

# **Bond Case Briefs**

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## **TAX - CALIFORNIA**

### **Citizens for Fair Reu Rates v. City of Redding**

**Court of Appeal, Third District, California - January 20, 2015 - Cal.Rptr.3d - 2015 WL 252175**

The City of Redding engaged in the practice of making an annual budget transfer from the Redding Electrical Utility to Redding's general fund. Because the Utility is municipally owned, it is not subject to a one percent ad valorem tax imposed on privately owned utilities in California. However, the amount transferred between the Utility's funds and the Redding general fund is designed to be equivalent to the ad valorem tax the Utility would have to pay if privately owned. Redding describes the annual transfer as a payment in lieu of taxes (PILOT). The PILOT is not set by ordinance, but is part of the Redding biennial budget.

Plaintiffs challenged the PILOT on grounds it constitutes a tax for which article XIII C of Proposition 26 required approval by two-thirds of voters. Redding responded that the PILOT was not a tax, and if it was a tax, it was grandfathered-in because it preceded the adoption of Proposition 26.

The Court of Appeal concluded that the PILOT constituted a tax under Proposition 26 for which Redding must secure two-thirds voter approval unless it proves the amount collected is necessary to cover the reasonable costs to the city to provide electric service.

The court rejected Redding's assertion that the PILOT was grandfathered-in by preceding Proposition 26's adoption. As a budget line item, the PILOT is subject to annual discretionary reauthorization by Redding's city council. The PILOT does not escape the purview of Proposition 26 because it is a long-standing practice.

The court remanded for an evidentiary hearing in which Redding has the opportunity to prove the PILOT does not exceed reasonable costs under article XIII C, section 1, subdivision (e)(2).