



1 Honorable Dzintra I. Janavs (Ret.)  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

9 CITY OF ALHAMBRA, CITY OF ARCADIA, ) LASC Case No. BS 116375  
CITY OF ARTESIA, CITY OF BALDWIN PARK, ) ADRS Case No. 08-6084-DIJ  
10 CITY OF BELL GARDENS, CITY OF )

11 **STATEMENT OF DECISION**

12 BELLFLOWER, CITY OF BRADBURY, CITY )  
13 OF BURBANK, CITY OF CALABASAS, CITY )  
14 OF CARSON, CITY OF CERRITOS, CITY OF )  
15 COMMERCE, CITY OF COVINA, CITY OF )  
16 CULVER CITY, CITY OF DIAMOND BAR, )  
17 CITY OF GARDENA, CITY OF GLENDALE, )  
18 CITY OF GLENDORA, CITY OF HAWAIIAN )  
19 GARDENS, CITY OF HAWTHORNE, CITY OF )  
20 HUNTINGTON PARK, CITY OF INDUSTRY, )  
21 CITY OF IRWINDALE, CITY OF LA HABRA )  
22 HEIGHTS, CITY OF LA MIRADA, CITY OF )  
23 LAKEWOOD, CITY OF LAWNSDALE, CITY OF )  
24 LOMITA, CITY OF LONG BEACH, CITY OF )  
25 LYNWOOD, CITY OF MONTEBELLO, CITY )  
26 OF MONTEREY PARK, CITY OF NORWALK, )  
27 CITY OF PARAMOUNT, CITY OF PICO )  
28 RIVERA, CITY OF POMONA, CITY OF )  
REDONDO BEACH, CITY OF ROSEMEAD, )  
CITY OF SAN DIMAS, CITY OF SANTE FE )  
SPRINGS, CITY OF SIERRA MADRE, CITY OF )  
SANTA CLARITA, CITY OF SIGNAL HILL, )  
SITY OF SOUTH EL MONTE, CITY OF SOUTH )  
GATE, CITY OF WEST COVINA, AND CITY )  
OF WHITTIER,

Petitioners,

v.

26 COUNTY OF LOS ANGELES; LOS ANGELES  
27 COUNTY AUDITOR-CONTROLLER; WENDY  
WATANABE, in her official capacity; and DOES  
28 1-10, inclusive,

Respondents.

1 On 5/8/09, the captioned matter was heard by Dzintra I Janavs, Judge (Ret.), appointed  
2 pursuant to CCP §638 as Referee for all purposes, including trial, by Hon. James C. Chalfant,  
3 Judge of the Superior Court, pursuant to stipulation of the parties.  
4

5 The Petitioners appeared by Holly D. Whatley, of Colantuono & Levin and Respondents  
6 appeared by Scott D. Bertzyk and Karin L. Bohmholdt of Greenberg Traurig and by Thomas M.  
7 Tyrell, Principal Deputy County Counsel.  
8

9 The Referee admitted in evidence the parties' Stipulated Facts and Exhibits A-D thereto  
10 and all the Declarations and exhibits thereto with objections sustained and overruled as indicated  
11 on the attached Order and reflected in the Reporter's transcript of the hearing.  
12

13 The Referee having considered the evidence, the parties' briefs and oral arguments,  
14 issues the following statement of decision.  
15

16 **I. NATURE OF THE CASE**  
17

18 In this action Petitioners challenge Respondents' method of calculating property tax  
19 administration fees charged to Petitioners starting 06/07, and seek a writ of mandamus to compel  
20 Responses to comply with California Revenue and Taxation Code § 97.75.<sup>1</sup>  
21

22 **II. SUMMARY OF FACTS**  
23

24 The RESPONDENTS, (also "the County") are the County of Los Angeles and Wendy  
25 Watanabe, in her official capacity as the Auditor-Controller of the County of Los Angeles.  
26 //  
27 //

28  

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<sup>1</sup> Unless otherwise indicated, all citations are to the Rev. & Tax Code.

1 The PETITIONERS, (also "the Cities") are 47 general law or charter cities listed in  
2 Paragraph 3 through 49 of the First Amended Petition in this action.

3  
4 RESPONDENTS are responsible for, among other duties, assessing, collecting and allocating  
5 property tax revenues collected base on assessed property within Los Angeles County.

6  
7 As part of their administration of the property tax system, RESPONDENTS calculate and  
8 distribute to the various local government entities within Los Angeles County (including cities,  
9 redevelopment agencies, special districts and the County itself) each entity's share of the  
10 property tax revenue.

11  
12 With limited exception not relevant here, Proposition 13, enacted in 1978, limited the amount  
13 of total property tax revenue that could be collected to 1% of assessed value. Prior to the  
14 enactment of Proposition 13 (and its cap on total taxes) counties were able to set their property  
15 tax rates at a level sufficient to recoup their property tax administrative costs. After Proposition  
16 13 this was no longer possible.

17  
18 In 1990 the Legislature passed the first of several measures addressing counties' recoupment  
19 of an entity's proportionate share of PTAF from each entity receiving a share of property tax.  
20 The fee a county may charge an entity, including PETITIONERS, within the county for  
21 administering the property tax system is commonly termed the Property Tax Administration Fee  
22 ("PTAF").

23  
24 In fiscal year 1992-93, the Legislature established in each county an Educational Revenue  
25 Augmentation Fund (ERAF). The ERAF is a fund into which property tax revenue was shifted  
26 to defray the State's constitutional responsibility to fund public education. Both the property  
27 taxes paid to local schools and the ERAF were made exempt from recoupment of PTAF.

1 In 1994, the Legislature enacted Revenue and Taxation Code § 95.3. That section was  
2 interpreted in Arbuckle-College City Fire Protection District v. County of Colusa, 105 CA<sub>4</sub> 1155  
3 (2003), which also describes in some detail the pre and post 1978, Prop. 13, property tax  
4 collection system and counties' functions in administrating it, including levy, collection and  
5 enforcement. The Arbuckle court noted that the express purpose of § 95.3 was to fairly allocate  
6 the counties' increased property tax collection and administration burden after Prop. 13, and that  
7 it was the intent of the Legislature that this burden should be shared by all entities receiving  
8 property tax revenue distributions, except those expressly exempted.

9  
10 Generally speaking, the PTAF for a given City is calculated as follows:

- 11 a. RESPONDENTS calculate the County's prior year property tax administration costs  
12 of the assessor, tax collector, assessment appeals board and the auditor-controller.  
13 Such costs included the direct costs, all activities directly involved in assessing,  
14 collecting and processing property taxes and overhead costs established in accordance  
15 with Federal Budget Circular A-87.
- 16 b. The County calculates each entity's proportionate share of such costs by calculating  
17 an apportionment factor from the ratio of the property tax revenue received by each  
18 entity to the total property tax revenue distributed.
- 19 c. The County multiplies its administrative costs incurred in the immediately preceding  
20 fiscal year by each City's cost apportionment factor to determine each City's PTAF.

21  
22 Each entity's annual PTAF is withheld by RESPONDENTS from property tax  
23 distributions made by RESPONDENTS to PETITIONERS during any given fiscal year.

24  
25 Effective July 1, 2004, Revenue & Taxation Code Section 97.68 reduced the Bradley-  
26 Burns Sales and Use Tax rate paid to cities and counties by ¼ cent, and the ¼ cent is retained by  
27 the State of California to repay State issued economic recovery bonds. Section 97.68 provides  
28 that, in lieu of the ¼ cent sales tax, cities and counties receive property taxes that otherwise

1 would have been allocated to the county's ERAF, discussed above. This revenue swap, known  
2 commonly as the "Triple Flip" was adopted as a temporary measure to fund repayment of the  
3 economic recovery bonds and terminates when the bonds are paid off.

4  
5 Effective July 1, 2004, state law permanently reduced the amount of vehicle license fees  
6 (VLF) payable to cities and counties from 2 % to 0.65% of a vehicle's assessed value. Section  
7 97.70 provides that each city and county shall receive payments of property taxes in place of the  
8 lost VLF. This substitution is commonly known as "the VLF Swap." The VLF Swap has no  
9 legislatively provided sunset date.

10  
11 Pursuant to Sections 97.68 and 97.70, RESPONDENTS have a duty to annually allocate  
12 and distribute to cities within Los Angeles County the appropriate payments from property tax  
13 revenues under the provisions of the Triple Flip and the VLF Swap.

14  
15 Revenue & Taxation Code Section 97.75 provides:

16  
17 "Notwithstanding any other provision of law, for the 2004-05 and 2005-06 fiscal years, a  
18 county shall not impose a fee, charge, or other levy on the city, nor reduce a city's allocation of  
19 ad valorem property tax revenue, in reimbursement for the services performed by the county  
20 under Sections 97.68 and 97.70. For the 2006-2007 fiscal year and each fiscal year thereafter, a  
21 county may impose a fee, charge, or other levy on a city for these services, but the fee, charge or  
22 other levy shall not exceed the actual cost of providing these services."

23  
24 The California State Association of County Auditors prepared "SB 1096 Guidelines" (a  
25 copy of which is attached as Exhibit A to parties Stipulated Facts), in response to the  
26 Legislature's enactment of Revenue & Taxation Code sections 97.68, 97.70, and 97.75, among  
27 other provisions of the 2004-05 Budget Act. Applying these Guidelines, RESPONDENTS did  
28 not charge PETITIONERS for any property tax administrative services whatever relating to the

1 funds paid under the Triple Flip and the VLF Swap in the 2004/2005 or 2005/2006 fiscal years.  
2 Beginning in the 2006/2007 fiscal year, RESPONDENTS included the funds paid under the  
3 Triple Flip and the VLF Swap as additional property tax share to each City and apportioned the  
4 total property tax administration costs to each City based on this share.  
5

6 The financial consequences of RESPONDENTS' method of calculating the PTAF for  
7 PETITIONERS are the PETITIONERS' PTAF fees were, collectively, over \$4.8 million in fiscal  
8 year 2006-07 and \$5.3 million fiscal year 2007-08, more than such fees would have been had the  
9 Triple Flip and the VLF Swap additional property tax revenues not been included in  
10 PETITIONERS' property tax share used for apportioning PTAF, the County's actual cost of  
11 incremental tax allocation/distribution duties required by the Triple Flip and VLF Swap was  
12 approximately \$35,000 per year.  
13

### 14 **III. ISSUES BEFORE THE REFEREE**

15

16 The Parties have stipulated to defer the question of recalculating each Petitioner's PTAF  
17 until the Referee rules whether the method currently used by Respondents to calculate such fees  
18 is lawful.  
19

20 Petitioners contend that the PTAF actually charged in 06/07 and 07/08 to each Petitioner  
21 and retained by Respondents is in excess of that permitted by Revenue & Taxation Code section  
22 97.75 specifically, that the Respondents should not have included the Triple Flip and VLF Swap  
23 property tax revenues in calculating their PTAF share and should have charged each city only an  
24 appropriate portion of the \$35,000 distribution costs.  
25

26 Respondents contend that the Legislature's enactment of Revenue & Taxation Code  
27 section 97.68 and 97.70 decreased the amount of PTAF exempt from recoupment that otherwise  
28 would have been attributable to the ERAF, and increased each City's proportionate share of the

1 total property taxes distributed, thereby increasing Petitioners' PTAF. Respondents further  
2 contend that their method of calculating PTAF for the Petitioners is lawful and in accordance  
3 with applicable Revenue & Taxation Code sections including, but not limited to, Revenue &  
4 Taxation Code sections 95.2, 95.3, 96.1 and 97.75.

5  
6 The ultimate issue before the Referee is whether Respondents' method of calculating  
7 Petitioners' PTAF starting 06/07 violates Sec. 97.75.

8  
9 More specifically, the issue is whether the Legislature by enacting that section intended,  
10 as contended by the Petitioners, to permanently,<sup>2</sup> starting 06/07, limit the counties' recoupment  
11 of administrative costs to incremental/marginal costs of calculating and distributing the  
12 additional real property revenues allocated to cities by Sec. 97.68 and Sec. 97.70, (approximately  
13 \$35,000 in 2006/2007) or whether, as Respondents contend, the Legislature intended that after  
14 the two years specified in Sec. 97.75, the cities should, as provided in the general rule embodied  
15 in Sec. 95.3,(which exempts only schools and ERAF), contribute their proportionate share to  
16 PTAF, including on the amounts of property tax revenues they receive pursuant to the Flip and  
17 Swap.

18  
19 **IV. DOES RESPONDENTS' METHOD OF CALCULATING PTAF VIOLATE**  
20 **SEC.97.75.**

21 Sec. 97.75 provides:

22 "Notwithstanding any other provision of law, for the 2004-05 and 2005-06 fiscal years, a  
23 county shall not impose a fee, charge, or other levy on the city, nor reduce a city's allocation of  
24 ad valorem property tax revenue, in reimbursement for the services performed by the county  
25 under Sections 97.68 and 97.70. For the 2006-2007 fiscal year and each fiscal year thereafter, a  
26  
27

28 <sup>2</sup> "Indefinitely" may be more accurate as the Triple Flip will terminate when the Economic Recovery Bonds are paid off, while the VLF Swap will continue as long as the statute remains in effect.

1 county may impose a fee, charge, or other levy on a city for these services, but the fee, charge or  
2 other levy shall not exceed the actual cost of providing these services.”

3  
4 The legislative intent underlying a statute must be ascertained initially from its language.  
5 Where the statutory language is clear and unambiguous, effect must be given to its plain  
6 meaning. *Mutual Life Ins. Co. v. City of L.A.* 50 Cal.3 402 (1990). Furthermore, the courts must  
7 read statutes as a whole, giving effect to all provisions, construing them so as to give effect to  
8 each. *Jurcoane v. Superior Court*, 9 CA4 886 (2001). Finally, statutes should also be read and  
9 interpreted in their statutory context. *People v. Hall* 1 Cal.4 266 (1991)

10  
11 Although both sides contend the plain language of Sec. 97.75 supports their position, Sec.  
12 97.75 is clear and unambiguous in just two respects.

13  
14 First, notwithstanding any other provisions of law, in 04/05 and 05/06, the counties may  
15 not charge or recoup from the cities any administrative costs whatever “for services performed  
16 under Sec. 97.68 and Sec. 97.70.”

17  
18 Second, the words “these services” in sentence two have the same meaning as the phrase  
19 “for services performed under Sec. 97.68 and Sec. 97.70 “in the first sentence.

20  
21 Unfortunately, the latter phrase is ambiguous. It can mean all services, including those  
22 required to generate the additional property tax revenues allocated to the cities under the Flip and  
23 Swap statutes, not just the additional cost of calculating and distributing such revenues.  
24 Arguably, it can also mean, as Petitioners contend, only the incremental cost of calculating and  
25 distributing said revenues.<sup>3</sup>

26  
27 <sup>3</sup> Not surprisingly, there is not unanimity in how Sec. 97.75 has been interpreted by the counties. Thus, the  
28 Respondents, following the SB1096 Guidelines, and 57 other counties, as noted in Petitioners’ Opening Brief at p.  
10, have included the cost of services to generate the additional property tax revenue allocated by Sec. 97.68 and Sec.  
97.70 to cities, in calculating the PTAF, while 6 counties have used some different methodology.



1           The parties agreed there is no pertinent legislative history contemporaneous to the  
2 enactment of Sec. 97.75 elucidating its meaning.

3  
4           Having considered the parties' arguments, based on the Stipulated Facts and other  
5 evidence admitted, as well as the language of Sec. 97.75, the Referee concludes that  
6 Respondents' interpretation of Sec. 97.75 is consistent with the intent of the Legislature in  
7 enacting Sec. 97.75, and Respondents' method of calculating Petitioners' PTAF does not violate  
8 that section.

9  
10           Sec. 97.75 can not be read in isolation. It must be read and interpreted as part of the  
11 statutory scheme which encompasses, among others, also Sec. 95.2, 95.3 and 96.1.

12  
13           Sec. 95.3 is set forth at p.11 of Respondents' brief and will not be repeated here. Among  
14 other things, Sec. 95.3 expresses the intent of the legislature "to more fairly apportion "the  
15 counties' "burden of collecting property tax revenues."<sup>4</sup> While Sec. 95.3 exempts schools and  
16 ERAF from having to contribute their proportionate share of the property tax administrative  
17 costs to the county, all other governmental entities receiving property tax revenues must  
18 contribute their share calculated as set forth in Sec. 95.3(a) and 96.1.

19  
20           Sec. 96.1 is set forth at p.8 of Respondents' brief, and will also not be repeated here.  
21 Briefly, it sets forth general tax allocation formula how property tax revenues shall be allocated  
22 to each local entity by the Auditor, subject to adjustments as "provided in Art.3..and Art. 4". As  
23 noted by Respondents, the ERAF statutes, the Triple Flip, the VLF Swap, and Sec. 97.75 all are  
24 in Art. 3 and thus call for adjustments contemplated by Sec.96.1.

25  
26           <sup>4</sup> The Legislature's concern for fair apportionment of the administrative costs necessary to generate  
27 property tax revenues is understandable. Counties' cost burden of collecting property taxes is substantial. As seen  
28 from Exhs. A and B attached to the Rhee declaration, submitted by the Petitioners, Respondents' (L.A. county's) net  
costs to operate the property tax system, which include costs of the Auditor-Controller, the assessor, the assessment  
appeal board and the treasurer and tax collector, were almost \$122 million in 2005/2006 and almost \$144 million in  
2006/2007.

1 It is undisputed that the source of revenues used to fund the Triple Flip and VLF Swap is  
2 property tax revenues. Given the broad scope and objectives of the Legislature in enacting Sec.  
3 95.3, had Sec. 97.75 not been enacted, the counties would have been able to recoup PTAF from  
4 cities with respect to the additional Flip and Swap property tax revenues under Sec. 95.2, 95.3,  
5 and 96.1.

6  
7 The Legislature clearly intended to exempt cities for the two years specified in Sec 97.75  
8 from having to contribute any amounts (not just incremental costs) to the counties for their  
9 services in administering the Flip and Swap. There is nothing to indicate, however, that the  
10 Legislature intended to make this wholesale exemption permanent starting 2006/2007 as to the  
11 VLF Swap or until the economic recovery bonds were paid off, as to the Triple Flip, and to limit  
12 counties' recoupment of costs to only incremental costs starting 2006/2007.

13  
14 Had the Legislature intended to allow recoupment of only incremental costs, it could  
15 have easily made its intent clear by stating that no incremental or marginal costs shall be  
16 recouped by counties in 04/05 and 05/06 and thereafter recoupment shall be limited to only such  
17 costs. The Legislature could also have specified that only the costs of distribution of the  
18 property tax revenues allocated from ERAF to the cities by the FLIP and SWAP could be  
19 recouped starting 2006/2007. Rather, it chose the phrase "services performed by the county  
20 under Sec. 97.68 and 97.70", and additionally provided that starting 06/07, the counties could  
21 recover "actual cost "for "these services". To limit the counties to recoupment of only marginal  
22 or incremental costs would require rewriting of Sec. 97.75. That is not the function of the  
23 Referee.

24  
25 Unlike the express language in Sec.95.3 exempting the proportionate property tax  
26 revenue shares of schools and ERAF from PTAF, Sec. 97.68, 97.70 and 97.75, do not provide  
27 that the property tax revenues allotted to the cities pursuant to said statutes, are to be exempt  
28 from PTAF. That Sec. 97.68 and 97.70 provide for allocation of ERAF property tax revenues to

1 the cities to fund the Flip and Swap does not automatically exempt the cities from PTAF with  
2 respect to the property tax revenues it receives under those statutes, and as discussed supra, Sec.  
3 97.75 does not do so.

4  
5 While there is no case law directly in point, *Arbuckle v. Colusa*, supra is instructive.

6  
7 Arbuckle held that Sec.95.3, rather than earlier statute, governed recoupment of tax  
8 administration cost from fire protection districts. As to the phrase in Sec. 95.3 “notwithstanding  
9 any other provisions of law”, the Court found that it was strong evidence the Legislature  
10 intended Sec. 95.3 to apply regardless of any earlier enacted limitation upon the county’s ability  
11 to recoup administrative expenses. Similarly, in this case, the “notwithstanding” language in  
12 Sec. 97.75 governing the two year total exemption, is strong evidence that the Legislature  
13 intended the phrase “services performed under Sec. 97.68 and 97.70” to include all services  
14 performed by Respondents (assessment, equalization, collection and distribution) the cost of  
15 which otherwise would have been shared by the cities pursuant to Sec.95.3 and 96.1. As noted  
16 earlier, absent Sec. 97.75, the counties could have proceeded to collect PTAF on all property tax  
17 administrative services starting 2004/2005.

18  
19 As regards exemptions, the Arbuckle court stressed the significance of the express  
20 exemptions in Sec. 95.3 and stated that exemptions should not be implied unless there is clear  
21 legislative intent to the contrary. Sec. 97.75 does not express clear Legislative intent that cities  
22 should be exempt from having to contribute their proportionate share of administrative costs  
23 starting 2006/2007 on the Triple Flip and VLF Swap property tax revenues they receive.

24  
25 Petitioner’s cite a 1990 Attorney General’s opinion and Health and Safety Code § 33672  
26 to support their position. Respondent’s Brief at pages 31-32 states reasons why these authorities  
27 are inapposite. The Referee agrees and will not reiterate them here. Suffice is to note that Health  
28 and Safety Code § 33672 and Secs 33401 and 33876 have no application here; Revenue &

1 Taxation Code § 97.75 does. The source of the funds received by the cities here is concededly  
2 property tax revenues and the Legislature in § 97.75 does not state that the cities are exempt from  
3 PTAF on funds received by them under the Flip and Swap. Rather, it provides for recoupment of  
4 counties' actual costs. Actual costs include costs of generating the property tax revenues, as well  
5 as distributing them.

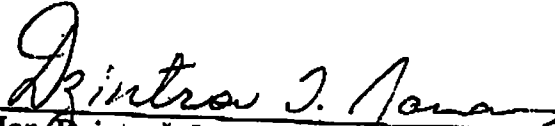
6  
7 **V. CONCLUSION**

8  
9 Based on the above, the Referee concludes that Respondents' calculation of Petitioners'  
10 PTAF starting 2006/2007 comports with and does not violate Sec. 97.75.

11  
12 Therefore, judgment shall be entered in favor of the Respondents and against the  
13 Petitioners, denying the Petition for Writ of Mandamus and dismissing the other causes of action  
14 as moot.

15  
16 Counsel shall meet and confer and counsel for Respondents shall prepare and submit a  
17 Proposed Judgment for the Referee's signature within ten days of receipt of this Statement of  
18 Decision.

19  
20 DATE: 6/2/09

21   
22 Hon. Dzintra I. Janavs, Judge (Retired)  
23 REFEREE  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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 ADR Services, Inc., 1900 Avenue of the Stars, Suite 250 Los Angeles, California 90067.

On June 3, 2009, I served the foregoing document described as the **STATEMENT OF DECISION** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Holly Whatley, Esq.  
COLANTUONO & LEVIN  
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Scott D. Bertzyk, Esq.  
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Raymond G. Fortner, Jr. Esq.  
Elizabeth M. Cortez, Esq.  
Thomas M. Tyrell, Esq.  
COUNTY COUNSEL'S OFFICE  
500 West Temple Street  
Los Angeles, California 90012

          
          
          
          
          
**X**

**BY U.S. MAIL**, I caused such envelope with postage thereon to be placed in the United States mail at Los Angeles, California.

**BY E-MAIL**, I caused such to be e-mailed to the attorneys on June 3, 2009.

**BY PERSONAL SERVICE** I caused such envelope to be delivered by messenger to:

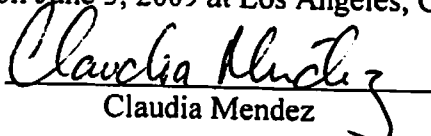
        

**STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

**FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 3, 2009 at Los Angeles, California.

  
Claudia Mendez