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VIA FEDERAL EXPRESS

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4712

Re: *City of Alhambra et al. v. County of Los Angeles, et al.* (Case No. S185457)

To the Honorable Chief Justice and Associate Justices of the Supreme Court of California:

In accordance with the Court's September 10, 2012 order, Appellant Cities submit the following reply to the County's Supplemental Brief dated September 28, 2012 ("CSB").

I. Introduction

The parties' Supplemental Briefs reveal substantial agreement between them. We agree that §§ 97.68, subds. (e) and (f)(3) and 97.70, subds. (d) and (f)(3)[1] ("the Subdivisions") do not provide the rule of decision here, which must be found instead in § 97.75. Even if the Subdivisions did provide the rule of decision, the County's PTAF calculations still overcharged the Cities and writ relief would be warranted. Because § 97.75 provides the rule of decision,

[1] All unspecified section references in this letter brief are to the California Revenue & Taxation Code.

however, the writ for which the Cities prayed should issue as the Court of Appeal determined.

II. The Parties' Briefs Reveal Substantial Agreement

Though the parties disagree on the ultimate issue, they agree on four significant points:

- The Subdivisions are intended to prevent "skewing" a city or county's property tax base calculation by adding Triple Flip and VLF Swap revenues to the property tax base allocation carried forward to a following year and adding it again as that year's allocations under the Triple Flip and VLF Swap. (CSB, p. 1; Appellant's Supplemental Brief ["ASB"], p. 5.)

- Reading the Subdivisions to address the PTAF issue makes § 97.75 superfluous (CSB, pp. 5–6; ASB, pp. 8–9), a result the rules of statutory interpretation disfavor.

- Section 97.68, subds. (e) and (f)(3), on the one hand, and § 97.70, subds. (d) and (f)(3), on the other, "are substantively the same" (CSB, p. 5; ASB, p. 7) and the minor wording differences between them do not evidence differing legislative intent.

- If the Subdivisions provided the rule for the application of PTAF to revenues cities receive by virtue of the Triple Flip and VLF Swap, cities would pay more PTAF than under the rule set forth in § 97.75 (CSB, pp. 7–8; ASB, p. 8.)

The impact of § 97.75 is what divides the parties and to that section we now turn.

III. The County's PTAF Apportionment Method Ignores Both the Subdivisions and Section 97.75

As the Cities argue in their supplemental brief (at pp. 8–9), as compared to the Subdivisions, § 97.75 is more specific and therefore controls. However, if it were absent, the Subdivisions **would** alter PTAF calculation in the manner the County specifies at pages 7–8 of its Supplemental Brief to the Cities' benefit and would require writ relief to the Cities, albeit less generous relief than § 97.75 requires.

Using the data the County presents in its hypothetical property tax and PTAF allocations at page 8 of its Supplement Brief, we can see plainly how the three interpretations under consideration affect the relative burden of cities and counties to fund PTAF. A few initial qualifications are in order, however.

The County's hypothetical data are biased because they suggest cities and counties receive equivalent property tax shares. In fact, counties receive significantly more. Legislative Analyst's Office, California Property Tax (March 12, 2012 paper presented to Assembly Revenue & Taxation Committee) at p. 2.[2] This is partly the case because, prior to Proposition 13, counties funded administration of the property tax system using the proceeds of their own property tax ordinance and, given the current property tax allocation formula's reliance on pre-Proposition 13 allocations, counties have received larger property tax shares ever since.

Second, the County's presentation of its fictive data conceals the benefit to counties of its preferred interpretation of the statutes in issue by dividing the PTAF for which it is responsible among three lines of its chart. It is agreed that

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[2] This report may be viewed at http://www.lao.ca.gov/handouts/state_admin/2012/CA_Property_Tax_3_12_12.pdf (last viewed October 6, 2012).

counties bear PTAF responsibility for their own property tax receipts as well as funds that flow to schools and PTAF by virtue of § 95.3, subd. (b).

With these qualifications, let us examine what the Counties' numbers reveal.

Three interpretations are under consideration:

1. The Cities contend § 97.75 preserves the pre-S.B. 1096 allocation of PTAF responsibility and effectively excludes Flip and Swap revenues from the numerator, but not the denominator, of the § 95.3 fraction. This is labeled below the **status quo ante** and the data in that column reflect the percentage of PTAF assigned to each type of local government assuming $1 billion in property tax revenues, of which $850 million are included in the numerator of the § 95.3 fraction and $150 million are excluded as Flip and Swap revenues.

2. If the Subdivisions controlled, Flip and Swap revenues would be excluded from both the numerator and denominator of the § 95.3 fraction. This is labeled below as **the Subdivisions' rule** and the data in that column reflect the percentage of PTAF assigned to each type of local government assuming $1 billion in property tax revenues of which $850 million are included in the numerator and denominator of the § 95.3 fraction and, again, $150 million are excluded as Flip and Swap revenues

3. The County contends, without statutory support, that the Flip and Swap revenues should be **in**cluded in both the numerator and denominator of the § 95.3 fraction. This is labeled below as **the County's Method** and the data in that

column reflect the percentage of PTAF assigned to each type of local government assuming $1 billion in property tax revenues, all of which are included in the numerator and denominator of the § 95.3 fraction.

Allocation of PTAF Applying Three Competing Interpretations of Revenue & Taxation Code to the County's Hypothetical Data

	Property Tax Allocation	w/ Flip & Swap	w/o Flip & Swap	Status Quo Ante	Subdivisions' Rule	County's Method
Schools	$500m	$500m	$500m	50%	58.82%	50%
ERAF	150m			15%		
County	150m	225m	150m	15%	17.65%	22.5%
County Subtotal	$800m	$725m	$650m	80%	76.47%	72.5%
Cities	150m	225m	150m	**15%**	**17.65%**	**22.5%**
Districts	50m	50m	50m	5%	5.88%	5%
Total	$1,000m	$1,000m	$850m	100%	100%	100%

The key cells of this table (shown in **boldface**) are the last three columns of the County Subtotal and Cities rows and demonstrate that the pre-S.B. 1096

"status quo ante" PTAF allocation which § 97.75 is intended to preserve[3] as between this hypothetical county and its hypothetical cities is an 80 to 15 ratio. Applying the Subdivisions' Rule to the County's hypothetical data produces a ratio of 76.47 to 17.65 — demonstrating that, even under this rule, the hypothetical county has shifted some 2.65% of the PTAF burden from itself to cities. Applying the County's Method to its hypothetical data produces a ratio of 72.5 to 22.5 and shifts from the county to cities some 7.5% of the PTAF burden. Using real-world data, Los Angeles County has shifted approximately $10 million per year from its own shoulders to cities' and the 55 counties in our state that include cities have shifted perhaps $40 million per year of their PTAF burden to cities.

Thus, although the County agrees (CSB at pp. 6–8) that reliance on the Subdivisions would represent a payment of "more" PTAF by cities, its discussions contains several errors. First, while allocating PTAF under the Subdivisions would cause the Cities to pay more than they should pay under the rule of § 97.75, it would still require mandate relief here because the Subdivisions would obligate the Cities for substantially less than the County has wrongfully withheld from them, as demonstrated by the table above.

Second, to claim that the Subdivisions "deal only with allocation" (CSB at p. 4) ignores that the fraction specified by § 95.3, subd. (a) is calculated using the results of allocation. The two cannot be separated. To conclude otherwise is to make nonsense of the language of § 95.3, subd. (a) defining the numerator of the PTAF fraction as:

> the sum of the amounts calculated with respect to each jurisdiction, Educational Revenue Augmentation Fund

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[3] This neglects, for simplicity, the County's $35,000 per year cost to implement the Flip and the Swap, which it is entitled to recover in FY 2006–07 and thereafter under the second sentence of § 97.75.

> (ERAF), or community redevelopment agency pursuant to Sections 96.1 and 100, or their predecessor sections, and Section 33670 of the Health and Safety Code.

The sum of the amounts produced by the allocation sections can have no meaning independent of those allocations. To state the County's contrary claim is to rebut it.

Third, in Step 1 of its analysis (CSB at p. 7), the County assumes the fraction defined by § 95.3 must incorporate all property revenues no matter how allocated. Nothing in the language of § 95.3 justifies that assumption. Instead, § 95.3 refers to the sum of allocations under three specified code section. The list of sections is closed and delimited. The all-encompassing definition the County prefers does not appear there. This point is further demonstrated in section II.C of its Supplemental Brief. However, as the Cities have demonstrated, § 95.3 does not provide the rule of decision here any more than the Subdivisions do. Rather, § 97.75 provides that rule and its effect is to exclude the revenues to the Cities under the Flip and the Swap from the numerator, but not the denominator, of the § 95.3 fraction because that is the means to preserve the status quo ante S.B. 1096, as the Legislature intended. Of course, the County is entitled to receive its $35,000 per year cost to implement the Flip and the Swap under the second sentence of § 97.75.

Fourth, in Step 2 of the County's analysis (CSB at p. 7), the County claims that Flip and Swap revenues are not excluded from the PTAF calculation. That claim belies the language and intent of the Subdivisions and of § 97.75. Fortunately for the Cities, the answer here lies in the entirety of the Revenue & Taxation Code, not just the sections the County's argument will bear.

IV. The County's Own Opening Brief Illustrates No "Longstanding" "Tradition" of Ever-Increasing Generosity to Counties for PTAF Recovery

The County argues that "longstanding" legislative intent and "traditional" PTAF rules support ignoring § 97.75's plain language. This rhetorical device is belied by the legislative history outlined in the County's own Opening Brief on the Merits, which demonstrates neither longstanding stasis nor tradition, but rather persistent legislative tinkering with PTAF recoupment.

- Upon the very adoption of the first PTAF rule in 1990, Senate Local Government Committee Chair Ken Maddy placed a letter in the Senate Journal to note the Senate's otherwise unstated intent to protect no- and low-property tax cities from PTAF. 8/31/90 Senate Daily Journal (reproduced in the Historical Notes to Rev. & Tax Code § 97 (West's).

- In 1991, the Legislature amended the PTAF recovery scheme to exempt schools. (See County's Opening Brief, p. 8; Stats. 1991, ch. 75, § 1 (SB 188); Ch. 33, § 3 (SB 282).)

- In 1993, the Legislature exempted property tax funds allocated to ERAF from PTAF. (See County's Opening Brief, p. 9; Stats. 1993, ch. 66, § 35.5 (SB 399).)

- In 1994, the Legislature moved the recoupment rules to § 95.3. (See County's Opening Brief, p. 9; Stats. 1994, ch. 1167, § 6 (AB 3347).)

- In 1996, the Legislature confirmed PTAF exemptions for ERAF funds and school entities. (See County's Opening Brief, p. 9, fn. 18; Stats. 1996, ch. 1072, § 1 (AB 1055).)

- In 2004, S.B. 1096 was adopted to establish the Flip and Swap and to adopt both the Subdivisions and § 97.75, further altering PTAF allocation in the manner described above.

The Legislature has acknowledged its exemptions from PTAF and provided mechanisms to fund PTAF shortages via loans and grants to counties. See § 95.3, subd. (b)(2) (counties to be reimbursed for PTAF for schools and ERAF "by the state in the time and manner specified by a future act of the Legislature that makes an appropriation for purposes of that reimbursement"); § 95.31 (adopted in 1995 to provide loans to counties to fund the property tax system) and § 95.35 (adopted in 2001 to provide grants to counties for this same purpose).

Thus, far from being the outliers that the County claims, the limitations on the County's ability to recover PTAF stated in the Subdivisions and in § 97.75 are consistent with the Legislature's practice of exempting from PTAF recoupment property tax revenues that it redirects for the State's benefit. The County's desire for more assistance from the State is a better addressed to the Legislature than to this Court.

V. *Arbuckle* Supports the Cities' Interpretation

The County again cites *Arbuckle-College City Fire Protection Dist. v. County of Colusa* (2003) 105 Cal.App.4th 1155 as support for its claim that the Court should ignore § 97.75's more recent and specific restrictions on § 95.3's general PTAF rule. *Arbuckle* refused to imply an exception to the PTAF rule of § 95.3 based on an earlier statute. Here, the Cities do not seek an implied exception, but rely on the express language of § 97.75, as explained in detail in the Cities' Answer Brief on the Merits at pages 28–32. The Court of Appeal determined *Arbuckle* supported the Cities' argument (Court of Appeal Decision, p. 15), not the County's, both because this case involves a later-enacted statute and because it involves an express exemption, not an implied one. The Cities urge this Court to similarly rule.

VI. The County's New-Found Legislative History is Unavailing

Legislative history is irrelevant when the language of the statute is plain. The Court of Appeal concluded § 97.75 was unambiguous and "did not require resort to extrinsic aids for its meaning." (Court of Appeal Decision, p. 13.) The County offers no compelling reason why this Court should find otherwise.

Instead, for the first time in the over four years this case has been litigated, the County asserts in post-argument supplemental briefing the asserted relevance of a comment in the Legislative Counsel's digest of S.B. 1096. Yet throughout this litigation, both parties and both lower courts agreed that no helpful legislative history exists. At trial, Judge Janavs noted "none of you have any legislative history really associated with these three statutes… ." (RT 56:22–57:3). At trial counsel for the County assured Judge Janavs that "there's not a shred of legislative history associated with these three statutes." (RT 56:18–21.)

Nevertheless, the County now belatedly urges the significance of a single line in the Legislative Counsel's digest of S.B. 1096. The Court need not consider the claim made for the first time on appeal and in the teeth of contrary assurances to the lower courts. *Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181 ("Judicial estoppel prevents a party from asserting a position in a legal proceeding that is contrary to a position previously taken in the same or some earlier proceeding. The doctrine serves a clear purpose: to protect the integrity of the judicial process.") (*quoting Cleveland v. Policy Management Systems Corp.* (5th Cir. 1997) 120 F.3d 513, 517); *McDonald's Corp. v. Bd. of Supervisors*, 63 Cal. App. 4th 612, 618 (1998) ("Under familiar general rules, theories not raised in the trial court may not be raised for the first time on appeal.")

Even if the Court wishes to address the point, however, the Court of Appeal found that this very language "provides no guidance about what the Legislature meant by the word 'services' in Revenue and Taxation Code section 97.75." (Court of Appeal Decision, p. 13, fn. 6.) This is unsurprising. How could a six-page summary of complex, 95-page bill be anything but incomplete?

Indeed, this Court has recognized the limitations of Legislative Counsel's digests as indicia of legislative intent. Digest statements "are not binding or persuasive where contravened by the statutory language, and by other indicia of a contrary legislative intent." (*State ex rel. Harris v. Pricewaterhouse Coopers, LLP* (2006) 39 Cal.4th 1220, 1232–33 & fn. 9 (finding that public entities are not "persons" under statute, despite reference in Legislative Counsel's digest to "the Attorney General, the prosecuting authority of a political subdivision and any other person").) If a Legislative Counsel's digest conflicts with a statute, it must be disregarded. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 597–98 (rejecting interpretation in Legislative Counsel's digest which "misstates the existing law").)

Similarly here, the single sentence of the Legislative Counsel's digest of S.B. 1096 is unhelpful. It makes two true statements and a significant omission. First, it correctly states that PTAF applied to non-ERAF revenues pre-S.B. 1096. Second, it correctly states that no PTAF can be claimed against Triple Flip and VLF Swap revenues in fiscal years 2004–05 and 2005–06. But it is silent as to the County's PTAF authority in fiscal year 2006–07 and thereafter. Like the County's preferred construction of S.B. 1096, the Legislative Counsel's Digest simply ignores the second sentence of § 97.75. This Court, of course, is not free to do so, and the County's complete inability to give meaning to that sentence (as demonstrated at page 11 of the Cities' Supplemental Brief and in oral argument) demonstrates the failure of its case.

The County's wishful and belated discovery of purportedly helpful legislative history is also belied for the reasons stated in the City's Answer Brief on the Merits at pages 31–32 and in Section IV of this letter brief above. Simply put, the comments in the Legislative Counsel's digest are of no moment to this Court's interpretation of § 97.75.

VII. Conclusion

The parties agree that § 97.75, not the Subdivisions, provides the rule of decision for the application of PTAF to Triple Flip and VLF Swap funds but disagree as to the meaning of that section. Because the County's interpretation gives no meaning to the second sentence of § 97.75 while the Court of Appeal's construction does, the Appellant Cities respectfully assert this Court should — like the District Court of Appeal — reverse the trial court and order it to issue the writ for which the Cities prayed.

Very truly yours,

COLANTUONO & LEVIN, PC
Michael G. Colantuono
Holly O. Whatley

MGC:how
Attachment: Proof of Service

PROOF OF SERVICE
City of Alhambra, et al. v. County of Los Angeles, et al.
Case No. S185457

I, Ashley A. Lloyd, declare:

I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 11364 Pleasant Valley Road, Penn Valley, CA 95946. On October 10, 2012, I served the document(s) described as **LETTER BRIEF** on the interested parties in this action as follows:

By placing a true copy thereof enclosed in a sealed envelope addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 10, 2012 at Penn Valley, California.

Ashley A. Lloyd