

Trial Court Rejects Proposition 218 Class Action Challenge to a City's Utility User Tax

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Richards, Watson & Gershon successfully represented the City of Norwalk in obtaining a judgment rejecting a class action lawsuit challenging Norwalk's utility user tax (UUT) that has been in place for almost 25 years. The lawsuit specifically targeted application of Norwalk's UUT on cell phone charges based on a 2006 IRS notice that had invalidated a federal excise tax (FET). Many cities had previously incorporated the FET definitions into their ordinances for administrative convenience and some amended them to delete the FET reference following the 2006 IRS action. The federal courts at all levels later invalidated the 2006 IRS notice and the IRS itself issued a further notice that its 2006 notice has no impact on the ability of local governments to impose or collect taxes.

Years later, counsel for a putative class of taxpayers alleged, as they have in similar class action suits in other California cities, that the UUT imposed by Norwalk violated Proposition 218 and Proposition 62 based on deletion of the FET reference in the local UUT ordinances. Proposition 218 requires voter approval if a tax is "imposed, increased, or extended." Proposition 62 requires voter approval to "impose" a tax.

In rejecting the lawsuit, the court recognized that Norwalk's voters twice resoundingly approved the UUT at elections in 2003 and 2014. The UUT, including the rate and methodology for collecting it, never changed since the voters approved it in 2003 and tax revenues from the UUT remained unchanged by the amendment. Applying previous judicial interpretations of Proposition 218 and the Proposition 218 Omnibus Implementation Act, the trial court concluded deletion of the FET reference did not "impose, increase or extend" the UUT in any manner. This ruling of the judge in the Los Angeles Superior Court's Complex Civil Litigation Department has statewide significance due to the proliferation of class action suits asserting challenges based on the IRS ruling to long-standing voter-approved UUT ordinances that fund essential public safety and community services.

If you have any questions or would like more information on the case, please contact Saskia T. Asamura or B. Tilden Kim.