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Schmeer, et al. v. County of Los Angeles
BC 470705

Tentative decision on petition for writ of mandate: denied

Petitioners Lee Schmeer, Salim Bana, Jeff Wheeler, Chris Kucma and Hilex Poly Co., LLC apply for a writ of traditional mandamus commanding Respondent County of Los Angeles ("County") to repeal Ordinance No. 2010-0059. The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

Petitioners commenced this proceeding on October 3, 2011 for traditional mandamus.

On November 23, 2010, the County adopted Ordinance 2010-0059 ("the Ordinance"), adding Chapter 12.85 to Title 12 of the Los Angeles County Code ("LACC"). The Ordinance requires all retail stores to charge customers 10 cents for each paper carryout bag the customer desires. The Ordinance also bans stores from providing plastic carryout bags to customers.

Petitioners contend that the mandatory $0.10 charge is a tax within the meaning of the California Constitution. Because the Ordinance was not submitted to popular vote, the charge is an unconstitutional tax.

B. Standard of Review

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person." CCP §1085(a).

A traditional writ of mandate under CCP section 1085 is a method of compelling the performance of a legal, usually ministerial duty. Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84. "Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy; the respondent has a duty to perform; and the petitioner has a clear and beneficial right to performance." Id. at 584 (internal citations omitted). When an administrative decision is reviewed under §1085, judicial review is limited to an examination of the proceedings before the agency to determine whether its action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether it did not follow the procedure and give the notices required by law. Id.

C. Governing Law

1. Prop 13

Under California law, locally imposed taxes are subject to a voter approval requirement. Proposition 13 ("Prop 13") was the genesis of voter approval requirements for locally-imposed special taxes. Cal. Const, Art. XIII A, §4. Adopted thirty four years ago in 1978, Prop 13 amended the State Constitution to restrict property tax increases. Prop 13 also gave local voters greater control over special taxes in order to prevent local governments from replacing lost property tax revenues by raising such taxes.

2. Prop 62

Local governments in subsequent years sought to circumvent the restrictions on imposing or increasing local taxes contained in Prop 13.

In response, in 1986 voters adopted Proposition 62 ("Prop 62"), a statutory initiative which sought to require local special taxes to be approved by two-thirds of local voters, and local general taxes to be approved by a majority of local voters. Santa Clara County Local Transportation Authority v. Guardino, (1995) 11 Cal.4th 220, 247-48 (upholding constitutionality of Prop 62).

3. Prop 218

Proposition 218 ("Prop 218") was enacted by the electorate in 1996, and in effect extended the voter approval requirements for the enactment of a local tax to cities operating under a "home rule" charter, and also imposed voter approval requirements for property-related fees, charges, and assessments. Howard Jarvis Taxpayers' Assn. v. City of L.A., (2000) 85 Cal.App.4th 79, 82-83.

Prop 218 added Articles XIII C and D to the State Constitution. "All taxes imposed by any local government shall be deemed to be either general taxes or special taxes." Cal Const., Art. XIII C §2(a). A "general tax" is "any tax imposed for general governmental purposes." Art. XIII C §1(a). A "special tax" is "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund." Art. XIII C §1(d). Prop 218 forbade any local general tax from being imposed without approval by a majority vote of the electorate in the affected jurisdiction, and any local special tax from being imposed without approval by a two-thirds vote of the electorate.

The Ballot Argument in support of Prop 218 stated that its provisions were intended to "guarantee" Californians the "right to vote on local tax increases—even when they are called something else, like 'assessments' or fees'." These restrictions were required because local politicians sought to exploit an apparent loophole in the law "that allow[ed] them to raise taxes without voter approval by calling taxes 'assessments' and 'fees'."

4. Sinclair

Prop 218 did not explicitly define what constituted a "tax" and was subject to the measure's local voter approval requirements. Disagreements ensued regarding the difference between regulatory fees and taxes.

In Sinclair Faints v. SBE, ("Sinclair") (1997) 15 Cal.4th 866, the California Supreme Court addressed this issue. The Legislature had enacted a mitigation fee requiring paint manufacturers to pay a regulatory charge to both deter and offset the impact of their activity upon the environment. The court found that if regulation is the primary purpose of a fee, the mere fact that revenue is also obtained does not transform the imposition into a tax.

5. Prop 26

The Sinclair decision had the effect of making it significantly easier for state and local government to impose a fee for the regulation of a service which may result in incidental revenue to the government.

In November 2010, Proposition 26 ("Prop 26") was enacted by initiative to amend the

Articles XIII C, and XIII D to address "hidden taxes" and to overturn the Sinclair case. Prop 26 overturned the Sinclair case by requiring with respect to Legislature-imposed fees that any change in state statute which results "in any taxpayer paying a higher tax" must be enacted with two-thirds approval of the Legislature. Voter Information Guide at p. 59.

With regard to fees imposed by local government, Prop 26 amends Article XIII C (Prop 218) to broaden the definition of "tax" "as used in this article," to mean "any levy, charge, or exaction of any kind imposed by a local government" unless the charge qualifies for one of seven exceptions. Art. XIII C §1(e).

Prop 26's definition of a "tax" applies to all levies, charges or exactions of any kind "except the following:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege to the payor.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

(3) A charge imposed for the reasonable regulatory costs to the local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof

(4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property, except charges governed by Section 15 of Article XI.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.

(6)A charge imposed as a condition of properly development.

(7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.22

Prop 26 also changed the law to require that a local government has the burden of proof by a preponderance of the evidence to establish it is not a tax:

> "The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity."

Art. XIII C § 1(e).

6. Prop 26 Legislative History

According to Prop 26's proponents, the measure bars "state and local politicians from raising Hidden Taxes on goods like food and gas, by disguising taxes as 'fees' and circumventing constitutional requirements for passing higher taxes." California Secretary of State, Voter's

Pamphlet for the General Election, November 2, 2010, p. 8, "Quick-Reference Guide". The Quick Reference Guide, stated purpose of Prop 26, and the accompanying Legislative Analysis by the Attorney General, all indicate that Prop 26 was intended to curb revenue generation by the Legislature and local governments. Id.

The Legislative Analyst's Office ("LAO") stated that Prop 26's intent was to expand the definition of "tax" to bring additional types of charges under the scope of Proposition 218's voter approval requirements:

> "Over the years, there has been disagreement regarding the difference between regulatory fees and taxes, particularly when the money is raised to pay for a program of broad public benefit. In 1991, for example, the state began imposing a regulatory fee on businesses that made products containing lead. The state uses this money to screen children at risk for lead poisoning, follow up on their treatment, and identify sources of lead contamination responsible for the poisoning. In court, the Sinclair Paint Company argued that this regulatory fee was a tax because: (i) the program provides a broad public benefit, not a benefit to the regulated business, and (2) the companies that pay the fee have no duties regarding the lead poisoning program other than payment of the fee."

> "In 1997, the California Supreme Court ruled that this charge on businesses was a regulatory fee, not a tax. The court said government may impose regulatory fees on companies that make contaminating products in order to help correct adverse health effects related to those products. Consequently, regulatory fees of this type can be created or increased by (1) a majority vote of each house of the Legislature or (2) a majority vote of a local governing body."

The LAO pointed out that Prop 26 would override the Sinclair decision and broaden the definition of "tax:"

> "This measure broadens the definition of a state or local tax to include many payments currently considered to be fees or charges. As a result, the measure would have the effect of increasing the number of revenue proposals subject to the higher approval requirements. Generally, the types of fees and charges that would become taxes under the measure are ones that government imposes to address health, environmental, or other societal or economic concerns."

Ballot arguments and the Legislative Analyst's analysis in the statewide voter handbook constitute legislative history of a statewide ballot measure which may be helpful in determining the probable meaning of uncertain language. Amador Valley Joint Union High School District v. State Board of Equalization, (1978) 22 Cal.3d 208, 245.

7. Interpretation of Ballot Measures

Constitutional amendments and statutes adopted by the voters must be interpreted consistent with the intent of the voters. "When interpreting a provision of our state Constitution, our aim is "to determine and effectuate the intent of those who enacted the constitutional provision at issue. When, as here, the voters enacted the provision, their intent governs." Bighorn-Desert View Water Agency v. Verjil, (2006) 39 Cal.4th 205, 212 (citation omitted). To make this determination, the courts begin by examining the text, giving the words their plain meaning. Ibid. Such provisions will be construed liberally in favor of the people's power of initiative. Shaw v. Chiang, (2009) 175 Cal.App.4th 577, 596. "If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it." Ibid.

8. Summary

In sum, over thirty years' worth of efforts by California voters to control their local governments' tax decisions have gone from requiring a public vote for local special taxes (Prop. 13), to requiring a public vote for all local taxes (Prop. 62), to enshrining in the Constitution the requirement for a public vote on all local taxes (Prop. 218), to defining "tax" in the Constitution itself as any levies, charges, or exactions of any kind (Prop 26).

C. Analysis[1]

This case involves the application of law to undisputed facts. The County bears the burden of proof that the 10 cent charge for paper bags is not a tax. Petitioners bear the burden of proof on the rest of their claim.

1. The Ordinance

The Ordinance was adopted by the County's Board of Supervisors on November 23,

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[1]The County asks the court to judicially notice (1) the voter pamphlet for Prop 26, (2) a master environmental assessment for reusable carryout bags prepared by a private party, which apparently was relied on by the County in its EIR for the Ordinance, and (3) the language of AB 87 and 68, neither of which were enacted. The voter pamphlet is subject to judicial notice. Ev. Code §452(b). The privately prepared environmental document does not. While an un-enacted bill is subject to judicial notice, it must also be relevant. The court sees no relevance to these bills. The request is granted as to the voter pamphlet and denied as to the rest.

Petitioners ask the court to judicially notice portions of the voter pamphlets for Props 218 and 26. The request is granted. Ev. Code §452(b).

Petitioners also request the court to judicially notice a State board of Equalization ("BOE") Special Notice concluding that sales tax does not apply to local government paper bag surcharges. The Notice notes that the local ordinances at issue typically impose a charge on the customer, not the retailer. The Notice concludes that the charge is not included in the retailer's gross receipts and is not subject to sales or use tax. The County opposes judicial notice of the BOE document as irrelevant. Petitioners reply that judicial notice is sought to dispel any notion that the paper bag is "sold" to the customer in these ordinances. The Notice is relevant and the request is granted. Ev. Code §452(c).

2010. The Ordinance requires all retail stores to charge customers 10 cents for each paper carryout bag the customer desires. The Ordinance also bans stores from providing plastic carryout bags to customers. LACC §12.85.020(A).

The Ordinance provides that each store shall retain the entire proceeds from each sold bag, which may be used only for (1) costs associated with complying with the Ordinance, (2) actual costs of providing paper carryout bags, and (3) costs associated with a store's educational materials and campaigns encouraging the use of reusable non-paper carryout bags in furtherance of the County's policy promoting the use of such bags. LACC §12.85.040(D). The Ordinance further requires retail stores to report to the Director of Public Works on a quarterly basis a summary of efforts the store has undertaken to promote the use of reusable non-paper carryout bags. LACC §12.85.040(E), and mandates that all retail stores shall provide reusable non-paper carryout bags, either for sale or at no charge. LACC §12.85.050(A). The Ordinance also contains an express statement declaring that "[e]ach store is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging customers to use reusable bags." LACC §12.85.050(B). The Ordinance became operative on July 1, 2011. LACC §12.85.070.

The Ordinance requires retail stores to charge customers for each paper carryout bag provided. The Ordinance implements the County's purpose of promoting reusable bags by discouraging the use of plastic and paper carryout bags, which retail stores have historically provided to customers without a separately stated charge. It prohibits retail stores from providing customers with plastic carryout bags and requires stores to impose a 10 cent charge on customers for each paper carryout bag.

The purpose of the 10 cent charge is to modify consumer behavior—to discourage the use of paper carryout bags by requiring customers to pay for something they had previously been provided for free. Banning the use of plastic bags and making it more expensive to use paper bags, the 10 cent charge promotes the use of reusable carryout bags. Furthering this goal, the Ordinance authorizes retail stores to retain the proceeds from the paper bag charge for, among other things, educational materials "encouraging the use of reusable bags" by customers.

Petitioners have paid the paper carryout bag charge and object to it. Prior to passage of the Ordinance, they had not been separately charged for plastic or paper carryout bags.

2. <u>The Ten Cent Charge Is Not a General or Special Tax</u>

Petitioners contend that the Ordinance's requirement of a 10 cent charge on customers for each paper bag is an unconstitutional tax under Prop 26. Mot. at 12-13.

Prop 26 amends Prop 218 to broaden the definition of "tax" as used in Article XIII C to mean "any levy, charge, or exaction of any kind imposed by a local government" unless the charge qualifies for one of seven exceptions. Art. XIII C §1(e).

The common definition of a "levy" is "a seizure." As used in taxation, it may mean the declaration of the rate or amount of taxation. Black's Law Dictionary, (4th ed.) 1051. An "exaction" is a wrongful compulsion to pay a fee under color of law. Id. at 664. The term "charge" has various meanings as a noun, including "an obligation or duty" and "a liability." Id. at 294. When used as a verb, "charge" means "to impose a tax, duty, or trust." Ibid.

Petitioners argue that the 10 cent paper bag charge to customers is without doubt a charge within the meaning of Prop 26.

An unstated premise of Petitioners' case is that a payment compelled by ordinance can be a tax where the government does not receive any portion of the money. Petitioners cite no constitutional provision, statute, or case for this rather remarkable proposition. While it is true that the Constitution does not expressly provide that a local government must receive a levy, charge or exaction in order for it to qualify as a tax, this is likely due to the fact that it is so obvious and unquestioned as to not be open to debate.

As a general rule, taxes are imposed for revenue purposes. *See* Sinclair, *supra*, 15 Cal.4th at 874. Prop 26 did not change this essential truth. This is confirmed by the stated purpose of Prop 26, which was aimed at curbing revenue generating measures by the Legislature and local governments:

> "This escalation in taxation does not account for the recent phenomenon whereby the Legislature and local governments have disguised new taxes as 'fees' in order to extract even more revenue from California taxpayers without having to abide by these constitutional voting requirements. Fees couched as 'regulatory' but which exceed the reasonable costs of actual regulation or are simply imposed to raise revenue for a new program and are not part of any licensing or permitting program are actually taxes and should be subject to the limitations applicable to the imposition of taxes."

Opp., RJN Ex.3, at 114 (§1(e)).

Taxes are, and have always been, about generating revenue, something which the Ordinance does not accomplish. The proponents of Prop 26 recognized this uncontroversial fact, claiming in the Rebuttal to Argument Against Proposition 26 that politicians want "more taxpayer money for the politicians to waste, including on lavish public pensions" and that Prop 26 "simply stops the runaway fees politicians pass to fund ineffective programs." Opp., RJN Ex.3, at 61.

In interpreting Prop 26's definition of a tax to include any "levy, charge, or exaction of any kind imposed by a local government," that does not end the inquiry. In enacting Prop 26, the electorate must be deemed to be aware of the legislative and judicial context of the enacted measure, including the rest of Prop 218. *See* Amador Valley Joint Union High Sch. Dist. v. SBE, (1978) 22 Cal.3d 208, 243-244.

Prop 218 requires that "[a]ll taxes imposed by any local government shall be deemed to be either general taxes or special taxes." Art. XIII C §2(a). Prop 218 also still defines a "general tax" as "any tax imposed for general governmental purposes" (Art. XIII C, §1(a), and a "special tax" as "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund." (Art. XIII C, §1(d)).

California law recognizes locally enacted taxes as consisting of either general taxes or special taxes. Howard Jarvis Taxpayers Assn. v. City of Roseville, ("Howard Jarvis") (2003) 106 Cal.App.4th 1178, 1187 ("Prop 218 does not permit a local tax to be considered some kind of hybrid. Rather it requires that local taxes be deemed either general taxes or special taxes." (citing Art. XIII C, § 2(a))). Prop 26 did not eliminate the constitutional requirement that a local tax must be either a general or special tax..

Under Prop 218, a tax is general only when its revenues are placed into the general fund and are available for any an all governmental purpose. Howard Jarvis, *supra* 106 Cal.App.4th at 1185. The 10 cent charge to paper bag customers is plainly not a general tax. It is not imposed for generally governmental purposes, and is not deposited into a general fund. All of the money is kept by the stores.

Under Prop 218, a special tax is any tax imposed for a specific purpose, even if the proceeds are placed into a general fund. Ibid. A tax is special whenever expenditure of its revenue is limited to a specific purpose or purposes. Ibid. A special tax is one that is collected and earmarked for a specific project or projects. Monterey Peninsula Taxpayers Assn. v. county of Monterey, (1992) 8 Cal.App.4th 1520, 1535.

Petitioners expressly allege in their Petition that the paper bag charge is a special tax. Pet. ¶¶ 36, 43, 45. They are wrong. None of the money generated by the Ordinance is collected by the County and earmarked or spent for a specific purpose. To the contrary, all of the money is kept by the stores. Ultimately, Petitioners' case ends there, without need for further analysis.

3. Prop 26's Definition Must Be Interpreted to Apply to Revenue

Even if *arguendo* Petitioners are correct that the 10 cent paper bag charge meets the ordinary definition of a "charge," Prop 26's definition of "tax" would not include that ordinary meaning in the phrase "any "levy, charge, or exaction of any kind imposed by a local government." While the word "charge" is contained within the phrase, the definition must be construed in a manner that is consistent with Prop 26's manifest purpose, which is to prevent local governments from raising revenue by disguising new taxes as fees without having to abide by constitutional voting requirements. Despite the general rule that ambiguity is a condition precedent to interpretation, the literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to manifest purposes that, in the light of the statute's legislative history, appear from its provisions considered as a whole." California Insurance Guarantee Assoc. v. Workers Compensation Appeals Board, et al., (2003) 112 Cal. App. 4th 358, 363.

This means that Prop 26's definition of tax must be interpreted to apply to revenue generated for government benefit. Where a local government has, as here, passed an ordinance pursuant to its police power[2] that requires a third party to charge customers a fee for a particular item because the item bears a collective environmental cost from its use, the ordinance is intended to discourage the use of that item, and the local government receives no revenue or even indirect benefit[3] from the fee, it does not qualify as a special or general tax under Prop 218. As such, it also is not as a tax under Prop 26.

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[2]Petitioners reply argues that the Ordinance is not a valid exercise of police power (Reply at 5-6), but the only issue in this case is whether Prop 26 has been violated; the County's general police power could not usurp Prop 26.

[3]This case is not an instance where a local government has imposed a charge collected by a third party and the charge is used for the local government's benefit without passing through its coffers.

4. The Stores Are Not the County's Agents

To avoid the problem that the Ordinance does not generate revenue even indirectly for the County, Petitioners argue that retail stores act as the County's agents in imposing the 10 cent bag charge on their customers. Mot. at 15-16.

Petitioners provide no authority for the proposition that a fee imposed by a local government on certain of its citizens, but which is collected, kept, and used by a third party, can be a tax. Petitioners argue that what the County orders done with the money -- depositing it in County coffers or permitting the stores to use them at the County's direction -- does not matter. Mot. at 16. But it does. The Ordinance permits the stores to use the money to defray the cost of the bags, the cost of educating customers on the benefits of using reusable bags, and the costs of complying with the Ordinance. LACC §12.85.040(D). All of these uses benefit the stores, and none benefits the County as a governmental agency.

5. If the Stores Were Agents, the First Exemption Would Apply

Even if deputizing a third party to collect a charge and use it for educational benefits could be a tax, the Ordinance's 10 cent charge fits within Prop 26's first exception to the definition of a tax : (1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege to the payor.

Petitioners argue that this exception does not apply because no "governmental benefit is conferred" on customers paying the 10 cent charge. Mot. at 14.

The County correctly replies that this argument is disingenuous. Opp. at 16. Petitioners "stores as deputies" argument must be carried through to the finish. If the stores are deputies of the County in collecting the 10 cents, then they are also deputies for purposes of bestowing the benefit of a paper bag on customers. Since the 10 cent charge is imposed on customers for a paper bag, and it is not imposed on a store's other customers, it meets the first prong of the exception -- it is "a charge imposed for a specific benefit conferred...directly to the payor that is not provided to those not charged...."

Petitioners do not mention the second prong of the exception until their reply. There, they argue that the exemption is not met because the County has not shown that the 10 cent charge "does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege to the payor." Reply at 7.

This argument has been waived by not making it in the opening brief. New evidence/issues raised for the first time in a reply brief are not properly presented to a trial court and may be disregarded. Regency Outdoor Advertising v. Carolina Lances, Inc., (1995) 31 Cal.App.4th 1323, 1333.

In any event, Petitioners are wrong. There is substantial evidence that the 10 cent charge retained by the "deputized" stores will cover the actual costs of paper bags, educational materials, and the cost of complying with the Ordinance. AR 6. Indeed, 10 cents is the average cost per

bag of paper carryout bags. Ibid.[4] Petitioner presents no evidence to the contrary.

Finally, Petitioners argue that certain customers are exempt from the 10 cent charge. Reply at 8. Apparently, their point is that the paper bag benefit is provided to some who are not charged, contravening the exemption requirement that the specific benefit "is not provided to those not charged."

Again, this issue is raised for the first time in reply. It is not adequately addressed even in reply. Petitioners do not show how the exemption is inapplicable based on the mere fact that the Ordinance does not require certain persons receiving welfare benefits to pay for their paper bags. AR 21.[5]

D. Conclusion

The County has met its burden of establishing that the Ordinance does not create a tax within the meaning of Prop 26 because it is neither a general nor a special tax under Article XIIIC, section 1(a), (d). In addition, the paper bag charge, to the extent that it is a "levy, charge, or exaction...imposed by a local government," it fits within the exception set forth in Article XIIIC, section 1(e) (1).[6]

The petition for writ of mandate is denied. The County's counsel is ordered to prepare a proposed judgment, serve it on the Petitioner's counsel for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for April 23, 2012.

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[4]No further explanation of this statement is given. While this figure seems high, the County's RJN Exhibit B, which the court did not judicially notice, explains that is the real cost. Ex.B at 18. Apparently, stores have been absorbing this cost into their overhead for years.

[5]The court agrees with Petitioners the second exemption -- "a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product." Unlike the first exception, in which the stores as "deputies" can confer a "specific benefit," the stores do not provide a "government service or product." Deputizing the stores does not convert a paper bag into a government service or product.

[6]As the paper bag charge is not a tax, the court need not consider whether that portion of the Ordinance is severable.