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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF ALHAMBRA, et al.,

Plaintiffs and Appellants

v.

COUNTY OF LOS ANGELES, et al.,

Defendants and Respondents

PETITION FOR REVIEW

Of 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 Chalfant, Presiding
[By C.C.P. § 638 Reference to the Hon. Dzintra Janavs (Ret.)]

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COUNTY OF LOS ANGELES, ET AL.

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INTRODUCTORY STATEMENT

California counties are obligated to assess, collect and allocate property tax revenues for the benefit of all local agencies and jurisdictions entitled to receive them. Because this obligation has imposed an "unfair and disproportionate . . . financial burden," the Legislature has mandated, since 1990, that counties are entitled to deduct from allocated revenues a jurisdiction's or agency's pro rata share of such costs (commonly called property tax administrative fees or "PTAF"). (Rev. & Tax. Code, § 95.3.)[1]

There is only one exception to this rule, and it evolved in the years immediately following enactment of the original recoupment statute. The exception is for school funding, which includes the so-called Educational Revenue Augmentation Fund ("ERAF"), into which the State shifted part of certain local jurisdictions' and agencies' tax shares to offset the State's funding obligation for education. (*Id.*)

In 2004, the Legislature gave cities larger property tax shares at the expense of schools, through the implementation of two property tax transactions commonly known as the "Triple Flip" (section 97.68) and the "VLF Swap" (section 97.70). Collectively, the statutes (i) took sales tax and vehicle license fees cities previously had received, and (ii) gave cities additional property tax shares from revenues that otherwise would have gone into ERAFs.

The Legislature also adopted section 97.75 to authorize counties, beginning with the 2006-07 fiscal year, to recoup from cities the cost of "services under" the Triple Flip and VLF Swap statutes. Section 97.75 did not define what the Legislature viewed those "services" to be. Nor did it mention section 95.3, which the trial court and Court of Appeal both recognized permitted the County to recoup more PTAF from cities in proportion to the larger property tax shares now being allocated to them.

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[1] All statutory references are to the Revenue & Taxation Code.

ISSUE PRESENTED FOR REVIEW

Does section 97.75 implicitly repeal section 95.3's requirement that each city is responsible for the pro rata share of PTAF associated with all property tax revenues it receives and, in effect, impliedly give the cities' new tax shares the same PTAF exemption granted to schools expressly?

A highly experienced trial judge answered "No."[2] A highly experienced appellate panel answered "Yes." For reasons explained briefly below, the Court of Appeal has erred and, in effect, rewritten section 97.75. Regardless of the ultimate outcome, this important issue should be reviewed and settled by this Court now.

WHY REVIEW SHOULD BE GRANTED

This is the lead case presenting a common claim affecting virtually every city and county in California. Similar claims (and, in at least one instance, a lawsuit) have been asserted across the State and are trailing in the wake of this case. The stakes involved are far too high for other counties to acquiesce in a mistaken appellate ruling. Inevitably, the same legal theories and defenses will be brought and pursued through superior and appellate courts across the State. Each impending new suit carries the possibility for a different interpretation and a different outcome. Each conflicting decision will, in turn, bring wasteful expense and uncertainty. Granting this Petition would prevent such waste, promote uniformity of decision, and settle an important question of law that affects cities and counties throughout the State.

The stark financial consequences of an erroneous decision underscore the importance of this case.[3] In this time of fiscal crisis — with inevitable State

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[2] Precisely because of the importance of the issue, the parties stipulated below to have the case heard by reference to the Hon. Dzintra Janavas (Ret.), a respected and highly experienced Los Angeles Superior Court writs and receivers judge.

[3] For example, Los Angeles County faces more than $60 million in potential repayment exposure for prior years and lost funding on a go forward basis. Such

pressure on local revenues — counties have no ability to replace lost recoupment dollars, much less cover the spate of refund claims that will follow if this Decision is allowed to stand. Further, depriving counties of the resources needed to adequately fund an efficient property tax administration system ultimately will harm every recipient local agency and jurisdiction, because proper funding is the key to robust revenue collection. Our Legislature recognized this long ago, when it passed one of many statutes designed to enhance property tax funding and expressly noted a "significant and compelling state financial interest in the maintenance of an adequately funded system of property tax administration." (Section 95.35(a).)[4]

In sum, not only is the Court of Appeal's Decision erroneous (for reasons we shall explain below), but it sanctions dubious policy that, unless corrected now, will harm all concerned, including, in the long run, the plaintiff cities themselves. Review should be granted to resolve this question of widespread public importance, and to establish a uniform rule applicable to all cities and counties in this State.

BACKGROUND AND STATEMENT OF THE CASE

A. Property Tax Collection, The Impact Of Proposition 13, And Emergence Of The Longstanding Rule Of Pro-Rata Recoupment

Historically, counties had limited means to recoup PTAF from the various entities benefiting from counties' assessment, collection, and allocation efforts. Prior to the adoption of Proposition 13 in 1978,[5] this limitation imposed no burden because counties were free to set countywide property tax rates at a level sufficient

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a blow would both aggravate the County's current fiscal crisis and severely handicap tax administration.

[4] The State has a constitutional obligation to fund education, and schools are the largest recipient of property tax revenues. Thus, every property tax dollar allocated to schools frees a dollar otherwise due schools from the State's General Fund.

[5] Cal. Const., art. XIIIA.

to enable them to recoup administration costs from the taxpayers countywide. With Proposition 13's constitutional cap on the amount of property tax that could be collected, however, the counties' ability to recoup PTAF vanished, even though property tax administration was becoming increasingly burdensome and complex.[6]

Recognizing the unfairness of this situation, the Legislature, in 1990, passed a general recoupment rule that, with an exception for school entities, still is in place today. (Section 95.3.) In creating recoupment authority, the Legislature expressed its intent "to recognize that since the adoption of Article XIIIA of the California Constitution by the voters, county governments have borne an unfair and disproportionate part of the financial burden of assessing, collecting, and allocating property tax revenues for other jurisdictions and for redevelopment agencies." (Section 95.3(e).)

In operation, section 95.3 does three things. First, section 95.3(a) provides that the PTAF responsibility for each individual agency or jurisdiction is its percentage share of total countywide property tax revenues.[7] Next, Section 95.3(b) mandates that, with the exception of funds earmarked for schools, each recipient's cost share is deducted from the property tax revenues otherwise allocable to it. Finally, section 95.3(d) mandates that every dollar recouped must fund property tax administration. But, because property taxes allocated to schools do not contribute recoupment, counties always pay far more than their proportionate share of PTAF, as the Legislature has recognized and lamented.

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[6] 1 JA 46 [Stip. No. 6]; 3 JA 547. (Citations to "__ JA __" are to the volume and applicable page numbers of the Joint Appendix below; citations to "RB" are to the Respondent's Brief; a copy of the Court of Appeal's decision ("Dec.") is attached a the end of this Petition.)

[7] As explained in the Respondent's Brief below, and as the Court of Appeal agrees, PTAF recoupment is driven by the post-Proposition 13 tax share scheme pursuant to section 96.1, which serves as the master statute. (RB at 9-19; Dec. at p. 4.)

(Section 95.3(b)(2); see also section 95.35(a) [quantifying disproportionate burden].)

B. The Exemption Of PTAF Recoupment For Taxes Devoted To School Funding

As mentioned above, the Legislature ultimately chose to exempt from PTAF recoupment those revenues devoted to funding education. The reason for that exemption is apparent: Every dollar of PTAF recoupment from schools is a dollar the State must replace out of its General Fund. The evolution of the recoupment rule (and its exemption) confirms the State's fiscal motivation.

- As originally enacted in 1990, the recoupment rule was absolute: Every local agency or jurisdiction receiving property tax revenues, including schools, was obligated for its pro rata share of PTAF. (Stats. 1990, ch. 466, Section 4 (SB 2557) [amending Rev. & Tax. Code section 97].)[8]
- In 1991, in an emerging recessionary budget crisis, the Legislature exempted schools from PTAF recoupment. (Stats. 1991, ch. 75, Section 1 (SB 188); ch. 333, Section 3 (SB 282).)
- In 1992, with budget problems worsening, the Legislature began requiring local governments and agencies to shift part of their allocated property tax shares to the Educational Revenue Augmentation Fund (ERAF) to be used to offset the State's funding obligation for education. Attempting to minimize the harm to property tax administration, however, the Legislature: (i) provided that counties still could recoup from schools the PTAF associated with revenues allocated to the ERAF; and (ii) "found" that such recoupment would not impact the State's financial obligation for school funding (i.e., that the State would not have to make up the PTAF dollars recouped on ERAF funds). (Stats. 1992, ch. 697, Section 14 (SB 1559).)

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[8] See also *Arcadia Redevelopment Agency v. Ikemoto* (1993) 16 Cal.App.4th 444, 454 [quoting legislative findings clarifying original recoupment rule and legislative history].

- In 1993, with the crisis worsening, the Legislature did away with recoupment for funds allocated to ERAFs. (Stats. 1993, ch. 66, Section 35.5 (SB 399).)
- In 1994, the Legislature moved the recoupment rule to section 95.3. (Stats. 1994, ch. 1167, Section 6 (AB 3347).)
- Finally, in 1996, the Legislature amended section 95.3 to confirm that property tax revenues allocated to ERAFs were exempt from PTAF recoupment — although the statutory definition of "school entities"[9] already compelled that conclusion. (Stats. 1996, ch. 1073, Section 1 (AB 1055).) The Legislature acknowledged that the underfunded property tax administration system resulting from its exemption for schools would be "to the great detriment of both the counties and taxpayers." (*Id.*) And, recognizing the unfairness to counties, the Legislature promised to rectify at least a part of that unfairness in the future. (Section 95.3(b)(2).)

Through these various enactments, the Legislature's intent is clear, unmistakable and express. It was (and is) vitally interested in adequately-funded property tax administration systems. It exempted schools (and later ERAF school funding) from PTAF recoupment grudgingly and in baby steps. It did so not because it was hostile to recoupment, but because the burden of funding amid never-ending budget shortfalls made it expedient to create the exemption. Even then, the Legislature was aware of the adverse consequences for property tax administration, and stated an express intent to enhance funding through future legislation.

C. More Recent Statutes Reiterate The Legislature's Pro-Recoupment Intent

With the exception of its exemption for school entities, every act taken by the Legislature since 1990 has enhanced funding for property tax administration.

[9] Section 95(f).

In 1995, the Legislature passed section 95.31 to authorize loans to fund property tax administration. (See also section 95.31(e) [loans shall not reduce amounts county is entitled to recoup under section 95.3].) In 2001, the Legislature passed section 95.35 to provide relief for counties in the form of grants. The Legislature found and declared that:

> ***[T]here is a significant and compelling state financial interest in the maintenance of an adequately funded system of property tax administration.*** . . . The Legislature also finds and declares that the State-County Property Tax Loan Program contained in Section 95.31 was in recognition of the state's financial interest, and ***the success of that 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 . . .[to] ***maintain the commitment to efficient property tax administration.***

(Section 95.35(a) [emphasis added]; see also section 95.35(f) [grants shall not reduce amounts county is entitled to recoup under section 95.3].)

In other words, the Legislature recognized that there is a direct correlation between the amount of funding for property tax administration and the amount of property tax revenues collected, with better funding yielding higher revenues. And, in point of fact, empirical studies immediately predating this statute have concluded that, on average, every additional $1 of funding for property tax administration yields in the range of $11 to $14 in additional revenues collected.[10]

D. Triple Flip, VLF Swap, and Additional Recoupment

The PTAF for which local jurisdictions have been responsible has ebbed and flowed in direct proportion to the amount of property tax revenues allocated to

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[10] 2 JA 386. Although the accuracy of these findings was undisputed, the trial court below ruled such studies were irrelevant.

them. In 1990, when the Legislature first provided for recoupment of PTAF, there was no such thing as an ERAF, and allocated revenues and PTAF both were proportionally higher. When ERAFs were established, a portion of the property tax revenues allocated to some local jurisdictions was diverted to school funding, and allocated revenues and PTAF recoupment both decreased proportionally.

In reallocating property tax revenues away from ERAFs pursuant to the Triple Flip and VLF Swap, the Legislature essentially has come full circle, restoring to cities and counties property taxes that (i) originally had been allocated to local agencies and subject to recoupment, but (ii) later had been diverted to ERAFs for school funding (and, hence, exempt from recoupment). It is these legislative changes that give rise to the instant dispute.

The "Triple Flip." During the 2003-2004 fiscal year, the State took a portion of sales tax revenues that had been levied by cities and counties and allocated ("flipped") them to fund a borrowing — economic recovery bonds — whose proceeds went to the State. In order to compensate for that revenue loss to local government, the State provided that each city and county receive property tax revenues that otherwise would have gone to the ERAF (the second "flip"), and then replaced from the State's General Fund (now augmented by bond proceeds) the funds that local schools no longer received from the ERAF (the third "flip"). (Section 97.68.)

The "VLF Swap." During fiscal year 2004-2005, the Legislature provided for another swap of revenues. This time, the Legislature: (i) permanently reduced the tax rate on vehicle license fees constitutionally dedicated to counties and cities; and (ii) replaced the revenue shortfalls with property tax revenues that otherwise would have been gone into the ERAF. (Section 97.70.) The formula for the substituted revenues began by approximating the lost VLF revenues, but in practice necessarily increased revenues for most counties and cities.[11]

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[11] See 2 JA 450-457 [¶¶ 8-19 & Exs. 1-2].

As a consequence of these statutes, in most counties (including Los Angeles County), ERAFs now exist in name only, as dollars that would have been allocated to ERAFs flow instead to cities and counties.[12] Thus, the State returned to where it began in 1990: It has restored to local agencies property tax revenues that (i) local agencies had received before the Legislature created ERAFs, and (ii) originally had been fully subject to PTAF recoupment.

Rev. & Tax Code Section 97.75. We arrive at the statute at the center of this mandamus proceeding. When it passed the VLF Swap, the Legislature also passed Section 97.75, which provides in full:

> 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 plaintiff cities allege, and the Court of Appeal now has concluded, that this statute forever forbade the County from recouping the underlying costs of assessing and collecting the increased tax shares now allocated to the cities.

E. Counties' Interpretation and Implementation of Section 97.75

As the trial court below later would recognize, there were two possible ways to read section 97.75, depending upon how one interpreted the undefined term "services." On the one hand, it was possible to interpret the word "services" as intending to deal only with the ***incremental, new*** services associated with accounting for the Triple Flip and VLF Swap (which even the cities and Court of

[12] 2 JA 448-449 [¶¶ 4-6].

Flip and VLF Swap amounts to approximately $35,000 per year. (Dec. at p. 9.) This disparity explains the motivation for this suit.

F. The Trial Court Rules Against The Cities, And The Court of Appeal Reverses

Through this mandamus proceeding, the cities alleged that section 97.75: (i) plainly forbade the County from recovering this $5 million not just for the first two fiscal years (the only years as to which section 97.75 prohibited recoupment of anything), but forever; and (ii) after the first two fiscal years, allowed the County to recover just the $35,000 incremental cost required to account for the additional tax shares being allocated under the Triple Flip and VLF Swap.

In rejecting the cities' claim and holding that the County had faithfully followed the law, the trial court began by recognizing that, had Section 97.75 not been enacted, section 95.3 would have allowed the counties to recoup all PTAF associated with the additional tax shares allocated to cities under the Triple Flip and VLF Swap statutes.[14] Turning to section 97.75, the trial court noted the ambiguity in the undefined term "services" and ultimately concluded that, through section 97.75, the Legislature intended to set forth the rules regarding recoupment of all PTAF associated with the cities' additional new tax shares.[15] The trial court then: (i) found nothing demonstrating a legislative intent either to forbid PTAF recoupment beyond the two years expressly identified in section 97.75 or to limit recoupment to incremental costs; and (ii) held that it was powerless to rewrite the statute to supply what the Legislature had seen fit to omit.[16]

The Court of Appeal read the same statute very differently and reversed. The bulk of the appellate decision is devoted to disagreeing with the trial court's conclusion that section 97.75 was concerned with the cost of all services necessary

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[14] 3 JA 574.

[15] 3 JA 572-573.

[16] 3 JA 574-575.

Appeal agree could be recovered beginning with fiscal year 2006-07). With this interpretation, though, it follows that section 97.75 would be irrelevant to the issue of whether the County could recoup the cost of the ***traditional, underlying*** services associated with assessing and collecting the additional revenues being allocated to the cities under the Triple Flip and VLF Swap. Instead, the issue of recoupment of the cost of such ***underlying*** services would continue to be governed by section 95.3, which would permit recoupment of such costs in all fiscal years.

On the other hand, it was possible to interpret section 97.75 as intending to embrace all "services" associated with collecting the additional property tax revenues being allocated to cities under the Triple Flip and the VLF Swap — including, in addition to the incremental new services required to allocate the new tax shares, and the underlying services required to assess and collect the tax shares being allocated. Under this interpretation, counties would be forbidden from recouping ***any*** PTAF associated with those revenues for the first two fiscal years, but would be authorized to recoup ***all*** associated PTAF for fiscal year 2006-07 and each fiscal year thereafter.

The California State Association of County Auditors Accounting Standards Committee issued Uniform Guidelines to implement section 97.75 and related statutes. The Guidelines adopted the latter, "all services," interpretation, and Los Angeles County (along with virtually all other counties across the State) have followed them.[13]

The total actual cost associated with assessing and collecting the additional tax shares allocated to cities under the Triple Flip and VLF Swap amounts to approximately $5 million per year for the 47 plaintiff cities alone. Conversely, the cost of providing incremental new services to technically account for the Triple

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[13] 1 JA 94-95 [Appendix A, Schedules K1 & K2]; 2 JA 461-462 [Linschoten Decl.]; 2 JA 449-450 [¶ 7]; see also Dec. at p. 8 [recognizing that County was acting consistently with Guidelines].

to assess, collect and allocate the cities' additional tax shares under the Triple Flip and VLF Swap (as opposed to simply the incremental new apportionment services). Had the Court of Appeal stopped there, the County would not have pursued this Petition. But, the Court of Appeal went on to conclude that, by providing express authority for counties to recover their incremental new costs from cities, section 97.75 somehow plainly, permanently and impliedly trumped section 95.3 recoupment of the underlying costs associated with assessing and collecting the cities' additional tax shares. It is that further conclusion that the County asks this Court to review.

ARGUMENT

Recognizing that full merits briefing is not called for here, the County limits its points to three themes: logical consistency; harmony with the statutory scheme; and the Decision's policy implications.

A. Every Consistent Interpretation Of Section 97.75 Supports The County's Practices.

To reach the correct conclusion in this case, it is important first to assess what section 97.75 does — and, more importantly, does not — provide. Section 97.75 is a two-sentence statute that provides in its entirety:

> 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.

(Emphasis added.) In simplest terms, the first sentence provides that, for two fiscal years, counties may not recover their actual costs for the "services" in

question, whatever those "services" might be, even if the cost of such "services" otherwise would be recoverable under different statutes. The second sentence provides that for each fiscal year thereafter, the actual cost of such "services," whatever they might be, may be recovered. But — and this is critical to appreciating where the Court of Appeal erred — there is no third sentence or additional language purporting to address the treatment in any year of the cost of "services" that fall outside the scope of section 97.75.

Obviously, if one were to accept the trial court's interpretation that section 97.75 covers the cost of ***all*** "services" necessary to assess, collect and allocate the cities' additional tax shares under the Triple Flip and the VLF Swap, it is inescapable that: (i) the County has faithfully followed the law; and (ii) section 97.75 (as opposed to some other statute) expressly authorizes recoupment of all PTAF associated with the cities' additional tax shares for the fiscal years in question. However, even accepting the Court of Appeal's interpretation of section 97.75 as embracing only the new, incremental "services" required to account for the additional tax shares, it simply does not follow that the County is forbidden from recovering the cost of the underlying services necessary to assess and collect the revenues in question under another statute.

Instead, accepting the Court of Appeal's reading of "services," the only logical conclusions are that: (i) section 97.75 is irrelevant to the issue at hand; and (ii) the controlling statute is section 95.3, which authorizes recoupment of the underlying PTAF associated with these revenues. To elaborate:

- Under the first sentence of section 97.75, the County, for the two fiscal years in question, would be forbidden from recovering the cost of the ***incremental new services*** required to account for the cities' additional tax shares under the Triple Flip and the VLF Swap;
- Under the second sentence of section 97.75, the County, for all other fiscal years, would be authorized to recover the actual cost of the ***incremental new services***;

- Neither sentence of section 97.75 concerns recovery of the cost of the ***underlying services*** necessary to assess and collect the additional revenues being allocated to cities under the Triple Flip and VLF Swap;
- The relevant statute for all fiscal years would remain section 95.3, which (i) nowhere exempts the cities' additional tax shares from responsibility for recoupment; and (ii) by its terms, would authorize recoupment of the underlying costs in each and every fiscal year.[17]

In other words, the Court of Appeal's interpretation of the "services" embraced by section 97.75 should have led that Court to affirm (albeit on different grounds than the ones articulated by the trial court).

B. Review Should Be Granted To Interpret Section 97.75 In Light Of The Entire Relevant Statutory Scheme.

To frame the issue in terms of fundamental rules of statutory interpretation, review should be granted for this Court to interpret section 97.75 in context and to determine whether the Court of Appeal impermissibly rewrote it.

1. The Court Did Not Interpret Section 97.75 In Context.

Throughout its decision, the Court of Appeal emphasized that, because it had found section 97.75 to be unambiguous, the Court could not interpret section 97.75 in harmony with other related statutes.[18] Respectfully, the law is to the contrary. (See, e.g., *People v. Hull* (1991) 1 Cal.4th 266, 272 ["A statute must be construed in the context of the entire statutory system of which it is a part, in order

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[17] See 3 JA 574 [trial court recognizing this effect]; Dec. at p. 4 [same].

[18] See, e.g., Dec. at p. 13 ["Looking at the words of Revenue and Taxation Code section 97.75 alone"], and fn. 6 ["we do not consider . . . the only relevant reference found in the legislative history"], 15 ["Stated differently, section 97.75 is a stand-alone provision" authorizing recovery of incremental costs "only"], 15 [rejecting argument that section 97.75 must be "read [] in the context of the statutory scheme for property tax administrative fees as a whole" and "the Legislature intended that section 97.75 stand alone"], 16, fn. 8 ["we should not refer to the older statutes where the newer one, section 97.75, can be read by itself"].

to achieve harmony among the parts."]; *Jurcoane v. Superior Court* (2001) 93 Cal.App.4th 886, 893 ["undisputed rule" of review is that courts "must read statutes as a whole, giving effect to all their provisions, neither reading one section to contradict others or its overall purpose, nor reading the whole scheme to nullify one section. . . . In this regard, all parts of a statute should be read together and construed in a manner that gives effect to each, yet does not lead to disharmony with the others"].)

By concluding that it must not look beyond section 97.75, the Court of Appeal reached conclusions that cannot be squared with the rest of the scheme. The Legislature's pro-recoupment stance is detailed above, but other inconsistencies emerge. For example, as passing support the Court of Appeal observed that the Triple Flip and VLF Swap allocations "are made from property taxes that would otherwise have been allocated to the County's ERAF (§ 97.68, subd. (a))," and, if so, had been exempt from PTAF recoupment. But, examining the complete history confirms that the undisputed purpose of the exemption from recoupment for school funding — to spare the State budget — has no application as to revenues allocated to cities.

Review should be granted to interpret section 97.75 in light of the entire statutory scheme.

2. Review Should Be Granted To Determine Whether The Court of Appeal Has Rewritten Section 97.75.

Neither section 97.75 nor its sparse legislative history contains so much as a syllable reflecting an intent by the Legislature to depart from the "pro-recoupment intent" it has staked out in statute after statute since 1990. Indeed, as the Court of Appeal recognizes, the statute does not even reference section 95.3's recoupment authority, much less overrule it.[19]

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[19] Dec. at pp. 16-17.

Once this is recognized, the Court of Appeal has done precisely what its Decision says it could not do — namely, "write into [section 97.75] by implication express requirements which the Legislature itself has not seen fit to place in the statute." (Dec. at p. 14, citing and quoting *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.) More specifically, the Court of Appeal turned a simple, ***two-sentence*** statute supposedly dealing only with incremental, new services into a ***three-sentence*** statute that: (i) first, somehow broadly (if impliedly) forbids recovery of all services necessary to assess, collect and allocate the revenues in question in all years — even though section 97.75, in the Court of Appeal's view, has a more restrictive focus; and (ii) then states the rules for recovery of the cost of incremental new "services" it expressly addresses.[20] In short, the Court of Appeal has redrafted and added to section 97.75's first clause as follows: "Notwithstanding ~~any other provision of law~~ **Section 95.3, counties shall not include the property tax revenues allocated to cities under Sections 97.68 and 97.70 in calculating the cities' administrative cost apportionment factor** . . . ."

It is error to impliedly repeal an earlier statute where it is possible to interpret the two statutes in harmony with each other — particularly where the earlier statute has been judicially construed, generally understood and long relied upon. (*Hammond v. McDonald* (1939) 32 Cal.App.2d 187 [repeal by implication disfavored under these circumstances; presumption is against such a construction; "where there are two laws upon the same subject, they will, if reasonably possible, be so construed as to maintain the integrity of both, the courts being bound to uphold the prior act if the two may well subsist together"]; see also *In re M.S.* (1995) 10 Cal.4th 698, 726 [rejecting argument for implied repeal]; *Briggs v. Eden*

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[20] Over and over, the Court of Appeal uses the word "only" to characterize the statute as purporting to identify the "only" types of services as to which recovery is allowed at any time. (See, e.g., Dec. at p. 14 ["counties may only recover"] and 15 ["administering the Triple Flip and VLF Swap only"].) But, the word "only" never appears in section 97.75.

Council for Hope & Opportunity (1999) 19 Cal.4th 1106, 11189-1119 ["every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect" [internal quotations and citation omitted].) Review should be granted to determine whether such an error has occurred here.

The fact that the Legislature presumably knew of the existence of section 95.3 and yet chose to enact a separate section 97.75, does not mean, as the Court of Appeal concluded, that the Legislature must have implicitly intended to trump section 95.3.[21] Initially, to conclude that section 97.75 was intended to affect section 95.3 and its recoupment rules for the underlying PTAF associated with collecting the revenues in question, requires that "services," in section 97.75, included the underlying PTAF-generating services embraced by section 95.3. But, if this is so, then section 97.75 expressly authorized recovery of the cost of such services after the first two fiscal years; and the County has followed the law.

Regardless, there are entirely benign reasons why the Legislature might choose to enact a separate statute. Consider:

- Section 95.3 deals with paying for processes of general benefit to every local government receiving property tax revenues. In contrast, the benefits of property tax allocations under the VLF Swap and Triple Flip flowed only to cities (and counties), and no other local jurisdictions; and
- Section 95.3 permits recoupment in every year. In contrast, section 97.75 forbade recoupment for the cost of certain "services" for two fiscal years — the same period in which cities and counties *also* suffered separate property tax reductions (further ERAF shifts) of $350 million per year. (Section 97.70(b)(2)(B)(4) [cities]; section 97.71(a)(2) [counties].)

Plainly, to forbid recoupment of at least some costs for two years (as section 97.75 does) required ***new statutory language somewhere***. In light of the

[21] Dec. at pp. 14-15.

differences noted above — and especially if one interprets section 97.75 as dealing only with incremental new services — it made perfect sense to put such language in a separate statute. Indeed, if the Legislature simply had let section 95.3 operate by its terms, not only would the County would have been entitled to full recoupment in fiscal years 2004-05 and 2005-06, but the cost of incremental new "services" benefitting only cities would have been imposed on all jurisdictions.

C. Ultimately, The Court Of Appeal's Decision Will Harm Everyone.

Lastly, the Court of Appeal's Decision promotes bad economic policy that, in very short order, will harm everyone, including the cities themselves and the State of California. The reason is found in related statutes the Court of Appeal did not consider. (See section 95.35(a) [noting "significant and compelling state financial interest in the maintenance of an adequately funded system of property tax administration."].)

Simply, higher spending for property tax administration results in higher property tax collections, with every dollar spent on property tax administration yielding in the range of $11 to almost $14 in additional revenues. (2 JA 386 [reported results of studies by California State Auditor and California Institute for County Government].) Thus, because every recoupment dollar must be used solely to fund property tax administration (section 95.3(d)), every dollar of recoupment provided by cities can be expected to generate additional revenue for allocation to all recipients, including the cities and schools.

Leaving this obvious benefit aside, it is undisputed that, because cities' additional tax shares under the VLF Swap significantly exceed the VLF fees that cities otherwise would have received, cities come out tens of millions of dollars ahead, even accounting for all the additional PTAF recoupment they dislike. (2 JA 452 [for fiscal years 2006-2008, 47 plaintiff cities came out ahead by more than $85 million].)

CONCLUSION

The issues raised by this Petition are of widespread public importance. Indeed, they impact each city, each county, and the State. Absent review to set a uniform rule, further suits and appeals — with attendant inconsistent rulings, expense and delay — inevitably will require this Court's consideration of the issues presented. The time to ensure uniformity of decision and settle these important issues of law is now.

This is especially so where, as here, the Court of Appeal's decision neglects the context, logic, and public policy that animates counties' tax administration and entitlements. To achieve the statutory harmony and logical consistency this important question demands, we respectfully urge the Court to grant this Petition.

DATED: August 13, 2010

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: _____

Scott D. Bertzyk

Attorneys For Petitioners

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies, pursuant to Rule 8.504(d) of the California Rules of Court, that the enclosed brief was produced using 13-point type, including footnotes, and contains 5,790 words, which is less than the 8,400 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: August 13, 2010

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: _____

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Attorneys For Petitioners

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CITY OF ALHAMBRA et al., Plaintiffs and Appellants, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.	B218347 (Los Angeles County Super. Ct. No. BS116375)

APPEAL from a judgment of the Superior Court of Los Angeles County, James Chalfant, Judge. Reversed and remanded with directions.

Colantuono & Levin, Michael G. Colantuono and Holly O. Whatley for Plaintiffs and Appellants.

Jarvis, Fay, Doporto & Gibson, Benjamin P. Fay and Rick W. Jarvis for The League of California Cities as Amicus Curiae on behalf of Plaintiffs and Appellants.

Greenberg Traurig and Scott D. Bertzyk; Raymond G. Fortner, Jr., County Counsel, and Thomas M. Tyrrell, Deputy County Counsel, for Defendants and Respondents.

Jennifer B. Henning for California State Association of Counties as Amicus Curiae on behalf of Defendants and Respondents.

INTRODUCTION

This appeal involves a question of first impression. We are asked to determine the proper calculation under Revenue and Taxation Code section 97.75 of the fee a county may charge local governmental entities within its jurisdiction for the services counties perform under two specifically designated tax statutes, the so-called Triple Flip (§ 97.68) and the VLF Swap (§ 97.70). Appellants (plaintiffs below), 47[1] of the 88 general law or charter cities in the County of Los Angeles, petitioned the trial court for a writ of administrative mandamus contending that defendants, the County of Los Angeles and Wendy Watanabe in her official capacity as the County's Auditor-Controller (together the County), failed to follow the law and violated a clear and plain duty in calculating the section 97.75 service fee. A referee found that the County was faithfully following the law. Petitioners appeal from the judgment adopting the referee's ruling. We conclude the statute is clear on its face and hold that the County's method of calculating its fee under section 97.75 was unlawful. Accordingly, we reverse the judgment and remand for further proceedings.

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[1] The plaintiff cities are: City of Alhambra, City of Arcadia, City of Artesia, City of Baldwin Park, City of Bell Gardens, City of Bellflower, City of Bradbury, City of Burbank, City of Calabasas, City of Carson, City of Cerritos, City of Commerce, City of Covina, City of Culver City, City of Diamond Bar, City of Gardena, City of Glendale, City of Glendora, City of Hawaiian Gardens, City of Hawthorne, City of Huntington Park, City of Industry, City of Irwindale, City of La Habra Heights, City of La Mirada, City of Lakewood, City of Lawndale, City of Lomita, City of Long Beach, City of Lynwood, City of Montebello, City of Monterey Park, City of Norwalk, City of Paramount, City of Pico Rivera, City of Pomona, City of Redondo Beach, City of Rosemead, City of San Dimas, City of Santa Clarita, City of Santa Fe Springs, City of Sierra Madre, City of Signal Hill, City of South El Monte, City of South Gate, City of West Covina, and City of Whittier. Not included as a plaintiff is the City of Los Angeles, the largest property tax-recipient of the cities in the County.

FACTUAL BACKGROUND

The parties stipulated to the following pertinent facts:

1. *One effect of Proposition 13 on counties*

Counties are responsible for, among other things, assessing and collecting ad valorem property tax revenues from assessed property within their borders. As part of their administration of the property tax system, the counties calculate and distribute to the various local governmental entities (including cities, redevelopment agencies, special districts, and counties themselves; hereinafter cities) within their jurisdiction each city's share of the property tax revenue.

Before passage of Proposition 13 (Cal. Const., art XIIIA, § 1) in 1978, counties set their property tax rates at a level that enabled them to recoup the cost to them of property tax administration. With limited exceptions not relevant here, Proposition 13 capped property tax rates to one percent of assessed value. After Proposition 13, counties continued to bear the burden of assessing, collecting, and allocating property tax revenues, but lacked a means of recovering their costs for this administration.

In 1990, the Legislature passed the first of several measures that addressed reimbursement to the counties of cities' proportionate share of the cost of property tax administration.

In fiscal year 1992-1993, the Legislature created an Educational Revenue Augmentation Fund (ERAF) in each county. The ERAF is a fund into which property tax revenue is shifted to pay for the State's constitutional responsibility to fund public education. The property taxes paid to both local schools and the ERAF are exempt from having to pay this property tax administration fee, or PTAF.

In 1994, the Legislature enacted Revenue and Taxation Code section 95.3 that, with the exception of schools and funds schools receive from ERAFs, permits counties to fairly apportion the burden of collecting property tax revenues by recovering from each city within its borders a PTAF that correlates to the property tax revenues allocated to

that city. (§§ 95.3, subd. (b)(1), 97.1.)[2] Section 95.3 provides the method for calculating an "administrative cost apportionment factor."

Generally speaking, the PTAF for a given city is computed as follows:

a. The County calculates the prior year property tax administration costs of the assessor, tax collector, assessment appeals board, and the 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.

b. The County calculates each city's proportionate share of such costs by calculating an apportionment factor from the ratio of the property tax revenue received by each city to the total property tax revenue distributed.

c. The County multiplies the administrative costs it incurred in the immediately preceding fiscal year by each city's cost apportionment factor to determine each city's PTAF. The city's annual PTAF is withheld by the County from the property tax distributions made by the County to cities for each fiscal year. (See *Arbuckle College City Fire Protection Dist. v. County of Colusa* (2003) 105 Cal.App.4th 1155, 1158, 1159, 1163 (*Arbuckle-College*).)

2. *The revenue statutes at issue here*

The three relevant revenue provisions were created nearly simultaneously. On December 12, 2003, the Legislature enacted Revenue and Taxation Code section 97.68 to be operative on March 3, 2004. (Stats. 2003, 5th Ex. Sess. 2003-2004, ch. 2, § 4.1 (Assem. Bill No. 5X 9 (2003-2004) 5th Ex. Sess.).) Seven months later in August 2004,

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[2] Revenue and Taxation Code section 95.3, subdivision (b)(1) reads: "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. For purposes of applying this paragraph for the 1990-91 fiscal year, each proportionate share of property tax administrative costs shall be deducted from those amounts allocated to the relevant jurisdiction or community redevelopment agency after January 1, 1991." (See also § 97.1.)

the Governor signed Senate Bill No. 1096, which amended section 97.68 and enacted sections 97.70 and 97.75 at issue here, all effective August 5, 2004. (Stats. 2004, ch. 211, §§ 20.5, 21, 26 (Sen. Bill No. 1096).) We describe these three provisions individually.

a. *The Triple Flip*

In 2004, California voters passed the Economic Recovery Bond Act, Proposition 57 (Gov. Code, § 99050), which authorized the issuance of bonds to preserve public education, among other things. (*Ibid.*) To fund repayment of the economic recovery bonds, the Legislature passed Revenue and Taxation Code section 97.68,[3] a temporary

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[3] Revenue and Taxation Code section 97.68 provides in part, "Notwithstanding any other provision of law, in allocating ad valorem property tax revenue allocations for each fiscal year during the fiscal adjustment period, all of the following apply:

"(a)(1) The total amount of ad valorem property tax revenue otherwise required to be allocated to a county's Educational Revenue Augmentation Fund shall be reduced by the countywide adjustment amount.

"(2) The countywide adjustment amount shall be deposited in a Sales and Use Tax Compensation Fund that shall be established in the treasury of each county.

"(b) For purposes of this section, the following definitions apply:

"(1) 'Fiscal adjustment period' means the period beginning with the 2004-05 fiscal year and continuing through the fiscal year in which the Director of Finance notifies the State Board of Equalization pursuant to subdivision (b) of Section 99006 of the Government Code.

"(2) Except as otherwise provided in subdivision (d), the 'countywide adjustment amount' means the combined total revenue loss of the county and each city in the county that is annually estimated by the Director of Finance, based upon the actual amount of sales and use tax revenues transmitted under Section 7204 in that county in the prior fiscal year and any projected growth on that amount for the current fiscal year as determined by the State Board of Equalization and reported to the director on or before August 15 of each fiscal year during the fiscal adjustment period, to result for each of those fiscal years from the 0.25 percent reduction in local sales and use rate tax authority applied by Section 7203.1. The director shall adjust the estimates described in this paragraph if the board reports to him or her any changes in the projected growth in local sales and use tax revenues for the current fiscal year.

"(3) 'In lieu local sales and use tax revenues' means those revenues that are transferred under this section to a county or a city from a Sales and Use Tax Compensation Fund or an Educational Revenue Augmentation Fund.

"(c) Except as otherwise provided in subdivision (d), for each fiscal year during the fiscal adjustment period, in lieu sales and use tax revenues in the Sales and Use Tax

measure for a revenue swap known as the Triple Flip. The Triple Flip works thusly: section 97.68 reduced the Bradley-Burns Sales and Use Tax rate paid to cities and counties by one-fourth cent. Under section 97.68, the State retains that one-fourth cent and uses it to repay State-issued economic recovery bonds (the first flip). To compensate the cities and counties for the lost revenue, section 97.68 provides that, in lieu of the one-fourth cent sales tax money, counties take an equivalent amount in property tax revenue that would otherwise have been allocated to each county's ERAF and deposit it in a Sales and Use Tax Compensation Fund set up in each county's treasury. (§ 97.68, subd. (a)(2).) The revenue deposited in the Fund is then allocated and

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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 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. [¶] . . . [¶]

"(f) This section may not be construed to do any of the following:

"(1) Reduce any allocations of excess, additional, or remaining funds that would otherwise have been allocated to cities, counties, cities and counties, or special districts pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2, clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3, or Article 4 (commencing with Section 98), had this section not been enacted. The allocation made pursuant to subdivisions (a) and (c) shall be adjusted to comply with this paragraph.

"(2) Require an increased ad valorem property tax revenue allocation to a community redevelopment agency.

"(3) Alter the manner in which ad valorem property tax revenue growth from fiscal year to fiscal year is determined or allocated in a county."

distributed by the counties to each city recipient in the county in lieu of the lost one-fourth cent sales tax revenue (the second flip). (§ 97.68, subd. (c)(1)-(c)(6).) The State replaces funds that local schools otherwise would have received from the ERAF out of the State's General Fund (the third flip).

b. *The VLF Swap*

Effective July 2004, the State permanently reduced the amount of the vehicle license fee (VLF) payable to cities and counties from 2 percent to 0.65 percent of a vehicle's assessed value. Revenue and Taxation Code section 97.70[4] replaces the lost

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[4] Revenue and Taxation Code section 97.70 reads in part, "Notwithstanding any other provision of law, for the 2004-05 fiscal year and for each fiscal year thereafter, all of the following apply:

"(a)(1)(A) The auditor shall reduce the total amount of ad valorem property tax revenue that is otherwise required to be allocated to a county's Educational Revenue Augmentation Fund by the countywide vehicle license fee adjustment amount.

"(B) If, for the fiscal year, after complying with Section 97.68 there is not enough ad valorem property tax revenue that is otherwise required to be allocated to a county Educational Revenue Augmentation Fund for the auditor to complete the allocation reduction required by subparagraph (A), the auditor shall additionally reduce the total amount of ad valorem property tax revenue that is otherwise required to be allocated to all school districts and community college districts in the county for that fiscal year by an amount equal to the difference between the countywide vehicle license fee adjustment amount and the amount of ad valorem property tax revenue that is otherwise required to be allocated to the county Educational Revenue Augmentation Fund for that fiscal year. This reduction for each school district and community college district in the county shall be the percentage share of the total reduction that is equal to the proportion that the total amount of ad valorem property tax revenue that is otherwise required to be allocated to the school district or community college district bears to the total amount of ad valorem property tax revenue that is otherwise required to be allocated to all school districts and community college districts in a county. . . .

"(2) The countywide vehicle license fee adjustment amount shall be allocated to the Vehicle License Fee Property Tax Compensation Fund that shall be established in the treasury of each county.

"(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.

vehicle license fee revenue with property taxes in a substitution referred to as the VLF Swap. As with the Triple Flip, counties take an amount of property tax revenue, otherwise required to be allocated to each county's ERAF, that is equivalent to the lost vehicle license fee revenue (§ 97.70, subd. (a)(1)(A)), and deposit that money in a Vehicle License Fee Property Tax Compensation Fund established in each county's treasury. (*Id.* at subd. (a)(2).) The counties distribute the money in this Fund to each city recipient in place of lost vehicle license fee proceeds. (§ 97.70, subd. (b)(1)(A)-(B).) The VLF Swap has no sunset provision.

c. *Revenue and Taxation Code section 97.75*

Pursuant to the Revenue and Taxation Code sections 97.68 (Triple Flip) and 97.70 (VLF Swap), the County has a duty to annually allocate and distribute to the 88 cities within the County, the appropriate payments from property tax revenues under the Triple Flip and VLF Swap.

Revenue and Taxation Code section 97.75, at issue in this appeal, reads: "Notwithstanding any other provision of law, for the 2004-2005 and 2005-2006 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.*" (Italics added.)

The California State Association of County Auditors prepared Senate Bill No. 1096 Guidelines (Guidelines) in response to the Legislature's enactment of Revenue and Taxation Code sections 97.68 (Triple Flip), 97.70 (VLF Swap), and 97.75, among other provisions of the 2004-2005 Budget Act. The Guidelines do not have the force of law. Consistent with the Guidelines, the County did not charge appellants for any property tax

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"(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."

administrative services relating to the funds paid to cities under the Triple Flip and VLF Swap in the 2004-2005 and 2005-2006 fiscal years. Beginning in fiscal year 2006-2007, the County included the property tax funds paid under the Triple Flip and VLF Swap as additional property tax share to each city and apportioned the total PTAF costs to each city based on this share.

The financial consequences of the County's method of calculating the PTAF for appellants are that the PTAF the County charged appellants was collectively, over $4.8 million in fiscal year 2006-2007 and $5.3 million in fiscal year 2007-2008, more than such fees would have been charged had the Triple Flip and the VLF Swap revenues not been included in appellants' property tax share used for apportioning PTAF. By comparison, beginning with the 2006-2007 fiscal year, the County's actual cost of the incremental tax allocation duties required by the Triple Flip and VLF Swap only was approximately $35,000 per year.

PROCEDURAL HISTORY

In 2008, appellants petitioned the trial court for a writ of administrative mandate (Code Civ. Proc., § 1085) challenging the County's method of calculating the PTAF charged to appellants starting in fiscal year 2006-2007. Maintaining that the PTAF the County charged each appellant and retained by the County was in excess of that permitted by Revenue and Taxation Code section 97.75, appellants sought a writ ordering the County to comply with that statute and to credit the excess withheld. The County denied appellants' contention that its method of calculating PTAF under section 97.75 is unlawful. Appellants argued that section 97.75 authorizes the County to charge only the actual cost of administering the Triple Flip and VLF Swap; it does not empower the County to include the property tax revenue under the Triple Flip and VLF Swap as additional property tax share for each city for purposes of calculating the administration fee for operating the property tax system as a whole. The County contended that the Legislature's enactment of sections 97.68 (Triple Flip) and 97.70 (VLF Swap) decreased the amount of PTAF exempt from reimbursement because that money otherwise would have been attributable to the ERAF, and thus increased each city's proportionate share of

the total property taxes distributed, thereby increasing appellants' PTAF. The County also argued that its method of calculating PTAF accords with applicable Revenue and Taxation Code sections including, but not limited to, sections 95.2, 95.3, 96.1, and 97.75.

The parties agreed to try this case by reference (Code Civ. Proc., § 638) and submitted the comprehensive stipulation of facts from which the above factual description was taken.[5] The parties also agreed to defer the question of recalculating each appellants' PTAF until the trial court determined whether the method currently used by the County was lawful. The referee ruled that the County's interpretation was consistent with legislative intent, and thus the County's method of calculation did not violate Revenue and Taxation Code section 97.75. The trial court entered judgment accordingly and appellants timely appealed.

DISCUSSION

"A traditional writ of mandate under Code of Civil Procedure section 1085 is a method for compelling a public city to perform a legal and usually ministerial duty. [Citation.] The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the

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[5] Without conceding that they were required to do so, each petitioner has filed a claim with the County for damages in the amount of the PTAF they contend was wrongfully withheld by the County. To date, the County has not paid or otherwise credited any petitioner for any PTAF withheld. The County further contends that, with respect to the PTAF attributable to the 2006-2007 fiscal year, each such claim was untimely. Petitioners do not concede this point. The parties by their stipulation agreed that petitioners' preexisting claims need not be supplemented to assert alleged damages arising on the same basis as stated in those claims, but occurring after fiscal year 2007-2008, and those earlier claims shall be deemed to include those alleged ongoing damages, thus relieving petitioners of any legal obligation to file such supplemental claims and relieving the County of any legal obligation to act upon such supplemental claims. The parties agreed to defer trying the timeliness issue until the court determined whether the method the County currently uses is lawful. If the court concluded the method was lawful, no further argument on timeliness would be necessary.

procedure and give the notices the law requires. [Citations.]" (*Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 995, fn. omitted.)

At issue here is the meaning of Revenue and Taxation Code section 97.75. The County contends that the Legislature's enactment of sections 97.68 and 97.70, decreased the amount of PTAF that otherwise would have been attributable to the ERAF -- and thus exempt from PTAF -- and increased each city's proportionate share of the total property taxes distributed, thereby increasing each appellant's PTAF obligation. The County believes the Legislature intended it to recoup from cities the costs associated with property tax administrative efforts of assessing, collecting, and allocating the share of property taxes that are included in the Triple Flip and VLF Swap. Appellants counter that the PTAF charged in fiscal years 2006-2007 and 2007-2008 to each appellant was in excess of "the actual cost of providing" the services under the Triple Flip (§ 97.68) and the VLF Swap (§ 97.70). That is, the County charged appellants more than that permitted by section 97.75 because the County should not have included the in-lieu property tax proceeds under the Triple Flip and VLF Swap in its calculation and apportionment of the cities' general PTAF responsibilities. Rather, the County should have charged each city only its proportion of the specific cost of making the accounting entries necessary to shift money in treasury accounts under the Triple Flip and VLF Swap. Therefore, we are tasked with determining whether the County's method of calculating appellants' PTAF violates section 97.75. Where the facts are undisputed, the issue here involves solely the interpretation of a statute, which is a question of law that we review de novo. (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332; *International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611.)

1. *The County's method of calculating the fee for its services is not authorized by Revenue and Taxation Code section 97.75 and is hence not lawful.*

Our task is to " 'ascertain the intent of the drafters so as to effectuate the purpose of the law. [Citation.] Because the statutory language is generally the most reliable indicator of legislative intent, we first examine the words themselves, giving them their usual and ordinary meaning and construing them in context.' [Citation.]" (*Mejia v. Reed*

(2003) 31 Cal.4th 657, 663.) We accord "significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.) If the language of a statute is unambiguous, the plain meaning governs and it is unnecessary to resort to extrinsic sources to determine the legislative intent. (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 919.) If the statutory language does not yield a plain meaning, we may consider extrinsic evidence of intent, including the legislative history. (*Mejia v. Reed, supra,* at p. 663.) "[W]e presume the Legislature meant what it said, and the plain meaning of the statute governs. [Citation.]" (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000.)

As noted, Revenue and Taxation Code section 97.75 reads: "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.*" (Italics added.)

We agree with the referee that Revenue and Taxation Code section 97.75 "is clear" in that: (1) notwithstanding any other provision of law, in fiscal years 2004-2005 and 2005-2006, the counties were forbidden to charge or recoup from the cities any administrative costs whatsoever "for services performed by the county under § 97.68 [Triple Flip] and 97.70 [VLF Swap];" and (2) the words "these services" in sentence two have the same meaning as the phrase " 'for services performed under by the county under Sections 97.68 and 97.70" in the first sentence.

Beyond that conclusion, the referee found that Revenue and Taxation Code section 97.75 was ambiguous and, there being no pertinent legislative history, the referee read section 97.75 as part of the statutory scheme which encompasses, among other statutes,

sections 95.2, 95.3, and 96.1, involving the computation of fees counties charge for property tax administration. However, we agree with appellants that section 97.75 is not ambiguous and hence, does not require resort to extrinsic aids for its meaning.[6]

Looking at the words of Revenue and Taxation Code section 97.75 alone, they reveal the clear intent that "services" are those that counties render pursuant to the Triple Flip (§ 97.68) and VLF Swap (§ 97.70) *only*. This is plain because section 97.75 tells us the fee is "for the services performed by the county under Sections 97.68 and 97.70." The County has stipulated that "[p]ursuant to Sections 97.68 and 97.70, [the County has] a duty to annually allocate and distribute to cities within Los Angeles County the appropriate payments from property tax revenues under the provisions of the Triple Flip and the VLF Swap." The tasks the Triple Flip and VLF Swap direct the County to undertake are to transfer, allocate, and distribute amounts, the size of which are specified by the State Director of Finance. (§§ 97.68, subd. (c)(1), (2), (4) & 97.70, subd. (b)(1)-(2).) The services counties render under sections 97.68 (Triple Flip) and 97.70 (VLF Swap) 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. Rather, the Triple Flip and VLF Swap are mechanisms designed to replace lost Sales and Use Tax and Vehicle License Fee revenue with funds derived from property taxes that have already been levied. Our task "is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been

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[6] Although we do not consider it, the only relevant reference found in the legislative history is the following from the Legislative Counsel Digest: "(7) Existing law authorizes a county to retain a portion of the ad valorem property tax revenue that would otherwise be allocated to specified entities in a county to reimburse the county for costs in collecting and administering the ad valorem property tax.

"This bill would, for the 2004-05 and 2005-06 fiscal years only, prohibit a county from imposing a fee, charge, or other levy on a city, or from retaining any portion of the ad valorem property tax revenue allocation of a city to reimburse the county for costs the county may incur under the bill and a specified statute." (Legis. Counsel's Dig., Sen. Bill No. 1096 (2003-2004 Reg. Sess.) pp. 4-5.) There appears to be no dispute that this language provides no guidance about what the Legislature meant by the word "services" in Revenue and Taxation Code section 97.75.

omitted, or to omit what has been inserted . . . ." (Code Civ. Proc., § 1858.) " 'It is . . . against all settled rules of statutory construction that courts should write into a statute by implication express requirements which the Legislature itself has not seen fit to place in the statute.' [Citations.]" (*In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011; Code Civ. Proc., § 1858.) Therefore, the 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 VLF Swap are not part of the "traditional PTAF – generating" tasks of property tax administration, but are limited to the services the counties perform to process the Triple Flip and VLF Swap only.

Furthermore, not only does Revenue and Taxation Code section 97.75 limit the scope of services counties provide to those necessary to process the Triple Flip and the VLF Swap, but the second sentence of section 97.75 specifies that counties may only recover the "actual cost of providing these services." The Legislature's use of this phrase reveals its intent to restrict cities' payment to no more than the definite costs related to performing the services under the two revenue provisions, sections 97.68 and 97.70, the only two revenue sections mentioned in section 97.75. All three statutes, the Triple Flip, the VLF Swap, and section 97.75, were fashioned by Senate Bill No. 1096.[7] The Legislature knew of the existence of section 95.3 and other existing statutes governing PTAF, and yet it passed Senate Bill No. 1096 creating section 97.75 as a statute separate from property tax administrative-fee generating statutes, whose sole reference is to the Triple Flip and VLF Swap. "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. [Citation.]" (*Arbuckle-College, supra*, 105 Cal.App.4th at p. 1166.) The Legislature's

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[7] Revenue and Taxation Code section 97.68 was enacted effective December 12, 2003, and became operative March 3, 2004 (Stats. 2003, 5th Ex. Sess. 2003-2004, ch. 2 § 4.1 (Assem Bill No. 5X 9 (2003-2004 5th Ex. Sess.)) but was immediately amended, effective August 5, 2004, by enactment of Senate Bill No. 1096 (2003-2004 Sess.) (Stats. 2004, ch. 211, § 20.5).

choice to enact section 97.75 where statutes addressing the calculation of PTAF have existed for decades indicates the legislative intent that "actual cost" refers to the cost to counties of performing the newly created Triple Flip and VLF Swap only, and should not be included in the cost to counties to perform the general property tax administration. Otherwise the phrase "actual cost" would be superfluous. Stated differently, section 97.75 is a stand-alone provision authorizing payment for the actual cost to the County of administering the Triple Flip and VLF Swap only. 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 administration, as the County advocates, would violate section 97.75's language limiting reimbursement to "actual cost of providing these services," i.e., the Triple Flip and VLF Swap.

The County contends, where Revenue and Taxation Code section 97.75 is ambiguous, that we must read it in the context of the statutory scheme for property tax administrative fees as a whole, including sections 95.2, 95.3, and 96.1. The argument is unavailing for two reasons. First, we have concluded that section 97.75 is not ambiguous. " ' "It is a settled principle in California law that 'When statutory language is . . . clear and *unambiguous* there is no need for construction, and courts should not indulge in it.' " [Citation.]' [Citation.]" (*California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd.* (2004) 117 Cal.App.4th 350, 355, italics added.)

Second and more important, however, is the fact that Revenue and Taxation Code section 97.75 commences with "[*n*]*otwithstanding any other provisions of law* . . . ." "This 'term of art' expresses a legislative intent 'to have the specific statute control *despite the existence of other law which might otherwise govern*[]' [citation]" (*People v. Franklin* (1997) 57 Cal.App.4th 68, 74, italics added) and thus clearly indicates the Legislature's intent that section 97.75 govern the fees for administering the Triple Flip and VLF Swap regardless of any *earlier* enacted statutes governing the assessment and collection of property tax administration fees in general, such as section 95.3. (See *Arbuckle-College, supra,* 105 Cal.App.4th at p. 1167.) Stated otherwise, the Legislature intended that section 97.75 stand alone with respect to the administrative costs incurred in

performing the services required for the Triple Flip and VLF Swap, while assuring that counties would still be reimbursed for those efforts.[8] Even if the phrase "[n]otwithstanding any other provisions of law . . . ." were to apply only to section 97.75's first sentence prohibiting the counties from recovering a service fee for the first two years (fiscal years 2005-2005, and 2005-2006), our conclusion would be the same. The second sentence of section 97.75 reinstates the service fee, but specifies that such fee "*shall not exceed the actual cost* of providing these services" under the Triple Flip and VLF Swap.

Indeed, had the Legislature meant for the "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. "The Legislature 'is deemed to be aware of statutes and judicial decisions already in existence, and to have enacted or amended a statute in light thereof. [Citation.]' " (*People v. McGuire* (1993) 14 Cal.App.4th 687, 694.) Cognizant of the extensive statutory scheme governing traditional property tax administrative fees, coupled with the repeated legislative aim of compensating counties

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[8] Although the referee relied on *Arbuckle-College, supra*, 105 Cal.App.4th 1155, for the contrary result, the referee overlooked the facts that Revenue and Taxation Code section 95.3 predates enactment of section 97.75, and has not been amended since enactment of section 97.75. Hence, we should not refer to the older statutes where the newer one, section 97.75 can be read by itself. Although *Arbuckle-College* involves section 95.3, it is otherwise inapposite. In that case, a fire protection district claimed that the county's recovery of PTAF was controlled by Government Code section 29142, which permitted a county to recover administrative costs under an agreement between the county and the fire protection district, and so the district was exempt from the PTAF provisions of Revenue and Taxation Code section 95.3. Disagreeing, *Arbuckle-College* held that the county had the right to recover PTAF pursuant to the later enacted section 95.3, which specifies that its provisions apply notwithstanding any other provision of law. (*Id.* at pp. 1163, 1167.) *Arbuckle-College* also held that section 95.3 was a remedial statute, which should be liberally construed. (*Id.* at p. 1167.) At issue here is section 97.75, which was enacted a decade after section 95.3, and which also specifically applies, "notwithstanding any other provisions of law."

for their efforts in administering the State's property tax system (see § 95.3, subd. (e)),[9] the Legislature could have, but notably *did not* refer to those traditional PTAF-generating statutes in the body of section 97.75. Alternatively, had the Legislature intended the in-lieu property tax revenues in the Triple Flip and VLF Swap to be treated in the same manner as property tax money in general, it could have remained silent because sections 95.3 and 96.1 already addressed the calculation of traditional PTAF.

We are unpersuaded by the County's argument that under the PTAF allocation rule in effect for the "better part of the last two decades," the County should be able to recoup the PTAF associated with the additional property tax revenues being allocated to cities under the Triple Flip and VLF Swap. Neither the Triple Flip nor the VLF Swap existed two decades ago. The Legislature added section 97.75 a mere six years ago in conjunction with its creation of the Triple Flip and VLF Swap, and section 97.75's reference to sections 97.68 (Triple Flip) and 97.70 (VLF Swap) only clearly indicates that "services" under section 97.75 refers solely to activities performed under the Triple Flip and VLF Swap. Thus, the in-lieu property tax payment amounts under these two revenue swapping measures should not be included in the traditional computation for PTAF. Our reading of section 97.75 is in harmony with the traditional PTAF-generating statutes as it addresses the actual cost of the services the County performs under the newer Triple Flip and VLF Swap. (*Chatsky & Associates v. Superior Court* (2004) 117 Cal.App.4th 873, 876; Code Civ. Proc., § 1858.)

The parties argue at length about the effect of the differences between each sentence in Revenue and Taxation Code section 97.75. The first sentence lists "a fee, charge or other levy . . . *reduc*[*tion of*] *a city's allocation of ad valorem property tax*

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[9] Revenue and Taxation Code section 95.3, subdivision (e) reads: "It is the intent of the Legislature in enacting this section to recognize that since the adoption of Article XIII A of the California Constitution by the voters, county governments have borne an unfair and disproportionate part of the financial burden of assessing, collecting, and allocating property tax revenues for other jurisdictions and for redevelopment agencies. The Legislature finds and declares that this section is intended to fairly apportion the burden of collecting property tax revenues and is not a reallocation of property tax revenue shares or a transfer of any financial or program responsibility.

revenue[,]" whereas the second sentence of section 97.75 lists only the "fee, charge, or other levy on a city" and then instructs that the "fee, charge, or other levy shall not exceed the actual cost of providing these services." (§ 97.75, italics added.) These two sentences are easily reconciled under the rule *expressio unius est exclusio alterius*, that is, " ' " 'the expression of certain things in a statute necessarily involves exclusion of other things not expressed[.]' " ' [citation or] ' "where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed." ' [Citation.]" (*Bonner v. County of San Diego* (2006) 139 Cal.App.4th 1336, 1347-1348.) Reducing cities' property tax allocations in recompense for services rendered under the Triple Flip and VLF Swap is prohibited in the first two fiscal years after enactment of section 97.75, and thereafter such a reduction is *simply not within the County's grant of authority.*

Next, the County argues that "[t]he broad remedial intent behind [Revenue and Taxation Code] section 95.3 is clear[,]" that "[w]ith the exception of schools and ERAFs, every other entity receiving property tax revenues is to pay its proportionate share of PTAF associated with the property tax revenues it receives." Where the in-lieu payments under the Triple Flip and VLF Swap derive from property taxes, and where sections 97.68, 97.70, and 97.75 are all Article 3 adjustments under section 96.1, the County argues, the in-lieu payments from property tax revenues under the VLF Swap and Triple Flip must be included in the calculation of the general PTAF it charges appellants.

However, sections 95.3 and 96.1 are the very same earlier statutes over which, as noted, the newer and specific section 97.75 controls. (*People v. Franklin, supra,* 57 Cal.App.4th at p. 74.) Also, counties are not entitled to recover PTAF from schools and ERAFs. More important, however, by virtue of section 97.75, counties *do* recover the "actual cost" of administering the Triple Flip and VLF Swap. Furthermore, while 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* (§ 97.68, subd. (a)), that are exempt from paying PTAF. The Triple Flip and VLF Swap are specific accounting

manipulations that involve many sorts of revenue. It is fair to conclude that the Legislature's use in section 97.75 of the phrase "actual cost" indicates its recognition, while the in-lieu payments derive from property tax funds, that the entire accounting scheme that comprises the Triple Flip and VLF Swap involves other revenue sources as well, such as the Sales and Use Tax and Vehicle License Fee.

We are also unpersuaded by the County's observation that appellants have benefitted from the VLF Swap, in that rather than being revenue neutral, appellants have experienced a revenue increase as the result of Revenue and Taxation Code section 97.70. Yet, such an observation does not justify a calculation of PTAF that is not statutorily authorized.[10] It is not our task to rewrite section 97.75 to offset perceived inequity created by another statute, in this case section 97.70. Temporary fluctuations in the value of the taxes reveal little about the meaning of section 97.75.

"As a general rule, the courts defer to the agency charged with enforcing a regulation when interpreting a regulation because the agency possesses expertise in the subject area. [Citation.] However, final responsibility for interpreting a statute or regulation rests with the courts and a court will not accept an agency interpretation which is clearly erroneous or unreasonable. [Citations.]" (*Aguilar v. Association for Retarded Citizens* (1991) 234 Cal.App.3d 21, 28.) We cannot accept the County's calculation method here because it violates the clear instructions of Revenue and Taxation Code section 97.75. In the end, it is up to the Legislature not the courts to rewrite the statute.

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[10] Likewise, the County's reliance on the Guidelines to justify its calculation method is unavailing. The Guidelines were not vetted under the Administrative Procedure Act and, as the parties stipulated, they "do not have the force of law."

DISPOSITION

The judgment is reversed and the matter is remanded to the trial court to determine the issue of timeliness and, if necessary, to calculate the service fee under Revenue and Taxation Code section 97.75 in accordance with the views expressed in this opinion. Appellants are to recover their costs on appeal.

CERTIFIED FOR PUBLICATION

ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2450 Colorado Avenue, Suite 400E, Santa Monica, California 90404.

On August 13, 2010, I served the **P ETITION FOR REVIEW** on the interested parties in this action by placing the true copy thereof, enclosed in a sealed envelope, postage prepaid, addressed as follows:

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San Francisco, CA 94102-7303

Clerk
Court of Appeal, Second District
300 South Spring Street
Floor 2, N. Tower
Los Angeles, CA 90013-1213

Holly O. Whatley
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555 West 5th Street, 31st Floor
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Los Angeles Superior Court Clerk
for Delivery to Hon. James C. Chalfant
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, CA 90012-3014

Hon. Dzintra Janavs (Ret.) (Courtesy Copy)
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Executed on August 13, 2010, at Santa Monica, California.

Vikki Barnette

VIKKI BARNETTE