



Distinguishing Fees From Taxes

The following criteria outline how to distinguish fee exactions from taxes. These criteria are based on principles set forth in cases interpreting Proposition 13:

- **Fee Must Be Related to its Purpose.** The fee must be reasonably related to its purpose. Fee revenues should not be used to pay for services other than those for which the fee is charged.
- **Amount of Fee Is Reasonably Necessary to Cover Costs of Regulatory Purpose.** The fee must not exceed the sum reasonably necessary to cover the costs of the regulatory purpose, including reasonable administrative expenses. If fees produce excess revenue, the amount of the fees should be reduced, rather than diverted to other governmental purposes.
- **Fee Must Be Fairly Apportioned.** The burden of proof is on the government to show the estimated costs of the service or regulatory activity and the basis for determining the manner in which the costs are apportioned. Fees allocated to a fee payer must bear a fair and reasonable relationship to the fee payer's burdens on or benefits from the regulatory activity.
- **Regulatory Fees Require Causal Connection Between Fee Payer's Product or Operations and its Adverse Effects.** Regulatory fees may be imposed to mitigate the past, present or future adverse impact of the fee payer's operations, and there must be nexus between the product and the adverse effects targeted by the measure.

An additional consideration for California is that taxes should not be classified as fees to circumvent tax approval requirements specified in the state constitution, such as the two-thirds vote threshold of the state Senate and Assembly for approval of a tax. Moreover, fees should not be classified as spending reductions to hide their revenue-raising effect.