Section 4: Finance

Chapter 22: Special Assessments and User Charges

Municipalities often raise funds for special purposes by imposing special assessments or user charges as an alternative to imposing a tax. All three financing mechanisms have elements in common, and distinguishing one from the other is not always a simple matter. Any assessment or user charge not properly imposed, however, will be construed as a tax, which must satisfy different requirements for validity.

While a *special assessment* bears some of the characteristics of a tax, it differs in that a special assessment may be levied only on land and may be imposed only to pay the cost of an improvement or service by which the assessed land is specially (as opposed to generally) benefited.

In contrast, a broadly imposed *tax* yields a general benefit to the community with no particular benefit to any person or parcel.

Generally, a *user charge* is the price paid for a service provided based directly on the value of the individual use of the service or benefit. Although a municipality may impose a *tax* whether or not the taxpayer particularly benefits from the purposes served by the tax, and may *specially assess* parcels which do particularly benefit from an improvement, it may impose a *user charge* only on individuals actually served. While the improvements made with a special assessment generally must increase or maintain the value of the lands specially benefited, the services which are the subjects of rates and charges do not necessarily have that effect. The value to one user may be greater than another depending on individual needs and consumption.

In *Bolt v City of Lansing*, the Michigan Supreme Court developed a test for user charges. In order to avoid classification as a tax, a user charge must "serve a regulatory purpose rather than a revenue-raising purpose."

Rates and charges must also bear a direct relation to the cost of providing the service to the ratepayer. A fee designed to raise revenue for general public services in addition to covering the cost of providing the service which is the subject of the fee is actually a tax. A fee designed to raise revenue from a broad range of users of a system to pay the cost of an improvement to a discrete part of the system which will benefit only a smaller group of users may also be considered a tax.

Revenues derived from user charges (or assessments) must be segregated from other municipal funds and applied solely to the expenses of providing the service or the improvement. The expenses of providing the service may include some indirect costs of providing the service.

Special Assessments

Authority

To impose a special assessment, a municipality must first have the statutory authority to make the improvement or provide the service for which the assessment will be imposed. Second, the municipality must have the statutory authority to assess for that type of improvement or service.

Special assessments may be imposed for many types of improvements and even services for which specific statutory and other local implementing authority is found. Typical subjects of special assessments are street improvements, including paving, curb, gutter and sidewalk improvements, and water and sewer improvements. In addition to statutory authorities, city and village charters and special assessment ordinances,

if any, should be reviewed as sources of authority.

Where statutory authority exists, municipalities will often finance an improvement through the issuance of bonds in anticipation of special assessments, secured primarily by the assessments and secondarily by the general fund of the municipality.

Basic Requirements
The lands proposed to be specifically assessed comprise a special assessment district. The assessments are apportioned among the landowners in the district. Assessments may be required to be paid in a single payment or in multiple installments. Interest may be charged on unpaid installments.

An improvement which reduces property value may not be specially assessed. Further, the benefit conferred by the improvement may not be disproportionate to the cost of the improvement, i.e. the cost of the improvements may not exceed the anticipated increase in the value of the property resulting from the improvement. Although this proportionality may "not require a rigid dollar-for-dollar balance," the cost of the improvement must reasonably relate to the increase in value in order to avoid an unconstitutional taking of property.

No specific method of apportioning the cost of an improvement is required, provided that the method selected is fair, just, equal and proportionate to the benefits conferred.

Key Procedures
Procedural requirements vary widely depending on the particular statute, charter or ordinance involved. The following are key elements to any assessment process:

1. petitions,
2. hearings on necessity and the apportionment of the assessment, and
3. notice
    - content
        - nature, location, cost of improvements
        - apportionment of cost
        - opportunity to object and appeal
    - dissemination
        - publication and mailing
        - timing.

Enforcement
Once confirmed, assessments may become a lien on the assessed property.

User Charges

Subjects and statutory authority
The Revenue Bond Act of 1933, provides the principal statutory authority for the imposition of rates and charges for the "service, facilities and commodities furnished by... public improvements." It authorizes any public corporation to purchase and acquire one or more public improvements; to own, operate and maintain the same; to furnish the services of such public improvement to users within or without its corporate limits; to establish by ordinance such rates for services furnished by the public improvement as are necessary to provide for the payment of administration, operation and maintenance of the public improvement so as to preserve it in good repair and working order; and to provide for the debt service, if any, on bonds issued to finance the improvement providing the service.

Other statutes and local charters provide additional authority. Municipalities regularly impose rates and charges for a variety of services.

Rate Ordinances
Municipalities impose user charges by adopting a rate ordinance governing a particular service or range of services. The ordinance should set forth the purpose of the ordinance, the service provided, the rates to be imposed and the various classifications of users, the timing and method of billing and payment, penalties for nonpayment and other enforcement provisions. To meet the *Bolt* standard described below, the ordinance should make a serious attempt, to relate the user charge to a regulatory scheme. Ordinances may also address a broader and

more detailed range of subjects, including regulations governing the use or provision of the service and licensing issues. Various grant making and regulatory authorities may require the use of a particular form of rate ordinance as a condition for approval.

Standards in Ratemaking: The *Bolt Test*

The Michigan Supreme Court's decision in *Bolt* turned ratemaking on its head. In *Bolt*, the court articulated a new three-part test for determining whether a charge is validly characterized as a fee:

1. it must serve a regulatory purpose,
2. it must be proportionate to the necessary costs of the service, and
3. the user must be able to refuse or limit use of the commodity or the service for which the charge is imposed.

These three criteria are not to be considered in isolation "but rather in their totality, such that a weakness in one area would not necessarily mandate a finding that the charge at issue is not a fee." *Graham v Township of Kochville, supra, 236 Mich App 141 (1999).*

As indicated in *Graham*, voluntariness may be less significant where the elements of regulation and proportionality are strong. Conversely, where the regulatory aspect of the fee is less obvious, the voluntary use of the system may assume more importance.

The method selected for calculating rates and charges must be reasonable and may not be arbitrary and capricious. Substantial evidence preferably set forth in the rate ordinance itself should justify the charges made and the method used.

The *Bolt* court held that user charges must reflect "the actual costs of use, metered with relative precision in accordance with available technology...."

The rates and charges for municipal services must be applied to similarly situated users in a similar way. It is appropriate to distinguish among different classes of users and to apply different rate schedules to each class.

The requirement that rates be uniformly applied is an extension of the overall requirement that charges be proportional to the value of the services rendered and the cost of providing the service. *Alexander v Detroit 392 Mich 30 (1974).*

Enforcement and Collection

In general, statutes authorizing user charges for services provide that the charges become a lien on premises served. Statutes also commonly allow the municipality to discontinue service for non-payment of the charges.

Chapter provided by **Amanda Van Dusen**, a principal in the law firm of Miller, Canfield, Paddock and Stone, P.L.C.