



MEMORANDUM

COUNTY OF LAKE

COUNTY COUNSEL

TO: HONORABLE BOARD OF SUPERVISORS

FROM: ANITA L. GRANT
County Counsel

SUBJECT: AVA Fees and Proposition 26

DATE: January 6, 2017

The Abandoned Vehicle Abatement (“AVA”) Program is a state program whereby counties and incorporated cities can receive funding to help defray the costs of removing abandoned vehicles within their jurisdiction. Funding for the program comes from a \$1 per vehicle Department of Motor Vehicles registration assessment. Unless extended, the fee expires ten years after it is implemented.

Prior to the passage of Proposition 26 (“Prop. 26”), regulatory fees (not property related) were used by state and local government often to create funding to address pollution and health problems by imposing exactions against developers and businesses that contribute to those problems. Many businesses and developers protested that these fees were actually hidden taxes. That protest culminated in the passage of Prop. 26.

The AVA fee was authorized by the Legislature prior to the passage of Prop. 26, but those jurisdictions which had not yet implemented the AVA fee before Prop. 26 was passed and/or those who seek to extend the fee for an additional ten years have grappled with the question of whether the AVA fee is a special tax.

With the passage of Prop. 26, almost any charge imposed by a local government that results in the local government receiving revenues could be viewed as a local tax. This means that the local government would need to obtain a majority approval of the voters if the revenues are to be used for general governmental purposes, or a two-thirds voter approval if the revenues are to be used for a particular or special purpose. Prop. 26 offers seven exceptions where its requirements do not apply. (Please see the attachment to this Memorandum.)

It appears that many of the counties in California determined the AVA fee is a special tax requiring voter approval. Those counties include Mendocino, Humboldt, Butte, San Benito, Fresno, Amador, Calaveras, Shasta, Monterey, San Diego, and San Francisco. Under Prop. 26, a “tax” means any levy, charge, or exaction of any kind imposed by a local government”. Vehicle Code sections 9250.7 and 22710 authorize the imposition of the AVA fee by a local government, but do not require it. The

AVA fee is charge which may be imposed by a local government that results in the local government receiving revenues.

A local government will next consider the following:

Does one of the seven exceptions apply here?

Does the charge specifically benefit those who pay the charge?

A charge should benefit only those that pay the charge.

Is the charge reasonable?

For the charge to be considered reasonable, the local government must be able to show the charge does not exceed the necessary cost of the governmental activity and that the cost allocated to the payer bears a reasonable relationship to the payer's burdens and/or benefits.

If the local government answers "no" to any of the above three questions, the charge is a tax. (Cal Tax Policy Paper, *Understanding Proposition 29*.)

It does not appear that any of the seven exceptions apply in regard to the AVA fee. It is not only vehicle owners who benefit from the AVA program. Non-vehicle owners benefit from the AVA program which makes possible the removal of abandoned vehicles that blight the landscape. These factors support a determination that the fee is a special tax.

Nonetheless, while it appears that a significant number of counties have determined the AVA fee to be a tax, some have not.

The Office of the California Attorney General has opined that it would be wrong to conclude that any amount collected by a local government that does not fall within one of the exceptions enumerated in Prop. 26 is necessarily a tax. (99 Ops.Cal.Atty.Gen. 1 (2016).) Further, the California Attorney General has determined that a green building standard fee required to be collected by cities, counties, and cities and counties was not a tax subject to Prop. 26, but a regulatory fee because, although it did not benefit the fee payers, the fees did support a program that addressed the societal costs of the fee payers' economic activities. The Attorney General's Office concluded that when charges required to be collected by cities, counties, and cities and counties are intended principally for the protection of the health and safety of the public, they are validly levied regulatory fees and do not constitute an unlawful tax. (94 Ops.Cal.Atty.Gen. 75 (2011).)

It would be a relatively simple exercise to put this matter before the electorate should your Board choose to do so. It is my understanding that those jurisdictions that have done so have largely been successful.