SUPERIOR COURT OF THE STATE OF CALIFORNIA
CONTRA COSTA COUNTY

CITY OF BRENTWOOD, et al., Petitioners and Plaintiffs V. ROBERT A. CAMPBELL, in his official capacity as Auditor-Controller of Contra Costa County, Respondent and Defendant and CITY OF RICHMOND, Intervenor	MSN11-1029 RULING ON MOTION FOR WRIT OF MANDATE AND POST-TRIAL ORDER

I. Introduction

Chevron USA ("Chevron") paid property taxes on the refinery it owns and operates in Richmond, California. It asserted that the refinery was over-valued in tax years 2004, 2005 and 2006, and filed an appeal with the Assessment Appeals Board ("AAB").[1]

On November 19, 2009, after extensive hearings, the Assessment Appeals Board found that Chevron's property tax assessments were too high in each of those three years. The result of its decision was to entitle Chevron to a refund in the aggregate amount of $17,872,294.70.

[1] There are many parcels included in the "refinery," as detailed in the Assessment Appeals Board's decision. But it is not necessary, for present purposes, to delve into that level of detail. In this opinion, the term "the refinery" is used to denote the parcels that were the subject of the AAB's decision. Also, sometimes the parties talk about (fiscal) years 2004-05, 2005-06 and 2006-07. The Court adopts the AAB's usage of "tax years 2004, 2005 and 2006."

It fell to the county's Auditor-Controller to refund the money to Chevron, and, more pertinent, to determine how to account for that refund. The Auditor-Controller determined that the lawful method was to charge every tax jurisdiction in the county a share of the cost of that refund.

Petitioners-plaintiffs were among the jurisdictions charged.[2] They filed suit, seeking to compel the Auditor-Controller to charge only the jurisdictions within the tax revenue area that contains the Chevron refinery.

The operative pleading is the Second Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. It seeks (i) a writ of mandate, (ii) injunctive relief, and (iii) declaratory relief. On November 23, 2011 the City of Richmond intervened in the case. On September 17, 2012, Petitioners filed a motion for judgment on the writ pursuant to Code of Civil Procedure Section 1094.

Since the issues on the writ, the complaint, and the motion are largely identical, the Court set the matter simultaneously for trial and for hearing on Petitioners' motion. Thus, all matters came on for hearing and trial on November 20, 2012. Petitioners were represented by Benjamin P. Fay and Rick W. Jarvis. Respondent was represented by Rebecca J. Hooley and Eric S. Gelston. Intervenor was represented by Brett L. Price.

The Court heard testimony from three witnesses during the morning session. In the afternoon it heard argument from counsel.

At the Court's request, the parties considered which previously filed evidence should be considered with respect to the motion and which as to the matters being tried. At the outset of the afternoon session the parties stipulated that:

(i) With respect to the motion for a writ of mandate, the Court may consider all of the evidence filed with the moving and opposing papers, including the exhibits

[2] "Petitioners-plaintiffs" is an awkward referent. The Court will refer to them as "Petitioners." Similarly, it sometimes refers to the Auditor-Controller as "Respondent."

and deposition excerpts, subject to the Court's ruling on the evidentiary objections filed with those papers. (See below.)

(ii) If the Court denies the motion or does not act upon it, then all of that material may still be considered for all other purposes, except that the excerpts from Mr. Ybarra's deposition shall be excluded.

The Court accepted that stipulation and proceeds accordingly.

Four preliminary matters should be addressed before turning to the merits of the case.

1. Does: The Petition-Complaint names Does 1-10. Nothing was said about them at trial. The Doe defendants are dismissed.

2. Injunctive Relief: At trial, Petitioners did not seek injunctive relief. They acknowledged that they have already been charged the cost of the refund to Chevron and that there is nothing to enjoin. Thus, the prayer for injunctive relief is denied.

3. Statement of decision: Trial was completed within one day and no party requested a statement of decision. So, the Court issues this Ruling and Order.

4. Evidentiary Objections: At the outset of the hearing the Court stated its intended rulings on the evidentiary objections. No one argued with respect to those rulings. As a result, the Court now makes final the following rulings on the disputed evidence:

   a. Requests for Judicial Notice: There was no objection to Petitioners' request for judicial notice of Exhibits 52, 53, 56, 57, 58, and 59; or to Respondent's request for judicial notice of Exhibits A through E. The Court will take judicial notice of them. There was objection to Exhibits 54, 60, 61 and 62. Those objections are overruled. Exhibit 54 is essentially the same as Exhibit 62 as to which notice may be taken under Evidence Code Section 452(c).

Thus, even though there is "restricted use" language, it is still before the Court which will give it the weight to which it is entitled. With respect Exhibits 60, and 61 see *Kaufman & Broad Communities, Inc, v Performance Plastering, Inc.* (2005) 133 Cal. App. 4th 26.

b. Other Evidentiary Objections: Respondent objected to Exhibits 28-37 to Mr. Fay's declaration. There was no question raised about their authenticity. The objection is overruled. Petitioners objected to paragraph 8 of Mr. Ybarra's declaration. The hearsay objection is sustained.

II. Analysis of the Issue

A. Definitions

It is necessary to be clear about some of the terms that are used by the parties and the law.

"Jurisdiction" refers to a governmental entity that receives a share of the property taxes collected in a county. Its precise definition is found in Section 95. [3]

"Fund" (as used in Section 4707) refers to an account established for each jurisdiction. (Each jurisdiction is assigned a fund number.) See, for example, Exhibit 40 to Mr. Fay's declaration. The first column lists the fund number; the second column identifies the jurisdiction to whose account that fund number is assigned.

"Tax Rate Area" means, with some exceptions, "a specific geographic area all of which is within the jurisdiction of the same combination of local agencies[4] and school entities for the current fiscal year." Section 95(g). Essentially, it is an area which encompasses a number of jurisdictions. So, for example, Exhibit 41 to Mr. Fay's declaration lists the jurisdictions (and their fund numbers) in Tax Rate Area 08001.

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[3] All references are to the Revenue and Taxation Code unless otherwise noted.

[4] "Local agency" means a city, county, and special district. Section 95(a).

B. The Property Tax Statutes At Issue

Although the parties have filed extensive briefs and evidence, the issue is simply stated: whether the Auditor-Controller followed the law in spreading the cost of the Chevron refund among all the jurisdictions that receive a share of the county's property tax receipts.

Respondent says he is required by Sections 96.2 and 4707 to apportion the costs as he did. Petitioners say he is not required to do that. They say his method results in something fundamentally unfair: they are required to "pay back" money they did not receive in the first place.

To decide this case, it is necessary to understand something about the property tax system. Fortunately, our Supreme Court explained some of the key provisions of that system in an opinion released the day before the trial of this matter:

> Following the passage of Proposition 13, the property tax allocation system has been governed by article 2 of chapter 6 of part 0.5 of division 1 of the Revenue and Taxation Code, section 96 et seq., primarily sections 96.1, 96.2, and 96.5. Under these statutes, in every current fiscal year, each local entity receives property tax revenues equal to what it received in the prior year (also referred to as its base) (§ 96.1, subd. (a)(1)), plus its proportional share of any increase in revenues due to growth in assessed value within its boundaries, which is defined as the " 'annual tax increment' " (§ 96.1, subd. (a)(2); see §§ 96.2, 96.5). The sum of these two amounts—the prior year base plus the current year's proportional share of the tax increment—becomes each jurisdiction's new base amount for the following year's calculations. (§§ 96.1, subd. (a)(1), 96.5.) Named after the Assembly bill that originally enacted the fundamental structure of this statutory scheme, this system is commonly referred to as the "A.B. 8" allocation system, with section 96.1 as its principal statute. (*City of Scotts Valley v. County of Santa*

> *Cruz* (2011) 201 Cal.App.4th 1, 8–9, 49 [133 Cal. Rptr. 3d 235].) Under this statutory allocation system, "the proportional allocations established in the first fiscal year following the passage of Proposition 13, as modified for the following fiscal year, are perpetuated year after year, unless modified by the Legislature." (*Id.* at p. 9.)

City of Alhambra et al. v. County of Los Angeles (2012) 55 Cal.4th 707, 713.

The county collects all property taxes. So, the Auditor-Controller must apportion the collected revenues to all the tax jurisdictions in the county. He does that using the property tax apportionment factors which are calculated in the manner specified in Section 96.2.[5]

In simple terms, the Auditor-Controller determines each jurisdiction's percentage of the taxes allocated to all jurisdictions in the county. So, for example, if the taxes allocated to the (hypothetical) Martinez Mosquito Abatement District pursuant to Sections 96.1 and 96.5 are $1,000 and the taxes allocated to all jurisdictions in the county total $100,000, then the Martinez Mosquito Abatement District has a property tax apportionment factor of 1% (that is $1,000 divided by $100,000).

The Auditor-Controller, Mr. Campbell, testified credibly. He explained that the jurisdictions' property tax apportionment factors are aggregated by tax revenue area. The allocations are actually made to each tax revenue area and then divided among the jurisdictions in a given tax revenue area by certain percentages which are "more or less static."[6]

Therefore, when, say, Chevron, pays its property taxes to the tax collector, that money goes into a "pot" that contains all of the tax payments from around the county. Those monies are

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[5] This calculation is mandatory. See Section 16. ("'Shall' is mandatory…")

[6] That is to say, the division among the jurisdictions in a tax revenue area is done by a "more or less static" formula. The apportionment factors for the individual jurisdictions and therefore the tax revenue areas change more dynamically.

then apportioned to all jurisdictions in the county by the Auditor-Controller using the property tax apportionment factors.

That is how a given year's revenues are apportioned. What, then, is an Auditor-Controller to do when an Assessment Appeals Board orders that a *refund* be paid to a taxpayer for overpayments in earlier years?

C. How an Auditor-Controller is Supposed to Handle Refunds

The parties cite two different statutes as the source of the Auditor-Controller's duty with respect to tax refunds. Petitioners point to Section 4707. Respondent points to Section 96.2(d) which he says is consistent with Section 4707.

Petitioners point to Section 4707 because Contra Costa County is a "Teeter County" and because this case involves secured property taxes. It requires a brief diversion to explain that.

Desmond Teeter was the Auditor-Controller of Contra Costa County in the 1940's. He devised a plan for handling secured property taxes in a way that would smooth out the problems associated with actually collecting the taxes billed to taxpayers. Fundamentally, the county knew how much it was billing. It did not know how much it would be able to collect, since some taxpayers might not pay or might pay late.

The Teeter Plan distributes taxes to all the jurisdictions in the county based not on the amount actually collected (as had been done until then), but based on the amount billed. To avoid paying the jurisdictions more than the county collects, the Teeter Plan creates a "tax loss reserve fund." It uses that fund to pay any shortfall in the current year's payments to the jurisdictions (based on the amount billed) that might occur due to the failure to collect the full amount billed.[7]

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[7] The Court derives its understanding of the Teeter Plan largely from counsel and the testimony of Robert Campbell rather than from a detailed parsing of the statute. The description given above is a simplification of the Teeter plan. But for purposes of this opinion, it is probably a sufficient description, since that is how the parties described it and there was no dispute about the description.

In 1949 the legislature amended the Revenue and Taxation Code to allow counties to use the Teeter Plan. Section 4701 et seq. At oral argument, the Court was advised that most counties have elected to use it, including Contra Costa.

The significance of that is this. The Teeter Plan applies to the secured roll. Section 4701. The parties agree that this case involves taxes from the secured roll. Therefore, Section 4707 applies to this case. It says:

> Should any tax or assessment which was apportioned at the time of levy be changed by correction, cancellation or refund authorized by Part 9 of Division 1 of this code, a pro rata adjustment for the amount of such change shall be made in each of the funds to which apportionment previously has been made. The total pro rata adjustments of amounts previously apportioned shall be entered on the apportioned tax resources accounts of the auditor and the treasurer. The total amount of the changes shall be entered on the secured taxes receivable accounts of the auditor.

Extracting the operative language that applies here, the statute tells us:

> "Should any tax or assessment which was apportioned at the time of levy be changed by…refund…a pro rata adjustment for the amount of such change shall be made in each of the funds to which apportionment previously has been made."

D. Whether Respondent Correctly Apportioned the Chevron Refund

Here, it is undisputed that the assessment of the Chevron refinery for tax years 2005 through 2007 -- like all assessments in the county -- was apportioned at the time of the levy among all of the funds in the county using the method specified in Section 96.2.[8] Thus, the

[8] Petitioner concedes that "the property tax from the Chevron Refinery was apportioned at the time of the levy of the tax." Petitioners' Memorandum of Points and Authorities In Support of Petitioners' Motion for Judgment on the Writ, p.12, lines 9-10.

refund should be charged pro rata to "each of the funds to which apportionment [was] previously…made;" *i.e.* to all of the funds in the county.

Petitioners argue that "pro rata" means that something other than the property tax apportionment factors should be used for the refund. Respondent argues the contrary. Neither cites any case directly on point.

Respondent points to Section 96.2(d). It provides,

> "For the 1980-81 fiscal year and each fiscal year thereafter, prior years' property tax revenues shall be apportioned using the factors determined pursuant to subdivision (c) for the immediately preceding fiscal year."

In other words, when there are changes to prior years' collections (because of changes such as refunds, corrections or cancellations) they should be apportioned using the property tax apportionment factors used for the year most recently ended – regardless of whether the change was to an assessment on last year's roll, or to an assessment that is two, three or four years old. One simply takes the net of all changes in a fiscal year and apportions that net among all jurisdictions using the prior year's property tax apportionment factors. That, says respondent, is what he did. That, says respondent, is consistent with Section 4707.

That appears to be correct. Petitioners were unable to give a convincing reason for reading "pro rata" in a different way. At oral argument, when asked what authority there was for a contrary reading of "pro rata," Petitioners' counsel said he was using a dictionary definition of pro rata "as related to or proportional." This is similar to the Black's Law Dictionary definition of "pro rata" as "Proportionately; according to a certain rate, percentage, or proportion. According to measure, interest, or liability."

It adds little or nothing to the analysis. For, were one to insert petitioners' definition into the operative statutory language quoted above, the law would read:

> "Should any tax or assessment which was apportioned at the time of levy be changed by…refund…a *related or proportional* adjustment for the amount of such change shall be made in each of the funds to which apportionment previously has been made."

But that does not really further the analysis, for it does not provide any clearer definition of "pro rata." It does not elucidate the question: "related or proportional to what?"

Petitioners argue that "pro rata" means the refund should be paid *in proportion to the amount of the original payment by that taxpayer that was actually received by a jurisdiction.* The petitioner jurisdictions say that since they received none of the money that Chevron overpaid, they should not have to pay any money back.[9]

But that does violence to the language of Section 4707 which directs a change in "each of the funds to which apportionment previously has been made." It is undisputed that apportionment was made to all jurisdictions in the county. Section 4707 does not say to make a change "to each fund which actually received a portion of the money being refunded;" it does not say "to each fund based on the amount of tax increment allocated to that fund as a result of the money now being refunded." It says "to each of the funds to which apportionment previously has been made." The evidence was clear and undisputed. Apportionment was made to every fund in the county.

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[9] As the Court noted at oral argument, Chevron has sued, claiming the Assessment Appeals Board's decision was incorrect and that its refund should have been greater. This Court has had that case (and a similar case for additional tax years) on its docket. In describing the refund as an "overpayment" of taxes, the Court has adopted the convention of speaking as if the Assessment Appeals Board's decision were correct, without prejudging in any way whether that is so. In other words, for purposes of *this case* the Auditor-Controller acted as if the AAB's decision were correct and made the refund. The parties have briefed this under that set of facts, knowing that there may yet be further adjustments if the Court finds error in the AAB's rulings. However for purposes of *this case*, all assume, arguendo, that the AAB was right and so does the Court. That simply enables the use of more straightforward language to describe a complicated situation. Nothing should be inferred from this usage other than a striving for clarity while reserving all rights to all parties in all other cases.

Thus, whether one looks to Section 4707, or to Section 96.2, or to either of those sections to elucidate the other, the result is the same. Respondent correctly apportioned the cost of the refund among all jurisdictions in the county.

The Court has focused on the meaning of "pro rata" because that was the main point of textual analysis made by Petitioners. However there is another question that bears examination when seeking to understand the meaning of Section 4707.

That question can be seen by quoting the key language again, with the italicized addition:

> "Should any tax or assessment which was apportioned at the time of levy be changed by…refund…a pro rata adjustment for the amount of such change shall be made in each of the funds to which apportionment *[of what?]* previously has been made."

In other words, does one make an adjustment (i) to each fund which received *any apportionment* of tax revenues (ii) only to the funds which received an apportionment of *the amount being refunded*?

As noted above, one has to add words to Section 4707 to give it the latter meaning. As the statute reads ("to which apportionment previously has been made") seems to suggest, more naturally, that the adjustment should be made to all jurisdictions which received an apportionment of the total tax revenues of the county. To limit apportionment of the refund to only those jurisdictions in the tax revenue area of the taxpayer receiving the refund would require more words in Section 4707.

In addition, the next couple of sentences in Section 4707 fortify that conclusion. They say,

> "The total pro rata adjustments of amounts previously apportioned shall be entered on the apportioned tax resource accounts of the auditor and the treasurer. The total of the changes shall be entered on the secured receivable accounts of the auditor."

The use of the word "total" is significant. It suggests that the Auditor-Controller is to make an aggregate, net adjustment. In other words, the Auditor-Controller is to take account of all of the corrections, cancellations, and refunds in a given year, aggregate them, and then apportion the net amount, pro rata, across all funds.

That reading is in harmony with Section 96.2 which says, explicitly, that "prior years' property tax revenues shall be apportioned using the factors determined pursuant to subdivision (c) for the immediately preceding fiscal year." That refers to the property tax apportionment factors.

These matters are discussed in more detail below, in the context of other arguments raised by Petitioners.

E. Petitioners' Arguments

Petitioners make a number of additional, serious arguments. The Court addresses the principal ones.

1. Petitioners received no share of the additional property taxes paid by Chevron

There was considerable debate about whether Petitioners received any part of the money refunded to Chevron. In a theoretical, mathematical sense Petitioners are correct: they did not.

That can be seen by assuming that nothing changed in the county in tax year 2005 except that the assessment increased for the Chevron refinery. Under this hypothetical scenario, that increase would have been used to calculate the annual tax increment for the tax rate area that includes the refinery. Then the Auditor Controller would use that increased number to calculate the property tax apportionment factors under Section 96.2. In doing so, the following would occur:

> *In the tax rate area that contains the Chevron refinery*: the numerator (the amount of property tax revenue allocated to the Chevron refinery tax rate area) would

increase. The denominator (the amount of property tax revenue allocated to all tax rate areas in the county) would also increase.

In the tax rate areas that do not contain the Chevron refinery (i.e., Petitioners' jurisdictions): the numerator (the amount of property tax rate revenue allocated to Petitioners' tax rate areas) would not increase or decrease. But the denominator (the amount of property tax revenue allocated to all tax rate areas in the county) would increase. [10]

Thus, the property tax apportionment factor in Petitioners' tax rate areas would be lower since the denominator would increase while the numerator remained the same. That means the property tax apportionment factor in the tax rate area containing the refinery would necessarily be higher, since the sum of all property tax apportionment factors must equal 100%. Therefore, as Petitioners say, all of the increase in revenue attributable to the increase in Chevron's assessment would benefit the jurisdictions in the tax rate area containing the refinery.[11]

But there is a twist to this. Since Contra Costa County is a Teeter county each local jurisdiction receives money based on the amount billed, not collected. So, if, hypothetically, Chevron were the only entity in the county that actually paid taxes that year, its money would be spread among all the jurisdictions in the county; its money would not stay in the refinery's tax rate area. However, Petitioners introduced no evidence of default rates in these years that would allow the Court to determine where Chevron's dollars actually went, assuming they were traceable.

So, in theory, Petitioners are right. The increased assessment redounded only to the benefit of the jurisdictions in the tax rate area that contains the refinery. But, in the real world, it is not known whether or not Petitioners benefited from Chevron's payment.

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[10] As can be seen, apportionment of the Chevron assessment was included in the denominator for every jurisdiction in the county.

[11] See the spreadsheet attached as Exhibit A for an illustration of this.

To the extent that Petitioners have the burden of proof with respect to this argument, they have failed to carry it. They have shown that in theory they might be right. But they have adduced no evidence to prove that, in practice, they did not receive any of the money that Chevron paid to the county.

2. This is not fair

Petitioners argue that this is terribly unfair. They say they did not get any of the money Chevron paid in tax years 2004 through 2006, yet they are being required to help pay for the refund. As noted immediately above, they have failed to prove the predicate of their argument. But assume, arguendo, that their predicate is correct; assume they did not get any of the money Chevron paid in those tax years.

The quick answer is that the legislature need not pass laws that are entirely fair, or wise, or good public policy. It has been observed that "'[t]here is no equitable way to share property tax revenues, only different degrees of inequity.'" *City of Scotts Valley v. County of Santa Cruz* (2011) 201 Cal. App. 4th 1, 7 , quoting Sen. Com. on Local Government, Rep. on Sen. Bill No. 407 (1987–1988 Reg. Sess.) Apr. 20, 1987, p. 2. This Court's job is to apply the law as it is written; not to second-guess the legislature's choices. *Marin Hospital District v. Rothman* (1983) 139 Cal. App. 3d 495, 498-99.

But there is far more of an answer to Petitioner's argument. The first problem with Petitioners' argument is that it focuses only on the one refund. They ignore everything else that is happening in the county's property tax system.

Former Auditor-Controller Steven Ybarra testified credibly at trial that each year there are thousands (and in some years, tens of thousands) of "corrections, cancellations and refunds" in the county. Respondent does not look at each of those refunds and additional payments and assign them only to the jurisdiction in which the relevant property is located. So, every year, some jurisdictions will get additional money that they would not necessarily have received in the

first instance. In other years, those jurisdictions will be required to pay money "back" that they did not necessarily receive in the first instance. That is because Respondent apportions the *net of all of the changes* using the property tax apportionment factors. That creates net "winners" and "losers" among the county's jurisdictions. But that is what Sections 96.2(d) and 4707 contemplate. A jurisdiction that is a net winner this year may be a net loser next year.[12]

As Respondent and Intervenor argue, this has been the process for decades. No one has ever complained until now. Perhaps the plusses and minuses to any given jurisdiction "washed out" over the years. Perhaps they did not. Regardless, no one objected.

The reason for the objection now is that there is one large refund which shines a spotlight on the apportionment mechanism. This one case (in Petitioners' judgment) shows the whole system to be unfair.

But the fact that one large refund has unusual financial consequences does not mean the system is fundamentally unfair. It means that once, in decades, there is a potential for a painfully anomalous result.

That is not the end of the story. For the Assessment Appeals Board more recently determined that the assessments of the Chevron refinery for fiscal years 2008 through 2010 were too low. As a result of increased assessments, Chevron must pay approximately $25,000,000 in additional property taxes for these years. Respondent says he will apportion the *benefit* of those additional funds using the property tax apportionment factors, precisely as he apportioned the *burden* of the repayment of the refund. So, Petitioners will each get an apportioned share of Chevron's payment even though they would not have received any if the "right" amount had been charged in the first place.

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[12] Again, this mathematical result does not take into account the default rate in various jurisdictions in a Teeter county. Determining who is a net "winner" or "loser" might require extensive analysis based on actual collections.

So, just as the thousands of micro-adjustments, if we can call them that, wash out each year; so too do these macro-adjustments somewhat wash out. Indeed, Petitioners will receive a net of approximately $7 million in apportioned funds.[13] They will not have lost money; they will have gained money. Viewed as a total system, it is hard to see how that is unfair to them.

Petitioners often refer to Section 96.2 as an "accounting shortcut." Indeed, the Auditor-Controller testified that it is much more efficient to use property tax apportionment factors to apportion corrections, cancellations and refunds. The alternative would be a more burdensome administrative process of matching each adjustment to its particular tax rate area, there being more than a thousand tax rate areas.[14] The Legislature may well have decided that the cost of making precisely targeted adjustments is not worth it; that "rough justice" is good enough. That is a rational policy choice. It is not for this Court to second-guess.

3. Tax situs

Petitioners argue that the Auditor-Controller's action violates a fundamental rule of property tax law: tax situs. They say, "It is a longstanding rule that taxes on a property are only paid to those local agencies in which the property is situated."[15] Petitioners cite two cases, *San Francisco and San Mateo Electric Railway Co. v. Scott* (1904) 142 Cal. 222, 229 and *City of Dinuba v. County of Tulare* (2007) 41 Cal. 4th 859, 866. The former is, of course, a pre-Proposition 13 case. The latter is not cited for its holding, but rather for a dictum. And the

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[13] That is, $25 million (the Chevron underpayment) minus $18 million (the Chevron overpayment).

[14] That is an argument made by Humboldt County, discussed below.

[15] Petitioners' Memorandum of Points and Authorities In Support of Petitioners' Motion for Judgment on the Writ, p.10, lines 11-12. Petitioners acknowledge this rule does not apply to supplemental and unitary taxes. *Id*. lines 26-28.

applicability of that dictum is questionable since its context was a discussion of the "tax increment financing" system applicable to redevelopment agencies.[16]

Respondent cites *City of Rancho Cucamonga v. Mackzum* (1991) 228 Cal. App. 3d 929 as more relevant authority. There, one question was, indeed, whether legislation implementing Proposition 13, including Section 95 et seq.,[17] "violates the tax situs principle because real property taxes no longer go to the local agencies within whose jurisdiction the real property is located…[and because] tax money crosses jurisdictional lines and goes to local agencies in other tax rate areas within the county." *Id.* at 941.

The appellate court answered that clearly. It reasoned that plaintiffs' premise was wrong; cities and other local agencies no longer impose property taxes. "[T]he only entity which now imposes a property tax is the county…" *Id*. at 941. As a result, "[t]he tax situs rule does not prevent a taxing entity, such as a county, from apportioning taxes as it sees fit within its jurisdictional boundaries. Thus, the Subject Legislation does not violate tax situs principles." *Id*. at 942.[18]

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[16] The Court is, of course, mindful of the importance of dicta in California Supreme Court cases. *See Lawler v. City of Redding* (1992) 7 Cal.App.4th 778, 784. However on the prior page of *City of Dinuba*, the Supreme Court wrote, "counties have a mandatory duty to collect property taxes, then allocate and distribute the appropriate amounts to various taxing entities pursuant to *a complex statutory scheme*." *City of Dinuba* at 865 (emphasis supplied). It is unlikely the Supreme Court intended to capture the complexities of the statutory scheme in a one sentence dictum. Indeed, Petitioners in this case have pointed to parts of the complex statutory scheme that show that the sentence they cite from *City of Dinuba* is an oversimplification. See, for example, Petitioners' acknowledgement that supplemental and unitary taxes are allocated to jurisdictions regardless of tax situs. In analyzing a complex case such as this, it helps to look at cases that are more directly on point and that confront some of the specific issues raised here.

[17] The "Subject Legislation" at issue in *City of Rancho Cucamonga* was Government Code §26912 and former Revenue and Taxation Code §2237, later amended and renumbered as provisions including what were, at the time of that decision, Sections 97, 97.5 and 98, the predecessors to current Sections 96.1, 96.2 and 96.5.

[18] The principle of property tax situs is contained in the California Constitution at Article XIII, Section 14. But the principal focus of the cases discussed in the annotations to that section concern such things as moveable property; railroad, airline and sea-going property; corporations headquartered in one county but having property in another; and water rights, None discuss the question presented by this case.

Petitioners speak of "situs" as referring to each jurisdiction rather than to the entire county. *City of Rancho Cucamonga* suggests that post-Proposition 13, "situs" refers to a county.

Indeed, the post-Proposition 13 "complex statutory scheme" that apportions property tax revenues does not respect a jurisdiction's "situs" in a number of ways. As Petitioners themselves recognize, the statute allocates tax revenues using both a base amount and an annual tax increment. While the latter factor is situs-driven, the former is not; it is historically derived.

The historical roots of the base amount partook of situs. But when Proposition 13 was adopted by the voters, the immediate legislative response was enactment of a statute that freed tax revenues from their situs in a given jurisdiction and re-allocated all revenues collected in the county according to a formula that required revenue to "cross jurisdictional boundaries." Revenue has crossed those boundaries ever since.

In addition, all supplemental taxes are allocated using property tax apportionment factors – not tax situs. (See Section 75 et seq., especially Sections 75.70- 75.72.) Petitioners acknowledge this.[19] The same is true for unitary taxes. They too are allocated on a special basis that is not tax situs based. Again, Petitioners concede this.[20] A jurisdiction's "situs" is not relevant to that allocation.

Thus, the categorical statement that Petitioners make: "Property taxes are only allocated to those local agencies in which the taxed property is located"[21] is clearly wrong.

In short, the "general policy of the law" discussed in *San Francisco and San Mateo Electric Railway Co. v. Scott, supra*, 225, 229, has been superseded by a prescriptive, complex statutory scheme that may be informed, but is not controlled, by the tax situs principle. The statutory scheme preserves some elements of the tax situs principle. But it veers from that

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[19] Petitioners' Memorandum of Points and Authorities In Support of Petitioners' Motion for Judgment on the Writ, p.10.

[20] *Id*. at pp.10-11.

[21] *Id*. at p.10, lines 9-10.

principle in several important respects. This case cannot be determined by a simple reference to a pre-Proposition 13 "general policy."

4. The Humboldt County Audit

Petitioners point to an audit of Humboldt County performed by the State Controller's Officer. Exhibit 54. Beginning on page 8, the Controller's Office finds that there were two large refunds awarded to Humboldt County property taxpayers in the period in question. The county charged the refunds to all tax jurisdictions rather than to just those jurisdictions in which the refunds were awarded. The State Controller's Office determined Humboldt County was wrong to have done that:

> …[W]e concluded that only agencies within the tax rate areas of the successful appellants should be charged for the refund…The basis of the property tax system is *situs*, that is, where the property is located. Property is assessed by its location and local agencies receive a share of the taxes generated if services are provided to that location. By charging agencies outside the taxpayer's area in order to repay a portion of the taxes levied in the taxpayer's area, the county is essentially transferring property taxes levied for, and paid to, agencies outside the taxpayer's area to agencies within the taxpayer's area. We are unaware of any statute that would allow such a transfer…."

At the bottom of page 9, the report cites Section 4701 et seq. and 4707. But the State Controller's office does not provide any further explanation for its conclusion.

Respondent argues that the Court should disregard that document since the State Controller's Office intends the audit for "restricted use." It says, on page 6,

> "This report is solely for the information and use of Humboldt County, the California Legislature, and the SCO; it is not intended to be and should not be

> used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record."

However the same finding is contained in Exhibit 62 which does not contain the "restricted use" language. That exhibit is the State Controller's 2010 report to the legislature on Property Tax Apportionments. It, like Exhibit 54, contains Humboldt County's response, which contends that it followed Section 4707 in apportioning the cost of the refunds as it did:

> We are guided by Revenue and Taxation Code Section 4707, which requires that any refunding adjustment to the tax roll be apportioned in the same manner that the tax revenue was originally apportioned, *i.e*. create a negative apportionment to adjust the earlier positive apportionment of tax revenues. In Humboldt County all $1.00 property tax apportionments are distributed to every taxing agency in the County, not just to the agencies in the tax rate areas where the tax dollars originate. Therefore, our policy has been to allocate the cost of any refund to the entire tax pool when we are required to adjust the rolls.

The County's response continued. It explained the administrative problem alluded to above,

> Another concern is for the complexity of administering a TRA-based refunding system. We probably couldn't justify the staff time involved in performing the calculations described above for every little refund, so we would have to set a dollar threshold above which we employ the TRA-based system. By contrast, our current system of applying refunds to the entire AB8 pool is very simple and makes no distinction for the size of the refund.

Humboldt County said that it would not change its policy without more research.

Petitioners' evidence regarding Humboldt County stops there. The Court has no evidence that Humboldt County has changed its policy in response to the State Controller's

Office report. It has no evidence of what, if anything, the legislature did with the State Controller's Office report.

But Respondent points to more. He asserts that the State Controller's Office has also audited Contra Costa County several times and has never criticized the method Respondent has used for thirty years or more to apportion the cost of refunds.

The State Controller Office's audits of Contra Costa County are Exhibits C (January 1998), D (August 1999), E (November 2004), F (July 2006), and G (April 2009) to the Declaration of Robert Campbell dated October 19, 2012. They were produced during the tenure of, respectively, State Controllers Kathleen Connell, Steve Westly and John Chiang.

Exhibit D, for example, says that "The State Controller's Office audited the methods employed by Contra Costa County to apportion and allocate property tax revenues for the period of July 1, 1995 through June 30, 1998. It "performed tests to determine whether there had been any incorrect apportionment and allocation of property tax." *Id*. p. 2. It also "interviewed key personnel about the county's processes for property tax apportionment and allocation" *Id*. p.3. It found that "Contra Costa County complied with California statutes for the apportionment and allocation of property tax revenues for the period July 1, 1995 through June 30, 1998," except with respect to one finding not material here. *Id*. p. 4. Similar statements are found in the other audit reports, including Exhibit G, the one prepared by State Controller Chiang's office. (Mr. Chiang is the incumbent Controller whose office also produced the Humboldt County report.)

It is, of course, possible that the State Controller's Office did not examine the process used by Contra Costa County to apportion the cost of refunds, cancellations and corrections. But since Mr. Ybarra testified that there are thousands of such adjustments each year, it seems unlikely that they would go unnoticed by the Controller who has a statutory obligation to audit the apportionment and allocation processes used by the state's Auditor-Controllers.

The Court does not believe it is bound by the statements in the Controller's audit report pertaining to Humboldt County. In *City of Scotts Valley v. County of Santa Cruz* (2011) 201 Cal.App.4th 1, Santa Cruz County asked that its interpretation of the Educational Revenue Augmentation Fund (ERAF) statutes be given deference as being consistent with "long-standing administrative interpretation of the relevant statutes," including the interpretation of the State Controller's Office as expressed in its "Report to the California State Legislature: Property Tax Apportionments, Calendar Year 2007." 201 Cal.App.4th at 42-43. The Court rejected the County's, and what may have been the State Controller's Office's interpretation of the ERAF statutes and their effect on TEA cities, stating that "[w]hile administrative interpretation of a statutory scheme is entitled to due regard, it is not determinative and cannot override the plain language of the statutes and the import of the legislative history." *Id*. at 44.

Here, the Auditor-Controller's interpretation is contrary to that of the State Controller's Office as expressed in the audit report. The Auditor-Controller's interpretation of the statutes, as evidenced in his implementation of them, is itself a "long-standing administrative interpretation," perhaps due equal deference. "'The construction of a statute by the officials charged with its administration must be given great weight.'" *Harrott v. County of Kings* (2001) 25 Cal. 4th 1138, 1154-1155 (Cal. 2001), quoting *Highland Ranch v. Agricultural Labor Relations Bd*. (1981) 29 Cal. 3d 848, 859. Given the conflict between the initial interpretation of the State Controller's Office with respect to an unresolved issue in a different county, and that of the Auditor-Controller charged with implementation of the statutes at issue in this county, limited deference (if any) is due to the interpretation put forth in the Humboldt County audit report.

5. The Legislative History

Petitioners cite the legislative history of Section 96.2, which specifies that Auditor-Controllers are to use property tax apportionment factors. They argue that since the legislation

adopting that section was said to be "revenue neutral," Section 96.2 cannot allow the kind of revenue-shifting that Respondent defends.

a. Should the Court consider the legislative history?

First, there is a serious question as to whether the Court should consider legislative history. Petitioners offer the legislative history. Respondent argues that when the language of a statute is clear, the inquiry need go no further. For this he cites *Cryolife, Inc. v. Superior Court of Santa Cruz* (2003) 110 Cal. App. 4th 1145, 1154 and other cases.[22] Our Supreme Court has written,

> To determine intent, "The court turns first to the words themselves for the answer." (*Brown v. Kelly Broadcasting Co., supra,* 48 Cal. 3d 711, 724, quoting *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230 [110 Cal. Rptr. 144, 514 P.2d 1224].) "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)." *(Lungren v. Deukmejian* (1988) 45 Cal. 3d 727, 735 [248 Cal. Rptr. 115, 755 P.2d 299].) *Delaney v. Superior Court* (1990) 50 Cal. 3d 785, 798.

Other cases state the same rule. For example, *Jensen v. BMW of North America, Inc.* (1995) 35 Cal. App. 4th 112:

> The key to statutory interpretation is applying the seemingly plastic rules of construction in proper sequence. (*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal. App. 4th 1233, 1238 [8 Cal. Rptr. 2d 298].) First, we must examine the actual language of the statute, giving the words their ordinary, everyday meaning. (*Ibid*.) If the words are reasonably free from ambiguity and uncertainty,

[22] See Defendant Robert Campbell's Opposition to Petition for Writ of Mandate etc., p.35, n.126

> the language controls. (*Id*. at p. 1239; *Wingfield v. Fielder* (1972) 29 Cal. App. 3d 209, 219 [105 Cal. Rptr. 619].) If the meaning of the words is not clear, we must take the second step and refer to the legislative history. (*Halbert's Lumber, Inc. v. Lucky Stores, Inc., supra*, at p.1239.) "The final step--and one which we believe should only be taken when the first two steps have failed to reveal clear meaning--is to apply reason, practicality, and common sense to the language at hand. If possible, the words should be interpreted to make them workable and reasonable [citations], in accord with common sense and justice, and to avoid an absurd result [citations]." (*Id*. at pp. 1239-1240.)

Jensen v. BMW of North America, Inc., supra at 122-123.

But there are other cases in which the Supreme Court has modified the "plain meaning" rule to permit examination of the legislative history of a statute even if the language seems clear. In *Goodman v. Lozano* (2010) 47 Cal. 4th 1327 Justice Chin, writing for a unanimous court said:

> In interpreting a statute, our primary goal is to determine and give effect to the underlying purpose of the law. (*People v. Valladoli* (1996) 13 Cal.4th 590, 597 [54 Cal. Rptr. 2d 695, 918 P.2d 999].) "Our first step is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning." (*Ibid*.) "'If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.'" (*California Teachers, supra*, 28 Cal.3d at p. 698.) In other words, we are not free to "give the words an effect different from the plain and direct import of the terms used." (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [45 Cal. Rptr. 2d 279, 902 P.2d 297]; see § 1858.) However, "'the "plain meaning" rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or

> whether such a construction of one provision is consistent with other provisions of the statute.'" (*County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 943 [64 Cal. Rptr. 2d 814, 938 P.2d 876].) To determine the most reasonable interpretation of a statute, we look to its legislative history and background. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 543 [67 Cal. Rptr. 3d 330, 169 P.3d 559] (*Doe*).)

Goodman v. Lozano (2010) 47 Cal. 4th 1327, 1332.

Indeed in *Goodman*, the Court stated: "Although we conclude that the meaning of 'net monetary recovery' is plain, it is helpful to look at section 1032's legislative history in light of the conflict on this issue." *Id.* at 1335.

Similarly, in a 2009 case, a unanimous Supreme Court found the plain meaning of a statute, but then added, "[a]lthough we need not look to extrinsic sources to discern legislative intent when the statutory language is susceptible of only one reasonable interpretation (see *Olson, supra*, 42 Cal.4th at p. 1147), an examination of the legislative history supports our conclusion…." *Miller v. Bank of America, NT & SA* (2009) 46 Cal. 4th 630, 642. It then proceeded to examine the legislative history of the statute.

The path away from the "plain meaning" rule is not untwisted. For example, in a case decided by a unanimous Supreme Court just two weeks before *Miller*, Justice Werdegar wrote:

> "As with all questions of statutory interpretation, we attempt to discern the Legislature's intent, 'being careful to give the statute's words their plain, commonsense meaning. [Citation.] If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary.' (*Kavanaugh v. West Sonoma County Union High School Dist*. (2003) 29 Cal.4th 911, 919 [129 Cal. Rptr. 2d 811, 62 P.3d

54].)" *Ste. Marie v. Riverside County Regional Park & Open-Space Dist.* (2009) 46 Cal. 4th 282, 288.

And in a 2008 case, *Van Horn v. Watson* (2008) 45 Cal. 4th 322 Justice Baxter, in dissent, stated the "plain meaning" rule as follows,

> "A statute's plain language is a dispositive indicator of its meaning unless a literal reading would lead to absurd consequences the Legislature did not intend. (*E.g.*, *Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 888 [80 Cal. Rptr. 3d 690, 188 P.3d 629]; *Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1131 [72 Cal. Rptr. 3d 382, 176 P.3d 654]; *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737 [21 Cal. Rptr. 3d 676, 101 P.3d 563].)" *Van Horn v. Watson* (2008) 45 Cal. 4th 322, 334.

In *Van Horn*, however, the *majority* – having found the plain meaning of the statute – examined the legislative history as well.

And, in the most recent case, *City of Alhambra v. County of Los Angeles*, *supra*, the Court returned to the "plain meaning" rule – but nonetheless examined the legislative history of the statute at issue. *City of Alhambra*, *supra*, at 718-719 and 726-729.

Given this developing law, the Court reviews the legislative history here. However, that exegesis does not alter the Court's decision as is explained next.

b. <u>The legislative history examined</u>

Petitioners' legislative history is found at Exhibits 56, 57, 58, 60 and 61. Much of it is redundant. When considering SB 180, which added what is now Section 96.2, some relevant bill analyses said,

> "The March 27 amendments allow county auditors to determine a percentage share for each jurisdiction for each fiscal year. Thus, when property tax revenues

are received, they can be allocated to jurisdictions rather than to tax rate areas. This provision is at the request of county auditors and has no fiscal effect."[23]

Respondent argues that there is no evidence of what the March 27 amendments were. As discussed below, there is some force to that argument when one tries to understand precisely what the just-quoted language means.

However, Petitioners assert more generally, that SB 180 provided the text that became Section 96.2, and that is true. See Statutes of 1980, Chapter 801, Section 9. The context of the just-quoted language appears to link to Section 9 of Chapter 801. So, the Court accepts the fact that the portion of the bill analysis that begins "The March 27 amendments…" refers to what is now Section 96.2.[24] But that does not add a great deal to Petitioner's argument for the following reasons.

The Court notes initially that Petitioners argue that this case is governed by Section 4707. Thus, their argument about the legislative history of Section 96.2 seems a bit off point.

Indeed, the timing of the enactment of the two sections raises a question about using the legislative history of Section 96.2 to determine the legislature's intent in enacting Section 4707. The predecessor to Section 96.2 [Section 97.5] was enacted in 1980, then amended and renumbered as Section 96.2 in 1994. Section 4707 was enacted years earlier – in 1949 – by a differently constituted legislature which presumably had its own intent. (Petitioners have not provided any of the legislative history of Section 4707.)

Nonetheless, Petitioners appear to be arguing that the legislature intended that the use of property tax apportionment factors (established in Section 96.2) should have no fiscal impact,

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[23] Dept. of Finance analysis of Sen. Bill No.180 (1979–1980 Reg. Sess.) Apr. 8, 1980, p. 2 (Exh. 56 at 826**),** Dept. of Finance analysis of Sen. Bill No. 180 (1979–1980 Reg. Sess.) Apr. 28, 1980, p. 2 (Exh. 57 at 828); Dept. of Finance analysis of Sen. Bill No. 180 (1979–1980 Reg. Sess.) June 2, 1980, p. 2 (Exh. 58 at 831); Enrolled Bill Report for Sen. Bill No.180 (1979-1980 Reg. Sess.) July 24, 1980, p. 3 (Exh. 61 at 849).

[24] Petitioners' argument might have been stronger had they provided more of the legislative history.

however they might be used – even if in connection with Section 4707. Petitioners argue that when the Auditor-Controller used the property tax apportionment factors to make adjustments under Section 4707 he violated the legislative intent that no (disproportionate) fiscal impact result from their use.

That is a heavy burden to place on a sentence that says only "[t]his provision is at the request of county auditors and has no fiscal effect." Often when a statement in a bill analysis refers to "no fiscal effect" it is referring to the impact on the State General Fund. Judging from the meager content of these bill analyses, it would seem that this legislation would have had no fiscal effect on the State General Fund.

On closer examination, it appears that "the March 27 Amendments" may have been intended to provide an alternative to what is now 96.2(e). Again, the analysis is hampered by the fact that Petitioners submitted only a part of the legislative history. One would have to compare the state of the bill as it existed *prior* to the March 27 amendments with the bill *as enacted with* the March 27 amendments; for a possible inference from the language quoted in the text is that prior to the March 27 amendments the bill would have allowed revenues to be allocated only to tax rate areas.

The language quoted above ("The March 27 amendments allow") suggests that the purpose of that day's amendments to SB 180 was to give the counties a second option – to allow them to allocate revenues to individual jurisdictions rather than to tax rate areas. If that is so, the statement would mean that there is no fiscal effect if one allocates revenues to jurisdictions rather than to tax rate areas. That does not really help understand the issue presented here.

Indeed, examined more broadly, the material provided by Petitioners belies their argument that the legislature's purpose was to avoid any fiscal effect on any local jurisdiction. One bill analysis says that "This bill has no direct State or local costs. The bill would, however,

allow shifts of property tax revenues between local agencies…."[25] If it is to allow shifts of revenue between local agencies, it does seem that it would have a "fiscal effect" on those agencies.

It is possible that the section of the bill analysis that refers to shifts of revenues among local agencies refers to other parts of SB 180. But there is insufficient material from the legislative history before the Court to explore that question in more detail. Petitioners have not provided sufficient evidence for the Court to conclude the legislative history is as they assert.

Still, at oral argument, Petitioners sought to extend the argument. They said that "no fiscal effect" means that Section 96.2 must be "revenue neutral." (In making this extended argument, they sought to link this case to the new Supreme Court case, *City of Alhambra v. County of Los Angeles, supra.*) But that does not follow for the reasons stated above.

There is one more point. When Section 96.2 was enacted, it amended a Revenue and Taxation Code that already contained Section 4707. "It is assumed that the legislature has in mind existing laws when it passes a statute. … 'The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended.'" *Estate of McDill* (1975) 14 Cal.3d 831, 837, cit. om., quoting *Cole v. Rush* (1955) 45 Cal.2d 345, 355. The Court must therefore assume that the legislature, in enacting Section 96.2, was fully aware of Section 4707 and chose not to change it.

Section 4707 requires adjustments to "be made in each of the funds to which apportionment previously had been made." In enacting Section 96.2 the legislature directed that apportionment be made using property tax apportionment factors. The legislature is presumed to have considered the interplay between the two statutes. Clearly there are consequences to how an apportionment is made. One is that adjustments are to be made as apportionments are made.

[25] Dept. of Finance analysis of Sen. Bill No.180 (1979–1980 Reg. Sess.) Apr. 8, 1980, p. 2 (Exh. 56 at 826).

At best, then, the legislative history presented to the Court is inconclusive and subject to differing interpretations. It is not helpful in determining the issue that must here be decided.

6. The Auditor-Controller's Website and Letters

Petitioners argue that the Auditor-Controller's website tells inquiring taxpayers where their tax dollars go. In addition, Respondent sends a yearly letter to local jurisdictions stating each city's share of the property tax revenue generated within its borders.[26]

As Respondent argues, this is general information, provided to the public. It does not begin to capture the complexities of the legislative scheme. It is simply an attempt to be informative at a level of generality. It is neither an admission nor a statement that estops Respondent here.

III. Summary

It is likely that Petitioners' position would have been correct in 1904, when the Supreme Court stated the "general principles" of *San Francisco and San Mateo Electric Railway Co., supra*. But there has been much law created since then.

When Proposition 13 was enacted, the legislature hastened to create a structure that would ameliorate potentially disastrous consequences for jurisdictions with high tax rates that would have seen their budgets slashed as a result of decreased property tax revenues. The general policy of tax situs was badly compromised in the legislative response, which distributed property taxes across jurisdictional lines within counties.[27] More accurately, "tax situs" was somewhat redefined, so that the situs became the county rather than individual jurisdictions.

Soon after that, AB 8 restored some more traditional notions of tax situs. It dedicated annual tax increments to individual tax revenue areas. Section 96.5. It did not return fully to the notion of a jurisdiction as a situs. But it came closer than SB 154.

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[26] Memorandum of Points and Authorities in Support of Petitioner's Motion for Judgment on the Writ, pp.25-26.
[27] SB 154 (Chapter 292, Statutes of 1978) enacted Government Code Section 26912. That section distributed property tax revenues across jurisdictional lines so that each jurisdiction would get approximately the same proportion of the total county property tax revenues it had received prior to Prop 13.

Since then, there have been changes to the Revenue and Taxation Code. Some have reflected older notions of tax situs (at the jurisdictional or tax revenue area level), and some have not. Fundamentally, the legislature has prescribed a set of rules that now govern the collection and apportionment of property tax revenues. Those rules must be followed. Those rules do not require strict adherence to the old notions of tax situs.

Those rules also have a practical aspect to them. They require the Auditor-Controller to use "property tax apportionment factors" to apportion money to the tax rate areas and jurisdictions in his or her county. As Petitioners argue, those apportionment factors might be considered to be an "accounting shortcut." They are the result of a formula that apportions money in a way that partakes of old notions of tax situs and newer notions driven (probably) by political compromise.

While the statutes are not, perhaps, as clear as they might be, they must govern the Auditor-Controller's actions; not antique notions of a "general policy" of tax situs.

The key questions are the meaning, in Section 4707, of the terms "pro rata" and "each of the funds to which apportionment previously has been made". The parties focused their arguments, in part, on "pro rata." Had that phrase been omitted from the statute it would have read, in pertinent part,

> Should any tax or assessment which was apportioned at the time of levy be changed by…refund…an adjustment for the amount of such change shall be made in each of the funds to which apportionment previously has been made."

That would not have told the Auditor-Controller how much of an adjustment to make to each fund. The phrase "pro rata" did that. It said to make a change in proportion to the amount that was previously apportioned to that fund.

And as noted above, the statute directs adjustments to be made to "each of the funds to which apportionment previously has been made." It does not say "each of the funds within the

same jurisdiction as the property which is the subject of the refund." Petitioners' reading would require changing the words of the statute.

Taxes are collected on a county-wide basis and then distributed among many jurisdictions. The county collects all the property tax revenues and then apportions them according to the formulas provided by statute. In the dynamism of the real world, there are thousands or tens of thousands of corrections, cancellations and refunds each year. Since the aggregate collections were initially apportioned using the property tax apportionment factors, it makes perfect sense that the legislature decided to apportion the aggregate corrections, cancellations and refunds using those same factors. That appears to be the more natural reading of the statute.

This is also the reading that best harmonizes Section 96.2 with Section 4707 so as to give full effect to both. "'[E]very 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.'" *Marin Hosp. Dist. v. Rothman* (1983) 139 Cal. App. 3d 495, 499, quoting *Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645. Read together, Sections 96.2 and 4707 show a legislative intent to apportion cancellations, corrections and refunds using property tax apportionment factors.

If there had been no Section 4707, there is no question that property tax apportionment factors for the prior year would have been used to apportion prior years' revenues. Section 96.2. (In that context, "revenues" means not just collections, but net collections after cancellations, corrections and refunds.)

Were Section 4707 to mean something significantly different, one might expect the legislature to have amended it at the time of the enactment of Section 96.2 to preserve that alternate meaning for Section 4707. Since that was not done, the two sections have to be read together. The best way to harmonize them is, as Respondent says, to use the property tax

apportionment factors to apportion cancellations, corrections and refunds under both Section 96.2 and Section 4707.

Petitioners may be correct. It may be better public policy to apportion large refunds in a special way. As to that, the Court has no view other than to note that Petitioners' arguments should be directed to the legislature.

IV. Rulings

For all these reasons, the Court denies Petitioners' (i) motion for judgment on the writ of mandate and (ii) prayer for declaratory relief. It further finds that judgment should be entered for Respondent.

Respondent is to prepare an appropriate form of judgment with respect to the petition for a writ of mandate and complaint and an order denying Petitioners' motion for judgment on the writ.

Dated: January 7, 2013

Barry P. Goode
Judge, Superior Court

Exhibit A

Two Hypothetical Calculations Showing That An Increase in "Annual Tax Increment" Goes To The Jurisdiction in Which the Increment Arises

Hypothetical One

1	2	3	4	5	6	7	8
	Year 1			Year 2			
	Base	PTAF	$$	ATI	Total	PTAF	$$
Richmond	1,000	20%	1,000	200	1,200	23.08%	1,200
Everywhere else	4,000	80%	4,000	-	4,000	76.92%	4,000
Total	5,000	100%	5,000		5,200	100.00%	

Hypothetical Two

1	2	3	4	5	6	7	8
	Year 1			Year 2			
	Base	PTAF	$$	ATI	Total	PTAF	$$
Richmond	1,000	13.89%	1,000	200	1,200	15.87%	1,200
Brentwood	1,200	16.67%	1,200	100	1,300	17.20%	1,300
Concord	1,300	18.06%	1,300	50	1,350	17.86%	1,350
Antioch	1,700	23.61%	1,700	10	1,710	22.62%	1,710
Walnut Creek	2,000	27.78%	2,000	-	2,000	26.46%	2,000
Total	7,200	100%	7,200	360	7,560	100.00%	7,560

These two hypothetical examples show that a jurisdiction that has an annual tax increment benefits from that increment dollar for dollar. (To simplify the illustration, the calculations are done using jurisdictions rather than tax rate areas.)

The first hypothetical illustrates that by assuming there are only two jurisdictions in the county, Richmond and "Everywhere else." In Year 1, The County apportions $5,000 in taxes, $1,000 to Richmond and $4,000 to Everywhere else (column 4). Richmond's property tax apportionment factor is 20%, Everywhere else's is 80% (PTAF, column 3).

The following year, there is an annual tax increment of $200 in Richmond, but the value of the property remains the same in Everywhere else. (Column 5). Thus, Richmond's base allocation (column 4) plus its ATI (column5) is $1,200, while the allocation for Everywhere else remains at $4,000. That results in new property tax apportionment factors (column 7). When the county distributes $5,200 using the property tax apportionment factors, Richmond gets $1,200 and Everywhere else gets $4,000 (column 8). Thus, Richmond gets all of the $200 ATI generated in its tax revenue area.

The second hypothetical is precisely the same, only it uses more jurisdictions, some with ATIs and one (Walnut Creek) with no ATI. In each case, the amount apportioned to a jurisdiction (column 8) equals the base amount plus the ATI.

The spreadsheet was created by assuming the numbers in columns 2 and 5. In Hypothetical #1 the PTAF in column 3 was generated by dividing the base for a jurisdiction by the total for all bases at the foot of column 2. In Hypothetical #2 the PTAF in column 7 was generated by dividing the total in column 6 for a given jurisdiction (which is the base plus the ATI) by the total for all jurisdictions at the foot of column 6.

The dollars apportioned to a jurisdiction in columns 4 and 8 were generated by multiplying the PTAF (columns 3 and 7) by the total assessments for the county (the foot of column 1 in Hypothetical #1 and the foot of column 6 in Hypothetical #2).

In all cases, it can be seen that all of the ATI for a given jurisdiction is apportioned to that jurisdiction in column 8. (For example, in Hypothetical #2, Brentwood has an ATI of $100 in Year 2. Its apportionment increases from $1,200 in Year 1 to $1,300 in Year 2, giving it the full ATI of $100.)