HEARING OF THE ASSEMBLY COMMITTEE ON REVENUE AND TAXATION APRIL 8, 2013

I. THE BASIC RULES OF PROPOSITION 13 (1978)

The property tax is one of the major revenue sources for local governments in California. As a general rule, it applies to all classes of property, is imposed on property owners, and is based on the value of the property in question. Much of the law pertaining to property taxation is prescribed by Articles XIII and XIII A (commonly known as Proposition 13) of the California Constitution.

Proposition 13 was designed to provide real property tax relief by imposing a set of interlocking limitations upon the assessment and taxing powers of state and local governments.¹ First, Section 1 of Article XIII A generally limits the maximum amount of any *ad valorem* tax on real property to no more than 1% of the property's full cash value, as adjusted for the lesser of inflation or 2% per year. The term "full cash value" means the "county assessor's valuation of real property as shown on the 1975-1976 tax bill" or, thereafter, "the appraised value of real property when purchased, newly constructed, or a *change in ownership* has occurred after the 1975 assessment" (*emphasis added*) [California Constitution, Article XIII A, Sections 1 and 2]. In other words, the California Constitution requires that real property be reassessed to its current fair market value whenever a "change in ownership" occurs.² The definition of a "change in ownership" was not included in Proposition 13, but rather, was left to implementing legislation.

¹ Since any tax savings resulting from the real property tax limitations provided in California Constitution Sections 1 and 2 of Article XIII A could be effectively eliminated through the imposition of additional state and local taxes, Sections 3 and 4 place additional restrictions upon the imposition of any such taxes. See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, (1978) 22 Cal.3d 208.

² For a detailed discussion of the law governing a change in ownership, please refer to this Committee's white paper prepared for the March 12, 2012, informational hearing entitled, "Defining a 'Change in Ownership': Is it Time to Reassess?"

Second, Proposition 13 requires cities, counties, and special districts to obtain approval of two-thirds of their qualified electors in order to impose an undefined class of "special taxes." Finally, Proposition 13, as modified by Proposition 26, prescribes a 2/3 vote requirement for the Legislature to impose a new, or increase an existing, state tax.

II. PROPOSITION 62 (1986)

Following the passage of Proposition 13, the courts interpreted its provisions as prohibiting any city, county, or special district from imposing any new special tax, unless expressly authorized to do so by the California Legislature. See *Cal. Bldg. Indus. Ass'n v. Governing Bd.* (1988) 206 Cal.App.3d 212. In response, the Legislature enacted general enabling legislation allowing local governments to impose certain special taxes. Both the newly imposed taxes and Proposition 13 became the subject of numerous legal challenges.

In response to judicial decisions viewed by some as establishing court-made "loopholes" in Proposition 13, the proponents of Proposition 13 successfully placed another proposition on the statewide ballot in 1986, Proposition 62.

Proposition 62's statutory provisions require voter approval of all new local taxes and specify that there are two kinds of taxes, "general" and "special." "Special taxes" are defined as taxes "imposed for specific purposes." A new or higher general tax must be authorized by a 2/3 vote of the legislative body of the taxing entity, but can be approved by a simple majority of local voters. In contrast, a new or higher *special tax* may be authorized by a majority vote of the legislative body of the local taxing entity, but must be approved by a two-thirds majority of local voters. Proposition 62 also requires that all local ordinances proposing new or higher general or special taxes contain specific information, including the method of collection and the proposed use of the tax revenues.

As a statutory ballot initiative, Proposition 62 did not apply to charter cities, such as Los Angeles and San Francisco.

III. PROPOSITION 218 (1996)

Although property taxes are the primary source of local government revenues, they are not the only source. Local governments may also finance their activities through the imposition of assessments, fees, or other charges. In response to an increased use of assessments and fees by local governments following Proposition 13's passage, a constitutional initiative known as Proposition 218 appeared on the 1996 ballot and was approved by the voters. Proposition 218 added Articles XIII C and D to the California Constitution, in part duplicating the statutory provisions of Proposition 62. As a result, the provisions of Proposition 218, including voter approval requirements for local taxes, apply to both general law and charter cities.

Specifically, Proposition 218 prohibits any local government³ from imposing, extending, or increasing any general tax⁴ unless and until that tax is submitted to the electorate and approved by a majority vote. Proposition 218 also prohibits any local government from imposing, extending, or increasing any special tax⁵ without the approval of two-thirds of the electorate. Proposition 218 also gave voters the power to reduce or repeal any local tax, assessment, or fee through ballot referenda (Article XIII C, Section 3). Furthermore, it subjected local assessments to a host of new procedural and substantive requirements (Article XIII D, Sections 4 and 5) and defined a new class of property-related fees that are subject to a number of limitations and requirements (Article XIII D, Sec. 6).

Propositions 13, 62, and 218 instituted voter approval requirements for certain taxes and assessments, thereby injecting an element of direct democracy into the decision-making process. At the same time, however, these propositions created a system whereby many taxes require a two-thirds vote for passage. This essentially vests the minority with the power to block revenue-raising measures with which they disagree, even in cases where a clear majority of legislators or local voters have registered their support.

IV. PROPOSITION 26 (2010)

Proposition 26, an initiative constitutional amendment, was approved by the voters on the November 2, 2010, general election ballot. Proposition 26 expanded the definition of a "tax" to include many state and local government assessments previously classified as "fees." The distinction between "taxes" and "fees" is important because state law imposes different approval requirements for each. As a general rule, state and local governments may impose fees with a simple majority vote of the governing body. By contrast, increasing tax revenues generally requires a two-thirds vote of the Legislature (for state taxes), or the approval of local voters (for local proposals). These heightened approval requirements for taxes have their origin in Propositions 13 and 218, discussed above.

Proposition 26 also provided that any change in state statute that results in any taxpayer paying a higher tax must be passed by a two-thirds vote of the Legislature. Previously, the constitutionally-mandated two-thirds vote requirement applied to changes in state *taxes* enacted for the purpose of *increasing revenues*. Proposition 26, however, amended this constitutional section to provide that "[a]ny change in state statute which [*sic*] results in any taxpayer paying a higher tax" must be passed by a two-thirds vote of the Legislature. (Emphasis added.)

³ Section 1(b) of Article XIII C defines a local government as "any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity."

⁴ Section 1(a) of Article XIII C defines a general tax as "any tax imposed for general governmental purposes."

⁵ Section 1(d) of Article XIII C defines a special tax as "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund."