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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF ALHAMBRA, et al.,

Plaintiffs/Petitioners Below

v.

COUNTY OF LOS ANGELES, et al.,

Defendants/Respondents Below

CRC 8.25(b)

SUPREME COURT
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REPLY BRIEF ON THE MERITS

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.)]

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INTRODUCTION

Claiming that Revenue & Taxation Code section 97.75 prohibits Los Angeles County from recouping the administrative costs associated with property tax revenues allocated to them by sections 97.68 and 97.70, the plaintiff/petitioner cities brought this mandamus proceeding. No matter how many times the cities attempt to shift the burden of proof and persuasion to the County or to misstate the County's legal position, the issue remains as framed by the cities' complaint below and the County's Petition 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?

On the issue actually presented, the County's position has been unwavering. There are two possible ways to interpret the scope of the "services" for which reimbursement is addressed by section 97.75 — and both find support in the record. Either one could conclude (as the trial court did) 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 allocated to cities under sections 97.68 and 97.70, or one could conclude (as the Court of Appeal did) that section 97.75 was intended to embrace only the incremental, new services required to implement the VLF Swap and Triple Flip. Either way, so long as one applies that interpretation consistently throughout section 97.75, the necessary conclusion is that the County is acting lawfully.

Because no one disputes that the County has acted lawfully if the Court were to interpret section 97.75 broadly, the County has focused its briefing on the remaining question: "Even under the Court of Appeal's narrow reading of the term 'services,' does section 97.75 require a judgment for the cities?" As the County's Opening Merits Brief ("OMB") establishes, the Court of Appeal's affirmative answer to that question is in

disharmony with the rest of the statutory scheme, even though section 97.75 can be interpreted in harmony.

In the main, the cities' Answering Brief ("AB") avoids the issue, while proffering inflammatory rhetoric, unsupported assertions and inconsistent arguments. And, to the extent the cities attempt to parse section 97.75, they undermine their position. For example, in arguing that section 97.75 was intended to be a statute of narrow application, the cities offer:

> Basic statutory analysis demonstrates that the phrase "these services" [in section 97.75] refers only to those activities referenced in §§ 97.68 and 97.70 — the sections referenced in the first sentence of this simple, two-sentence statute — and does not include services described in § 95.3 (which provides authority to withhold PTAF in general). . . .[1]

But, if this is so, how can section 97.75, confined to a narrow subject matter, defeat section 95.3, which section 97.75 never mentions and which (according to the cities) deals with a different (and much broader) subject matter? The only logical — and legally permitted — answer to that question is that, precisely because it deals with a different category of services, section 97.75 does ***not*** undo section 95.3.

ARGUMENT

A. No Matter How One Interprets the Term "Services," Section 97.75 Does Not Prohibit the County from Recouping the Cities' Full Pro Rata Share of PTAF for the Fiscal Years In Question.

It is undisputed that the County did not recoup any PTAF associated with the additional property tax shares allocated to cities under the Triple Flip and the VLF Swap for the first two fiscal years of section 97.75's existence (2004-06). Thereafter, the County has recouped from cities their pro rata share of the PTAF associated with the cities' new tax shares. The County's defense does not require the Court to conclude that

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[1] AB at p. 16.

section 97.75 expressly authorizes the County's recoupment practices. Rather, because such recovery would have been independently authorized by Revenue & Taxation Code section 95.3 (as the trial court and Court of Appeal both concluded),[2] the County's position is simply that its recoupment practices are authorized unless, as the cities allege, section 97.75 forbade such recovery for the fiscal years in question. And, interpreted broadly or narrowly, but explicated consistently throughout, it is inescapable that section 97.75 does not forbid recoupment.

This conclusion flows directly from the wording of section 97.75, which provides:

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

In short, the first sentence prohibits recovery from cities of the cost of certain "services" for two fiscal years; the second authorizes recovery from cities of the "actual cost" of those "services" thereafter. Section 97.75 does not explicitly prohibit recovery of anything "for the 2006-07 fiscal year and each fiscal year thereafter." It simply serves to authorize recovery of the cost of whatever "services" fall within its ambit.

With that context, the analysis is straightforward.

1. Under a Broad Reading of "Services," Section 97.75 Provides Explicit Recoupment Authority.

If the Court were to interpret section 97.75 broadly — i.e., as addressing and encompassing the cost of ***all services*** associated with assessing, collecting and allocating

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[2] 3 JA 547, 548, 553-554 [trial court recognizing this effect]; Dec. at p. 17 [recognizing that, without section 97.75, section 95.3 would have permitted recoupment].

the property tax revenues allocated to cities under the Triple Flip and the VLF Swap — then: (i) for the first two fiscal years (2004-05 and 2005-06), the County was forbidden from recouping any costs for any services associated with the tax revenues in question, even if recovery was permitted by another statute, such as section 95.3; and (ii) thereafter, the County would be entitled to recover the "actual cost of providing these services." In short, section 97.75 would directly provide the County's recoupment authority.

2. Under a Narrow Reading of Section 97.75, the County's Recoupment Authority Is Unaffected.

If the Court were to interpret section 97.75 narrowly — i.e., as addressing only the cost of the incremental new services associated with accounting for the Triple Flip and VLF Swap payments to cities — the County's section 95.3 recoupment authority would be unaffected:

- Under the first sentence of section 97.75, the County, for the first two fiscal years, 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, but would not be prohibited from recovering the cost of any other services if permitted by other provisions of law.
- Under the second sentence of section 97.75, the County, for all other fiscal years, would be authorized to recover directly from cities the actual cost of the ***incremental new "services"*** forbidden for the first two fiscal years. Recovery of the cost of ***any other services*** would be neither authorized nor prohibited by section 97.75.

In short, under a narrow reading, neither sentence of section 97.75 can be said to concern itself with recoverability of the cost of the traditional ***underlying services*** to assess and collect the additional amounts being allocated to cities under the Triple Flip and VLF Swap. The inquiry simply would become whether other provisions of law, such as section 95.3, authorized recoupment. Because, as the trial court and Court of Appeal

both recognized, section 95.3 would authorize recoupment of those other costs,[3] it still follows that the County has acted lawfully.

3. The Cities' Reading of Section 97.75 Is Logically Unsound.

The cities' efforts to "interpret" section 97.75 confirm that they cannot, consistent with the rules of statutory construction, read section 97.75 to compel their desired outcome. For example, as noted above, the cities say that section 97.75 was crafted to deal with the cost of incremental new services imposed for the first time by the Triple Flip and VLF Swap, while section 95.3 is concerned with the cost of the underlying services necessary to assess and collect those taxes in the first place.[4] But, under the unyielding maxim that courts should, wherever possible, interpret statutes in harmony with each other rather than effecting an implied repeal, the cities' premise means that, because section 97.75 deals with a different subject matter, it cannot defeat the operation of section 95.3. (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 942-943 ["Repeals by implication are disfavored and are recognized only when potentially conflicting statutes cannot be harmonized."].)

Then, turning to the wording of section 97.75, the cities offer that its first sentence prohibits the recovery not just of incremental new services imposed directly by the Triple Flip and VLF Swap, but also, of the underlying services necessary to assess and collect the tax revenues in the first place.[5] (As the trial court concluded.) But, because basic rules of statutory interpretation require the Court to apply that interpretation consistently throughout the rest of the statute,[6] the necessary next conclusion would be that the second sentence of section 97.75 expressly authorizes recovery of "the actual cost of providing

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[3] 3 JA 547, 548, 553-554; Dec. at p. 17.

[4] AB at p. 16.

[5] E.g., AB at p. 23 ["its meaning is plain -- counties get nothing in FY 2004-05 and FY 2005-06 (which the county understood to be the case, charging nothing)"]; see also *id.* at pp. 9, 27, 29 [similar statements].

[6] AB at p. 16 ["The phrase 'these services' in the second sentence necessarily refers to the services as described in the first."].

these [same] services" in all other fiscal years. Indeed, the only way to conclude otherwise would be to interpret the second sentence of section 97.75 inconsistently with the first, which brings us to our next point.

Finally, having read the first sentence of section 97.75 broadly (to forbid recovery of any costs associated with ***any*** services), the cities read the authority conferred in the second sentence narrowly, as dealing only with recovery of the cost of incremental new services imposed directly by the Triple Flip and VLF Swap.[7] Fundamental rules of statutory construction require, however, that the term "services" be given the same meaning throughout section 97.75. The cities cannot have it both ways.

There simply is no way, consistent with rules of statutory interpretation, to reach the cities' desired outcome. Recognizing this, the cities posit that, because the second sentence authorizes recovery of the cost of incremental, new services directly imposed by the Triple Flip and VLF Swap, the Court must conclude that it impliedly forbade the recovery of other costs under "the rule of '*expressio unius est exclusio alterius*.'"[8] But, that logic assumes that no other cost recoupment statutes (like section 95.3) permit recovery. Because section 95.3 exists, the cities' argument is reduced to the claim that section 97.75 ***impliedly repealed*** section 95.3 on this subject — something fundamental rules of statutory interpretation forbid. (*Pacific Lumber Co., supra*, 37 Cal.4th at pp. 942-943 ["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 [same].)

Put differently, the cities' interpretation of the second sentence of 97.75 would have this Court transmute a rule whose sole express purpose is to ***authorize*** recovery of

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[7] AB at p. 25 [claiming second sentence only permits recovery of County's "annual costs to cover the additional administrative tasks of maintaining separate accounts for the designated in-lieu funds and distributing them as instructed by the VLF Swap and Triple Flip statutes"]; see also *id.* at pp. 23, 24, 27-28.

[8] AB at p. 24.

new costs into a rule whose implied (and supposedly dominant) purpose is to ***forbid*** recovery of ***other*** costs recoverable under another statute. There is not a shred of legislative history to suggest that the Legislature intended that curious outcome, and all evidence of legislative intent favors recoupment.

4. The County's Interpretation Does Not Create Surplusage.

The cities offer that, if the Court were to rule for the County, the second sentence of section 97.75 would be reduced to "surplus, a result not tolerated by long-established rules of statutory interpretation."[9] Not so. As the County pointed out in its Opening Merits Brief — and the cities simply ignore — the Triple Flip and VLF Swap benefit only cities and counties; thus, a directive that the cost of new services associated with the cities' Flip and Swap revenues may be collected from cities ensures that only the parties who benefit from the Triple Flip and VLF Swap bear the costs associated with the property tax revenue allocations under those two statutes. And, again, this purpose is fulfilled whether one interprets section 97.75 broadly (to deal with all services) or narrowly (as dealing only with incremental services.[10] Either way, costs are borne by the benefiting parties and no one else, which is precisely as it should be. Either way, the second sentence accomplishes a reasonable purpose the cities ignore.

B. <u>The Cities' Newfound Reliance on Section 95.3 Is Both Ironic and Fruitless</u>.

There is no small irony in the cities' abrupt decision to turn to section 95.3 for relief; even the Court of Appeal concluded that, if section 97.75 does not forbid it, section 95.3 would have allowed recoupment.[11] Regardless, the cities' attempted use of section

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[9] AB at p. 25.

[10] OMB at pp. 32-33.

[11] Dec. at p. 17 ["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."].

95.3 is no more sound than their former sole reliance on section 97.75.[12]

1. Section 95.3 Does Not Provide Cities with Immunity from PTAF Recoupment.

For their main argument concerning section 95.3, the cities offer that the additional property tax dollars allocated to them under the Triple Flip and VLF Swap somehow are immune from PTAF recoupment by virtue of section 95.3(b)(1),[13] which provides in its entirety:

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

Initially, the cities' immunity contention is irreconcilable with their lead argument — namely, section 97.75 was enacted to defeat recoupment otherwise permitted by section 95.3.[14] Indeed, if section 95.3 already provided cities immunity from recoupment of anything, there would have been no need for section 97.75 to forbid recoupment in any fiscal year. Regardless, the cities' attempt to extend recoupment immunity to their additional tax shares is wrong.

a. The Cities Misstate the Evolution of PTAF Recoupment.

The cities insist there is a body of property tax dollars that always has been immune from PTAF recoupment, claiming that: (i) PTAF recoupment was not permitted until 1994, when section 95.3 was enacted in its original form; and (ii) there never has been a point in time when the Legislature has permitted PTAF recoupment from schools

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[12] 1 JA 33 [Petition, ¶ 68, lines 14-18 & 25-27 (relying on Section 97.75)]; 1 JA 49 [Stipulation, ¶ 18].

[13] See AB at pp. 2, 4, 5, 8, 25-26, 29.

[14] See AB at pp. 16, 22.

or ERAFs, who would have received these property tax dollars but for the Triple Flip and VLF Swap, and are exempted from recoupment by section 95.3(b)(1).[15] The facts are otherwise.

The evolution of PTAF recoupment is spelled out at length in both the County's Petition for Review and in its Opening Merits Brief (at pp. 7-9). It also is described at length in *Arcadia Redevelopment Agency v. Ikemoto* (1993) 16 Cal.App.4th 444 and *Community Redevelopment Agency of City of Los Angeles v. County of Los Angeles* (2001) 89 Cal.App.4th 719 — both of which are cited in the Opening Merits Brief, but ignored by the cities. Again, PTAF recoupment has existed since ***1990,*** at a point in time before the Legislature even had conceived of an ERAF. The initial recoupment rule provided for every benefiting jurisdiction or agency, ***including schools***, to pay its full pro rata share of PTAF. Even after the Legislature (i) chose to carve out a PTAF-recoupment exemption for schools, and (ii) shifted local agency revenues to ERAFs to offset the State's obligation to fund education, ERAFs were not initially exempted from PTAF recoupment. Instead, that exemption came later, with the Legislature lamenting the adverse impact on property tax administration, and confirming a purpose for the immunity from recoupment that had nothing to do with the identity of the dollars, and everything to do with the recipient of those dollars (and, more specifically, the State's obligation to fund education).[16]

In short, this is not a case where the property tax revenues in issue here always have been exempt from PTAF recoupment. Instead, this is a case where:

- Every tax dollar, including dollars going to schools and ERAFs, originally was subject to PTAF recoupment,

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[15] AB at p. 22 [in paragraph accusing county of engaging in "revisionist history," cities assert "there is no dispute" as to these points].

[16] See AB at pp. 5-6, 10 and 22 [cities conceding this purpose].

- Subsequently, a budget-driven exemption from recoupment was created for dollars going to schools (and later ERAFs), with everyone else still paying their full pro rata share, and
- Through the Triple Flip and VLF Swap, the State effectively is returning to its initial broad-based recoupment policy (albeit under a different formula).

b. The Cities' New Tax Shares Are Not Taken Out of the ERAF.

In a further effort to cloak their section 97.68 and section 97.70 revenues with some sort of immunity from PTAF recoupment, the cities repeatedly suggest that the additional tax shares they receive under the Triple Flip and VLF Swap are deposited into the ERAF (which itself is immune) before being re-allocated to cities and counties.[17] But, the Court need only read sections 97.68 and 97.70 to appreciate that these revenues never are deposited into the ERAF.[18] Instead, the calculation of revenues allocated under the Triple Flip and VLF Swap are but two of a series of final calculations required by Chapter 6, article 3 of the Revenue and Taxation Code to complete the process of allocating property taxes to all jurisdictions and agencies entitled to receive them. Elsewhere, the cities grudgingly concede the point.[19]

c. The Cities Ignore the Purpose Behind Immunity for Schools and ERAFs.

The cities' plea for immunity ignores the undisputed purpose for the exemption for school entities and ERAFs. As the cities concede elsewhere, the purpose for the

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[17] AB at pp. 8 ["in-lieu payments come from each county's ERAF" and "payments from ERAF"], 10 ["funds paid . . . via the ERAF" and "ERAF-channeled revenues"], 26 ["Legislature redirected PTAF-exempt ERAF funds to cities"].

[18] Section 97.68 ["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."]; Section 97.70 ["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."].

[19] AB at p. 27 [recognizing that funds never actually make it to ERAF].

exemption was to allow the State to meet its constitutional obligation to fund education with an expenditure of as few State dollars as possible.[20] (By definition, every dollar in recoupment the State allows from schools or ERAFs is a dollar the State would have to make up to schools out of its own General Fund.) Obviously, that purpose has nothing to do with cities, and it makes no sense to imply an extension of immunity to them — particularly where that very same statute expressly declares a different intent and purpose for every recipient of property tax revenues apart from schools and ERAFs:

> 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 . . .

(Section 95.3(e); see also *Arbuckle-College City Fire Protection Dist. v. City of Colusa* (2003) 105 Cal.App.4th 1115, 1167 [rejecting attempt to avoid PTAF responsibility based on separate statute, court notes: "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."].)

That section 97.75 post-dates section 95.3 provides no ground for distinguishing *Arbuckle* on this point.[21] Simply, the Legislature is presumed to have been aware of section 95.3 when it enacted section 97.75; indeed, elsewhere in their brief, the cities expressly assert that section 97.75 was enacted with section 95.3 in mind. Because the Legislature did not see fit (either in section 97.75 or section 95.3) to expand section

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[20] See AB at pp. 5-6 [conceding this purpose], 10 ["For the State's own benefit"] and 22 [conceding point again].

[21] AB at pp. 28-29.

95.3(b)(1)'s limited exemption for schools and ERAFs, it necessary follows that the Legislature chose not to expand that exemption to benefit cities or to impliedly repeal section 95.3's application to cities. (See, e.g., *Western Oil Gas Ass'n v. Monterey Bay Unified Bay Air Pollution Dist.* (1989) 49 Cal.3d 408, 422 [rejecting similar implied repealer argument: "We presume, absent evidence to the contrary, that the Legislature was fully aware of the districts' long-standing statutory authority when the Legislature passed the Tanner Act. The only reasonable conclusion is that if the Legislature had intended to repeal the district's authority (in whole or in part) the Legislature would have explicitly done so."].)

d. The Cities Ignore the Way Section 95.3 Operates.

Finally, the cities' immunity argument fails to come to grips with the way section 95.3 works. Under section 95.3, the first step is to determine the "administrative cost apportionment factor" after all available tax dollars have been allocated, so that total PTAF can be allocated proportionally between all property tax recipients in direct proportion to the revenues they are to receive. (Section 95.3(a).) Only after the process of identifying recipient shares is complete does immunity come into play. Then, and only then, monies actually allocated to schools and ERAFs are exempted from recoupment. (Section 95.3(b)(1).)[22] Consequently, following the progression required by section 95.3 means that the "administrative cost apportionment factors" for ERAFs and schools would not be based on any property tax revenues allocated to cities under the Triple Flip and VLF Swap, and section 95.3(b)(1) immunity would never even come into play.

[22] Under section 95.3 "administrative cost apportionment factors" are calculated for every jurisdiction and agency entitled to receive property tax revenues, including schools and ERAFs. School entities' and ERAFs' exemption comes into play only after the PTAF allocable to their actual tax shares has been finally determined.

2. That Section 95.3(a) Does Not Expressly Reference Sections 97.68 and 97.70 Is Irrelevant.

For their next line of defense, the cites muse that their new tax shares are not counted for purposes of determining their PTAF "administrative cost apportionment factor" because section 95.3(a) (which requires calculation of the apportionment factor) does not expressly "list" section 97.68 or section 97.70.[23] The analysis is flawed.

As spelled out at length in the County's Opening Merits Brief, ***section 96.1*** itself — which ***is*** "listed" in section 95.3 — is the master property tax allocation statute that sets forth the basic formula for allocating property tax revenues and then proceeds to identify the other statutes requiring more specific allocations that must be followed, including those statutes set forth in "Article 3 (commencing with Section 97), and in Article 4 (commencing with Section 98)." The Triple Flip and VLF Swap are, of course, in "Article 3" — as, for that matter, are the statutes spelling out the ERAF shifts (which even the cities concede fall within the reach of section 95.3(a), even though none of them are "listed" either).[24] The cities know all of this to be true; indeed, they conceded this very point in oral argument below.[25]

3. Section 95.3(e) Expresses an Intent 180 Degrees at Odds with the One Offered by the Cities.

In a final stab at section 95.3, the cities suggest that, because the Legislature uttered the words "not a reallocation of property tax revenue shares or a transfer of any program or financial responsibility," in subdivision (e), section 95.3 itself embodies a

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[23] AB at pp. 29-30, fn. 27 [noting that only statutes referenced are R&T sections 96.1 and 100 and H&S section 33670].

[24] See OMB at pp. 12-14, 16-17 [explaining this precise point].

[25] RT at 81:8-14: "[JUDGE JANAVS]: . . . I would like you to comment on counsel's argument that the ERAF statutes, triple flip, the VLF swap and Section 97.75 are all in Article 3 and call for adjustments contemplated by Section 96.1 rather than being part of the base computation. MS. WHATLEY: I certainly agree that they're not included in the base. And I have to agree that they are in Article 3. That is what it is."

legislative intent not to saddle them with PTAF.[26] The argument is defeated by the full text of subdivision (e) (quoted above at p. 11). As the full text confirms, when the Legislature spoke the words quoted by the cities, it hardly was condemning the notion that cities should pay their full, pro rata share of PTAF associated with all the property tax revenues they receive. Instead, and precisely because the Legislature concluded it was "unfair" to saddle counties with such costs, the Legislature: (i) imposed a rule that cities (and others) must bear their own costs; and (ii) stressed that, precisely because it was the "fair" result, such a rule should not be deemed a reallocation of recipients' tax shares or a transfer of any program responsibility.[27]

C. The Remaining Statutes Cited by the Cities Do Not Help Them.

Unable to find shelter under the wording of sections 97.75 and 95.3, the cities turn at last to the Triple Flip (section 97.68) and a Health & Safety Code section dealing with redevelopment agencies. Their analysis is no more helpful.

1. The Cities Draw the Wrong Conclusion from Section 97.68.

Because section 97.68(f)(3) provides that the Triple Flip "may not be construed to [] alter the manner in which ad valorem property tax revenue growth from fiscal year to fiscal year is determined or allocated in a county," the cities leap to the conclusion that this language reflects an intent that "the swapped funds are not to be treated as property tax revenue" for any purpose.[28] Initially, one need only scan section 97.68 to appreciate that the Legislature considers these funds to be "property tax revenues." Indeed, they are

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[26] AB at p. 24.

[27] The foregoing also disposes of the cities' throwaway suggestion that the County's post-Prop. 13 property tax share must have been slightly larger because: (i) prior to Prop. 13, the County set property tax rates at levels sufficient to recoup its administrative costs; and (ii) the size of pre-Prop. 13 tax shares factored into post-Prop. 13 allocations. (AB at pp. 38-39.) In short, the Legislature already has rejected that notion through section 95.3, which makes each nonexempt recipient of property tax revenues responsible for its full, pro rata share of PTAF.

[28] AB at p. 35.

expressly described as such no less than four times in that very statute. (See subds. (a)(1), (c)(5), (e) and (g).) Two more points:

First, providing that section 97.68 does not alter the manner in which yearly property tax revenue growth is allocated simply recognizes and reflects the reality of where the Triple Flip (and, for that matter, the VLF Swap) fit into the tax allocation process. They are Article 3 adjustments. As explained in the County's Opening Merits Brief, the basic formula for allocating property tax revenues is: "SECTION 96.1 BASE AMOUNT" **PLUS** "ANNUAL TAX INCREMENT" **PLUS/MINUS** "ARTICLE 3 ADJUSTMENTS" — in that order.[29] Thus, providing that a current year Article 3 adjustment shall not be deemed to be part of the current year annual tax increment simply ensures that the Triple Flip and VLF Swap enter the tax allocation formula only once and where they should (as an Article 3 adjustment) — a point the cities' counsel conceded below.[30]

Second, the cited language compels the opposite conclusion from that drawn by the cities. Section 96.8(f) expressly identifies only three things that the Triple Flip "may not be construed to alter" ***and the "administrative cost apportionment factor" calculated under section 95.3 for these cities is not one of them.*** Given this, the only proper conclusion is that, by leaving section 95.3 and its calculations out of the list of statutes whose operation is not altered by Section 97.68, the Legislature intended these revenues to be included for purposes of calculating the cities' PTAF shares under section 95.3. (See *Arbuckle*, *supra*, 105 Cal.App.4th at p. 1167 ["if exemptions are specified in a

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[29] In simplest terms, the base amount for a current year is the total property tax allocation from the prior year, which includes (i) the base amount from the year before that, (ii) the annual tax increment allocated in the prior year. In other words, last year's annual tax increment becomes part of the current year's base. (See Section 96.1(a)(1).) Annual tax increment — which to be clear is the "annual tax growth" to which section 97.68(f)(3) refers — captures current fiscal year revenue growth due to increased property values resulting from new construction or changes in ownership. (OMB at p. 13.)

[30] See footnote 25, *supra* [quoting concession at RT at 81:8-14].

statute, we may not imply additional exemptions unless there is a clear legislative intent to the contrary"].)

2. The Cities Also Draw the Wrong Conclusion from Health & Safety Code Section 33672.

The cities' reliance on Health & Safety Code section 33672 — which exempts from the definition of "taxes" available for allocation to redevelopment agencies, those property tax revenues allocated to cities and counties under the Triple Flip and VLF Swap — is misplaced for similar reasons.

First, there is no similar provision for cities, be it in the Revenue & Taxation Code, the Health & Safety Code, or elsewhere, and the absence of a similar provision for cities shows that the Legislature intended cities to be treated differently than redevelopment agencies. (See *Arbuckle*, *supra*, 105 Cal.App.4th at p. 1167 ["if exemptions are specified in a statute, we may not imply additional exemptions unless there is a clear legislative intent to the contrary"].)

Second, there is a good reason why redevelopment agencies require differing treatment — they cannot levy taxes, and hence, have an entirely separate tax allocation scheme in which taxes levied by taxing entities are further divided and partly diverted to redevelopment agencies. (Health & Safety Code, § 33670, et seq.) Excluding revenues allocated to counties and cities pursuant to R&T sections 97.68 and 97.70 from the "taxes" available for re-allocation to redevelopment agencies is thus necessary to avoid skewing the tax sharing allocations required by that separate scheme. (Health & Safety Code §§ 33672 [exemption throughout article], 33607.5(a)(2) [similar exemption of mitigation payment allocations].)[31]

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[31] The 1990 Attorney General Opinion upon which the cities rely (90 Ops. Cal. Atty. Gen. 501) is wholly inapposite. The Opinion addressed: (i) whether mitigation payments (or payments in lieu of taxes) from a redevelopment agency to a school district count as property taxes received by the school district "pursuant to . . . the Revenue & Taxation Code"; and (ii) turned solely on the specific language of the statute being interpreted (Education Code section 42238). Finding no contrary

D. The Residue of the Cities' Brief Is Even Further Off Point.

As noted in the Introduction, the bulk of the cities' Answering Brief is calculated to distract, rather than confront the dispositive issue. The Answering Brief attempts to misstate both the burden of proof and the issue presented — by wrongly positing that, to prevail here, the County must establish that section 97.75 itself provides recoupment authority — and then goes on to spend 10 pages knocking down that strawman.[32] It asserts "facts" with no record support and that, in some instances, are 180 degrees at odds with the record.[33] And, it takes inconsistent positions throughout.

Some of the cities' distractions already have been addressed above; some are so trivial as to warrant no mention; others merit a brief refutation below.

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expression of legislative intent, the Attorney General concluded that the redevelopment payments did not count, "more importantly" because redevelopment "mitigation revenues simply are not 'property tax revenue received (by the school district) pursuant to . . . the Revenue and Taxation Code.' (Ed. Code, § 42338, subd. (h)(1).)" (73 Ops. Cal. Atty. Gen. 324, 328.) Contrary to the cities' claim (AB at pp. 36-37), it was the plain language of *Education Code section 42238*, not the Health and Safety Code, that controlled the issue. An opinion that bears no relation to the controversy is no authority. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2002) 100 Cal.App.4th 1066, 1075.)

[32] AB at pp. 12-21.

[33] Some of the cities' inaccuracies are nothing short of breathtaking. For example, the cities proclaim: "The lengths to which the County goes to avoid the plain language of § 97.75 can be gleaned from the fact that the statute central to this case is not referenced until page 18 of the County's 35-page Appellants' Brief in this Court." (AB at p. 20, fn. 23.) In truth, however: (i) section 97.75 is the very first thing referenced in both the County's "Issue Presented for Review" and "Introduction" on page 1; (ii) it is referenced no less than five times on page 1 and quoted in full once; and (iii) it is discussed over the next three pages (and referenced nine times). Elsewhere, the cities attach illustrative charts from the County's trial brief and proceed to represent them as stating established facts, even though, in that same trial brief, the County admonished (in a page the cities chose not to attach) that "the percentages set forth are illustrative only, and are not intended to reflect the exact allocation percentages that would apply in this County." (Compare AB at pp 37-38 & fn. 31 with 2 JA 319.) The County has confined this Reply to correcting only those misstatements most essential to a correct resolution of this case.

1. The 1096 Guidelines and a Supposed Contrary "Controller's" Opinion

It is undisputed that the County faithfully has followed the dictates of SB 1096 Guidelines developed to implement the relevant statutes, including section 97.75.[34] Although the County has cited the Guidelines only in passing — to demonstrate the disciplined basis upon which it proceeded — the cities offer an extended and inflammatory attack on the Guidelines; and further suggest that this Court should be deferring to a supposed "State Controller's opinion."[35] Three points are in order here:

First, there is no support in the record for the cities' characterization of those Guidelines as being "sleight of hand," prepared without the knowledge or participation of the League of California Cities and "communicated only by two footnotes to spreadsheets buried in the guidelines." Indeed, the evidence of record is that the Guidelines were developed with input from representatives of the League of California Cities as well as State officials,[36] and the Guidelines openly showed a future impact on PTAF.[37]

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[34] 1 JA 8 [Stipulated Fact No. 15]; 1 JA 53-215 [Guidelines]; see also Dec. at p. 8 [Court of Appeal recognizing that County was acting consistently with Guidelines].

[35] AB at pp. 33-35.

[36] 1 JA 59 [organizations "who lent their time and immeasurable help" included the Office of the State Controller, the League of California Cities, the Office of the Legislative Analyst, and the State Department of Finance]; see also 9/10/10 letter from amicus, State Association of County Auditors filed in support of review.

[37] 1 JA 56 [Table of Contents identifying discussion of "Effect on Property Tax Admin Fees" and schedules illustrating allocation of PTAF]; 1 JA 80 [summary of impact of section 97.75], 1 JA 94-95 [schedules]. The cities' further intimation that the trial court sustained objections to these Guidelines is misleading, too. (AB at p. 34, citing 3 JA 539.) The Guidelines actually were attached as an Exhibit to the Stipulation of Facts. (1 JA 53-215.) All the trial court sustained objections to was a Declaration summarizing information gleaned from the League of California Cities' website and establishing that every plaintiff city had representation on the League. Finally, the cities' criticism that the record does not reveal "that the Auditors Association ever sought to subject the Guidelines to the discipline of the formal rulemaking process of the California Administrative Procedures Act" is entirely misplaced. (AB at p. 33, fn. 30.) The county auditors had no authority to make such a submission.

Second, there also is no support for the cities' suggestion that the State Controller has issued some sort of official interpretation of section 97.75.[38] Indeed, upon reviewing the "evidence" cited by the cities for that proposition, the only thing the Court will find is a internal memo authored by a staff attorney that: (i) is devoid of any cogent effort to interpret the statute; (ii) confirms that "this is an internal memorandum; it was drafted without the benefit of all pertinent documentation or information having been provided"; and (iii) admonishes that "this internal memorandum should not be shared with any cities and counties at this time."[39] That these cities obtained the uninformed musings of a staff attorney does not turn the memo into an official "Controller opinion."[40]

2. The County's References to "Fairness" Arise from the Legislature's Policy Statements.

The cities go to great lengths to dismiss the County's legal position as a supposedly unsupported plea to fairness, which "is not this Court's task."[41] Having just admonished that "fairness" is irrelevant, however, the cities proceed to offer a four-page discussion as to why a defense judgment would be unfair and inequitable.[42] Plainly, the cities cannot have it both ways. Ironically, both planks of its brief are wrong.

When the County speaks of "fairness," it hardly is asking the Court to base its outcome on subjective views divorced from the statutory scheme. Instead, the County simply is ***quoting*** the views of our Legislature and the courts concerning the PTAF recoupment statutes. That it is "unfair" to saddle counties with the administrative costs associated with collecting property taxes for cities, and that requiring cities to pay their

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[38] AB at pp. 33-34.

[39] 3 JA 517.

[40] Indeed, the Controller's official opinion can be found in the published results of any number of county audits: The Controller has no official position and is leaving the issue to the courts. (See, e.g., www.sco.ca.gov/Files-AUD/02_2009ptxlosangeles.pdf - 2010-12-30 [audit of Los Angeles County].)

[41] AB at p. 30.

[42] AB at pp. 37-40.

full, pro rata costs is "fair," are stated expressly in section 95.3, subdivision (e). And, the *Arbuckle* decision offers these same conclusions:

> 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.

(105 Cal.App.4th at p. 1167, emphasis added.)

It hardly is improper to quote the policy actually expressed by our Legislature or the holdings in settled precedent. That is how statutes get interpreted properly. What is not proper for the cities to ask this Court to ignore statutory language or to rewrite a statute — because, in their view, it would be a "windfall" to the counties if the cities actually had to pay the pro rata share of the costs counties incur to administer the property tax revenues allocated to cities — when the Legislature has expressly found that outcome to be "fair."[43]

3. Revenue Neutrality and the Actual Economics

To their "unfair windfall" claim, the cities add that the Triple Flip and VLF Swap were intended to be "revenue neutral" — and, even go so far as to cite to a supposed

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[43] E.g., AB at pp. 2, 10 (using "windfall" 2 times), 14 (3 times), 21 (2 times), 39.

County "admission" of the point.[44] At the same time, the cities chide the County for citing undisputed proof that, after deducting the extra PTAF cities now bear, these cities had, as of the close of evidence below, come out ahead by over $80 million.[45]

First, the County wholeheartedly agrees that the statutory language must control regardless of economics. Indeed, the County would be quite happy to stop pointing out the economic truth if the cities would stop complaining about supposed County "windfalls" and suggesting that cities are being denied revenue neutrality.

Second, these actual numbers and the statutory formula for calculating them are relevant to negate the cities' suggestion that the *raison d'être* for the Triple Flip and the VLF Swap was to promote revenue neutrality. Indeed, the VLF Swap in particular — being tied to the value of real property, rather than VLF growth — is uniquely unsuited to achieve neutrality. It would achieve it only by serendipity, and in fact, has proven to be a financial boon to cities.[46]

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[44] AB at p. 22 [point (iv)]; see also *id.* at pp. 7, 10, 36, 37, 38. To be clear, the "admission" the cities attribute to the County is non-existent. See OMB at p. 17 [County's actual position].

[45] The cities no longer affirmatively contend that the recession will eviscerate their gains, although they still attempt to cloud the issue by: (i) offering that "what goes up can come down"; and (ii) suggesting that the County has admitted "that the VLF increases are associated with a rising real estate market." (AB at pp. 41-42.) The first assertion misses the point, which is that property tax values (under Proposition 13) are more recession-proof than VLF fees. The second assertion misstates the County's actual position, which is that cities (and, yes, the counties) inevitably will be better off under the VLF Swap because the revenues they receive (i) are tied to real property growth in all years, and (ii) include supplemental property taxes. (Compare AB at p. 41 with 2 JA 328-329, fn. 13 [County's actual position]; see also 1 JA 69 [cities and counties receive supplemental roll taxes under VLF Swap].)

[46] Since VLF property tax revenues include the Supplemental Roll (1 JA 69), revenue neutrality was not in the cards. Recall also that the negotiations culminating in the VLF Swap also brought large new transfers of local revenues for the benefit of the State budget. (See §§ 97.71(a)(1) & (2) [$350 million reduction for each of two years to counties]; §97.71(b)(2)(A) [cities].)

Third, settled case law cited in the County's Opening Merits Brief — and simply ignored by the cities — conclusively rejects the cities' assumption that the imposition of PTAF ***charges*** somehow denies a recipient the full amount of ***revenues*** to which it might be entitled. (See *Community Redevelopment Agency of the 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, as confusing "charges" with "revenues"].)

4. Impact of Funding on Property Tax Collection

The cities dismiss as speculative and unsupported the notion that higher spending for property tax administration will result in higher property tax collection.[47] Not only does the undisputed record prove this very point,[48] but also, our Legislature has drawn this very conclusion in section 95.35, which recognizes that "[t]here is a significant and compelling state financial interest in the maintenance of an adequately funded system of property tax administration," and that the success of prior funding programs "has demonstrated the appropriateness of an ongoing commitment" to adequate funding to "reduce the burden of property tax administration on county finances." (Section 95.35(a).) The fact that the Legislature has expressly drawn this conclusion provides still more proof of a pro-recoupment (i.e., pro-adequate funding) intent.

CONCLUSION

Since 1990, our Legislature has provided that, to alleviate the "unfairness" of having counties incur substantial costs to collect property taxes for the benefit of others, every jurisdiction and agency receiving property tax revenues must pay its pro rata share of the costs of administration. The sole exception to PTAF recoupment — for dollars actually going to school entities and ERAFs — has neither actual nor policy-driven application to cities. Moreover, the Legislature has stressed, in multiple contexts, the

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[47] AB at p. 32.

[48] 2 JA 386 [on average, every additional dollar of funding for property tax administration yields in the range of $11 to $14 in additional revenues collected].

importance of ensuring that county property tax administration is adequately funded — precisely because there is a demonstrated correlation between the level of funding and the amount of taxes collected for distribution. Indeed, this is why all PTAF collected by counties from other jurisdictions and agencies can be spent only on property tax administration for the benefit of all.

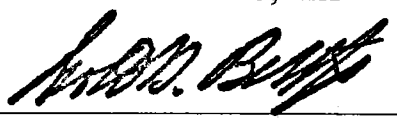
Against this backdrop, 47 cities in Los Angeles County ask this Court to rule that, through section 97.75, the Legislature somehow impliedly intended to depart from longstanding legislative intent and have counties bear PTAF associated with additional property tax shares now being allocated to cities, and that otherwise would be their responsibility. They do so without a shred of legislative history to even hint at such a radical departure. They do so even though, no matter how one interprets section 97.75, so long as one applies it consistently, the County prevails. And, they do so on the basis of arguments that are inconsistent, illogical and require this Court either to rewrite the statute upon which they rely or to interpret it inconsistently.

The cities' legal position demands that this Court accept that this is a "simple" case based on a "simple," two-sentence statute that should be examined out of context — and, then, only uncritically. Fundamental rules of statutory interpretation require more. And, once the required analysis is performed, one "simple" truth will emerge: No matter how one interprets section 97.75, all logical roads lead directly to a defense judgment that leaves cities bearing the costs of administration for their tax shares, but not a penny more.

DATED: January 10, 2011

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: 

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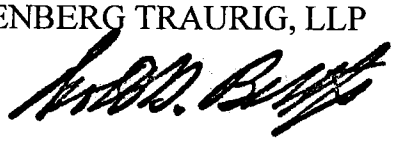
CERTIFICATE OF COMPLIANCE

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 7,903 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: January 10, 2011

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: 

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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 January 10, 2011, I served the **REPLY BRIEF ON THE MERITS** on the interested parties in this action by placing the true copy thereof, enclosed in a sealed envelope, postage prepaid, addressed as follows:

Supreme Court of California (Original, plus 13 copies)
San Francisco Office
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San Francisco, CA 94102-7303

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

Executed on January 10, 2011, at Santa Monica, California.

JESSE RODRIGUEZ