S185457

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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

OPENING BRIEF

From a 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 C.C.P. § 638 Reference to the Hon. Dzintra Janavs (Ret.)]

GREENBERG TRAURIG, LLP
Scott D. Bertzyk (116449)
Karin L. Bohmholdt (234929)
2450 Colorado Avenue
Suite 400E
Santa Monica, CA 90404
Telephone: (310) 586-7700
Facsimile: (310) 586-7800

OFFICE OF LOS ANGELES COUNTY COUNSEL
Andrea Sheridan Ordin (38235)
County Counsel
Thomas M. Tyrrell (72985)
Principal Deputy County Counsel
500 West Temple Street
Los Angeles, CA 90012
Telephone: (213) 974-1833
Facsimile: (213) 617-7182

Attorneys for Defendants and Respondents Below
COUNTY OF LOS ANGELES, ET AL.

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COUNTY OF LOS ANGELES, ET AL.

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Case Number S185457

On behalf of the County of Los Angeles and Wendy Watanabe, its Auditor-Controller in her official capacity, counsel of record hereby certifies that there are no interested entities or persons required to be listed under Rule 8.208.

Dated: November 19, 2010

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: _____

Scott D. Bertzyk
Attorneys for Defendants and
Respondents below
County of Los Angeles, et al.

ISSUE PRESENTED FOR REVIEW

Does Revenue and Taxation Code section 97.75 prohibit a county from taking into account property tax revenues diverted from the county's Educational Revenue Augmentation Fund to a city under sections 97.68 and 97.70 when determining, pursuant to section 95.3, the city's share of costs incurred by the county in the assessment, collection, and allocation of property taxes?[1]

INTRODUCTION

Section 97.75 resides in a dense article (Article 3) of a dense chapter (Chapter 6) of the Revenue and Taxation Code. In contrast to many of the surrounding statutes dealing with the same subject matter (tax allocation and administration), section 97.75 is brief and contains but two sentences:

> 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

[1] The "Issue Presented" is quoted from this Court's website because the "Issue Presented" as stated in the Petition for Review contained a preliminary statement that defined many terms. The Issue Presented in the Petition for Review, pursuant to California Rule of Court 8.520(b)(2), is as follows: "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?" The Answer to the Petition for Review expressly declined to state a counter-issue, but at footnote 2, urged a different articulation, as follows: "Did the Court of Appeal correctly construe Revenue & Taxation Code § 97.75 to provide that counties may recover their actual, marginal costs to implement the VLF Swap and Triple Flip but may not reallocate their entire cost to administer the property tax system in light of property taxes paid in lieu of vehicle license fees and sales taxes under those measures?"

All statutory citations are to the Revenue and Taxation Code unless otherwise noted. Citations to "JA" are to the Joint Appendix below; citations to "Dec." are to the Court of Appeal's opinion attached to the County's Petition for Review.

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.

For fiscal years 2004-05 and 2005-06, the County did not reduce cities' tax allocations under sections 97.68 or 97.70 to recoup ***any*** costs of administration, whether it be the cost of incremental new services required by sections 97.68 and 97.70 or the underlying costs of assessing and collecting such revenues, which always had been subject to recoupment under section 95.3. For each fiscal year thereafter, the County has recouped from cities all costs of administration associated with the cities' additional tax shares. It is undisputed that, without section 97.75, the County could have recouped such costs under section 95.3.

Nonetheless, 47 cities in Los Angeles County (and cities in other counties across the State) challenge such recoupment. The issue is whether section 97.75 somehow impliedly trumps section 95.3. From any vantage point, the answer is "No."

For example, the trial court concluded that section 97.75's ambiguous term "services" was intended to embrace all "services" associated with the assessment, collection and allocation of the additional tax shares going to cities under sections 97.68 and 97.70. Under this interpretation, it follows that section 97.75: (i) forbade counties for two years from recouping any administrative costs associated with the additional tax shares allocated to cities under sections 97.68 and 97.70, but (ii) expressly authorized recoupment of all such costs thereafter. Thus, under this interpretation, a defense judgment would be required.

Alternatively, one could interpret the term "services" narrowly, as the Court of Appeal did — such that only the incremental, new services associated with the VLF Swap and Triple Flip are addressed by section 97.75. Under that interpretation, however, the only different conclusions the Court would reach are that: (i) the County under-collected in the first two years (because section 97.75

only forbade recoupment of the cost of incremental new services and section 95.3 permitted recoupment of the remainder); and (ii) section 95.3, rather than section 97.75, provided authority for recoupment of the cost of the traditional administrative services required to assess and collect the cities' additional tax shares. Again, a defense judgment would be required.

The Court of Appeal interpreted section 97.75 in a vacuum without considering whether its interpretation created disharmony with the rest of the scheme. As a consequence, the Court of Appeal's interpretation either rewrites section 97.75 or impliedly repeals section 95.3 in part, contrary to fundamental rules of statutory interpretation. The Court of Appeal's decision should be reversed, and the trial court's judgment should be affirmed.

BACKGROUND AND STATEMENT OF THE CASE

A. Overview

Like many cases that have come before this Court, this action traces its roots to Proposition 13, passed by the electorate in 1978 to cap real property taxes at 1% of property value. (Cal. Const., art. 13A.)[2] Property taxes provide the most stable source of discretionary revenue for local governments; they once also provided the largest and most important source of funding for schools (now a constitutional obligation of the State). The sometimes conflicting responses to the exigencies created by Proposition 13 have spawned a dense and byzantine tax allocation scheme within which the statutes in issue here must be interpreted and placed in context. (See *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1269-1276 [describing evolution post-Prop 13]; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 270-274 [describing evolution of tax schemes post-Prop 13].) Before plunging headlong into the thickness of that forest, we pause first to provide an overview of the scheme and the specific issue at hand.

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[2] See also 1 JA 46 [Stipulated Fact Number 6].

For decades, counties have been tasked with providing the property tax administration services by which local property tax revenues are assessed, collected and allocated to all local jurisdictions entitled to receive them.[3] This centralizing of services was, in principle, merely a useful efficiency. And, prior to the adoption of Proposition 13, this obligation imposed no significant burden, as counties were free to set their countywide property tax rates at levels sufficient to recoup the administrative cost from all taxpayers. With the adoption of Proposition 13, however, counties' ability to recoup their administrative costs — commonly called property tax administrative fees or "PTAF" — vanished, creating an unfair financial burden.[4]

Recognizing the unfairness, the Legislature, in 1990, passed a PTAF recoupment rule that, with an exception for "school entities," still is in place today. (Section 95.3.) In essence, section 95.3 provides that:

- the PTAF charge allotted to each local entity equals its percentage share of total countywide property tax revenues; and
- with the exception of "school entities" (which are exempt), each recipient's share of PTAF is to be deducted from the property tax revenues otherwise allocable to it.[5]

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[3] See 1 JA 46 [Stipulated Fact Number 5].

[4] See 1 JA 46 [Stipulated Fact Number 6]; see also section 95.3, subd. (e) [expressly noting unfair burden created by Proposition 13].

[5] The exemption for school entities is driven by the State's constitutional obligation to fund education equitably. As we shall explain below, this is the only exemption from PTAF recoupment our Legislature ever has seen fit to enact; even there, the Legislature did so grudgingly and in baby steps because it recognized that its actions would have an adverse impact upon property tax administration.

In this way, every recipient of property tax revenues bears its pro rata share of the expenses incurred to collect them. (See *Community Redevelopment Agency of the City of Los Angels v. County of Los Angeles* (2001) 89 Cal.App.4th 719, 723.)

The amount of property taxes allocated to local jurisdictions — and, hence, the corresponding amount of PTAF for which each jurisdiction is responsible — has ebbed and flowed over time (invariably, as a result of legislation passed to meet immediate State budget concerns). In the early 1990s, for example, to help defray its constitutional obligation to fund education, the State substantially reduced the property tax shares allocated to local entities by requiring contributions to a so-called Educational Revenue Augmentation Fund (ERAF), and exempting those contributions from PTAF recoupment.[6] (See *County of Sonoma*, *supra*, 84 Cal.App.4th at p. 1269.) In contrast, during the 2003-04 and 2004-05 fiscal years, the Legislature essentially came full circle through two statutes that restored to cities and counties property tax revenues that originally had been allocated to local entities and subject to PTAF recoupment, but in the interim had been diverted to ERAFs for school funding.[7]

Section 95.3 would allow counties to recoup the PTAF associated with the additional tax shares now being allocated to cities under those two new statutes. After all section 95.3 makes each recipient of property tax revenues except for schools responsible for its full, pro rata share of PTAF. Yet 47 of the 88 cities in Los Angeles County have contended that *another* statute (section 97.75, governing "services performed by the county under Sections 97.68 and 97.70") forbids such recoupment.[8]

The issue in this mandamus proceeding is whether section 97.75 reflects a clear legislative intent to trump section 95.3 and forbid recoupment that otherwise

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[6] See 1 JA 47 [Stipulated Fact Number 8].

[7] Those two statutes are section 97.68 (commonly called the "Triple Flip") and section 97.70 (commonly called the "VLF Swap").

[8] See 1 JA 1-9 [allegations in Petition].

would follow as a matter of course. With this brief overview, we now stride into the forest of Chapter 6 of the Revenue & Taxation Code, entitled "Allocation of Property Tax Revenues."

B. Property Tax Collection And The Impact Of Proposition 13

Property taxes provide a large and important source of discretionary revenue for local governments. Each local entity originally administered its own property taxes. Over several decades preceding Proposition 13, the job was centralized with counties.[9] Thus, even as many local entities benefit from property tax revenues, counties alone bear the burden of assessing them, collecting them, handling appeals, and disseminating to each benefiting entity (including cities) its proportionate share of the taxes collected each year. Responsibility for the administrative expense of these efforts — the property tax administrative fees or "PTAF" — has differed over time.

Historically, counties had limited means to recoup PTAF from the various entities benefiting from counties' assessment, collection, and allocation efforts. For example, Government Code section 51520, enacted in the 1960s, provided for the County to bear all its administrative costs "without compensation" as to any cities that agreed to use the County's assessment rolls. Prior to the adoption of Proposition 13 in 1978,[10] this limitation imposed no burden because counties were free to set countywide property tax rates at a level sufficient to enable them to recoup administration costs from the taxpayers countywide.[11] With the adoption of Proposition 13, however, the counties' ability to do so vanished.[12] Counties could no longer both meet their core service responsibilities and recoup PTAF,

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[9] See 1 JA 46 [Stipulated Fact Number 4].

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

[11] 1 JA 46 [Stipulated Fact Number 6].

[12] *Id.*

given the constitutional cap on the amount of property tax that counties could collect. (See *County of Sonoma*, *supra*, 84 Cal.App.4th at p. 1273.)

In effect, then, after Proposition 13, counties retained the administrative and financial burden to assess, equalize and collect property taxes, but could neither collect sufficient taxes to offset the burden nor pass on the cost to the various local jurisdictions benefiting from the counties' efforts. Compounding the problem — as this Court's precedents reflect — property tax administration was increasingly forced to grapple with new and heavy demands.[13]

C. Recognizing The Unfair Burden Upon Counties, The Legislature Authorizes PTAF Recoupment, But Soon Exempts Local Schools

Recognizing the unfairness of this situation, the Legislature passed a statute to permit counties to recoup from each recipient of property tax revenues that recipient's pro rata share of PTAF.[14] 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, § 4 (SB 2557) [amending Rev. & Tax. Code section 97].)[15]

It would not be long before fiscal problems prompted the Legislature to create an exception out of necessity. To elaborate, in 1988, the California

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[13] 1 JA 46 [Stip. No. 6]; 3 JA 547. The burden is substantial and heaviest in times of economic decline. As the cities themselves noted below: (i) total PTAF for the 2005-2006 fiscal year was almost $122 million; and (ii) the next year, PTAF increased by 14.7% to almost $140 million. (Appellants' Opening Brief at p. 7.) Although the trial court deemed the point irrelevant, it was undisputed that the depressed economy has caused an exponential increase in the number of taxpayer assessment appeals, and hence, the costs that drive PTAF. (2 JA 458-459 [¶¶ 4-6].)

[14] See 1 JA 47 [Stipulated Fact Number 7].

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

electorate had passed Proposition 98, which established a minimum annual State funding level for K-14 schools (K-12 schools and community colleges). (See *County of Sonoma, supra*, 84 Cal.App.4th at pp. 1275-1276 and fn. 8.) But, within years, the State was hit with a recession that (i) reduced available revenues, (ii) created a fiscal crisis, and (iii) drove the Legislature to take a series of steps designed to shift much of its educational funding obligation to local government in general, and counties in particular. (See *id.*)[16]

The first intrusion, enacted in 1991, was relatively modest.[17] With the recession in its infancy, the Legislature simply exempted schools from the PTAF recoupment rule established the year before, thereby (i) saddling counties with the PTAF associated with property tax revenues allocated to schools, and (ii) freeing the State to spend the same amount of dollars on services other than education. (Stats. 1991, ch. 75, § 1 (SB 188); ch. 333, § 3 (SB 282).)

In 1992, with budget problems worsening, the Legislature went much further, creating a so-called Educational Revenue Augmentation Fund (ERAF) and requiring local governments and agencies to shift part of their allocated property tax shares to the ERAF to be used to offset the State's funding obligation for education. (See *County of Sonoma, supra*, 84 Cal.App.4th at pp. 1274-1275.) 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

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[16] See generally *Community Redevelopment Agency of the City of Los Angeles v. County of Los Angeles* (2001) 89 Cal.App.4th 719, 723 ["In the early 1990's, at a time when public funds were in crisis, the Legislature enacted several provisions to foster the economic viability of county governments."].

[17] Modest in terms of PTAF impact, that is; major local revenue cuts were occurring. (See *Arcadia Redevelopment Agency v. Ikemoto, supra*, 16 Cal.App.4th at p. 450.)

(i.e., that the State would not have to make up the PTAF dollars recouped on ERAF funds). (Stats. 1992, ch. 697, § 14 (SB 1559).)

In 1993, with the crisis deepening further, the Legislature did away with PTAF recoupment for revenues allocated to ERAFs (as well as schools). (Stats. 1993, ch. 66, § 35.5 (SB 399).) And, in 1994, the Legislature moved the recoupment rule to section 95.3, where it still resides today. (Stats. 1994, ch. 1167, § 6 (AB 3347).) Since that time, there has been only one amendment to section 95.3, and it worked no substantive change.[18]

Here is how the recoupment rules codified in section 95.3 work today, and have worked since 1993:[19]

- Section 95.3, subd. (a) fixes the PTAF recoupment factor for each entity as the percentage of total countywide property tax revenues allocated among the various entities entitled to receive them:

> Notwithstanding any other provision of law, . . . ***the auditor shall divide the sum of the amounts calculated with respect to each jurisdiction, Educational Revenue Augmentation Fund (ERAF), or community redevelopment agency pursuant to Sections 96.1*** and 100, or their predecessor sections, and Section 33670 of the Health and Safety Code, by the countywide total of those calculated amounts. The resulting ratio shall be known as

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[18] In 1996, the Legislature amended section 95.3 to confirm that property tax revenues allocated to ERAFs were exempt from PTAF recoupment. (Stats. 1996, ch. 1073, § 1 (AB 1055).) This amendment did not expand the exemption one iota, however. (See section 95, subd. (f) ["'School entities' means school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendents of schools."].)

[19] Section 95.3, subd. (c), simply exempts PTAF recoupment from the claims presentation requirements set forth in section 907 of the Government Code. Section 95.3, subds. (f) and (g), simply deal with the effective date of the statute, and the timing of its replacement of prior recoupment statutes. Hence, we discuss only subdivisions (a), (b), (d) and (e) in text.

the "administrative cost apportionment factor" and shall be multiplied by the sum of the property tax administrative costs incurred in the immediately preceding fiscal year . . . to determine the fiscal year property tax administrative costs proportionately attributable to each jurisdiction, ERAF, or community redevelopment agency. . . .

(Emphasis added.)

- Section 95.3, subdivision (b) provides for each recipient of property tax revenues other than school entities to pay its pro rata share of PTAF, which is to be deducted from the revenues allocated to the recipient. ("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. . . .")
- Section 95.3, subdivision (d) provides that the funds recouped through section 95.3, subdivision (b) "shall be used only to fund costs incurred by the county in assessing, equalizing, and collecting property taxes, and in allocating property tax revenues."
- Finally, section 95.3, subdivision (e) expresses the broad remedial intent behind this rule of recoupment:

  It is the intent of the Legislature in enacting this section 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. 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.

(Emphasis added.)

Section 95.3 is clear. With the exception of schools and ERAFs — who have been exempted from PTAF recoupment out of fiscal exigencies for the State — every other entity receiving property tax revenues is to pay its proportionate share of PTAF associated with the property tax revenues it receives.[20] Further, even as for the exemption for school entities, the Legislature acknowledged and lamented 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." (Stats. 1996, ch. 1073, § 1 (AB 1055).) And, recognizing the unfairness to counties, the Legislature promised to rectify at least a part of that unfairness in the future.[21]

D. More Recent Statutes Reiterate The Same Pro-Recoupment Theme

With the exception of its exemption for school entities, every act taken by the Legislature since 1990 has further enhanced funding for property tax administration. In 1995, for example, the Legislature passed section 95.31 to authorize loans to fund property tax administration. (See also section 95.31, subd.

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[20] In fairness to the State, any attempt to impose PTAF on schools raised equity issues. In simplest terms, the post-Proposition 13 allocation scheme based each local entity's allocation on the percentage of countywide property taxes it had received before Proposition 13. But, schools' relative dependence on property taxes was highly variable. Some school districts received the bulk of their funding from the State, while local property taxes sufficed for others. Thus, imposing PTAF costs on schools – unless offset by the State – would have had discrepant impacts.

[21] Section 95.3, subd. (b)(2) ["It is the intent of the Legislature that the portion of those shares of property tax administrative costs . . . for school entities and the county's ERAF . . . [be] reimbursed by the state in the time and manner specified by a future act of the Legislature that makes an appropriation for purposes of that reimbursement."].

(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, subd. (a) [emphasis added]; see also section 95.35, subd. (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 available to allocate to everyone, including counties, cities, special districts and schools. 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.[22]

E. Allocation Of Property Tax Revenues

1. The Longstanding Formula For Allocating Property Tax Revenues

Because section 95.3 links local entities' responsibility for PTAF to the percentage of countywide tax revenues allocated to them, we pause to briefly

[22] 2 JA 386. Although the accuracy of these findings was undisputed, the trial court below ruled such studies were irrelevant.

discuss the "AB 8" tax allocation scheme established by the Legislature to implement Proposition 13.[23] Although the mechanics of allocating property tax revenues gradually have grown more complicated, the basic allocation formula has remained the same for a very long time. It is laid out in section 96.1, which, from the 1980-81 fiscal year to the present, has served as a master statute that (i) expressly states certain aspects of the calculation, and (ii) references the further adjustments spelled out in neighboring parts of the Code.[24]

The formula for each local entity receiving property tax revenues is as follows: First, one starts with the amount of property tax revenues the local entity received in the prior fiscal year. (Section 96.1, subd. (a)(1).) To that amount, one then attributes to each entity its share of the "annual tax increment" — mainly, revenue increases attributable to increased property tax values resulting from change in ownership or new construction during the fiscal year. (Section 96.1, subd. (a)(2); see also section 96.5 [referenced in section 96.1, subd. (a)(2) and providing specific procedures for allocating annual tax increment].) Finally, to arrive at the final amount of property tax revenues allocated to any given recipient, one makes all the further adjustments called for by various other related articles of the Revenue and Taxation Code — including adjustments called for by "Article 3

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[23] Proposition 13 vested the Legislature with authority to devise an equitable scheme to allocate the reduced 1% property tax base among local recipients, which it did in 1979 through Assembly Bill 8. (Stats. 1979, ch. 282.) Commendably, when it enacted these long-term rules, the Legislature gave cities, counties, and special districts a "bailout" of increased property tax shares at the expense of K-14 schools, leaving the State itself to shoulder most education funding. But by the early 1990s the State no longer could afford the bailouts.

[24] Section 96.1 is located in Article 2 ("Basic Revenue Allocations") of Chapter 6 ("Allocation of Property Tax Revenues"). It begins by pointing to and incorporating more specific allocations articulated in other places such as Article 3 ("Revenue Allocation Shifts for Education") and Article 4 ("Tax Equity Allocations for Certain Cities"). Section 96.1 also acknowledges the division of taxes in redevelopment areas under Health and Safety Code section 33670 to which its apportionments may be subject.

(commencing with Section 97), and Article 4 (commencing with Section 98)." (Section 96.1, subd. (a).)[25]

Putting together the statutes and articles referenced in section 96.1 to the extent they are applicable to this case, the basic formula for allocating property tax revenues to local jurisdictions looks like this:

Section 96.1(a) Base Amount	$ **********
PLUS Annual Tax Increment (R&T 96.5)	**********
SUBTOTAL	$ **********
MINUS Adjustments Required By Article 3	**********
EQUALS TOTAL ALLOCATED REVENUES.....	$ **********

Again, this is still the basic formula that applies today. The only thing that has changed is that the number of Article 3 adjustments has multiplied over time.

2. The Triple Flip And VLF Swap Restore To Local Agencies Revenues That Previously Had Been Earmarked For ERAFs

The PTAF for which local agencies have been responsible has ebbed and flowed in direct proportion to the amount of property tax revenues allocated to them. In 1990, when the Legislature first provided for recoupment of PTAF, there was no such thing as an ERAF, and allocated revenues subject to PTAF 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 intercepting property tax revenues from being deposited into ERAFs and diverting them back to counties and cities 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

[25] Article 3 is where the ERAF shifts are codified; it also is the Article where the Legislature placed the Triple Flip, the VLF Swap and section 97.75, which we will discuss in a moment. Of all the adjustments referenced in section 96.1, only the Article 3 adjustments are relevant here.

recoupment, but (ii) later had been diverted to ERAFs for school funding (and, hence, exempt from recoupment).

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 "recovery 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 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 because it is tied to growth in the assessed values of real property.[26]

As a result of the Triple Flip and VLF Swap: (i) the mix of tax revenues for each city and county changed, with property tax revenues increasing and other revenues (sales taxes and vehicle license fees) decreasing; and (ii) instead of going to a fund that was exempt from the PTAF charge (the ERAF), the property tax revenues in question instead were allocated to non-exempt entities including the plaintiff cities. Both statutes make clear that these property tax revenues never get to the ERAF, and are deposited instead to accounts maintained for cities and counties. (Section 97.68, subd. (a)(1) ["The total amount of ad valorem property

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

tax revenue ***otherwise required to be allocated to a county's Educational Revenue Augmentation Fund*** shall be reduced by the countywide adjustment amount. 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."]; section 97.70, subd. (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."], emphasis added; and subd. (a)(2) [revenues deposited into Vehicle License Fee Property Tax Compensation Fund].)

To put this in terms of the allocation formula set forth above, the slightly more complicated math would look like this:

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

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.[27] The net effect of making all the Article 3 adjustments is that all the revenues that previously would have gone into the ERAF are instead restored to cities and counties, albeit pursuant to an entirely different formula than the one used to calculate the total ERAF shift from all contributing local agencies. Stated simply, the State returned to nearly where it was in 1991: It has restored to local agencies property tax revenues that

[27] 2 JA 448-449 [¶¶ 4-6].

(i) local agencies had received before the Legislature created ERAFs, and (ii) originally had been fully subject to PTAF recoupment.

3. Section 95.3 Looks To Section 96.1 Allocations, Including Adjustments Required By The Triple Flip And VLF Swap

This discussion of the allocation process confirms a point upon which the trial court and Court of Appeal both agreed: Section 95.3, by its terms, expressly mandates that the cities' additional tax shares under the Triple Flip and VLF Swap be included for purposes of determining their responsibility for PTAF.[28] Under section 95.3, subdivision (a), (i) "the sum of the amounts calculated with respect to each jurisdiction . . . pursuant to Section[] 96.1" is used to determine each city's administrative cost apportionment factor; (ii) Article 3 adjustments are part of the calculus required by section 96.1 (indeed, they are part of its first sentence); and (iii) the Triple Flip and VLF Swap both are Article 3 adjustments.

4. Economic Impact Of The Triple Flip And The VLF Swap

In a broad sense, the Triple Flip and VLF Swap were not intended to increase or decrease revenues flowing to local government, but rather, were to replace two revenue streams diverted or reduced by the State, in the same general proportion, so as not to harm local governments. In practice, the Triple Flip is revenue neutral. It offsets, dollar for dollar, the sales tax revenues being lost. On the other hand, the VLF Swap has proven to be a boon to local governments, virtually all of whom: (i) receive more revenues under the current scheme than they enjoyed before the Triple Flip and VLF Swap were enacted; and (ii) are better off *even accounting for* all the additional PTAF charges being collected by counties across the State.[29]

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[28] 3 JA 547, 548, 553-554 [trial court recognizing this effect]; Dec. at pp. 4, 17 [recognizing that, without section 97.75, section 95.3 would have permitted recoupment].

[29] 2 JA 452-457 [for fiscal years 2006-2008, 47 plaintiff cities came out ahead by more than $85 million].

F. The Statute At The Center Of This Dispute — Rev. & Tax Code Section 97.75

1. The Statute

This brings us to the statute at the center of this mandamus proceeding. When it passed the VLF Swap, the Legislature also added section 97.75 to Article 3, which section 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 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 under section 97.75.

2. The Two Possible Interpretations Of Section 97.75 And The Economic Consequences Of Each Interpretation

As the divergent trial court and Court of Appeal decisions in this case confirm, there are two possible ways to read the undefined term "services" in section 97.75. On the one hand, it is 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, the cost of which proved to be extremely modest (approximately $35,000 per year in Los Angeles County). On

the other hand, it is 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. This would include, in addition to the incremental services to allocate the new tax shares, the significant cost of the underlying services required to assess and collect the tax shares newly allocated (approximately $5 million per year for the 47 plaintiff cities).

The California State Association of County Auditors Accounting Standards Committee issued Uniform Guidelines to implement section 97.75 and related statutes.[30] The Guidelines adopted the "all services" interpretation, and, although they admittedly do not have the force and effect of law, Los Angeles County (along with virtually all other counties across the State) has followed them.[31] Financially, this means that for fiscal years 2004-05 and 2005-06, the County did not recoup from the plaintiff cities either the approximately $35,000 cost of the incremental new services required by the Triple Flip and VLF Swap, or the approximately $5 million cost of the underlying services necessary to assess and collect the additional tax shares allocated to cities under those two statutes.

G. 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 other words, the cities maintained that: (i) for the first two fiscal years, section

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[30] See 1 JA 48 [Stipulated Fact No. 15]; 1 JA 53 [Guidelines].

[31] 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 the Guidelines].

97.75 applied broadly to forbid recoupment of the cost of all "services" associated with their additional tax shares; and (ii) thereafter, section 97.75 applied narrowly so as to permit cost recoupment only for the incremental new services required by the Triple Flip and VLF Swap.

In rejecting the cities' claim and holding that the County had not violated the law, the trial court began by recognizing the obvious — 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.[32] 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.[33] 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.[34]

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 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). The Court of Appeal then concluded that, by providing express authority for counties to recover their incremental new costs from cities, section 97.75 in its prefatory language — "Notwithstanding any other provision of law"

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[32] 3 JA 574. Although it disagreed with the ultimate outcome, the Court of Appeal also recognized that section 95.3 otherwise would authorize recoupment of the underlying PTAF associated with these revenues. (Dec. at pp. 4, 17.)

[33] 3 JA 572-573.

[34] 3 JA 574-575.

— also plainly and permanently trumped section 95.3 recoupment of the underlying costs associated with assessing and collecting the cities' additional tax shares.

If the Court does not agree with the trial court's broad reading, then the validity of the Court of Appeal's latter conclusion is the question this Court must decide.

STANDARD OF REVIEW

This case arises from a petition for writ of mandate under Code of Civil Procedure section 1085. A trial court's legal interpretation of statutes on such a petition is reviewed de novo. (See, e.g., *Munroe v. Los Angeles County Civil Serv. Comm'n* (2009) 173 Cal.App.4th 1295, 1301.) To grant a writ of mandamus, a court must find a "clear, present and ministerial duty" on the part of the respondent, and that the duty is being violated. (*Id.* at p. 1300, quoting *American Fed'n of State, County & Mun. Employees v. Metropolitan Water Dist.* (2005) 126 Cal.App.4th 247, 261.)

Applicable principles of statutory interpretation will be discussed below in the context of specific arguments to which they relate. For example, it is settled that statutes should be interpreted in the context of the entire scheme of which they are a part; and it is error to impliedly repeal an earlier statute where it is possible to interpret two statutes in harmony

ARGUMENT

As noted above, there are two possible ways to interpret the undefined term "services" in section 97.75. But, so long as one applies the definition consistently throughout, both interpretations logically support the recoupment of PTAF on section 97.68 and 97.70 property tax revenues — albeit on different statutory authority.

Even the cities would concede that a defense judgment is required if one reads section 97.75 "services" broadly, as the trial court did — namely, as covering the cost of ***all*** "services" necessary to assess, collect and allocate the

cities' additional tax shares under the Triple Flip and the VLF Swap, as opposed to just the incremental new services necessary to apportion the additional tax shares.[35] Indeed, under that interpretation, ***section 97.75 itself*** would expressly authorize counties to recoup "the actual cost of providing these services" for every fiscal year after the 2005-06 fiscal year (the only fiscal years in issue). (Section 97.75 [second sentence].)

A defense judgment still should follow, however, even if one were to interpret section 97.75 narrowly — namely, as addressing only the incremental new services required to account for the additional tax shares now allocated under the Triple Flip and VLF Swap. The County will devote the balance of its brief to explaining why this is so.

A. Section 97.75 Can Reasonably Be Read To Address Only The Cost Of Incremental New Services Under Sections 97.68 And 97.70.

There are three basic reasons why section 97.75 could be interpreted as addressing only the incremental new services counties must perform to allocate

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[35] There are a number of good reasons why this Court could conclude, as the trial court did, that section 97.75 was intended to deal with the cost of all services associated with assessing, collecting and allocating the cities' additional tax shares. **First**, a broad reading of section 97.75 was most financially beneficial to cities, as it gave them maximum relief from PTAF recoupment during the same two fiscal years where the State had provided for further temporary ERAF shifts to fund education. (See section 97.71.) **Second**, a broad reading also would be consistent with the sparse legislative history for section 97.75, which begins by (i) observing that "[e]xisting 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"; and (ii) ends by concluding that recoupment of such costs as to the cities' additional tax shares is prohibited only for "the 2004-05 and 2005-06 fiscal years." (Legislative Counsel Digest to SB 1096 of 2004, available online at http:www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1051-1100/sb_1096_bill_20040805_chaptered.html.) **Finally**, the trial court's reading is consistent with the Uniform Guidelines that had been promulgated with the involvement of the State and the California League of Cities. (1 JA 94-95 [Appendix A, Schedules K1 & K2].)

the cities' additional tax shares under the Triple Flip and VLF Swap. To varying degrees, each supports the conclusion that section 97.75 was ***not*** designed to trump section 95.3.

1. The Language Chosen By The Legislature Is Fully Consistent With A Narrow Reading Of Section 97.75.

We begin with the language used. Section 97.75 expressly deals with cost recoupment for "services performed by the county under Sections 97.68 and 97.70." Given that all other services performed by counties to assess and collect property taxes are services performed before the Triple Flip and VLF Swap were enacted (and still would be performed without the Triple Flip and VLF Swap), it is reasonable to conclude that section 97.75 was crafted to deal solely with the costs associated with the incremental new services required by sections 97.68 and 97.70. The Court of Appeal makes this a major premise of its conclusion. (See Dec. at pp. 14-15.) Concluding that section 97.75 deals with a different subject matter, however, means that the Legislature did not mean to disturb the general recoupment rule embodied in section 95.3.

2. The Location Chosen For Section 97.75 Is Consistent With A Narrow Reading.

Section 97.75's placement within the statutory scheme also is consistent with a narrow reading. Simply, section 97.75 was not placed in Article 1, "Definitions and Administration," either beside or as an amendment to section 95.3, as one might expect if it addressed the tax administration services of section 95.3. Instead, it was placed in a separate article of the Revenue Code — Article 3, the same article containing the Triple Flip and VLF Swap (and the ERAF statutes) — providing further support for the notion that section 97.75 was designed to deal with a different subject than section 95.3 was designed to address.

Again, however, if section 97.75 was enacted to deal with a different subject than section 95.3, it seems unlikely that section 97.75 also was intended to trump or amend section 95.3 by implication. In that regard, it merits emphasis

that: (i) the Legislature's original recoupment statute, enacted in 1990, authorized recoupment from all entities receiving property tax revenues, including schools; and (ii) when the Legislature later chose to exempt school entities from PTAF recoupment, it placed that exception within the same recoupment statute. The fact that the Legislature did something quite different here provides further support for the conclusion that section 97.75 was not intended to, and did not, affect section 95.3.

3. The Triple Flip And VLF Swap Relate Uniquely To Counties And Cities.

The underlying services provided by counties to assess and collect property tax revenues countywide benefit all the ultimate recipients of property tax revenues. But, the Triple Flip and VLF Swap apply only to counties and cities, and hence, the incremental new services to implement them benefit only cities and counties. So, it makes perfect sense for the Legislature to enact a separate statute dealing with those new services and prescribing cost recovery solely between the entities benefiting from them. Again, however, such a context would suggest that the Legislature did not mean to disturb the general recoupment rule dealing with services beneficial to everyone.

B. The Court Of Appeal Erred In Concluding That Section 97.75 Impliedly Trumped The Operation Of Section 95.3.

The doctrine of implied repeal applies only when two or more statutes concern the same subject matter and are in irreconcilable conflict. (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 942.) The doctrine of implied repeal, when the two acts are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. (*Id.* at pp. 942-943.) Thus, courts are bound, if possible, to maintain the integrity of both statutes if the two may stand together. (*Ibid.*) "Repeals by implication are disfavored and are recognized only when potentially conflicting statutes cannot be harmonized." (*Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 43.)

Turning more directly to the issue at hand, section 97.75 imposes no obstacle to PTAF recoupment under section 95.3 for at least three reasons.

1. Accepting A Narrow Definition Of "Services" In Section 97.75 Yields A Conclusion That The Statute Does Not Forbid Recoupment Of Traditional PTAF.

Accepting the Court of Appeal's reading of "services," an immediate question arises as to section 97.75's relevance to section 95.3 recoupment authority with respect to the cities' additional tax shares. To elaborate, here is the logic compelled by a narrow reading of "services":

- 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 amounts being allocated to cities under the Triple Flip and VLF Swap;
- Thus, for all fiscal years, the relevant statute for cost recovery of the underlying services necessary to assess and collect the additional revenues would continue to be 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.

In short, the Court of Appeal's narrow interpretation of the "services" embraced by section 97.75 should have led to a conclusion that the statute did not forbid section 95.3 recovery of the cost of the underlying services provided by counties to assess and collect section 97.68 and 97.70 property tax revenues.

2. The Court Of Appeal's Interpretation Is Contrary To The Plain Intent Expressed Throughout The Rest Of The Statutory Scheme.

Throughout its decision, the Court of Appeal emphasized that, because it had found section 97.75 to be unambiguous, the Court felt prohibited from interpreting section 97.75 with other related statutes.[36] Respectfully, the law is, and must be, 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 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 erred and reached conclusions that cannot be squared with the rest of the scheme. The Legislature's pro-recoupment stance is detailed above, and it could not be more clear: The State is vitally interested in having adequate funding for property tax administration and in alleviating the unfair burden on counties of having to collect property taxes allocated to others. For this reason, it has been the law for twenty years that every local entity except schools and ERAFs —

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[36] 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"], p. 15 ["Stated differently, section 97.75 is a stand-alone provision" authorizing recovery of incremental costs "only"], p. 15 [rejecting argument that section 97.75 must be "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"], p. 16, fn. 8 ["we should not refer to the older statutes where the newer one, section 97.75, can be read by itself"].

exempted out of fiscal necessity for the State — is responsible for its pro rata share of PTAF.

Case law reinforces what already is clear from the statutes themselves. Indeed, there are three reported decisions in which local entities have sought to avoid PTAF recoupment, and all three cases read the scheme broadly to allow recoupment. (*Arcadia Redevelopment Agency v. Ikemoto* (1993) 16 Cal.App.4th 444 [upholding constitutionality of PTAF recoupment from redevelopment agencies]; *Community Redevelopment Agency of City of Los Angeles, supra*, 89 Cal.App.4th 719 [rejecting claim that imposition of PTAF improperly reduced share of property tax revenues allocated to Redevelopment Agency, and containing extensive discussion of legislative history and broad purpose behind section 95.3]; *Arbuckle-College City Fire Protection Dist. v. County of Colusa* (2003) 105 Cal.App.4th 1155 [rejecting claim that statute specific to fire protection districts controlled over section 95.3].)

Arbuckle is instructive, as the trial court noted below. There, a fire protection district petitioned for a writ of mandate seeking to require a county auditor-controller to comply with Government Code section 29142, which permits a county to recoup administrative costs only by agreement between the Board of Supervisors and the fire protection district, and only up to a specified cap. The county demurred on the ground that section 95.3 was controlling, and permitted the county to collect the fees in question with or without an agreement. The trial court sustained the demurrer without leave to amend, and the Court of Appeal affirmed.

Initially, the court undertook to explain why section 95.3 was so important, observing that, with the enactment of Proposition 13,

> it was no longer possible for local taxing authorities to employ budget-based taxation without regard to the taxes imposed by other taxing authorities. Rather, the 1 percent maximum tax imposed pursuant to California Constitution, article XIII A, section 1, is a

limit on the total aggregate amount to be levied and apportioned by all local agencies and districts within a county.

(*Id.* at pp. 1161-1162.) The Court further noted that, "[a]s originally enacted, and until 1994, the property tax allocation provisions of the Revenue and Taxation Code did not include any provision to permit counties to recoup administrative costs associated with the burdens of assessing, collecting, and allocating property tax revenues. [Citation omitted.] Therefore, until 1994, the ability of counties to recoup administrative expenses was governed by the provisions of the Government Code" relied upon by the fire protection district (and requiring an agreement). (*Id.* at p. 1162.)[37] Turning to section 95.3, the Court of Appeal held that the intent was,

> to fairly apportion the burden of collecting property tax revenues. [Citation omitted.] Accordingly, in allocating property tax revenues to jurisdictions entitled to share in the revenues, the county calculates the proportionate share of property tax administrative costs attributable to each jurisdiction. (Rev. & Tax. Code, § 95.3, subd. (a).) With the exception of school entities, each proportionate share is deducted from the property tax allocation of the relevant jurisdiction, and is retained by the county as a charge for its services.
>
> The Legislature provided that Revenue and Taxation Code section 95.3 is to apply "[n]otwithstanding any other provision of law." (Rev. & Tax. Code, § 95.3, subd. (a).)

(*Id.* at p. 1163.) The Court went on to find this particular declaration was "strong evidence the Legislature intended Revenue and Taxation Code section 95.3 to apply regardless of any earlier enacted limitation upon a county's ability to recoup administrative expenses." (*Id.* at p. 1167.)

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[37] Although section 95.3 as such was enacted in 1994, recoupment was allowed from 1990.

Turning to the express exclusion for schools and the ERAF, the *Arbuckle* court further held that "if exemptions are specified in a statute, we may not imply additional exemptions unless there is a clear legislative intent to the contrary. [Citations omitted.] The express exemption of school entities is strong evidence the Legislature intended that other jurisdictions, including fire protection districts, are not exempt from the administrative cost provision of Revenue and Taxation Code section 95.3." (*Ibid.*)

Next, the Court stressed the unfairness of a contrary reading:

> Revenue and Taxation Code section 95.3 is a remedial statute enacted on the basis of express legislative recognition that it is unfair to require county governments to bear a disproportionate part of the costs of assessing, collecting, and allocating property tax revenues. (Rev. & Tax. Code, § 95.3, subd. (e).) The statute was expressly intended to fairly apportion the cost burden. (*Ibid.*) It is a well-recognized policy of law to liberally construe remedial statutes to achieve their legislative purpose. [Citations omitted.] To engraft exemptions into Revenue and Taxation Code section 95.3 would compel county governments to bear the exempted jurisdictions' share of the cost burden, which the Legislature has declared to be unfair and which it intended to remedy by enacting section 95.3.

(*Ibid.*) Finally, the Court of Appeal reasoned that its conclusion was not inconsistent with the purpose behind the other statutes upon which the fire protection district relied. (*Id.* at pp. 1167-1168.)

The parallels between this case and *Arbuckle* are striking. Here, as in *Arbuckle*, local jurisdictions have sought to avoid PTAF by arguing that a separate statute somehow trumped section 95.3 and its broad remedial intent.[38] Here, as in

[38] The only difference is that, in *Arbuckle*, the statute invoked to avoid responsibility for PTAF pre-dated section 95.3, whereas here, the statute invoked by Appellants post-dates section 95.3. But, this is a "distinction" without a

Arbuckle, the fact that the Legislature chose to provide an exemption only for school entities is "strong evidence" that the Legislature did not intend to exempt anyone else. Here, as in *Arbuckle*, endorsing the cities' argument would frustrate the intent behind section 95.3, which is to fairly apportion the burden of PTAF among all property tax recipients other than schools. Here, as in *Arbuckle*, the County's interpretation is consistent with the intent behind all applicable statutes.

* * *

Plainly, the construction of section 97.75 urged by the plaintiff cities and adopted by the Court of Appeal creates disharmony with twenty years' worth of harmonious statutes and case law — even though it is entirely possible (and, indeed, only logical) to interpret section 97.75 in harmony. Specifically, under the Court of Appeal's interpretation of section 97.75 as speaking only to recoupment for incremental new services, section 97.75 may be harmonized as follows:

- The Legislature's overriding intent is to ensure that all local entities (other than schools) pay for their share of the costs necessary to assess, collect and allocate the property taxes they receive, both to ensure that property tax administration is adequately funded and to alleviate the unfair burden imposed on counties;
- Virtually all services provided by the county benefit all recipients in equal measure, and hence, are properly handled through section 95.3;
- On the other hand, the Triple Flip and VLF Swap require services that benefit only cities and counties. To ensure that entities who derive no benefit from the Flip and Swap bear no portion of the cost of

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difference. The Legislature is presumed to have been aware of section 95.3 when it enacted section 97.75 and, because section 97.75 does not even mention section 95.3, much less contain any language to limit its application, the logical conclusion is that the Legislature did not intend either to alter section 95.3's general rule of PTAF recapture or to expand its limited exception for schools and ERAFs.

administration, a separate statute applicable only to cities and counties is fitting.

The Court of Appeal missed this interpretation precisely because it wrongly felt that it must interpret section 97.75 in a vacuum.

3. The Court Of Appeal's Decision Either Rewrites Section 97.75 Or Impliedly Repeals Section 95.3.

Neither section 97.75 nor its sparse legislative history contains a syllable reflecting an intent by the Legislature to depart from the general "pro-recoupment intent" it has staked out in statute after statute since 1990. Indeed, as the Court of Appeal's decision recognizes, the statute does not even reference section 95.3's recoupment authority, much less overrule it.[39]

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. 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** . . . ."

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

Looked at another way, the decision is an implied repeal of section 95.3. But, 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 Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1118-1119 ["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].) It is possible, as described above, to read the two statutes in harmony with one another; thus, there can be and should be no finding of implied repeal.

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 posited, that the Legislature must have implicitly intended to trump section 95.3.[40] Initially, any assumption that section 97.75 was intended to affect section 95.3 demands a broad reading of "services" in section 97.75 (so as to embrace the same "services" as section 95.3). But, if so, then section 97.75 would expressly authorized recovery of the cost of such services after the first two fiscal years, and the County has not disobeyed the law.

Regardless, there are good reasons why the Legislature might choose to enact a separate statute:

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

- As noted above, 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. For whatever reason, 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. (See Section 97.71.)

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 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 have been entitled to full recoupment in fiscal years 2004-05 and 2005-06, but also, 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.

Finally, as noted in the Petition, the Court of Appeal's decision promotes dubious economic policy that, in very short order, will harm everyone, including the cities themselves and the State of California. The reason is found in other statutes the Court of Appeal did not consider. (See section 95.35, subd. (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.[41] Thus, because every recoupment dollar must be used solely to fund property tax administration (section 95.3, subd. (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

In this mandamus proceeding, cities have the burden to support their claim that section 97.75 established a clear and plain duty that the County has violated. But, there is no way, consistent with either logic or longstanding rules of statutory construction, to reach the cities' desired outcome.

- Whether one interprets section 97.75 broadly or narrowly, by applying the statute consistently, the County is entitled to prevail;
- The outcome urged by the cities and endorsed by the Court of Appeal is at odds with longstanding legislative intent and creates disharmony, not harmony, with the rest of the statutory scheme;
- The outcome rewrites section 97.75 — or works a partial implied repeal of section 95.3 — for long run harm to everyone; and
- Nothing in the sparse legislative history of section 97.75 even hints at the cities' desired outcome.

[41] 2 JA 386 [reported results of studies by California State Auditor and California Institute for County Government].

The Court of Appeal's decision should be reversed.

DATED: November 19, 2010

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: _____

Scott D. Bertzyk
Attorneys for Defendants and
Respondents Below
County of Los Angeles, et al.

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies, pursuant to Rule 8.520(c) of the California Rules of Court, that the enclosed brief was produced using 13-point type, including footnotes, and contains 10,948 words, which is less than the 14,000 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: November 19, 2010

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: _____

Scott D. Bertzyk
Attorneys for Defendants and
Respondents Below
County of Los Angeles, et al.

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 November 19, 2010, I served the **OPENING BRIEF** 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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Floor 2, N. Tower
Los Angeles, CA 90013-1213

Holly O. Whatley
Colantuono & Levin, PC
300 South Grand Avenue, Suite 2700
Los Angeles, CA 90071-3137

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 November 19, 2010, at Santa Monica, California.

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