Court of Appeal Rejects Proposition 218 Challenge to City Cell Phone Tax

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RWG lawyers have prevailed for the City of Norwalk in a class action challenge to its voter-approved utility user tax (UUT) on cell phone usage. The Court of Appeal decision has potentially significant benefit for other cities with similar cell phone tax ordinances.

The City first adopted the UUT in 1992 and the voters ratified and approved the 5.5% UUT at an election in 2003. For administrative convenience, like many other California cities, the 2003 ordinance incorporated definitions from the Federal Excise Tax (FET) and provided that persons who were exempted from the FET were also exempt from the City's UUT. In 2006, the IRS issued a notice declaring the FET was unlawful as it applied to long distance telephone plans which charged customers according to the length of the call without regard to distance (such as cell phone plans). In response, like many other cities, the City adopted an ordinance in 2007 deleting the FET reference from the City's UUT ordinance.

In the lawsuit, Plaintiffs contended that the 2006 IRS notice invalidated the UUT and that the City's 2007 ordinance violated Proposition 218 and Proposition 62 because it "imposed, increased or extended" the UUT without voter approval. After the lawsuit was filed, in November 2014, the voters again resoundingly approved the UUT at another election at the same 5.5% rate.

In a published decision issued on December 4, 2017, the Second District Court of Appeal upheld the trial court's judgment and held that the City's deletion of the FET reference did not "impose, extend, or increase" the UUT and, therefore, did not violate Proposition 218 or Proposition 62. RWG attorneys Saskia Asamura and B. Tilden Kim represented the City of Norwalk. The case is *Gonzalez v. City of Norwalk*.

For more information on Proposition 218 and Proposition 62 challenges to local cell phone taxes or this Court of Appeal decision, please contact Saskia T. Asamura.

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