

Utility User Tax Facts

The Utility User Tax (UUT) may be imposed by a city on the consumption of utility services, including (but not limited to) electricity, gas, water, sewer, telephone (including cell phone and long distance), sanitation and cable television.ⁱ A county may levy a UUT on the consumption of electricity, gas, water, sewer, telephone, telegraph and cable television services in the unincorporated area.ⁱⁱ

The rate of the tax and the use of its revenues are determined by the local agency. The tax is levied by the city or county on the consumer of the utility services, collected by the utility as a part of its regular billing procedure, and then remitted to the city or county.

Most of the cities and counties with UUTs adopted the taxes prior to 1986 by vote of the city council (or in the case of a county UUT, the county board of supervisors). Any increase or extension of a local tax now requires voter approval. Currently, all city UUT levies in California are general taxes. Statewide, city and county utility user taxes generate nearly \$2 billion per year.

	Cities	Counties	Total	Calif Population covered
Number with UUT	157	4	161	54.0%
Telephone UUTs	149	4	153	49.5%
Electricity	156	4	160	52.7%
Gas	156	4	160	52.7%
Cable TV	90	1	91	22.8%
Water	85	1	86	24.7%
Sewer	14	1	15	2.7%
Garbage	12	0	12	1.3%
San Francisco is counted as a county				

Exemptions

State and federal government agencies, and gas and water used by utility companies to generate electricity are exempt from utility user taxes.

UUTs on Telephony

The application of utility user taxes to certain telephone services has been a topic of substantial legal and legislative turmoil due to changes in technology and federal law.

UUTs and the FET

Many Utility User Taxes in California include reference to the Federal Excise Tax (“FET”)ⁱⁱⁱ commonly limiting the application of the utility user taxes to charges that are “subject to” the FET. Telephone calls which are not charged based on both time and distance — such as those paid by coin in phone booths — are exempt from the FET. By reference, these types of calls are also exempt from some local UUT ordinances. Many cell phone bills are based upon a package which provides a mix of local and long-distance calling for a flat rate.

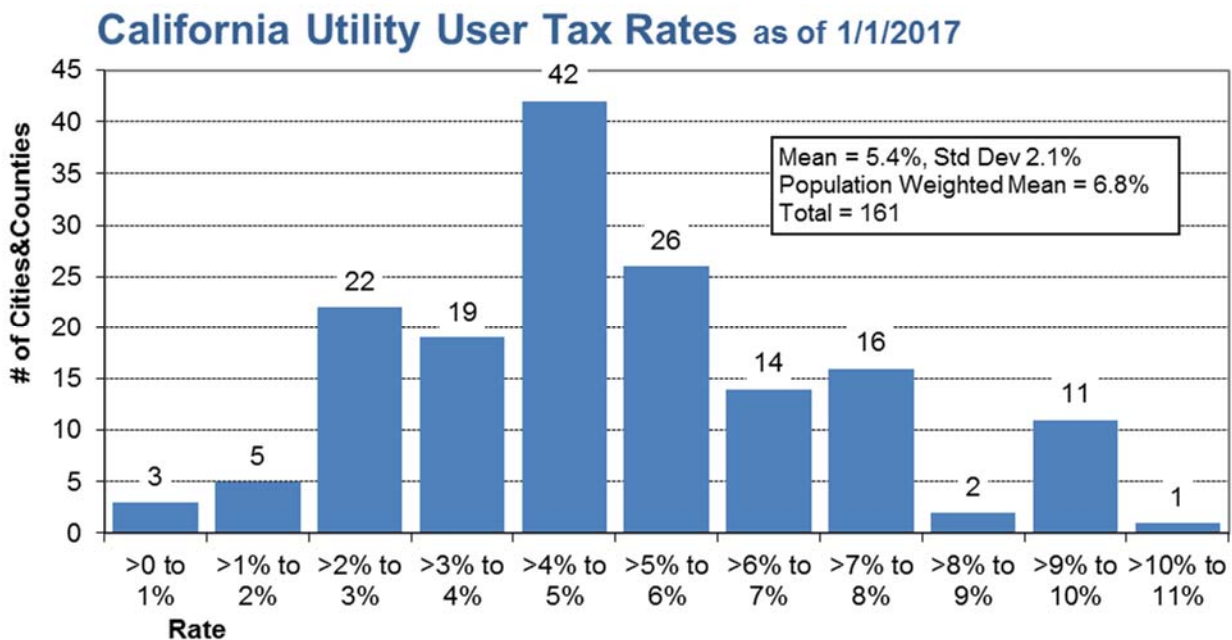
In 2007, several federal courts and the IRS ruled that telephone service packages which provide a mix of local and long-distance calling for a flat rate or a fixed fee are based on neither time nor distance and are therefore not subject to the FET.^{iv} The IRS subsequently adopted a regulation incorporating these rulings.^v That meant that if a city wished to continue to impose its UUT on cell phone or other

telephone calls which are not charged on both time and distance, it must amend its ordinance to remove the reference to this exemption to the FET.

A number of cities have amended their UUT ordinances to clarify that they did not wish to adopt the IRS’ new practice, but rather wished to continue to impose their UUTs as they had historically been imposed (i.e. on charges based on time or distance). At the time of this writing, several localities are challenging the right of local taxing authorities to amend their ordinances without voter approval, or to continue to collect this revenue without amendment. The lawsuits argue that an amendment to an ordinance to bring it into conformity with the FET ruling is an “increase” subject to voter approval under Proposition 218.

UUTs and the MTSA

Prior to the adoption of the Mobile Telecommunications Sourcing Act of 2000 (MTSA)^{vi} by Congress, cellular carriers had argued that the federal Constitution forbade the application of a utility user tax to telephone calls which neither originated nor terminated within the taxing agency. The MTSA expanded the permissible nexus for taxation to all cellular telephone charges for accounts with a primary place of use in the jurisdiction. However, carriers have argued in the courts that the California Constitution Article XIII C prohibits cities and counties from applying the MTSA nexus rules without voter approval.^{vii}

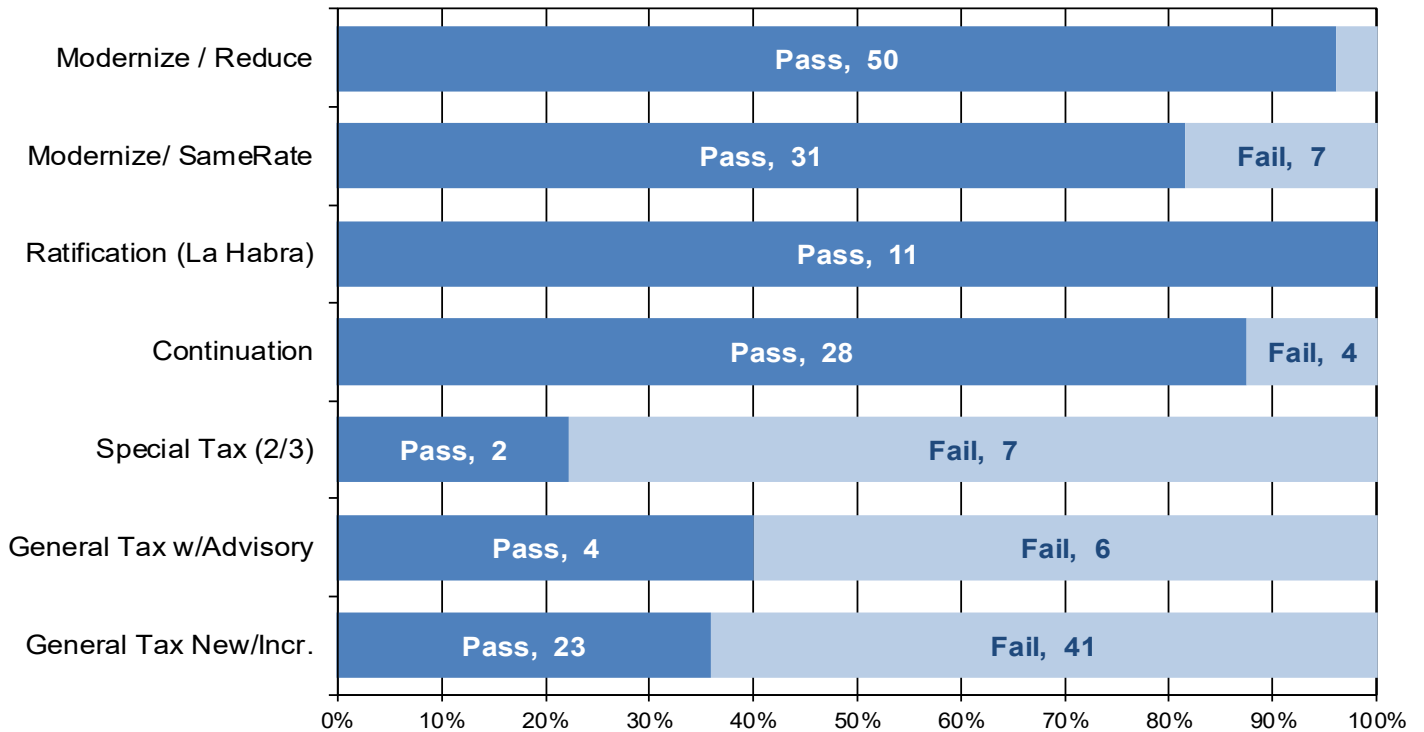


As a result of these events, doubt has been cast over the application of some outdated local UUT ordinances to certain types of telephone service. Proposition 218 requires voter approval of any change in the “methodology” by which a tax is administered if the change increases the amount of the tax paid by the taxpayer.^{viii} Many agencies that rely on UUTs on telephony have successfully sought voter approval of an updated ordinance that reflects the realities of the modern telecommunications industry.

Recent Voter Approval Record

From June 2002 through November 2016, there were 80 measures to increase or adopt a new UUT by cities and three by counties. Nine were special taxes designated for a specific purpose and requiring two-thirds voter approval. Among the 74 general taxes, 10 were accompanied by advisory measures indicating the use of the funds, the so called “a/b strategy.”

Utility User Tax Measures 2002 through November 2016
 Cities and Counties



Currently, all UUTs are general taxes except two. In June 2003, voters in the City of Desert Hot Springs approved a UUT which dedicates 50% of the proceeds to resolving the city’s bankruptcy related debt.^{ix} In June 2010, voters in the City of Mammoth Lakes approved the extension of the cities sun-setting UUT but earmarking it for “mobility, recreation, and arts and culture.” Ironically, that city later filed for bankruptcy facing a massive court judgment from a land use dispute.

Referenda to Reduce or Repeal UUTs Have Rarely Succeeded

Since 2001 there have been 149 successful utility tax measures including validations, extensions, expansions and increases. During this time there were just **two** successful referenda to repeal or reduce a UUT among 18 qualifying attempts in 12 different cities and one county. Eleven of these measures were decided November 6, 2002 with all failing except a measure reducing the UUT in Greenfield from 6% to 3% passed in 2002. Just three cities and one county have considered UUT repeals or reductions since then. Of the seven measures (multiple in Seaside and Holtville) voters in the County of Santa Cruz were alone in deciding to repeal their UUT (March 2003).

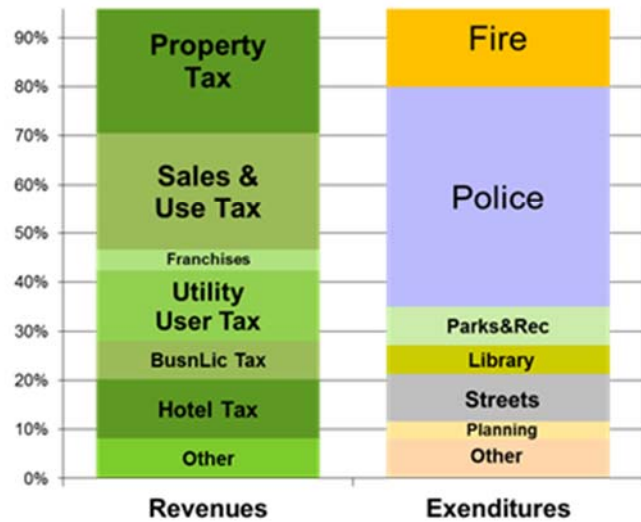
The UUT is Vital to Funding Essential Municipal Services

City utility user tax rates range from 1 percent to 11 percent. The particular utilities to which the tax is applied varies. In some cities different rates apply to residential versus commercial users. The most common rate is 5 percent, applied broadly among many types of utilities. The average rate (mean) is 5.4 percent with a standard deviation of 2.1 percent. Because most large cities have UUTs, roughly half of California residents and businesses pay a utility user tax. Four of the 58 counties levy a UUT (Alameda, Los Angeles, Sacramento and San Francisco).

The UUT is a vital element in the funding of critical city services. On average, the UUT provides 15 percent of general-purpose revenue in cities that levy it. In some cities, the UUT provides as much as one third of the General Fund.

Discretionary Revenues and Spending

Typical Full Service City



Some UUTs Result From State Cuts to City Funds

Many city UUT levies and increases have resulted from cuts to city revenues by the state. In 1992, facing massive deficits in the state budget, the Legislature and Governor began the annual transfer of billions of dollars of property tax revenue from cities, counties and special districts to K-14 schools, allowing the state to reduce its general fund spending on education. Cities and counties, who depend substantially on sales tax and property tax revenues for discretionary income, were already experiencing the same recessionary effects as the state.^x City property tax revenue, a top source of general purpose revenue for most, was cut from at least 9% and 24% on average. Cities responded by cutting services, deferring infrastructure maintenance, relying more heavily on debt financing, paring down reserves, more aggressively pursuing sales tax generators, and raising taxes and assessments. Within a few years of the beginning of the property tax shifts, more than fifty (50+) cities increased an existing or levied a new UUT.

Highest Utility User Tax \$ Dependencies FY2013-14

City	UUT as Percent of General Revenues	City	UUT as Percent of General Revenues	City	UUT as Percent of General Revenues
Richmond	42.4% a	Porterville	23.7% a	Seal Beach	21.5% b
Hercules	34.8% d	Moreno Valley	23.6% a	Whittier	21.4% e
Compton	34.6% b	Winters	23.5% b	Brawley	20.7% a
Sierra Madre	34.3% a	Pomona	23.4% a	Covina	20.7% a
Bell	29.9% d	Glendale	23.4% a	Portola Valley	20.7% d
Desert Hot Springs	29.6% d	Orange Cove	23.4% d	Culver City	20.6% b
Holtville	29.4% b	Lynwood	23.0% b	Stockton	20.4% a
Waterford	28.6% d	Inglewood	23.0% a	Bradbury	20.3% d
Rialto	27.0% b	San Gabriel	23.0% b	Woodlake	20.3% f
Firebaugh	26.1% b	Cudahy	22.8% d	Lawndale	20.0% d
Lindsay	25.5% b	Indio	22.6% b	Coachella	19.6% f
Claremont	25.1% d	Bellflower	22.6% d	Burbank	19.6% a
El Segundo	24.7% a	Modesto	22.4% b	Exeter	19.5% b
Pasadena	23.9% a	Irwindale	22.0% e	Huntington Park	19.4% d
Los Alamitos	23.8% d	Torrance	21.6% a	Riverside	19.3% a

Source: CaliforniaCityFinance.com computations from FY 12- 13 data reported to the California State Controller.

a= full service city

b= city does not provide/fund library services

c= city does not provide/fund library or parks services

d= city does not provide/fund fire, or library services

Highest Utility User Tax \$ Collections FY2013-14

City	UUT per capita	City	UUT per capita
Vernon	\$ 14,338.48	Torrance	\$ 212.22
Irwindale	\$ 2,495.63	Malibu	\$ 193.29
El Segundo	\$ 781.53	Seal Beach	\$ 188.86
Richmond	\$ 452.56	Burbank	\$ 188.60
Sand City	\$ 395.73	Los Alamitos	\$ 186.58
Santa Fe Springs	\$ 382.41	Portola Valley	\$ 177.57
Culver City	\$ 374.94	Benicia	\$ 173.79
Santa Monica	\$ 355.99	Santa Cruz	\$ 164.96
Emeryville	\$ 287.55	Palo Alto	\$ 164.63
Sierra Madre	\$ 260.01	Los Angeles	\$ 160.69
Pasadena	\$ 252.00	Palm Springs	\$ 155.08

Source: CaliforniaCityFinance.com computations from FY 12- 13 data reported to the California State Controller.



ⁱ Charter cities: Cal. Const. art. XI §5; General Law cities: Cal. Government Code §37100.5.

ⁱⁱ Revenue and Tax Code §7284.2.

ⁱⁱⁱ 42 U.S.C. §§4251 et seq.

^{iv} IRS Notice 2006-50.

^v Revenue Bulletin 2007-5 Section 10.

^{vi} 4 U.S.C. §§116 et seq.

^{vii} Verizon Wireless v. Los Angeles, No. B185373, AB Cellular LA, LLC dba AT&T Wireless v. City of Los Angeles, 150 Cal. App. 4th 747 (2007).

^{viii} Government Code §53750(h).

^{ix} In 2009, those voters increased the tax to 7%.

^x For more information on ERAF, see <http://www.californiacityfinance.com/#ERAF>