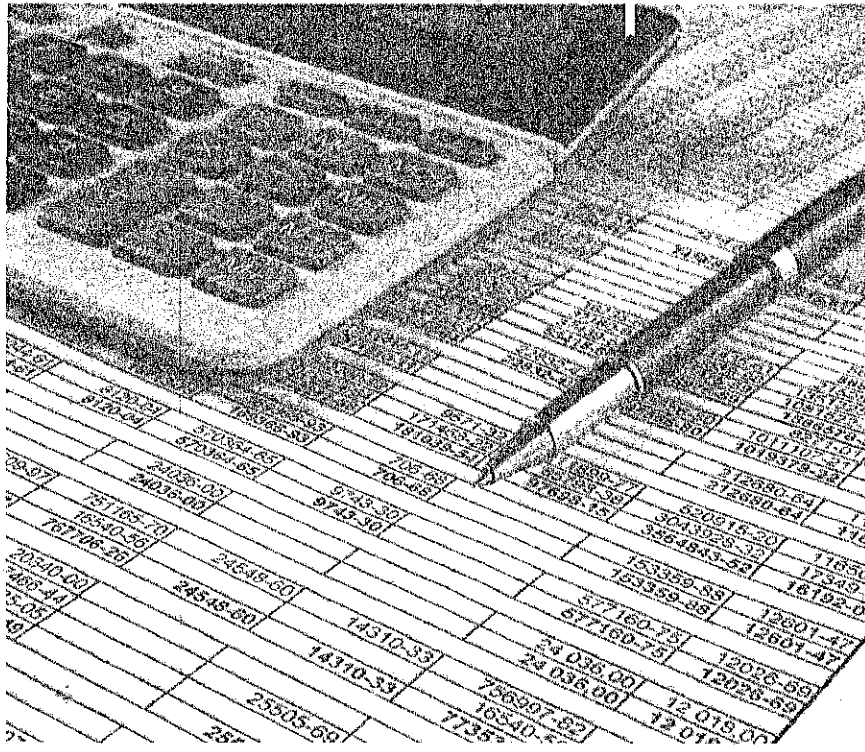


# TAXES



*"The nation should have a tax system that looks like someone designed it on purpose."*

--- WILLIAM SIMON

A tax is a monetary imposition by a government on persons or property for the purpose of raising revenue to support the purposes of the government.<sup>1</sup> In contrast to an assessment or a fee, a tax need not be levied in proportion to specific benefit to a person or property. Fees or charges will be considered taxes to the extent they exceed the reasonable cost of the service, commodity or facility for which they are imposed.

California cities do not have an inherent power to tax. Charter cities are given the power to tax pursuant to Article XI, Section 5 of the California Constitution and may levy taxes for municipal purposes without specific authorization from the Legislature. As authorized in state statute, a general law city, with certain exceptions, may levy any tax that a charter city may levy.<sup>2</sup> State law may set certain limits and procedures and may exempt certain activities from taxes levied by general law cities. These laws apply to charter cities in matters that the courts have determined are of statewide concern.

## ■ General and Special Taxes

The passage of Proposition 13 in 1978 created a distinction between "general" and "special" taxes. Proposition 218, in 1996, further defined and established procedures for general taxes.<sup>3</sup>

- A *general tax* is a tax imposed for general governmental purposes, the proceeds of which are deposited into the General Fund. A majority vote of the electorate (those voting on the measure) is required to impose, extend or increase any general tax.
  - An election on a general tax must be consolidated with a regularly scheduled general election of city council members, except in cases of emergency declared by a unanimous vote of the city council.<sup>4</sup>
  - Single-purpose special districts ("special purpose districts") may not impose general taxes.

	General Tax	Special Tax
<b>Use of Revenues</b>	<ul style="list-style-type: none"> <li>■ Unrestricted</li> </ul>	<ul style="list-style-type: none"> <li>■ Specific purpose</li> </ul>
<b>Governing Body Approval</b>	<ul style="list-style-type: none"> <li>■ General law cities: two-thirds</li> <li>■ Charter cities: Majority</li> </ul>	<ul style="list-style-type: none"> <li>■ Majority</li> </ul>
<b>Voter Approval</b>	<ul style="list-style-type: none"> <li>■ Majority</li> </ul>	<ul style="list-style-type: none"> <li>■ Two-thirds</li> </ul>
<b>Other Rules</b>	<ul style="list-style-type: none"> <li>■ A general tax election must be consolidated with a regularly scheduled general election of city council members, unless an emergency is declared by unanimous vote (among those present) of the city council.</li> </ul>	<ul style="list-style-type: none"> <li>■ Special tax funds must be deposited in a separate account. The taxing agency must publish an annual report including: 1) the tax rate; 2) the amounts of revenues collected and expended and 3) the status of any project funded by the special tax.<sup>5</sup></li> </ul>

- A *special tax* is a tax that is collected and earmarked for a specific purpose and deposited either into a separate account or the General Fund. A two-thirds vote of the electorate is required to impose, extend or increase any special tax.

## ■ When is a Tax Imposed, Increased or Extended?

Under Proposition 218, no local government may impose, extend or increase any general tax until such tax is submitted to the electorate and approved.<sup>6</sup>

A tax is "*imposed*" when the local tax ordinance is adopted, and each time a tax is collected.<sup>7</sup> "*Extend*" means a decision by an agency to extend the stated effective period for the tax or fee or charge, including amendment or removal of a sunset provision or expiration date.<sup>8</sup>

A tax is "*increased*" when an agency either (1) increases the rate used to calculate the tax; or (2) revises the methodology by which the tax is calculated if that revision results in an increased amount being levied on any person or parcel.<sup>9</sup> A tax is not "increased" if (1) it is imposed at a rate no higher than the maximum rate previously approved, or (2) it is adjusted in accordance with a schedule of adjustments, including a clearly defined formula for inflation that was adopted prior to November 6, 1996.<sup>10</sup> However, a tax which is calculated by using a percentage is "increased" when it is adjusted for inflation even if the voters approve the tax.<sup>11</sup>

### ■ Additional Aspects of Municipal Taxation in California

- A local tax can be reduced or repealed by initiative unless it supports bonded debt. Many taxes can be imposed or increased by initiative as well.
- Certain types of local taxes are specifically pre-empted by state law. These include taxes on: cigarettes, alcohol and personal income.<sup>12</sup>
- State law provides various additional procedural requirements for the enactment of some taxes depending on the type of tax.
- If a local agency wants to collect a previously approved tax at a rate lower than was authorized by the voters, the agency should make it very clear in its official actions that the rate is being “suspended” for a certain period of time and not being permanently lowered. An agency that collects a previously approved tax at a rate lower than was authorized by the voters without a statement clarifying the intent and purpose of the suspension may trigger a Proposition 218 vote requirement when it begins collecting the tax at the previously approved rate.<sup>13</sup>

#### **For More Information:**

*Proposition 218 Implementation Guide*, League of California Cities, Sacramento California 2007 Edition.

*California Municipal Law Handbook*, Chapter V, League of California Cities, Sacramento, CA, 2007 Edition.