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VIA FEDERAL EXPRESS

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

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:

I. INTRODUCTION

As the Court requested on September 10, 2012, we write on behalf of the Plaintiff cities ("Cities") to address the significance of Revenue and Taxation Code Section 97.68, subdivisions (e) and (f)(3), and Section 97.70, subdivisions (d) and (f)(3).[1] As we explain, those sections do not alter the import of Section 97.75, which protects in-lieu payments to cities under the VLF Swap and Triple Flip from property tax administration fees (PTAF) except that, after the 05-06 fiscal year, counties may recover "the actual cost of providing ... services" "under Sections 97.68 and 97.70." Rather, those subdivisions demonstrate the Legislature's intent that property tax revenues distributed to cities under the Triple Flip and the VLF Swap not affect other aspects of the property tax allocation system. For purposes of the PTAF calculation, it is as though those

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[1] All unspecified statutory references in this letter brief are to the Revenue and Taxation Code.

funds continued to flow to the Educational Revenue Augmentation Fund (ERAF), which all agree is immune from PTAF, rather than as payments in lieu of sales tax and vehicle license fees (VLF). Accordingly, the Court of Appeal correctly ruled that Los Angeles County ("County") cannot charge cities $10 million for a service that costs only $35,000, and this Court ought to reverse the trial court and order it to issue the mandate for which the Appellant cities prayed.

II. LEGAL DISCUSSION

A. PTAF Calculation under Section 95.3

Section 95.3 requires the County to calculate a city's share of responsibility for the cost to "assess[], equalize[e] and collect[] property taxes and ... allocat[e] property tax revenues." Rev. & Tax. Code § 95.3, subd. (d). Section 95.3, subd. (a) defines a fraction in which an agency's share of certain revenues is the numerator and the sum of all such agencies' shares is the denominator. As Justice Liu observed at oral argument, any sum included in the numerator for one agency is included in the denominator, which is the sum of the numerators for all agencies. Section 95.3(a) defines the numerator of this fraction as:

> the sum of the amounts calculated with respect to each jurisdiction, Educational Revenue Augmentation Fund (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 ... .[2]

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[2] Section 95, subd. (b) defines "jurisdiction" to mean "a local agency, school district, community college district, or county superintendent of schools." Section 95, subd. (a) defines "local agency" to mean "a city, county, and special district." Thus, for our purposes, each of the Appellant Cities is a "jurisdiction," as is the County.

Section 96.1 defines an agency's "base allocation" of property tax proceeds and is discussed in detail below. Section 100 defines an agency's share of taxes on unitary and non-unitary property (*i.e.*, such multi-county property as that of railroads and public utilities), neither of which implicates the in-lieu payments at issue. Health and Safety Code section 33670 refers to the tax increment that flows to redevelopment agencies (or, more properly, to successor agencies to former redevelopment agencies) under the Community Redevelopment Law and, likewise, need not detain us further.

Thus, an agency's share of PTAF responsibility is in proportion to its share of the sum of:

- base property tax allocations under Section 96.1;
- flows from unitary and non-unitary property under Section 100; and,
- redevelopment tax increment under Health and Safety Code section 33670.

Importantly, however, Section 95.3, subd. (b) requires counties to bear the responsibility to fund PTAF as to property tax flows to schools and ERAF.

B. Base Property Tax Calculation under Section 96.1, subd. (a)

Section 96.1, subd. (a) defines a jurisdiction's share of property tax allocations by:

> i. Starting with the City's property tax receipts in the previous fiscal year as required by Section 96.1, subd. (a)(1) (so-called "A.B. 8 base");

> ii. adding year-over-year tax increment, calculated under Section 96.5 as required by Section 96.1, subd. (a)(2); and,
>
> iii. subtracting Article 3 adjustments as required by Section 96.1, subd. (a)'s introductory phrase, "Except as provided in Article 3 ... ."

The Cities and the County agree that Article 3 includes the Triple Flip (§ 97.68) and VLF Swap (§ 97.70) and, but for Section 97.75 and the provisions of Sections 97.68 and 97.70, would include the in-lieu property tax cash flows to cities pursuant to the Triple Flip and VLF Swap in both the numerator and denominator of the fraction defined by Section 95.3 used to allocate PTAF.[3] Thus, we now turn to these provisions.

C. Sections 97.68 subds. (e) and (f)(3) and Sections 97.70, subds. (d) and (f)(3) Would Partly Protect Flip and VLF Swap Revenues from PTAF if Section 97.75 Did Not Control Here

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[3] Again, as Justice Liu observed in oral argument, Section 95.3, subd. (a) would, of course, include Triple Flip and VLF Swap revenues in both the numerator and denominator of the fraction it defines because the denominator is merely the sum of all agencies' numerators — these are relative shares of a consistently calculated "pie." This is how the County has made the calculation and how the SB 1096 Guidelines on which the County relies suggest it ought to be made. But for the requirements of Section 97.75, discussed below, this definition would have the effect of shifting from the County to cities responsibility for the portion of PTAF proportionate to revenues which had been ERAF and are now payments in lieu of sales tax and VLF.

Property taxes paid to cities via the Triple Flip are excluded from the base property tax allocation under Section 96.1, subd. (a). Section 97.68, subd. (e) states:

> For the 2005–06 fiscal year and each fiscal year thereafter, the amounts determined under subdivision (a) of Section 96.1, or any successor to that provision, may not reflect any portion of any property tax revenue allocation required by this section for a preceding fiscal year.

Thus, property taxes paid to cities in lieu of sales taxes pursuant to the Triple Flip are excluded from that base allocation for all purposes, including calculation of the fraction that determines PTAF responsibility under Section 95.3. One reason for the exclusion is plain — it ensures that the in-lieu payments do not inflate the Section 96.1 base (calculated using the preceding year's revenue) in the year immediately following payoff of the Triple Flip bonds when the Triple Flip's alterations to sales and property tax allocations end. Were the Triple Flip funds not so excluded, property tax revenues would not fall when a city's sales tax revenues increase to pre-Triple Flip levels —the Triple Flip revenue stream would become a permanent part of cities' AB 8 base under Section 96.1 to the disadvantage of counties and special districts. The revenue neutrality goal of S.B. 1096 would be disserved.

VLF Swap revenues are similarly excluded from Section 96.1's base property calculation by Section 97.68, subd. (f)(3), which states:

> This section may not be construed to do any of the following:
> ...
>
> (3) Alter the manner in which ad valorem property tax revenue growth from fiscal year to fiscal year is determined or allocated in a county.

None of the other sections of the Revenue and Taxation Code that bear on these issues uses the phrase "ad valorem property tax revenue growth." However, it appears the Legislature intended the phrase to mean "annual tax increment" as defined in the introductory paragraph of Section 96.5. So interpreted, Section 97.68, subd. (f)(3) provides that the Triple Flip does not affect tax increment and subd. (e) provides that it does not affect tax base, and therefore, the in-lieu Triple Flip funds are not treated as property taxes for any purpose including the PTAF calculation of Section 95.3, subd. (a).

Section 96.5 describes the annual tax increment calculation as the difference between total property tax receipts and the A.B. 8 base allocation defined by Section 96.1, subd. (a). Thus, if we exclude Triple Flip revenues from the annual tax increment calculation and from the base allocation calculation under Section 96.1(a) as well, then Triple Flip revenues do not enter the Section 95.3's PTAF calculation at all. Thus, Section 97.68, subds. (e) and (f)(3) require that, even in the absence of Section 97.75, the distributions of property taxes to cities pursuant to the Triple Flip and VLF Swap are not included in either the numerator or the denominator of the fraction described by Section 95.3 to determine a city's PTAF share.[4]

The same analysis applies to the VLF Swap for the language of Section 97.70, subd. (d) is essentially the same as that of Section 97.68, subd. (e).

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[4] This is **not** how the County or the SB 1096 Guidelines calculate PTAF on the Triple Flip and VLF Swap — both include these payments in both the numerator and the denominator of the PTAF fraction defined by Section 95.3, subd. (a). Thus, Los Angeles County's practice, and that recommended by the SB 1096 Guidelines, violate not only Section 97.75 (as the Court of Appeal concluded), but also the subdivisions of Sections 97.68 and 97.70 as to which this Court invited supplemental briefing.

> For the 2005-06 fiscal year and each fiscal year thereafter, the amounts determined under subdivision (a) of Section 96.1, or any successor to that provision, shall not reflect, for a preceding fiscal year, any portion of any allocation required by this section.

Here, the "shall not" has the same meaning in this context as the "may not" in Section 97.68, subd. (e), and the different word order as between the two sections does not affect its meaning. Thus, the result is the same for the VLF Swap as for the Triple Flip —this use of property tax revenues to accomplish state fiscal purposes does not affect other calculations required by the Revenue and Taxation Code sections governing the distribution of property tax revenues.

In conscious parallel to Section 97.68, subd. (f)(3), Section 97.70, subd. (f) states:

> This section shall not be construed to do any of the following:
> ...
>
> (3) Alter the manner in which ad valorem property tax revenue growth from fiscal year to fiscal year is otherwise determined or allocated in a county.

This subdivision is virtually identical to Section 97.68, subd. (f)(3) and has the same result: property tax revenues that flow to cities under the VLF Swap are excluded from the numerator and the denominator in the PTAF fraction required by Section 95.3, subd. (a), just as are Triple Flip revenues.

By excluding Triple Flip and VLF Swap revenues from both the numerator and denominator of the PTAF fraction, however, application of Section 97.68, subds. (e) and (f)(3) and Section 97.70, subds. (d) and (f)(3) would make the PTAF fraction rely on less than all of the proceeds of the property tax.

This calculation of the PTAF fraction on less than all property tax revenues is not a possibility either party considered prior to oral argument (and explains the need for these supplemental briefs), is not Los Angeles County's practice, and is not the practice recommended by the SB 1096 Guidelines. Logic, however, suggests it will reduce Los Angeles County cities' collective PTAF share from the $10 million that the County withheld in the years litigated here and increase the County's share — but not as much as by limiting counties to their actual costs to implement the Flip and Swap as Section 97.75 requires.

This is because the reduction of the PTAF fraction's numerator and denominator by revenues which flow only to cities will reduce the denominator of the fraction for all agencies but will reduce only cities' numerators, and not the numerators of counties and special districts. Thus, while the fractions for all jurisdictions will be calculated differently than under the approach the County took which the Cities challenge here, cities' PTAF shares will be lower than what the County withheld in the years litigated here.

It is this possibility that Justice Liu's questions at oral argument suggested. However, it is not permitted by Section 97.75 and is not how any party to this dispute or (to the knowledge of counsel) any county has interpreted the various Revenue and Taxation Code sections adopted by SB 1096. Thus, absent Section 97.75, we would have a logical structure of code sections which could produce this result. However, the legislative intent is plainly otherwise given the express, specific and controlling language of Section 97.75. To that language we must now return.

D. Section 97.75 Is More Specific and Therefore Controls

Even though the subdivisions of Section 97.68 and 97.70 about which this Court inquired protect revenues from the Triple Flip and VLF Swap from PTAF as explained above, the result the Court of Appeal reached is correct for another, simpler reason. Section 97.75 provides more specific guidance on the question of

how the Flip and Swap relate to PTAF and, as the more specific rule, it controls. Section 97.75 states:

> Notwithstanding any other provision of law, for the 2004–05 and 2005–06 fiscal years, a county shall not impose a fee, charge, or other levy on a city, nor reduce a city's allocation of ad valorem property tax revenue, in reimbursement for the services performed by the county under Sections 97.68 and 97.70. For the 2006–07 fiscal year and each fiscal year thereafter, a county may impose a fee, charge, or other levy on a city for these services, but the fee, charge, or other levy shall not exceed the actual cost of providing these services.

As the Court of Appeal correctly concluded, this section is both more recent and more specific than Section 95.3; it is also more specific to the question of PTAF liability than are Sections 97.68 and 97.70, with which it was contemporaneous. Thus, the Legislature intended Section 97.75 to control the question disputed here: How ought the County to allocate PTAF with respect to property tax revenues allocated to cities pursuant to the Triple Flip and VLF Swap? The second sentence of Section 97.75 provides the answer for fiscal years commencing 2006–07:

> [A] county may impose a fee, charge, or other levy on a city for these services [under Sections 97.68 and 97.70], but the fee, charge, or other levy shall not exceed the actual cost of providing these services.

Applying the *expressio unius* rule, the specific authority conferred on the County to collect **some** of its costs to operate the property tax system necessarily precludes more general authority to collect **all** of that cost, and Section 97.75 provides the rule of decision here. The County's collection of $10 million for services that cost only $35,000 runs afoul of the limited authority conferred by Section 97.75, as the Court of Appeal correctly concluded.

E. Sections 97.68, 97.70 and 97.75 Each Reflect the Legislatures Intent that the Triple Flip and VLF Swap Be Revenue Neutral as to Cities and Counties

S.B. 1096, of course, was motivated by the Legislature's desire to use its control over the allocation of property taxes to borrow money backed by the Triple Flip sales tax revenue stream and to avoid the impact of Proposition 98 on those revenues flows by diverting them from the state's General Fund. Thus, as to the state and schools, the measure was not revenue neutral. As to cities and counties, however, it was plainly intended to be so. Indeed, revenue neutrality was the very purpose of the exercise.

Sections 97.68, subds. (e) and (f)(3) and Sections 97.70, subds. (d) and (f)(3) demonstrate this legislative intent that property tax revenues distributed to cities in lieu of sales taxes and vehicle license fees not affect property tax allocations in any other way. Pursuant to these statutes, these allocations of property tax:

- are not A.B. 8 tax base under Section 96.1, subd. (a) due to Sections 97.68, subd. (e) and 97.70, subd. (d);
- are not annual tax increment under Section 96.5 due to Sections 97.68, subd. (f)(3) and Section 97.70, subd. (f)(3); and,
- are not property tax at all.

In the absence of Section 97.75, these sections would be sufficient to require a writ of mandate to compel Los Angeles County to exclude these property tax revenues from the numerator of the PTAF fraction required by Section 95.3, subd. (a) (as the Cities demand) and from the denominator of that fraction, too (as neither the Cities nor the County have advocated). As explained above, this would require a substantial (but as yet uncalculated) refund of PTAF to the Cities.

However, Section 97.75 is not absent; both its sentences must be given meaning, and the County's interpretation allows no meaning to the second sentence. That sentence cannot have been intended to prevent a mandate claim because Section 48 of SB 1076 addresses that issue. It cannot have been intended to protect special districts from the County's $35,000 per year cost to implement the Triple Flip and the VLF Swap because the SB 1076 Guidelines, which the County concedes it follows, do not protect special districts. Moreover, so far as this record reveals, no one other than Respondents' counsel has ever suggested (much less implemented) such an interpretation to protect special districts.[5] It cannot have been intended to clarify that county fee-setting authority resumes in the 2006-07 fiscal year, because the first sentence already says so.

The appropriate interpretation of Section 97.75 is that which the Court of Appeal adopted in reliance on the *expressio unius* rule. It limits County PTAF authority with respect to the Triple Flip and the VLF Swap to that expressly conveyed by the second sentence of Section 97.75.

III. CONCLUSION

Section 97.68, subds. (e) and (f)(3), and Section 97.70, subds. (d) and (f)(3,) confirm that property taxes distributed to the Cities pursuant to the Triple Flip and VLF Swap are not property taxes for any purposes — they are not A.B. 8 base allocation under Section 96.1(a), nor annual tax increment under Section 96.5. This reinforces the Court of Appeal's conclusion that these tax allocations are not intended to affect the PTAF allocations which preceded S.B. 1096. Section

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[5]Both the League of California Cities and the California State Association of Counties participated as amici in the Court of Appeal and the League appeared in this Court, as well. Surely one or both of these amici would have provided examples of this alternative approach to applying PTAF to VLF Swap and Triple Flip cash flows were that approach in use in any of the 55 counties which include one or more cities.

97.75 ensures that these funds remained as though they were ERAF and counties were in the same position they were before adoption of SB 1096 — they get no multi-million-dollar windfall by transferring to cities a liability they previously bore and which there is no evidence the Legislature intended to allow them to shift to cities.

For these reasons and those stated in the Cities' brief and at oral argument, the Cities respectfully ask this Court to reverse the trial court and command 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, Martha C. Rodriguez, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 300 S. Grand Avenue, Suite 2700, Los Angeles, California 90071. On September 27, 2012, I served the document(s) described as **SUPPLEMENTAL 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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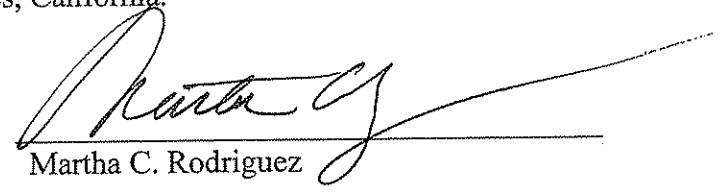
Executed on September 27, 2012 at Los Angeles, California.



Martha C. Rodriguez