S185457

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

City of Alhambra, et al.
Plaintiffs and Appellants

vs.

County of Los Angeles, et al.
Defendants and Respondents.

ANSWER BRIEF ON THE MERITS

From a Published Decision of the Second District Court of Appeal
Reversing a Judgment Entered by the Superior Court of
the State of California for the County of Los Angeles, Case No. BC116375
Honorable James C. Chalfant, Presiding
[By CCP § 638 Reference to the Hon. Dzintra Janavs (Ret.)]

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I. Introduction

This dispute regards charges Los Angeles County imposes on cities within it to administer the property tax system from which the County, cities, special districts and the State all derive revenue. These fees are known as property tax administration fees or "PTAF." In particular, since fiscal year 2006-07,[1] Respondent County of Los Angeles and its Auditor-Controller (collectively, hereinafter "Respondents" or "County") have incurred annual costs of approximately $35,000 to administer allocations of property taxes the County makes to the 88 cities within it[2] in lieu of sales taxes and vehicle license fees diverted to the State Treasury pursuant to the Economic Recovery Bond Act adopted in 2004 and legislation known as the "VLF Swap." The County makes these in-lieu property tax allocations to cities pursuant to Revenue & Taxation Code § 97.68[3] as to a portion of Bradley-Burns sales tax which would otherwise be paid to cities, and pursuant to Revenue & Taxation Code § 97.70 as to motor vehicle license fees ("VLF") the cities would otherwise receive.[4] The swap of sales taxes for property taxes is known in government circles as "the Triple Flip"[5] and the swap of VLF for property taxes is known as "the VLF Swap."

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[1] All "years" referenced in this brief are County fiscal years, which run from July 1 to June 30th.

[2] Forty-seven of Los Angeles County's 88 cities are petitioners in this case, but the issues addressed here affect all of them.

[3] Unspecified section references in this brief are to the Revenue & Taxation Code.

[4] The purpose of these swaps of sales taxes and VLFs for property taxes is to allow the Legislature to providing funding for K-14 education without increasing base funding due to school districts under Proposition 98, Cal. Const. art. XIII B, §§ 2, 5.5, 8, and 8.5 by using non-General Fund revenues to do so.

[5] The "Triple Flip" refers to (i) a quarter-cent reduction in the local sales tax and a

Revenue & Taxation Code § 97.75 allows counties to charge cities for the services to administer these two in-lieu payment streams beginning in 2006-07, but expressly limits such fees to "the actual cost of providing these services."

The County concedes it did not charge each of the 88 cities a proportionate share of the $35,000 the County actually spent to perform this service. Rather, in 2006-07 alone the County charged the Appellants collectively $4.8 million more in PTAF than the cities would have been charged had the Legislature not required the in-lieu payments in order to allow it to use sales taxes and VLF revenues for State purposes. In 2007-08, the County charged the 47 Appellants approximately $5.3 million in PTAF on account of these property taxes allocated in lieu of sales tax and VLF revenues. These sums do not include similar charges imposed on 41 Los Angeles County cities not party to this case. To justify its multimillion-dollar, ongoing windfall; the County ignores the plain language of § 97.75 and argues the allocations of property taxes in lieu of sales taxes and VLF should be added to each city's property tax share for purposes of calculating each city's obligation to fund the cost of operating the property tax system. That calculation apportions the cost to operate the entire property tax system – from assessing to billing to collecting to Sheriff's sales – in proportion to each agency's share of total property tax receipts, with an important exception that lies at the heart of this case – funds formerly used for State purposes to fund K-14 education[6] (*i.e.*, revenues to the Educational Revenue Augmentation Fund or ERAF) and now used to make cities and counties whole for

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quarter-cent increase in the state sales tax, (ii) a transfer of property tax revenues from schools to cities and counties to offset the sales tax loss, and (iii) a subvention of state general fund revenues to schools.

[6] K-14 is a convention that refers to public school districts from kindergarten through junior college.

the State's diversion of sales tax and VLF proceeds to State purposes. The result of the County's violation of the limits on its authority to impose PTAF under § 97.75 is that the cities are collectively paying a multi-million-dollar increased share of the cost of operating the property tax system – costs previously paid by other beneficiaries of the property tax system, principally the County itself. The County's illegal and unauthorized withholding of property tax allocations from the cities within it will continue indefinitely unless the writ ordered by the Court of Appeal is permitted to issue.

Because § 97.75 imposes a mandatory and ministerial duty on the County to calculate and charge only its **actual** costs to administer the Triple Flip and VLF Swap, the Court of Appeal rejected the County's tortured interpretation of that section. Instead it found that construction ignores the plain language of the statute, which limits counties to their actual costs to make these marginal changes to the property tax system, not to re-spread their average cost to operate that entire system, which has been a County responsibility since California entered the Union. The Court of Appeal also determined the trial court failed to give effect to every word of § 97.75, and ignored the rule that more recent, specific laws control over older, more general legislation.

Anxious to keep the millions in property tax revenue to which it helped itself, the County fashions a complex and arcane argument to give a meaning to § 97.75 that enriches it at cities' expense by tens of millions of dollars annually and indefinitely. But this interpretation cannot overcome the bare language of § 97.75 which, as the Court of Appeal found in an opinion designated for publication, is logically coherent on its own terms, begins with the phrase "notwithstanding any other provision of law," and would have no need for the second of its two sentences if the County's tortured construction were correct. Fortunately, such complexity and elaborate subtlety is not required to discern the intent of the Legislature here, which was to

continue to protect from PTAF monies that the State uses for its own purposes – what had been PTAF-exempt ERAF money is now PTAF-exempt local money used to free up sales tax and VLF dollars for State use. Nor need this Court ignore the Legislature's stated intention in § 95.3(b)(2) to cure the funding gap of which the County complains from State revenues, rather than to empower counties to take it from cities. The Court of Appeal's decision is well-reasoned, in accordance with controlling rules of statutory interpretation and provides a persuasive basis to overturn the trial court ruling before this Court.

II. Statement of Facts

A. Property Tax Administration Fees Generally

The County is responsible to assess, collect, and allocate property tax revenues collected from owners of property in Los Angeles County. (Stip. Fact No. 4; 1 JA 46.)[7] Respondents calculate and distribute to the various local government entities within Los Angeles County (including cities, redevelopment agencies, school districts, other special districts and the County itself) each entity's share of property tax revenue. (Stip. Fact No. 5; 1 JA 46.) The County, with certain limitations, is entitled to withhold from property tax distributions each entity's proportionate share of most of the costs to administer the property tax system – costs associated with the Educational Revenue Augmentation Fund ("ERAF")'s allocation of property taxes were and are the County's responsibility. ERAF is defined further below. The fee a county may charge for this purpose is commonly termed the "Property Tax Administration Fee" or "PTAF". (Stip. Fact No. 7; 1 JA 47.) The County withholds

[7] "JA" refers to the Joint Appendix below.

each entity's annual PTAF from the property tax distributions Respondents make to the entities. (Stip. Fact No. 10; 1 JA 47.)

Generally, the amount the County withholds from a city's property tax revenues as payment of PTAF is calculated as follows:

i. Respondents calculate the County's prior year property tax administration costs of the assessor, tax collector, assessment appeals board and auditor-controller. Such costs include the direct costs, all activities directly involved in assessing, collecting and processing property taxes and overhead costs established in accordance with Federal Budget Circular A-87.[8] (Stip. Fact No. 9.a; 1 JA 47.)

ii. The County calculates each entity's proportionate share of such costs by calculating the ratio of the property tax revenue received by each entity to total property tax revenues. (Stip. Fact No. 9.b; 1 JA 47.)

iii. The County multiplies its administrative costs incurred in the immediately preceding fiscal year by each City's cost apportionment factor to determine each City's PTAF for the current fiscal year. (Stip. Fact No. 9.c; 1 JA 47.)

In 1992-93, the Legislature established in each county an Education Revenue Augmentation Fund, or ERAF. The Legislature shifted property tax revenues to ERAF from cities, counties and non-school special districts to defray the State's constitutional responsibility to fund public education. The Legislature exempted both the property taxes paid to K-14 schools and the ERAF from recoupment of PTAF. (Stip. Fact No. 8; 1 JA 47.) The reason for this is obvious – the Legislature used ERAF to ameliorate State fiscal problems in the 1990s and did not choose to pay

[8] Although not in issue here, that federal directive establishes cost-accounting standards used throughout the American public sector to identify overhead and other indirect costs appropriately attributed to a service or activity.

Counties for the privilege. Thus, the Legislature's decision to allow Counties to recover the cost of operating the property tax system has **always** been partial, and Counties have **never** been authorized to impose on other local governments the full cost of this historic county responsibility and, contrary to the County's revisionist history, no inexorable trend toward greater financial latitude for counties at the expense of cities appears.

B. The Triple Flip and VLF Swap

On March 2, 2004 the voters adopted Proposition 57, the perhaps ironically entitled Economic Recovery Bond Act. (Gov. Code § 99050.) This statute authorized bonds – borrowing – to defer resolution of the State's budget problems. (*Id.*) Effective July 1, 2004, Revenue & Taxation Code § 97.68 reduced the Bradley-Burns Sales and Use Tax rate paid to cities and counties by ¼-cent, and the ¼-cent is retained by the State to repay the economic recovery bonds. (Stip. Fact No. 11; 1 JA 47-48; Rev. & Tax. Code, § 97.68) Section 97.68 provides that, in lieu of the ¼-cent sales tax, cities and counties receive property taxes that otherwise would have been allocated to schools via ERAF. The State's General Fund compensates schools for reduced ERAF revenues, paying direct subventions to each school, community college and county superintendent. This revenue swap, known as the "Triple Flip," was adopted as a temporary measure to fund repayment of the economic recovery bonds. (Stip. Fact No. 11; 1 JA 47-48.) It was intended to be revenue-neutral as to cities and counties and allowed the State to avoid using State General Fund revenues

for this purpose, as such revenues are subject to the mandates of Proposition 98,[9] which generally requires a minimum percentage of all State General Fund revenues to be used for schools.

Every September 1st, the State Department of Finance notifies each county auditor of the Triple Flip adjustment amount for each city and county for the current fiscal year. (Rev. & Tax. Code, § 97.68(c)(1).) The adjustment is based on the actual sales and use taxes received by each entity pursuant to the local 1-cent (now ¾%) portion of the Bradley Burns uniform sales tax (which are allocated based on the place or "situs" of taxed transactions) for the prior year and any growth in those revenues projected for the current year. (Rev. & Tax. Code, § 97.68(b)(2).) The 58 county auditors must then transfer property tax funds from ERAF to reflect sales taxes diverted from cities and counties by the ¼% sales tax shift of the Triple Flip. (Rev. & Tax. Code, § 97.68(c)(2).)

Following Governor Schwarzenegger's election in the recall of 2003,[10] and effective July 1, 2004, the Legislature permanently reduced the vehicle license fees (VLF) payable to cities and counties from 2% to 0.65% of a vehicle's assessed value. To ensure this maneuver was revenue neutral as to cities and counties, § 97.70 provides that each city and county shall receive property tax payments in lieu of the

---

[9] Cal. Const., art. XIII B, §§ 2, 5.5, 8, and 8.5. Every dollar that passes through the State's General Fund is subject to the Prop. 98 funding guarantee, which can be analogized to a "tax" on State discretionary funding. The Triple Flip and the VLF Swap allow the State to use non-General Fund revenues to fulfill part of its constitutional obligation to fund K-14 education and thus avoid the Prop. 98 "tax" on those funds.

[10] The recall campaign featured memorable pictures of Mr. Schwarzenegger smashing automobiles to demonstrate his populist opposition to the "car tax," *i.e.,* the VLF.

lost VLF. (Rev. & Tax. Code, § 97.70(b)(1).) The in-lieu payments come from each county's ERAF which, as noted above, are not subject to PTAF – the withheld taxes used to partially fund the County's cost to operate the property tax system. (Rev. & Tax. Code, § 97.70(a)(1)(A).) If the ERAF in any county is insufficient to fund these required in-lieu payments, additional amounts are drawn from non-basic-aid school district's share of property taxes,[11] which are then replaced by the State General Fund. This substitution is commonly known as "the VLF Swap." No sunset is provided for the VLF Swap, thus it is intended to be as permanent as any feature of California's complex system of state and local government finance. (Stip. Fact No. 12; 1 JA 48.)

Pursuant to §§ 97.68 and 97.70, Respondents have a duty to annually allocate and distribute to the 88 cities within Los Angeles County the payments from ERAF required by the Triple Flip and the VLF Swap. (Stip. Fact No. 13; 1 JA 48.)

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[11] School districts obtain most of their revenues from property taxes, including those distributed via the ERAF, and from the State in the form of average daily attendance (or ADA) money – money paid depending on student population and school attendance. These funding streams are intended to meet the State's constitutional obligation, established in *Serrano v. Priest* (1971) 5 Cal.3d 584, to provide relatively equivalent funding for the education of students in wealthy and in poor districts. School districts in areas with relatively high property values – and thus property tax revenues – do not need ADA funds to meet the *Serrano v. Priest* funding level and are therefore termed "basic aid" districts.

C. County's PTAF Calculation Method

The County's net costs to operate the property tax system in 2005-06 were $121,742,433 – almost $122 million. (2 JA 269-285.) For 2006-07, these costs increased to almost $140 million. (2 JA 286-304.) These include costs of the Auditor-Controller, the assessor, the assessment appeal board and the treasurer and tax collector. (2 JA 269-304.)

Section 97.75 – the statute at issue in this case – provides:

> 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[12] and 97.70.[13] 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.** (Footnotes and emphasis added.)

As this statute requires, the County did not charge Petitioners for any property tax administrative services related to the Triple Flip and the VLF Swap in 2004-05 or 2005-06. (Stip. Fact No. 15; 1 JA 48-49.) Beginning in 2006-07, however, Respondents included the funds paid under the Triple Flip and the VLF Swap as additional property tax share to each City for purposes of calculating increased PTAF obligations, thus distributing the cost to operate the property tax system against

[12] *I.e.,* the Triple-Flip exchange of property taxes for sales taxes.

[13] *I.e.,* the VLF Swap of property taxes for vehicle license fee proceeds.

property tax receipts including the funds paid to cities and the County itself via the ERAF, which the Legislature had previously directed be PTAF-exempt (§ 95.3(b)) (County may withhold PTAF "except for those proportionate shares determined with respect to a school entity or ERAF"). (Stip. Fact No. 15; 1 JA 48-49.) As a result, Appellants' PTAF fees, collectively, were $4.8 million more in 2006-07 and $5.3 million more in 2007-08, than they would have been had the Triple Flip and the VLF Swap revenues not been used to apportion the PTAF burden. (Stip. Fact No. 16; 1 JA 49.)[14] By comparison, beginning in 2006-07, the County's **admitted actual cost** of the incremental tax allocation duties required by the Triple Flip and VLF Swap was approximately $35,000 per year. (Stip. Fact No. 16; 1 JA 49.) Thus, the County incurred $35,000 more in actual costs, but charged the 47 Petitioner Cities an additional $4.8 and $5.3 million, thus it shifted preexisting costs of operating the property tax system from the County (and non-school special districts) to cities. What the Legislature had intended to be revenue-neutral for cities and counties, became an annual multi-million-dollar windfall for the County in the County's hands. The ERAF-channeled revenues to cities the Legislature demanded (for the State's own benefit, of course) be exempt from PTAF are now subject to PTAF as a result of the County's self-serving *ipse dixit*.

[14] Again, the cities at bar are 47 of the 88 within the County and exclude Los Angeles, by far the largest property tax recipient among cities in the County. Respondents' estimate the total annual windfall to the County as a result of the issue litigated here at $10 million per year.

D. Trial

The parties stipulated to a reference of the matter for all purposes, including trial, to Retired Los Angeles County Superior Court Judge Dzintra Janavs. (1 JA 24-26.) The parties also stipulated to most facts, and the trial was conducted on May 8, 2009. (1 JA 45-244.) The referee issued her Statement of Decision on June 2, 2009 (3 JA 545-557) and entered judgment June 17, 2009. (3 JA 598-604.)

Petitioners appealed. The Court of Appeal, Second Appellate District, reversed and issued its opinion, designated for publication, on July 7, 2010.

III. Standard of Review

When reviewing a trial court's ruling on a question of statutory construction, this Court need not defer to the trial court's decision, but rather may independently determine the issue. (E.g., *Regents of University of California v. Superior Court* (1999) 20 Cal.4th 509, 531.) The same is true when applying a statute to undisputed facts. (*International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611-12.) Here, construing § 97.75 and applying that construction to essentially undisputed facts present purely legal questions. Thus, this Court reviews the trial court ruling *de novo*.

IV. The Court of Appeal Properly Determined the County Failed to Comply With Mandatory, Ministerial Duties Imposed by §§ 97.68, 97.70 and 97.75

A. The Court of Appeal Accurately Construed § 97.75 to Limit the Charges Counties May Impose to their "Actual Costs" — Approximately $35,000 a Year

Respondents do not dispute that §§ 97.68 and 97.70 impose on them a ministerial duty to annually allocate and distribute to the cities within Los Angeles County in-lieu Triple Flip and VLF swap payments consistently with statute. (Stip. Fact No. 13; 1 JA 48.) Section 97.75 controls whether, and how much, Respondents may charge a city for those services:

> 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**.

(Rev. & Tax. Code, § 97.75 (emphasis added).)[15] Thus, while § 97.75 grants a county discretion whether to charge for such services beginning in fiscal year 2006-07, if a

[15] Revenue & Taxation Code § 16 states: "'Shall' is mandatory and 'may' is permissive."

county does so, it may not charge more than its actual cost to administer the Triple Flip and VLF Swap payments – a cost admitted here to be just $35,000. "A ministerial duty is one that the entity is required to perform in a prescribed manner without any exercise of judgment or opinion concerning the propriety of the act." (*California Ass'n for Health Services at Home v. Department of Health Servs.* (2007) 148 Cal.App.4th 696, 707-08.)[16]

B. The County Admits It Charged Petitioners Much, Much More than Its Actual Costs to Administer the Triple Flip and VLF Swap

Respondents admit that the County's actual cost to administer the in-lieu payments was approximately $35,000 in 2006-07, the first year § 97.75 permitted them to charge for the cost to administer the VLF Swap and the Triple Flip. (Stip. Fact No. 16; 1 JA 49.) Instead of allocating this total cost proportionally among the Appellants and the other 41 cities in the County, Respondents annually charged Appellants collectively over $4.8 million in additional PTAF and perhaps as much as $10 million total to all cities in Los Angeles County.[17] The Court of Appeal recognized that the method the County used to arrive at this figure "violates the clear instructions of Revenue and Taxation Code section 97.74." (Decision, p. 19) As noted above, each city's PTAF is generally calculated by multiplying the total property tax administration costs incurred by the county by the percentage each city

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[16] The County's claim that the Court of Appeal ignored the statutory context of § 97.75 is not entirely fair. (County's Opening Brief, p. 25.) Rather, the Court found that context unhelpful when construing a statute which beings "Notwithstanding any other law ...". (Decision, p. 15.)

[17] And, of course, a much larger sum state-wide.

receives of County-wide, total property tax revenue – excluding ERAF. (Stip. Fact No. 9; 1 JA 47.) Beginning in 2006-07, the County added the value of the VLF Swap and Triple Flip in-lieu payments to each city's share of property tax proceeds even though these payments are made with funds that otherwise would be paid to ERAF (which § 95.3(b) directs be exempt from PTAF), which, as a result, increased each city's proportionate share of the total amount of property taxes distributed and thus its PTAF liability and generating a multi-million-dollar annual windfall to the County. (Stip. Fact No. 15; 1 JA 48-49.)

In other words, the County multiplied the entire cost of operating the property tax system (all but $35,000 of which reflected preexisting costs having nothing to do with the Triple Flip and the VLF Swap) by an improperly inflated ratio of property tax proceeds by treating the in-lieu payments as base property tax share. Thus, the County charged Petitioners an increased share of the **average cost** to operate the property tax system, including the $35,000 marginal cost of the VLF Swap and the Triple Flip, rather than the **marginal cost** of those changes – which marginal cost is all the Legislature authorized them to recoup on account of these two fiscal mechanisms. The net result was an annual $10 million windfall for Los Angeles County for all 88 cities there, and a loss of $4.8 million for the 47 cities at bar for 2006-07 and over $5.3 million for 2007-08. (Stip. Fact No. 16; 1 JA 49.) At trial, the County admitted that, unless ordered by a court, it intends to continue to reap this multi-million-dollar windfall in every future fiscal year so long as the in-lieu payments continue and, given that the VLF Swap has no sunset – this means permanently.[18] (Stip. Fact No. 21; 1 JA 50.)

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[18] Assuming no further legislative manipulation of the property tax system to accomplish State fiscal ends, the Triple Flip expires when the Economic Recovery Bonds are paid off. (Rev. & Tax Code, § 97.68(b)(l); Gov. Code, § 99006(b); Rev. &

The Court of Appeal determined that this method violates § 97.75, reversed and remanded to the trial court to determine the amounts to be refunded to the City – the same action Petitioner asserts this Court should take – issue the writ for which Petitioners prayed. (Decision, p. 20.)

C. The County's Interpretation of § 97.75 is at Odds with the Plain Language of the Statute and the Legislature's Intent

1. The Court of Appeal Properly Construed "Services" as Used in § 97.75

When statutory language is unambiguous, there is no room for interpretation, and a court must give effect to its plain meaning. See, e.g., *Mutual Life Ins. Co. of New York v. City of Los Angeles* (1990) 50 Cal.3d 402, 407.

> It is a prime rule of construction that the legislative intent underlying a statute must be ascertained from its language; if the language is clear, there can be no room for interpretation, and effect must be given to its plain meaning. [Citations] 'An intent that finds no expression in the words of the statute cannot be found to exist. The courts may not speculate that the legislature meant something other than what it said. Nor may they rewrite a statute to make it express an intention not expressed therein.'

(*Id.* at 412, quoting *Hennigan v. United Pacific Ins. Co.* (1975) 53 Cal.App.3d 1, 7.) Here, § 97.75 unambiguously states: "[Beginning in fiscal year 2007-07] a county

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Tax Code, § 7203.1.)

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."

Basic statutory analysis demonstrates that the phrase "these services" refers only to those activities referenced in §§ 97.68 and 97.70 – the sections referenced in the first sentence of this simple, two-sentence statute – and does not include services described in § 95.3 (which provides authority to withhold PTAF in general) – a provision nowhere mentioned in this statute except its opening phrase – "notwithstanding any other law."[19] The second of § 97.75's two sentences provides that beginning in 2006-2007 a county may impose a fee for "these services," but that such fee shall not exceed the actual cost of providing "these services." (Rev. & Tax Code, § 97.75.) The phrase "these services" in the second sentence necessarily refers to the services as described in the first. That sentence, however, states: "Notwithstanding any other provision of law, . . . a county shall not impose a fee . . . in reimbursement for the services performed by the county under § 97.68 and 97.70." (*Id.*) Thus, the "services" mentioned in the first sentence are clearly defined as those "performed by the county under § 97.68 and 97.70" and the reference to services in the second sentence is plainly these.

Among the other law that does not "withstand" the directive of § 97.75 is, of course, the general authority to impose PTAF on all property tax proceeds other than ERAF and school district tax receipts stated in § 95.3.

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[19] The County suggest the Court of Appeal's interpretation amounts to the disfavored implied partial repeal of § 95.3. (County's Opening Brief, p. 3.) Not so – that a later statute makes an express exception to an earlier one does not amount to judicial implied partial repeal – it amounts to a legislative determination not to extend the sweep of a statute.

Thus, in construing what "these services" as used in § 97.75's second sentence encompasses, one must examine the text of §§ 97.68 and 97.70. The Court of Appeal did just that and properly determined that such services "do not include the additional activities of equalizing, assessing and collecting property tax, processing appeals, or otherwise administering the property tax system as a whole." (Decision, p. 13.) Specifically, the relevant portion of § 97.68[20] provides:

> Except as otherwise provided in subdivision (d), for each fiscal year during the fiscal adjustment period,[21] in lieu sales and use tax revenues in the Sales and Use Tax Compensation Fund shall be allocated among the county and the cities in the county, and those allocations shall be subsequently adjusted, as follows:
>
> (1) The Director of Finance shall, on or before September 1 of each fiscal year during the fiscal adjustment period, notify each county auditor of that portion of the countywide adjustment amount for that fiscal year that is attributable to the county and to each city within that county.
>
> (2) The county auditor shall allocate revenues in the Sales and Use Tax Compensation Fund among the county and cities in the county in the amounts described in paragraph (1). The auditor shall allocate one-half of the amount described in paragraph (1) in each January during the

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[20] The entire text of § 97.68 is included in the trial court record at 1 JA 223-234.

[21] The "fiscal adjustment period" is repayment period for the 2004 Economic Recovery Bonds. (Rev. & Tax Code, § 97.68(b)(l); Gov. Code § 99006(b).)

fiscal adjustment period and shall allocate the balance of that amount in each May during the fiscal adjustment period.

(3) After the end of each fiscal year during the fiscal adjustment period, other than a fiscal year subject to subdivision (d), the Director of Finance shall, based on the actual amount of sales and use tax revenues that were not transmitted for the prior fiscal year, recalculate each amount estimated under paragraph (1) and notify the county auditor of the recalculated amount.

(4) If the amount recalculated under paragraph (3) for the county or any city in the county is greater than the amount allocated to that local agency under paragraph (2), the county auditor shall, in the fiscal year next following the fiscal year for which the allocation was made, transfer an amount of ad valorem property tax revenue equal to this difference from the Sales and Use Tax Compensation Fund to that local agency.

(5) If the amount recalculated under paragraph (3) for the county or any city in the county is less than the amount allocated to that local agency under paragraph (2), the county auditor shall, in the fiscal year next following the fiscal year for which the allocation was made, reduce the total amount of ad valorem property tax revenue otherwise allocated to that city or county from the Sales and Use Tax Compensation Fund by an amount equal to this difference and instead allocate this difference to the county Educational Revenue Augmentation Fund.

(6) If there is an insufficient amount of moneys in a county's Sales and Use Tax Compensation Fund to make the transfers required by

> paragraph (4), the county auditor shall transfer from the county Educational Revenue Augmentation Fund an amount sufficient to make the full amount of these transfers.

(Rev. & Tax Code, § 97.68.) These provisions specify the tasks a county must undertake to calculate each city's lost sales and use tax revenues and to transfer to each city an equal amount from funds that otherwise would have been allocated to ERAF. None of the described services includes assessing or collecting property taxes.

Similarly, § 97.70 provides in a mercifully shorter, relevant part:[22]

> (b)(1) The auditor shall allocate moneys in the Vehicle License Fee Property Tax Compensation Fund according to the following:
>
> (A) Each city in the county shall receive its vehicle license fee adjustment amount.
>
> (B) Each county and city and county shall receive its vehicle license fee adjustment amount.
>
> (2) The auditor shall allocate one-half of the amount specified in paragraph (1) on or before January 31 of each fiscal year, and the other one-half on or before May 31 of each fiscal year.

(Rev. & Tax. Code, § 97.70.) Again, the "services" described in § 97.70 are limited to calculating and distributing a Vehicle License Fee Property Tax Compensation Fund equal to the VLF funds each city would have received absent the VLF Swap.

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[22] The entire text of § 97.70 appears at 1 JA 236-241.

Nowhere does § 97.70 describe services to operate the property tax assessment, collection or dispute resolution system generally.

Based on this plain statutory language, the Court of Appeal held § 97.75's "clear intent" is "that 'services' are those that counties render pursuant to the Triple Flip (§ 97.68) and VLF Swap (§ 97.70) *only*." (Decision, p. 13) (original emphasis.) Thus, the trial court erred when it determined "actual costs" in § 97.75 included those generated by services other than those described in §§ 97.68 and 97.70. Those two sections address how counties must calculate and distribute property tax payments in lieu of VLF under the VLF Swap and in lieu of sales taxes under the Triple Flip. To include the services described in § 95.3 – "equalization, assessment and collection" – in the term "services" as used in § 97.75 simply rewrites that latter section to include the services described in § 95.3 with no basis in the text of § 97.75 to do so.[23] Doing so runs afoul of the most basic tenet of statutory construction — a court may not insert provisions in the statute that have been omitted by the Legislature. Thus, the Court of Appeal properly found error in the trial court's decision to do so. (Code Civ. Proc., § 1858; see, e.g., *People v. Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.)

The language of § 97.75 makes the Legislature's intent unmistakable. As the Court of Appeal noted:

> [T]he absence from the Triple Flip or VLF Swap statutes of the words equalize, assess or collect, demonstrates the Legislature's intent that the administrative activities counties perform under the Triple Flip and VFL Swap are not part of the "traditional PTAF-generating" tasks of property

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[23] The lengths to which the County goes to avoid the plain language of § 97.75 can be gleaned from the fact that the statute central to this case is not referenced until page 18 of the County's 35-page Appellants' Brief in this Court.

tax administration, but are limited to the services the counties perform to process the Triple Flip and VLF Swap only. (Decision, p. 14.)

Yet Respondents ask this Court to assume the Legislature intended the County to receive a windfall of more than $4.8 million in 2006-07 and $5.3 million in 2007-08 at the Appellants' expense,[24] and that this windfall should continue indefinitely. Such interpretation is not credible given the statute's plain requirement that cities pay no more than **the actual cost** to administer the Triple Flip and VLF Swap. Rather than the revenue neutrality the Legislature intended for the Triple Flip and VLF Swap, the County's construction of § 97.75 has made it a burden on cities and a boon to the County.

The County mistakenly further argues that, even if § 97.75's use of the word "services" means "incremental services" under §§ 97.68 and 97.70, it may still charge Cities millions annually in PTAF even though its incremental cost to provide those services is a mere $35,000. This argument is based on the flawed logic that if "services" means incremental services, then recovery of PTAF with respect to the VLF Swap and Triple Flip in-lieu revenues would be addressed by § 95.3, and § 97.75 would be unnecessary. (County's Opening Brief, p. 25).

However, this argument begs the question, and is circular at best. As the County admits, the purpose of the VLF Swap and Triple Flip was to balance the **State's** budget through various funding shifts. The Legislature did not contemplate a multi-million-dollar, permanent funding shift from cities to counties. Nor did it contemplate allowing counties to stake a claim on property taxes of other local

[24] Appellants are 47 of the 88 cities within Los Angeles County. The estimated transfer to the County from all 88 cities is estimated at $10 million or more annually.

governments comparable to the Prop. 98 set-aside for schools of State discretionary that motivates these fiscal maneuvers.

Moreover, the County asks this Court to ignore § 97.75's plain language by describing the authority for PTAF as "long-standing" and "traditional." This is revisionist history. There is no dispute that counties were legally required to fund the property tax functions of the Assessor and Auditor since at least the 1960s (County's Opening Brief, p. 6) and were authorized to recover **some** of the cost of those functions in 1994 (County's Opening Brief, p. 9), and have **never** had authority to recover all of it – schools and ERAF remain exempt under the current language of § 95.3, and counties – the largest recipient of property taxes – pay the largest share of PTAF. The County admits the Legislature exempted schools and ERAF to protect the State's own budget (County's Opening Brief, p. 11), yet would have this Court construe the Revenue & Taxation Code to empower all counties to impose a set-aside for **their** benefit on legislative efforts to make revenue-neutral swaps of revenues flowing to cities and counties for the **State's** benefit. The Court of Appeal was not misled by these tactics, and this Court need not be either.

Respondent cities agree that all the relevant Revenue & Taxation Code sections could be written more plainly. However, § 97.75 is no less artful than other provisions of that Code in issue here. These facts aid its reading:

(i) It is the only statute specific to the Triple Flip and the VLF Swap;

(ii) it was adopted contemporaneously with the Triple Flip and VLF Swap and well after § 95.3's general grant of authority for PTAF;

(iii) it states that it is "notwithstanding any other provisions of law," which necessarily includes the earlier-enacted § 95.3;

(iv) the Legislature intended to make the Triple Flip and VLF Swap revenue-neutral as to cities and counties, as the County readily admits (County's Opening Brief, p. 17.);

(v) the Legislature desired to avoid fiscal set-asides (like Prop. 98 and the County's construction of § 97.75) that constrain its ability to allocate revenue;

(vi) Counties bore PTAF responsibility for ERAF funds prior to the depletion of that fund by the Triple Flip and the VLF Swap;

(vii) the County's action unilaterally shifts PTAF to Cities in the same measure as the ERAF is reduced by the Triple Flip and VLF Swap; and,

(viii) the County cites no legislative history or other evidence of legislative intent to end counties' responsibility for the measure of PTAF that has been unrecoverable for years.[25]

Section 97.75 is also more easily read if its subject is understood to be the power of counties to recover the cost of administering the Triple Flip and the VLF Swap. In light of that apparent purpose, its meaning is plain – counties get nothing in FY 2004-05 and FY 2005-06 (which the County understood to be the case, charging nothing) and counties get only the "actual cost" "for the services performed by the county under Sections 97.68 and 97.70" in subsequent years. There is no dispute here that most of the multi-million dollar annual cost the County unilaterally transferred from itself to the Cities is for services not described in those two sections.

The County's argument also ignores the differences between the first and second sentences of § 97.75. The first sentence of § 97.75 prohibits a county in FY 2004-05 and FY 2005-06 to "impose a fee, charge or other levy on a city, []or [to] reduce a city's allocation of ad valorem property tax revenue." The second sentence empowers a county in FY 2006-07 and future years to "impose a fee, charge or other

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[25] Indeed, the Court of Appeal notes the legislative history is singularly unhelpful in interpreting § 97.75. (Decision, p. 13, fn. 6) (not relying on legislative history, but noting its paucity).

levy on a city for these services" that "shall not exceed the actual cost of providing these services." The second sentence makes no reference to reduced property tax allocations to cities. Thus, reducing cities' property tax allocations is prohibited in FY 2004-05 and FY 2005-06 by the first sentence of § 97.75 and not within the grant of authority provided for FY 2006-07 and future years under the rule of "*expressio unius est exclusio alterius*." (See, e.g., *National R.R. Passenger Corp. v. Nat'l Ass'n of R.R. Passengers* (1974) 414 U.S. 453, 458 (to say one thing is to exclude another); *Bonner v. County of San Diego* (2006) 139 Cal.App.4th 1336, 1347-48 (same).) (See Decision, p. 18.)

However, the County did precisely what § 97.75 forbids – it unilaterally reduced the Respondent cities' property tax allocations to its own benefit to accomplish what it perceives to be a "fairer" allocation of the burden to fund the property tax responsibilities of the Assessor, Auditor, and Sheriff. Even § 95.3 – the central support for the County's elaborate and creative argument – establishes no legislative intent to achieve this result; that section states it was "not a reallocation of property tax revenue shares or a transfer of any financial or program responsibility." (Rev. & Tax. Code, § 95.3(e).) Thus, the County's reliance on § 95.3 to justify taking $10 million annually in excess PTAF in the teeth of § 97.75's express limits is undermined by the text of the very statute on which it relies.

2. The County's Construction Fails to Give Effect to Every Word in § 97.75

The County's proposed construction violates another basic rule of statutory construction: the duty to give meaning to every word in a statute. (See, *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 249; *Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 274.) Specifically, the trial court erroneously concluded, and the County argues here, the sole purpose of § 97.75 was to exempt the VLF Swap

and Triple Flip funds from inclusion in the PTAF calculation for two years — 2004/2005 and 2005/2006. (3 JA 554:7-12.) If § 97.75 were intended only to exempt the VLF Swap and Triple Flip from PTAF for two years, its second sentence would be wholly unnecessary. Why would the Legislature state that beginning in 2006-2007 the counties may charge for "these services," limited to the actual costs, if—as Respondents argued and the trial court held—§ 95.3 applies to authorize such charges apart from § 97.75?

This interpretation renders the last sentence § 97.75 surplus, a result not tolerated by long-established rules of statutory interpretation. The interpretation that gives effect to the second sentence is one that limits a county's recovery to its annual costs to cover the additional administrative tasks of maintaining separate accounts for the designated in-lieu funds and distributing them as instructed by the VLF Swap and Triple Flip statutes. In this case, that admitted cost is $35,000, not the $4.8 million Los Angeles County collectively withheld from Respondent cities in 2006/2007 and the $5.3 million it withheld in 2007/2008.

Additionally, the County's construction reads out of the statute its limit of County PTAF on the VLF Swap and Triple Flip to the County's "actual cost" to implement those statutes. No one disputes that had the Legislature not enacted §§ 97.68 and 97.70, the funds to which the County now applies its PTAF would have remained in the County's ERAF (Stip. Fact No. 8; 1 JA 47.) and continued to exempt from PTAF recoupment under the express language of § 95.3(b):

> Each proportionate share of property tax administrative costs determined pursuant to subdivision (a), **except for those proportionate shares determined with respect to a school entity or ERAF**, shall be deducted from the property tax revenue allocation of the relevant

jurisdiction or community redevelopment agency, and shall be added to the property tax revenue allocation of the county.

(Rev. & Tax Code, § 95.3(b) (emphasis added).) Yet, Respondents contend that despite the explicit limitation of § 97.75 to recover only the "actual cost" to administer the Triple Flip and VLF Swap, use of funds otherwise destined for ERAF to fund these in-lieu payments means these funds may properly be included when calculating each city's PTAF liability. (Stip. Fact No. 19; 1 JA 49-50.) Although Respondents point to neither statutory language suggesting this to be the case nor any indicia of legislative intent, the trial court accepted the point. The Court of Appeal rejected the County's argument:

> Adding the property tax revenue related to the Triple Flip and VLF Swap to the general property tax shares from which the County calculates the PTAF for property tax administrations, as the County advocates, would violated section 97.75's language limiting reimbursement to "actual cost of providing these services," i.e., the Triple Flip and VLF Swap. (Decision, p. 15.)

The Court of Appeal's conclusion is supported by plain statutory language. It is undisputed that the Legislature redirected PTAF-exempt ERAF funds to cities via the Triple Flip and VLF Swap. As § 97.68(a)(2) explains:

> The total amount of ad valorem property tax revenue otherwise required to be allocated to a county's [ERAF] shall be reduced by the countywide adjustment amount.

The "adjustment amount" is the countywide revenue lost as a result of the temporary, annual redirection of a portion of the local sales and use tax revenues to the State. (Rev. & Tax. Code, § 97.68(b)(2).) Those funds otherwise were destined for ERAF, which no one disputes is exempt from PTAF recovery under § 95.3(b).

As the Court of Appeal stated:

> [W]hile in-lieu payments are made from property tax funds, they are designed to replenish lost revenues **that were not originally property taxes** but were collected from Sales and Use Tax and the Vehicle License Fees. And the in-lieu payments are made from property taxes **that would otherwise have been allocated to the County's ERAF** [citation] that are exempt from PTAF. (Decision, p. 18) (original emphasis).

The County's simply assumes the Legislature intended those funds to lose their PTAF-exempt status with no persuasive basis to do so. Yet, the statutory language makes the opposite intent apparent – concurrently with adoption of the Triple Flip and VLF Swap, the Legislature expressly limited the type of costs counties could recover for services described in §§ 97.68 and 97.70. That limitation would be unnecessary if the County's construction reflected legislative intent. Yet what is the meaning of the phrase "but the fee, charge, or other levy shall not exceed the actual cost of providing these services," if the County can charge cities **millions more than the actual cost** to administer the Triple Flip and VLF Swap?

Indeed, § 97.75's two sentences state quite simply what the Legislature intended. The first sentence states that, in FY 2005-05 and 2005-06, counties could charge nothing on account of the VLF Swap and Triple Flip. The second sentence states that, thereafter, counties may recover only their actual costs to administer those

two in-lieu payments and not more. This is not a hard case and, like the Court of Appeal, this Court should reverse the trial court.

3. The More Recent and Specific § 97.75 Controls over the Older, More General § 95.3

The County devotes the bulk of its argument to § 95.3 and its history, making the policy argument – better directed to the Legislature – that it is fair to relieve counties of the portion of the cost to administer the property tax system that § 95.3(b) provides they should bear – the portion associated with ERAF and school tax receipts. What Respondents never squarely address, however, is why that older, more general provisions of § 95.3 should control over the more recent and specific direction of § 97.75.

Indeed, the case Respondents cite actually supports the Court of Appeal's reading of § 97.75. In *Arbuckle-College City Fire Prot. Dist. v. County of Colusa* (2003) 105 Cal.App.4th 1155, the Court of Appeal followed the long-established rule that, in the event of a statutory conflict, a specific provision controls over a more general one. (*Id.* at 1166.)

> Generally, it can be presumed that when the Legislature has enacted a specific statute to deal with a particular matter, it would intend the specific statute to control over more general provisions of law that might otherwise apply. (*Id.*)

Thus, the *Arbuckle* court determined § 95.3 controlled over an older law regarding a fire protection district's obligation to reimburse a county for its share of administrative costs associated with the county's tax collection services. Among other reasons for this conclusion, the court cited the initial language of § 95.3(a):

"Notwithstanding any other provision of law . . . ." That court recognized that this phrase demonstrated the Legislature's intent that § 95.3 control over **earlier** laws.

The Court of Appeal properly determined in this case that, as in *Arbuckle*, the more specific § 97.75 controls over the older, more general § 95.3. (Decision, pp. 15-16, fn. 8.) Section 97.75 contains the identical statutory phrase recognized in *Arbuckle* as powerful evidence of the Legislature's intent that it control over earlier, more general provisions — "Notwithstanding any other provision of law . ..." (Rev. & Tax. Code, § 97.75.)[26] Section 97.75, enacted ten years after § 95.3, specifically limits what counties may charge cities to administer the Triple Flip and VLF Swap and was adopted upon passage of the later of those two mechanisms.

Thus, the County's right to recover its costs to administer the in-lieu payments in issue here rests solely in § 97.75 both because § 95.3(b) exempts the revenues in issue from PTAF and because § 97.75 more recently and specifically controls PTAF charges as to these revenue streams. The County's right to withhold PTAF on account of the Triple Flip and VLF Swap is limited to the actual cost to provide exactly what § 97.75 says— "the services performed by the county under §§ 97.68 and 97.70." Section 95.3 does not authorize counties to include these in-lieu payments in their general PTAF calculation. Rather, that section specifies what must be included in the numerator when calculating the administrative cost apportionment

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[26] It is true that § 95.3 also provides that it applies "notwithstanding" other laws. When these two "notwithstanding" come into direct conflict, the rational means to resolve the legislative direction is to apply the more recent and specific statute at the expense of the older, more general provision. This is especially so where the older, more general provisions of § 95.3 exempts from PTAF the very funds exempted from that charge by the newer, more specific language of § 97.75 and thus there is no incursion on § 95.3's direction in any event.

factor, and the cost to implement neither § 97.68 nor § 97.70 is listed there.[27] Of course, the Triple Flip and VLF Swap were not in place when § 95.3, § 96.1 and § 100 were enacted years earlier. Thus, § 95.3 cannot fairly be interpreted to authorize the County to include the Triple Flip and VLF Swap funds because they did not exist at the time § 95.3 was enacted, and the Legislature has set forth precisely what counties may recover as to those transfers in § 97.75 and did not add § 97.68 and § 97.75 to the list of sections in § 95.3(a) used to describe the costs to be recovered. As the Court of Appeal put it:

> [H]ad the Legislature meant for 'services' performed pursuant to the Triple Flip and VLF Swap to encompass those governed by the property tax administrative fee statutes including Revenue and Taxation Code sections 95.2, 95.3, and 96.1, it could have said so in section 97.75. (Decision, p. 16.)

Respondents maintain here, as they did in the trial court, that it is unfair to counties to enforce the plain language of the more recently enacted § 97.75. (County's Opening Brief, p. 29.) Fairness is not the Court's task, however. The Court is charged with implementing the Legislature's intent to the full extent of the Legislature's power under our Constitution, fair or not.[28] The language of § 97.75

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[27] Had the Legislature intended the result argued by the County here, it need only have added §§ 97.68, 96.70 and 97.75 to the list of sections cited in § 95.3(a). Its failure to do so is telling, indeed, controlling.

[28] Of course, "fairness" is not an objective standard easily applied by courts. What the County sees as "fair," Respondent cities see as a windfall. No neutral standard is available to choose between these characterizations and this Court is left to its usual

evidences the Legislature's intent that the VLF Swap and Triple Flip funds be exempt from recoupment under § 95.3 just as are the ERAF and school district tax proceeds from which they derive. The County's remedy for this perceived unfairness is to petition the Legislature for change, not to seek judicial revision of the statute to allow it to recoup costs plainly excluded from PTAF by statute.

In furtherance of its "fairness" argument, the County argues the Legislature recognized in § 95.3 the burden on counties to administer the property tax system and stated its intent to appropriate funds in the future to alleviate such burden. (Respondents Opening Brief, pp. 10-12.) Notably, however, § 95.3(b)(2) makes clear that future appropriation would come from "the state in the time and manner specified by a future act of the Legislature that makes an appropriation for purposes of that reimbursement." (Rev. & Tax Code, § 95.3(b)(2).)[29] Thus, the promise of future funding was via reimbursement from the **State**, not via self-help at the expense of cities. Again, counties plead their cause in the wrong forum – if funding is to be provided, the Legislature must provide it.

Moreover, the County sidesteps other relevant statutes that provide the appropriations promised by the Legislature in § 95.3. Specifically, in 1995, the Legislature adopted § 95.31 to create the State-County Property Tax Administration Program. This program, effective in fiscal years 1995-96 to 2001-02, authorized state appropriations to loan funds to qualifying counties to "enhance the property tax administration system by providing supplemental resources." (Rev. & Tax Code, § 95.31(c)(1).) In 2001, the Legislature adopted § 95.35 to create the State-County Property Tax Administration Grant Program (Rev. & Tax. Code, § 95.35), finding:

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task – discerning and implementing Legislative intent within constitutional bounds.

[29] It is noteworthy that the County's copious and repeated quotations of § 95.3 leave this telling language to a footnote. (County's Opening Brief at 11, fn.21.)

> [T]he success of [the State-County Property Tax Loan Program] has demonstrated the appropriateness of an ongoing commitment of state funds to reduce the burden of property tax administration on county finances. Therefore, it is the intent of the Legislature, in enacting this act, to establish a grant program known as the State-County Property Tax Administration Grant Program that will continue the success of the State-County Property Tax Loan Program and maintain the commitment to efficient property tax administration. (Rev. & Tax Code, § 95.35(a).)

Had Los Angeles County chosen to participate and otherwise qualified, § 95.35 authorized an annual grant of $13,451,670 for fiscal years 2003-04 through 2006-07. (Rev. & Tax. Code. § 95.35(c)(3).) This, of course, is more it withheld from the Respondent cities in fiscal years 2006-07 and 2007-08. Thus, §§ 95.31 and 95.35 plainly embody the "future appropriations" promised by § 95.3(c)(2), if not in full, at least in part. There is no need to contort § 97.75 to fill a non-existent gap in the law.

Finally, the County stretches its "fairness" still further to contend that "higher spending for property tax administration results in higher property tax collections. . .." (County's Opening Brief, pp. 33-34.) However, there is no reason to believe that a more expensive property tax system is a more remunerative one. A more expensive system might be faster, better and more "customer friendly" and might – in the current economy – reduce property taxes by assessing property values more accurately. Alternatively, spending more on property tax administration might merely be wasteful. This record does not allow the Court to determine that policy question and this case does not require it to do so.

4. The County Auditors' SB 1096 Guidelines Are Irrelevant to Interpretation of Section 97.75

The County points to guidelines developed by the California State Association of County Auditors Accounting Standards Committee ("the Guidelines") to suggest that these voluntarily guidelines, developed by private association of mostly elected officials given no status in law, somehow provides legal support for the County's self-serving interpretation of § 97.75. That many County Auditors assert their right to withhold city property taxes to augment funding for their offices does not confer that right.

One can easily avoid being mislead by this claim by noting that the Guidelines:

- Do not have the force of law, as the County admitted (Stip. Fact No. 15, [JA 48-49, Vol. 1, Tab 5]) and as the Court of Appeal ruled (Decision, pp. 8, 19, n.10); and,
- Revenue and Taxation Code § 96.1 (c) provides that **if** either the State Controller or the State Department of Finance adopts the Auditors' Guidelines as formal regulations, they are deemed correct unless clarified by legislation or court decision. To date, however, no regulations have been adopted by either the State Controller or the Department Finance, and the Guidelines on which the County relies remain the private view of Auditors, whose own funding is at stake here.[30]

Moreover, the Guidelines are at odds with the State Controller's interpretation of § 97.75 (See Exh. B to Whatley Decl. [JA 512-517, Vol. III, Tab. 12].) The

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[30] Nor does this record reveal that the Auditors Association ever sought to subject the Guidelines to the discipline of the formal rulemaking process of the California Administrative Procedures Act.

Controller is authorized to convert a Guidelines provision to an authoritative regulation and has no dog in this fight. Accordingly, its views are both more persuasive and more authoritative than the Auditors' partisan views. Telling, its views accord with that of the Court of Appeals and undermine both the County's position and the trial court's conclusion.

5. The County Misconstrues the Facts Regarding the League of California Cities' Alleged Support of the County's PTAF Calculation

As it did below, the County argues the League of California Cities somehow approved the County's PTAF calculation method. (County's Opening Opening Brief, p. 22, fn. 35.) The trial court properly sustained the Cities' objection to material the County submitted in support of this claim. (3 JA 539.) The League – a non-profit corporation whose members include most, but not all, California cities – plainly did not draft the Guidelines, has no statutory role in interpreting property tax statutes and is without power to bind its members or to authoritatively construe legislation. Moreover, the League's alleged participation in the formulation of the Auditors' Guidelines is irrelevant, as the trial court declared in sustaining Petitioners' objection to the offered material:

> I don't think that these guidelines [mean] that the League of Cities or anyone else can waive the Cities' rights to have the statute interpreted, if they disagree with that position. (Reporter's Transcript, 17:25-18:3.)

Further, a multi-million dollar transfer of responsibility to fund the County Assessor, Auditor and Sheriff communicated only by two footnotes to spreadsheets buried in the guidelines of a voluntary association of county officials is hardly notice

to cities, the League of California Cities (a legal entity distinct from its members), or to State officials. It was not until PTAF bills soared in the 2006-07 fiscal year that the Assessors' sleight of hand was revealed.

6. The County's Construction is at Odds with Other, Applicable Authority the Demonstrates Legislature Intent that the Triple Flip and VLF Swap be Revenue Neutral

In addition to the plain language of §§ 95.3(b) and 97.75, other legal authority undermines the trial court's conclusion that payments of property tax in lieu of sales tax and VLF can be considered "property tax" revenue for purposes of the § 95.3 PTAF calculation. Section 97.68 explicitly states that these in-lieu payments:

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

This provision illustrates the Legislature's intent that the swapped funds are not to be treated as property tax revenue and that the Triple Flip and VLF Swap were intended to be revenue neutral as to cities and counties.

Similarly, the Community Redevelopment law provides that in-lieu property tax payments under the Triple Flip and VLF Swap are not to be included in calculating property taxes allocated to redevelopment agencies. Health & Safety Code § 33672 provides:

> [T]axes shall not include any amounts of money deposited in a Sales and Use Tax Compensation Fund pursuant to § 97.68 of the Revenue

and Taxation Code or a Vehicle License Fee Property Tax Compensation Fund pursuant to § 97.70 of the Revenue and Taxation Code.

The plain purpose of this exclusion is to ensure the Triple Flip and VLF Swap do not affect the allocation of property taxes to redevelopment agencies rather than to cities, counties and other taxing agencies – *i.e.,* to make the Triple Flip and VLF Swap revenue neutral as to local governments.

Further authority establishes that the in-lieu nature of the Triple Flip and VLF Swap payments also precludes their characterization as property tax share when calculating PTAF. The Triple Flip in-lieu payments are to compensate the cities for the lost ¼-cent sales tax that would have been collected by the cities and which will be collected by cities when the Economic Recovery Bonds are fully paid. (Rev. & Tax Code, § 97.68.) Likewise, the VLF Swap is to compensate cities for VLF funds it would have received had the Legislature not heeded Governor Schwarzenegger's election-year call to "cut the car tax." (Rev. & Tax Code, § 97.70.)

In a similar situation, the California Attorney General determined that in-lieu payments made by redevelopment agencies to school districts pursuant to Health & Safety Code §§ 33401 and 33676 are not "property tax revenue" and may not be used in computing a school district's general aid entitlement. (90 Ops. Cal. Atty. Gen. 501 (1990).) In the statutory scheme at issue there, redevelopment agencies paid funds to school districts to replace property tax revenues that the school district lost due to the tax-exempt redevelopment agency's ownership of land. Yet even though the in-lieu funds there were designed to replace lost property taxes, which is not the case here (rather this case involves the reverse – property taxes in lieu of other revenues), the Attorney General determined the plain language of the Health & Safety Code precluded characterization of those funds as property taxes for purposes of determining a school district's general aid entitlement. Even more so in the present

case, where the in-lieu payments are designed to replace **non**-property tax revenue, the payments should not be considered property tax share when calculating PTAF. The Legislature's intent in each instance was to limit the effects of its use of the property tax system to accomplish State fiscal objectives and to preclude other windfalls and losses to the local government beneficiaries of the property tax.

Accordingly, the Court of Appeal correctly construed § 97.75 to effect the Legislature's intent that the effect of the in-lieu payments to cities be limited to recovery of counties' actual, apparently minimal, costs to accomplish the VLF Swap and the Triple Flip. Thus, the trial court's decision should be overturned.

7. The County's Interpretation Would Impose an Inequitable Result Not Intended by the Legislature

If this Court were to affirm the Court of Appeal and adopt what it held is the plain meaning of § 97.75, graphs that Respondents' used at trial and in the Court of Appeal below demonstrate that their share of PTAF remains the same as if the Triple Flip and VLF Swap had never been enacted – *i.e.,* the Triple Flip and VLF Swap were revenue neutral in intent. For ease of reference for the Court, and pursuant to California Rules of Court Rule 8-204(d), Appellants attach the relevant pages from Respondents' trial brief as Exh. 1 to this brief. The chart on the left-hand side of page 15 of Respondents' Opposition at the trial court level entitled "Before 'Flip' and 'Swap'" shows the County is responsible for 76% of PTAF (the shaded portion per footnote 7 of the trial court Opposition). (See Exh. 1 hereto; also at 2 JA 324.) On page 18 of that trial-court Opposition, where the County purports to illustrate the City's contentions, the right-hand chart labeled "Allocated Share of PTAF," shows the County continues to be responsible for the same 76% – the Cities' construction of

§ 97.75 costs Counties nothing. [31] (See Exh. 1 hereto; also at 2 JA 327.) This is because the VLF Swap and Triple Flip are funded via the PTAF-exempt ERAF. Making those revenue streams PTAF-exempt, just as is ERAF, changes nothing for the County – the Legislature's goal of revenue neutrality is accomplished.,[32]

Further, Respondents' own charts also illustrate that – other than schools – counties are the largest recipient of property tax proceeds. (See Exh. 1 hereto, p. 12, Chart on left; also at 2 JA 321.) This is so because, as the County admits, Proposition 13 froze in place pre-existing allocations of property-tax proceeds. (2 JA 316:18-19.) For counties, including Respondent County, that pre-Proposition 13 level included the additional property tax counties levied "sufficient to enable them to recoup their PTAF from the taxpayers." (2 JA 316:4-5.) Put more plainly – prior to the adoption of Prop. 13 in 1978, Counties operated the property tax system and funded their cost to do so by imposing a property tax. When the A.B. 8 formula was adopted by the Legislature to distribute the Prop.13-reduced property tax proceeds among local governments, it did so in proportion to the taxes previously levied by each. (Rev. &

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[31] These exhibits' powerful demonstration of the inequity of the County's position likely explains their absence from its Opening Brief.

[32] The County speculates that the exemption of property taxes allocated to ERAF and to schools may reflect equities arising from disparate property taxes imposed by school districts prior to the adoption of Proposition 13, which decisions continue to affect tax allocations today under § 96 and Gov't Code § 26912. (County's Opening Brief, p.11, fn.20.) This speculation is entirely unsupported by statutory language or legislative history suggesting the Legislature considered it. Moreover, cities, too differ greatly in their allocations of property taxes, a situation the Legislature has acknowledged, and only partly remedied, via the Tax Equity Allocation Act, Rec. & Tax. Code §§ 98 et seq.

Tax Code, § 96; Gov. Code, § 26912.) Because County's 1978 property tax levy was large enough to cover the cost to operate the property tax system, its post-Prop. 13 share of property taxes is larger than cities' shares partly in reflection of that fact.

Under the County's theory, it is the **only** entity that may treat in-lieu payments as property tax. The Legislature excluded these in-lieu payments from calculation of annual ad valorem revenue growth (a concept essential to tax-increment financing of redevelopment). (Rev. & Tax. Code, § 97.68(f)(3).) These payments may not be treated as property tax for purposes of payments to redevelopment agencies under the Community Redevelopment Law. (Rev. & Tax. Code, § 97.68(f)(2); Health & Saf. Code, § 33672.) These payments may not be treated as property taxes for purposes of construing tax exchange or sharing agreements among local governments in place before adoption of the Triple Flip and VLF Swap. (Rev. & Tax. Code, § 97.68(g).) Yet the County's construction gives counties alone the power to treat in lieu funds as property taxes for purposes of PTAF calculations, disregards the text and context of § 97.75 and the plainly stated legislative intent that the Triple Flip and VLF Swap not be treated as property taxes, so that counties, and counties alone, may reap an annual, multimillion-dollar windfall at the expense of cities.

Appellants do not argue, and never have argued, that they should not pay their proportional share of the marginal costs incurred by the County to administer the Triple Flip and VLF Swap. Indeed, § 97.75 requires they bear such costs beginning in fiscal year 2006/2007. What Appellants do protest is that rather than recovering its actual, incremental costs (which the County admits to be just $35,000), the County collectively charged them $10.1 million in fiscal years 2006/2007 and 2007/2008 on account of these property taxes paid with funds that would otherwise flow to ERAF in lieu of VLF and sales tax proceeds the state diverted from the cities for State purposes. The Court of Appeal agreed this result is unlawful.

The ERAF, Triple Flip and VLF Swap are all immune from PTAF for the same reason (although by virtue of different code sections) — they reflect legislative uses of its control over property tax allocations to accomplish State budget objectives. The Legislature chose not to allow counties PTAF with respect to ERAF, and to limit what counties could recover from cities with respect to the Triple Flip and VLF Swap. The Legislature is entitled to make that choice, and the law is clear it did so. (See *County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442, 1457 [State has power to shift property taxes among local agencies and schools.].) Again, the County's remedy for what it perceives as an inequitable refusal to change the status quo that prevailed before the approval of the Triple Flip and VLF Swap lies in the Legislature, not the courts. The Court of Appeal put is succinctly: "In the end, it is up to the Legislature not the courts to rewrite the statute." (Decision, p. 19.)

8. Alleged Increases in VLF In-Lieu Payments Are Irrelevant

The County suggests this Court may ignore § 97.75's mandate because the VLF Swap has allegedly netted cities (and counties we might add) more in revenue than they lost due to the unauthorized PTAF in issue here. (County's Opening Brief, p. 17, fn. 29.) In other words, the County asks the Court to ignore § 97.75 because the Petitioner cities can afford it – which is a bit like Willie Sutton's apocryphal reply that he robs banks "because that's where the money is."

Notably, though, it is the County itself that is the largest single beneficiary of any legislative generosity in crafting the VLF Swap formula. (See Rev. & Tax. Code, § 97.70(b)(1).) Thus any alleged "benefit" to Cities is enjoyed in greater amounts by the County. But such alleged benefit cannot authorize or excuse the County's unlawful calculation of PTAF. As the Court of Appeal reasoned:

> It is not our task to rewrite section 97.75 to offset perceived inequity created by another statute, in this case section 97.70.
> (Decision, p. 19.)

Moreover, by including in its PTAF calculation the purported "boon" to the cities and counties from the VLF Swap, the County actually receives a double windfall, for it receives both the authorized VLF Swap from schools (which the Legislature backfilled to schools) and the unauthorized PTAF from cities, for which no backfill is provided to anyone.

Finally, at trial, the County admitted that the VLF increases are associated with a rising real estate market. (2 JA 328-329, fn 13.) However, as recent economic events demonstrate, what goes up can come down. Accordingly, the falling real estate market can be expected to dramatically reduce property taxes paid in lieu of VLF. True, sales taxes have likely fallen as well, meaning that the property taxes paid in-lieu of sales tax may continue to exceed what the cities would have otherwise received. VLF fees will have fallen, along with car sales, too. This record does resolve the econometric exercise required to make sense of evolving market conditions. Nor need this Court be detained by it – cyclical market fluctuations simply cannot control the meaning of § 97.75. Were it otherwise, the parties would need to petition a court for relief each time the VLF Swap rose or fell in relation to real estate and retail trends. Similarly, § 97.75 might mean something different in counties with different expressions of the larger economic cycle – such as those with high real estate values and low retail sales or the reverse. Moreover, to the extent the VLF Swap overcompensated cities during the real estate boom of the first decade of this century, it overcompensated counties in equal measure. The Court of Appeal

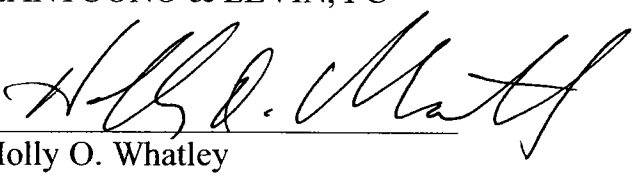
stated the issue well: "Temporary fluctuations in the value of the taxes reveal little about the meaning of section 97.75." (Decision, p. 19.)[33]

V. Conclusion

This case is a simple one. The Legislature used its power over the operation of the property tax system to pay cities and counties funds previously paid to ERAF and schools to accomplish State budgetary objectives. In doing so, it authorized counties to recover their "actual costs" to administer those in-lieu payment streams, but forbade them to recover the proportionate cost to operate the entire property tax system with respect to those funds. The County wishes it were otherwise and acts as if it were. The cities at bar respectfully ask this Court to accept the cogent reasoning of the Court of Appeal and reverse the trial court.

DATED: December 17, 2010

COLANTUONO & LEVIN, PC

By: 

Holly O. Whatley
Attorneys for Plaintiffs and Appellants Below, City of Alhambra, et al.

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[33] The County also seeks to support is contorted construction of § 97.75 by arguing that its placement in Article 3 evidences intend to subordinate it to § 95.3, which is included in Article 1 – entitled "Definitions and Administration." (County's Opening Brief, p. 23.) What a slender reed on which to stake a claim to $10 million a year! The relative position of § 95.3 and § 97.75 might as easily be said to reflect that the latter is the more specific and the former more general. More likely, § 97.75 appears in Article 3 because it relates specifically to the VLF Swap and Triple Flip, which are also stated in that article.

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies pursuant to Rule 8.520(c)(1) of the California Rules of Court, this Answer Brief on the Merits contains 11,162 words, fewer than the 14,000 words permitted by the rule. Counsel relies on the word count feature of the Word 2007 computer program used to prepare this brief.

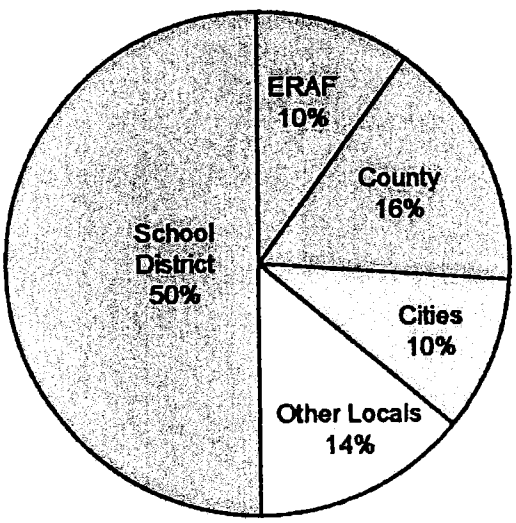
DATED: December 17, 2010

Respectfully submitted,

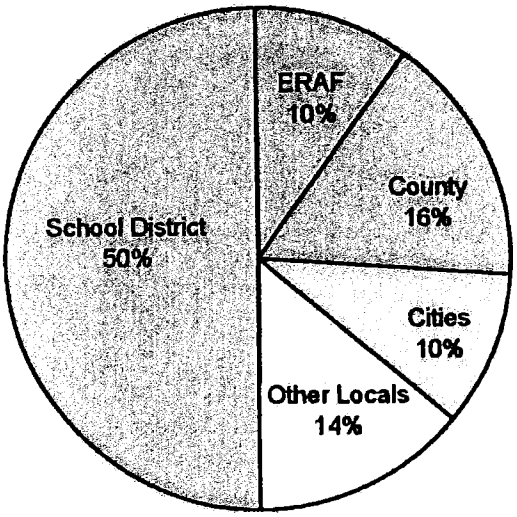
COLANTUONO & LEVIN, PC

By: _____
Holly O. Whatley
Attorneys for Plaintiffs and Appellants Below, City of Alhambra, et al.

The Relationship Between Revenue Allocations and PTAF



Share of Property Tax Revenue



Allocated Share of PTAF
(County bears its proportionate share plus share for ERAF and local schools which are exempt; everyone else bears their proportionate share)

As this chart reflects: (i) cities and local jurisdictions other than counties are responsible for the pro rata share of PTAF allocated to them, while (ii) counties remain responsible for the PTAF associated with property tax revenues allocated to them, to schools and to the ERAF (hence, the same green color for all three slices of the pie). Although the percentages in this chart are not exact, they approximated reality for counties across this State as of about 2001, as our Legislature already has found. (Section 95.35(a) [finding that, on average, counties were paying for 73% of PTAF, while receiving only 19% of available property tax revenues].) That would change.

F. Legislative Gymnastics Earlier This Decade

The statutory scheme for the collection of property and other tax revenues has been amended many times, often to provide a temporary fix for an immediate budget problem. This dispute arises from such a fix — or, to be precise, a series of related fixes.

1. The "Triple Flip"

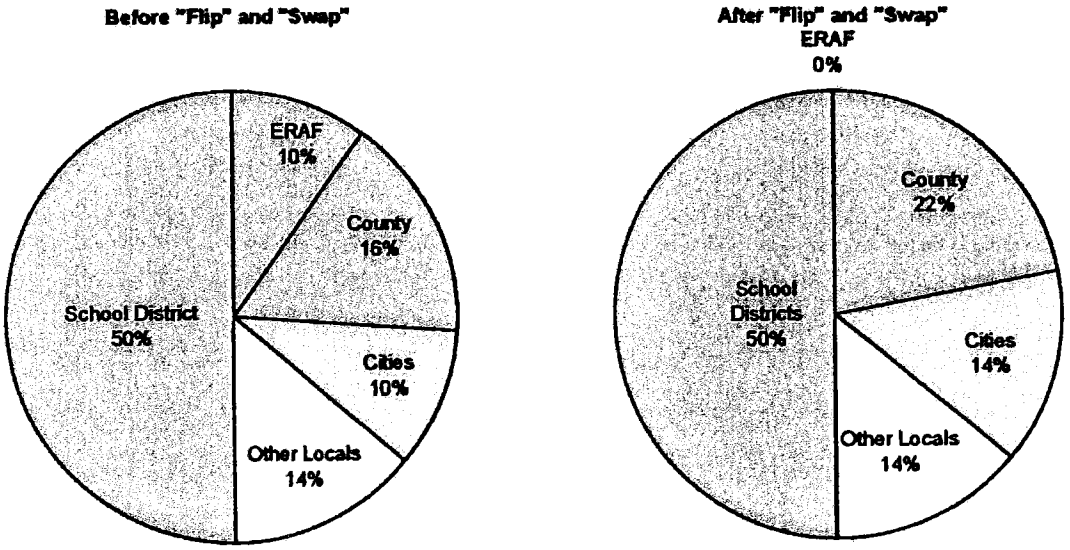
During the 2003-2004 fiscal year, the State provided for a portion of sales tax revenues that previously had been credited to the general funds of cities and counties to be allocated ("flipped")

Section 96.1(a) Base Amount	$ **********
PLUS Annual Tax Increment (R&T 96.5)	**********
SUBTOTAL	$ **********
MINUS Adjustments Required By Article 3	
ERAF Adjustment	$ *********
Minus Amount Retained Under Triple Flip	(*********)
Minus Amount Retained Under VLF Swap	(*********) **********
EQUALS TOTAL ALLOCATED REVENUES	$ **********

Pictorially, the effect of applying the Triple Flip and VLF Swap would look like this:[9]

The Impact of R&T 97.68 and 97.70 on Property Tax Revenue Allocation

Less Goes to ERAF, While More Goes to Local Government



Although ERAF still exists as an account, as a result of R&T Sections 97.68 and 97.70, in most counties (including L.A. County) property tax revenues all are consumed with the "Flip" and "Swap"

As indicated above, the practical effect of the Triple Flip and the VLF Swap in this County has been to consume all property tax revenues that previously would have been allocated to the ERAF — i.e., all revenues that historically would have gone into the ERAF are instead allocated out to Petitioners and other local jurisdictions pursuant to the Triple Flip and VLF Swap. As such, in Los Angeles County, the ERAF essentially now exists in name only. (Aikens Decl., ¶¶ 4-6.) But, the larger point of

[9] Note that the VLF Swap and Triple Flip affect only cities and counties. Thus, the percentages of revenues allocated to other local entities do not change.

all this is that all of these adjustments are adjustments contemplated by section 96.1, which in turn feeds into the PTAF allocation required by section 95.3.

3. Rev. & Tax Code Section 97.75

One more Legislative fix is relevant here. Necessarily, the Triple Flip and VLF Swap would impose some additional administrative costs that, absent a clear mandate to the contrary, would have been borne by the County to its detriment. Consequently, the Legislature passed Section 97.75 to allow the County to recoup its costs of administration (after a two year exemption). The statute provides:

> 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.***

The bolded words will be critical to the outcome of the case.

G. Summary Of The Instant Dispute

The instant dispute centers upon the meaning of section 97.75 — and, from the County's perspective, the language bolded immediately above. The parties' positions are as follows:

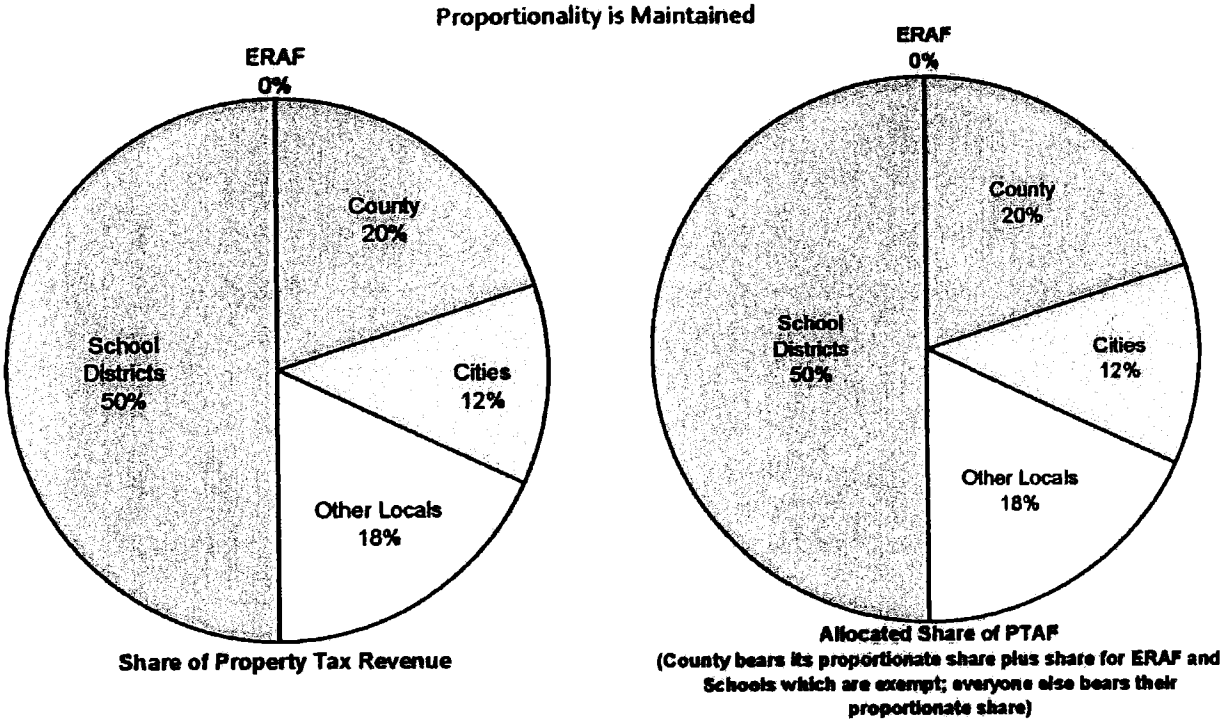
1. The County's Position

The County's position is straightforward: (i) as our Legislature has determined, it would be unfair to saddle the County with a disproportionate share of PTAF; and (ii) for that reason, all local jurisdictions (other than schools or ERAFs) must bear their pro rata share of PTAF attributable to tax revenues assessed, collected and allocated by the County. And, as reflected in the picture below, under the methodology being challenged by Petitioners, all that is happening is that: (i) Petitioners are bearing their pro rata share of PTAF (and no more), as the Legislature intended; while (ii) by virtue of section 95.3's exemption for schools and ERAF, the County still bears a disproportionate share of PTAF.

Having Petitioners bear their pro rata share of PTAF is fully consistent with legislative intent and the statutory scheme; conversely, there is no way to read the statutory scheme as supporting the outcome Petitioners lobby for here. Indeed, whether the Court were to read Petitioners' favorite statute (section 97.75) broadly or narrowly, it necessarily must conclude that the County is entitled to recoup from Petitioners the PTAF associated with the additional property tax revenues now being allocated to them.

Pictorially, the County's position looks like this:

County's View of PTAF Allocation in Light of "Flip" and "Swap"



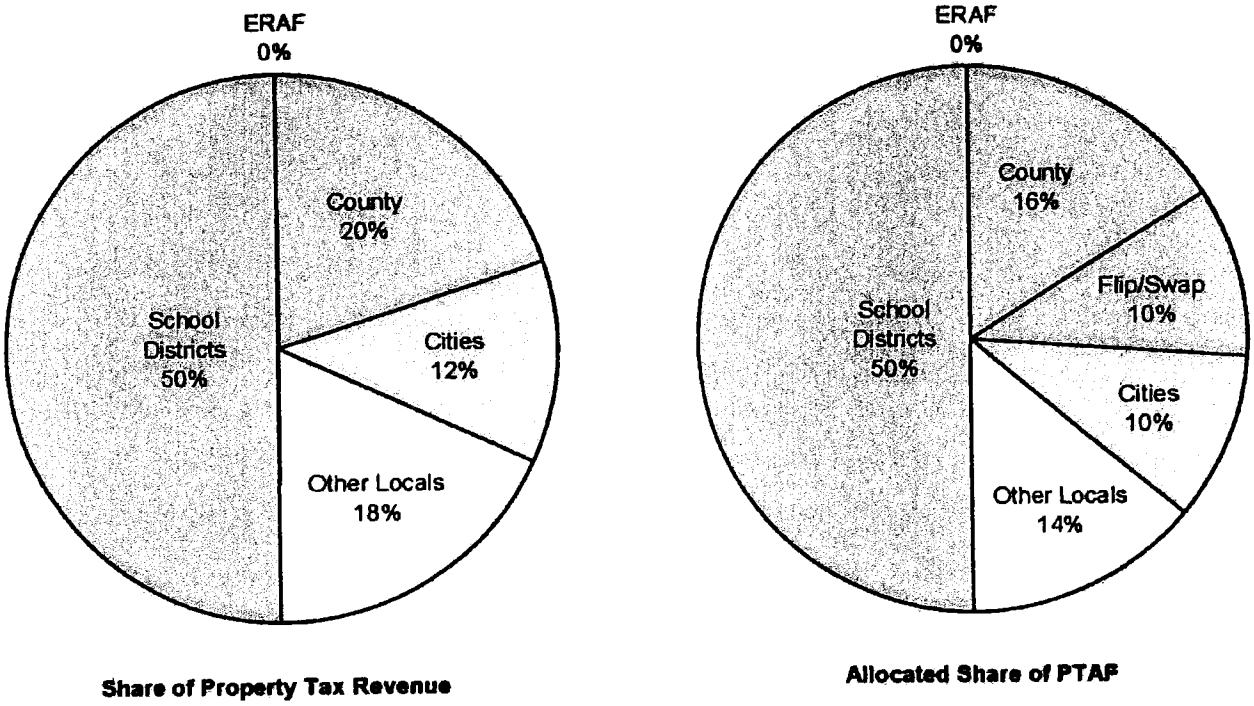
2. Petitioners' Position

Petitioners' position also can be simply stated: Although (i) they are receiving more revenues today than they would have without the Triple Flip and VLF Swap — tens of millions of dollars more, and (ii) it has been the law since the early 1990s that all local jurisdictions and agencies (other than schools and ERAFs) must pay the pro rata share of PTAF, Petitioners simply do not want to pay their pro rata share of PTAF. Instead, they want to foist such costs on the County (which already is bearing its full pro rata share, and then some). As explained above and below, to support this outcome, Petitioners ask the Court to (i) focus on only a single statute, and (ii) then read that statute beyond reason.

Here, pictorially, is the outcome Petitioners urge:

City's View of PTAF Allocation in Light of "Flip" and "Swap"

Proportionality is Destroyed



H. SB 1096 Guidelines

The issue of how to properly account for the PTAF in issue here has been the subject of considerable discussion, and even has resulted in the promulgation of Uniform Guidelines prepared by the Accounting Standards Committee of the California State Association of County Auditors, working in collaboration with other interested parties, including the Office of the California State Controller and the California League of Cities ("League").[10] (The Guidelines are Exhibit A to the Stipulation of Facts submitted to the Court.)

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[10] According to its website (www.cacities.org), "The League of California Cities is an association of California city officials who work together to enhance their knowledge and skills, exchange information, and combine resources so that they may influence policy decisions that affect cities." Each and every Petitioner has strong representation with the League. (See Aguillon Decl.)

More importantly, legislative history confirms that these very statutes were intended to pass into law an agreement "by the Governor and the League of California Cities and the California State Association of Counties" — i.e., ***the very drafters of the SB 1096 Guidelines***. (See RJN, Ex. 5 [concurrence to AB 2115 confirming that AB 2115 was intended to make "technical corrections and clarifications to SB 1096," and that the "intent of SB 1096 was to allocate the cities' contributions in the manner agreed to by the Governor and the League of California Cities and the California State Association of Counties. In that agreement, the reduction to each city generally is in proportion to its share (compared with the statewide total for all cities) of sales tax, property tax, and VLF, with each revenue source weighted equally."].) Plainly, the SB 1096 Guidelines are (i) consistent with the wording of R&T section 97.75, and (ii) of relevance here.

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 December 17, 2010, I served the document(s) described as **ANSWER BRIEF ON THE MERITS** 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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San Francisco, CA 94102-7303

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Floor 2, N. Tower
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for Delivery to Hon. James Chalfant
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Hon. Dzintra Janavs (Ret.)
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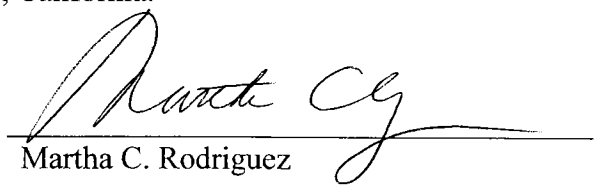
Executed on December 17, 2010 at Los Angeles, California.



Martha C. Rodriguez