STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

January 21, 2022

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Ms. Natalie Sidarous
State Controller's Office
Local Government Programs and Services Division
3301 C Street, Suite 740
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Municipal Storm Water and Urban Runoff Discharges, 19-0304-I-03
Los Angeles Regional Quality Control Board Order No. 01-182,
Permit CAS004001, Part 4F5c3
Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009
City of Arcadia, Claimant

Dear Ms. Chinn and Ms. Sidarous:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision not later than **5:00 p.m. on February 11, 2022**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[1]

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

[1] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, March 25, 2022**, at 10:00 a.m. via Zoom. The Proposed Decision will be issued on or about March 11, 2022.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list and so that detailed instructions regarding how to participate as a witness in this meeting on Zoom can be provided to them. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

Heather Halsey
Executive Director

Hearing Date: March 25, 2022
J:\MANDATES\IRC\2019\0304 (Municipal Storm Water and Urban Runoff Discharges)\19-0304-I-03\IRC\Draft PD.docx

ITEM ___

INCORRECT REDUCTION CLAIM

DRAFT PROPOSED DECISION

Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001 Part 4F5c3

Municipal Storm Water and Urban Runoff Discharges

Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009

19-0304-I-03

City of Arcadia, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction of reimbursement claims filed by the City of Arcadia (claimant) for the *Municipal Storm Water and Urban Runoff Discharges* program for fiscal years 2002-2003 through 2008-2009. The Controller reduced 100 percent of the costs claimed on the ground that the claimant failed to identify non-local, restricted funds from the Proposition A Local Return program which were used by the claimant to pay for the reimbursable activities.[1]

Staff finds that the Controller's reduction is correct as a matter of law and recommends that the Commission deny this IRC.

Procedural History

The Controller issued its final audit report on September 5, 2017, providing written notice of the reductions and the reasons for the reductions.[2] The claimant filed the IRC on June 8, 2020.[3] The Controller did not file comments on the IRC. Commission staff issued the Draft Proposed Decision on January 21, 2022.[4]

[1] Exhibit A, IRC, filed June 8, 2020, pages 111-117 (Final Audit Report).

[2] Exhibit A, IRC, filed June 8, 2020.

[3] Exhibit A, IRC, filed June 8, 2020, page 1.

[4] Exhibit B, Draft Proposed Decision, issued January 21, 2022.

Commission Responsibilities

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[5] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitution and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[6]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[7]

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[8] In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[9]

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[5] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[6] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[7] *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

[8] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[9] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

Issue	Description	Staff Recommendation
Was the IRC timely filed?	Section 1185.1(c) of the Commission's regulations states: "All incorrect reduction claims and amendments thereto shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment."[10]	*Timely filed* – The Controller issued its final audit report on September 5, 2017, which specified the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment. The claimant filed this IRC on June 8, 2020, within three years following the date the claimant received the final audit report. Therefore, this claim was timely filed.
Was the Controller's reduction of costs claimed, based on the determination that Proposition A sales tax Local Return funds used by the claimant to pay for the mandate are offsetting revenues, which should have been identified and deducted from the reimbursement claim, correct as a matter of law?	The claimant used Local Return funds from the Proposition A sales tax rather than proceeds of taxes to partially pay for one-time costs and to maintain trash receptacles in accordance with the mandate. The claimant did not identify and deduct the Proposition A Local Return funds as	*Correct as a matter of law* – The claimant used Proposition A Local Return funds from the Proposition A sales tax to pay for the state-mandated activities. The claimant did not identify and deduct the Proposition A Local Return funds as offsetting revenues in its reimbursement claims.

[10] California Code of Regulations, title 2, section 1185.1(c), Register 2020, No. 4 (eff. April 1, 2020).

Issue	Description	Staff Recommendation
	offsetting revenues in its reimbursement claims. Section VIII. of the Parameters and Guidelines states: "…reimbursement for this mandate received from any federal, state or *non-local* source shall be identified and deducted from this claim."[11] The claimant asserts that it has no revenue to offset because the Proposition A taxes that were used are a local source of funds, proceeds of taxes, and not revenue as defined in Section VIII. of the Parameters and Guidelines.[12]	Article XIII B, section 6 requires reimbursement only when the state-mandated program forces local governments to incur increased actual expenditures of their limited "proceeds of taxes," which are counted against the local governments' spending limit.[13] Proposition A and C local return program funds are not the claimant's "proceeds of taxes" because these taxes are not imposed pursuant to the claimant's authority to levy taxes, nor are the revenues distributed to the claimant subject to the claimant's appropriations limit.[14] Thus, the reference in the Parameters and Guidelines to "non-local" funds to pay for a state-mandated program means that the funds for the program are not the claimant's own proceeds of taxes, nor are they subject to the claimant's appropriations limit imposed

[11] Exhibit A, IRC, filed June 8, 2020, page 93 (Parameters and Guidelines), emphasis added.

[12] Exhibit A, IRC, filed June 8, 2020, pages 3-4.

[13] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185; *Redevelopment Agency of the City of San Marcos* v. *Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986-987.

[14] California Constitution, article XIII B, sections 8(b) and 8(c); *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451; Government Code section 7904; Public Utilities Code sections 130350, 130354; Exhibit X, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on October 14, 2020), page 6.

Issue	Description	Staff Recommendation
		by article XIII B. Non-local funds, when used to pay for a state-mandated program, are required to be identified and deducted from reimbursement claims as offsetting revenue. The Controller's reduction is correct as a matter of law.

Staff Analysis

A. The Claimant Timely Filed this IRC Within Three Years from the Date the Claimant First Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim, which Complies with Government Code Section 17558.5(c).

Section 1185.1(c) of the Commission's regulations provides that an IRC must be filed no later than three years following the claimant's receipt of the Controller's final audit report or other written notice of adjustment to a reimbursement claim that complies with Government Code section 17558.5(c).[15] The Controller issued its final audit report on September 5, 2017,[16] resulting in a September 4, 2020, deadline for the filing of an incorrect reduction claim. The claimant filed this IRC on June 8, 2020, within three years following the date the claimant received the Controller's final audit report.[17] Accordingly, this IRC was timely filed.

B. The Controller's Reduction, Based on the Determination that Proposition A Local Return Funds Are Offsetting Revenue that Should Have Been Identified and Deducted from the Reimbursement Claims, Is Correct as a Matter of Law.

Staff finds that the Proposition A Local Return funds used by the claimant are offsetting revenue that should have been identified and deducted from the reimbursement claims and thus, the Controller's reduction is correct as a matter of law. The claimant agrees that it used Proposition A funds to pay for the costs of the program, but contends that these funds should not be considered offsetting because they are a local source of funds, proceeds of taxes, and not revenue as defined in Section VIII. of the Parameters and Guidelines.[18]

Section VIII. of the Parameters and Guidelines requires that reimbursement for this mandate received from any non-local source shall be identified and deducted from this claim. This provision is consistent with article XIII B, section 6, which requires the state to provide

[15] California Code of Regulations, title 2, section 1185.1(c), Register 2020, No. 4 (eff. April 1, 2020).

[16] Exhibit A, IRC, filed June 8, 2020, pages 111-112 (Cover Letter to Final Audit Report).

[17] Exhibit A, IRC, filed June 8, 2020, pages 1-2 (IRC Form).

[18] Exhibit A, IRC, filed June 8, 2020, pages 3-4.

reimbursement only when local government is mandated to expend its own proceeds of taxes subject to the appropriations limit of article XIII B.[19] The Parameters and Guidelines are regulatory in nature and are binding on the parties.[20]

Staff finds that Proposition A local return fund revenues are not the claimant's "proceeds of taxes" within the meaning of article XIII B of the California Constitution because the taxes are not levied by the claimant nor are they subject to the claimant's appropriations limit. Therefore, staff finds that the Proposition A local return revenue used by the claimant is offsetting revenue that should have been identified and deducted from the reimbursement claims and thus, the Controller's reduction is correct as a matter of law. Section VIII. of the Parameters and Guidelines requires that "reimbursement for this mandate received from any federal, state or *non-local source* shall be identified and deducted from this claim" as offsetting revenue, and these funds are non-local sources of revenue.[21] To understand the meaning of *non-local* revenue, the Parameters and Guidelines must be read consistently with the constitutional legal principles underlying the reimbursement of state-mandated costs.[22]

Article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of tax revenues which are subject to limitation. Thus, contrary to the claimant's assertions, the courts have consistently found that the purpose of section 6 is to preclude "the state from shifting financial responsibility for carrying out governmental functions to local governmental entities, which are 'ill equipped' to assume increased financial responsibilities *because of the taxing and spending limitations that articles XIII A and XIII B impose.*"[23] The California Supreme Court, in *County of Fresno v. State of California*,[24] explained:

> Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.; see Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall

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[19] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

[20] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

[21] Exhibit A, IRC, filed June 8, 2020, page 93 (Parameters and Guidelines), emphasis added.

[22] See *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 974, 811-812, where the court states that the parameters and guidelines must be read in context, and with the fundamental legal principles underlying state-mandated costs.

[23] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81), emphasis added.

[24] *County of Fresno v. State of California* (1991) 53 Cal.3d 482.

> provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.[25]

It has been the long-held position, supported by case law, that only state mandates that require the expenditure of a claimant's "proceeds of taxes" limited by the tax and spend provisions in articles XIII A and XIII B are reimbursable, and that local governments authorized to recoup costs through non-tax sources are not eligible for reimbursement under article XIII B, section 6.[26]

Proposition A funds are not the claimant's local "proceeds of taxes" for purposes of mandates reimbursement because they are neither levied by the claimant nor subject to the claimant's appropriations limit. As such, any costs incurred by the claimant in performing the mandated activities that are funded by Proposition A, non-local taxes, are excluded from mandate reimbursement under article XIII B, section 6.

The power of a local government to tax is derived from the Constitution, upon the Legislature's authorization.[27] "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."[28] In other words, a local government's taxing authority is derived from statute.

The Los Angeles Metropolitan Transit Authority (Metro), as the successor to the Los Angeles County Transportation Commission, is authorized by statute to levy the Proposition A transactions and use taxes throughout Los Angeles County.[29] Under the Proposition A ordinance, twenty-five percent of Proposition A taxes is allocated to the local return program funds for the cities and the county to use for public transit purposes.[30] Permissible uses include bus stop improvements and maintenance projects, which include the installation, replacement, and maintenance of trash receptacles.[31] The claimant does not dispute receiving Proposition A tax revenues through the local return program during the audit period and using those funds for the eligible purposes of installing and maintaining trash receptacles at transit stops.

These taxes, however, are not levied "by or for" the cities and county, as that constitutional phrase is interpreted by the courts, because the claimant does not have the authority to levy

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[25] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, emphasis in original.

[26] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 (Article XIII B "was not intended to reach beyond taxation").

[27] California Constitution, article XIII, section 24(a).

[28] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450 ("Taxes are levied by the Legislature, or by counties and municipalities under their delegated power, for the support of the state, county, or municipal government").

[29] Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

[30] Exhibit A, IRC, filed June 8, 2020, page 13 (Local Return Guidelines 2007 Edition).

[31] Exhibit A, IRC, filed June 8, 2020, page 23 (Local Return Guidelines 2007 Edition).

Proposition A taxes; these taxes are not the claimant's local proceeds of taxes.[32] Nor are the proceeds subject to the city's appropriations limit.[33]

Under article XIII B, section 6 of the California Constitution, the state is required to provide reimbursement only when a local government is mandated to spend its own proceeds of taxes subject to the appropriations limit of article XIII B.[34] Because the Proposition A local return funds are not the claimant's "proceeds of taxes levied by or for that entity," they are not the claimant's "appropriations subject to limitation."[35]

Thus, expenditures from these "non-local" (Proposition A Local Return) funds should have been identified and deducted as offsetting revenues. Therefore, the Controller's reduction is correct as a matter of law.

Conclusion

Staff concludes that the Controller's reductions are correct as a matter of law.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to deny the IRC. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

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[32] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32; Article XIII B, section 8(b) of the California Constitution.

[33] Government Code section 7904; Public Utilities Code sections 130350, 130354; Exhibit X, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on October 14, 2020), page 6.

[34] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

[35] California Constitution, article XIII B, section 8.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Los Angeles Regional Quality Control Board Order No. 01-182 Permit CAS004001, Part 4F5c3 Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 Filed on June 8, 2020 City of Arcadia, Claimant	Case No.: 19-0304-I-03 *Municipal Storm Water and Urban Runoff Discharges* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted March 25, 2022*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on March 25, 2022. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the IRC by a vote of [vote will be included in the adopted Decision], as follows:

Member	**Vote**
Lee Adams, County Supervisor	
Sam Assefa, Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Renee Nash, School District Board Member	
Sarah Olsen, Public Member	
Yvette Stowers, Representative of the State Controller, Vice Chairperson	
Spencer Walker, Representative of the State Treasurer	

Summary of the Findings

This IRC challenges the State Controller's Office's (Controller's) reduction to reimbursement claims filed by the City of Arcadia (claimant) for the *Municipal Storm Water and Urban Runoff Discharges* program for fiscal years 2002-2003 through 2008-2009. The Controller reduced 100 percent of the costs claimed on the ground that the claimant failed to identify non-local, restricted funds from the Proposition A Local Return program, which were used by the claimant to pay for the reimbursable activities.

The Commission finds that this IRC was timely filed within three years of the date the Controller notified the claimant of the reduction.

The Commission further finds that the Controller's reduction, based on its determination that Proposition A local return funds are offsetting revenues that should have been identified and deducted from the reimbursement claims, is correct as a matter of law. Proposition A funds are transactions and use taxes levied by the Los Angeles Metropolitan Transit Authority (Metro). A portion of the Proposition A tax revenues are distributed to cities and the county through the Proposition A local return program for use on eligible transportation projects. These taxes, however, are not levied "by or for" the claimant, as that constitutional phrase is interpreted by the courts, because the claimant does not have the authority to levy Proposition A taxes, and thus, these taxes are not the claimant's local proceeds of taxes.[36] Nor are the proceeds subject to the claimant's appropriations limit.[37] Under article XIII B, section 6 of the California Constitution, the state is required to provide reimbursement only when a local government is mandated to spend its own proceeds of taxes subject to the appropriations limit of article XIII B.[38]

Accordingly, the Controller's reduction is correct as a matter of law and the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

09/28/2011 The claimant filed its initial reimbursement claim for fiscal years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009.[39]

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[36] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32; Article XIII B, section 8(b) of the California Constitution.

[37] Government Code section 7904; Public Utilities Code sections 130350, 130354; Exhibit X, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on October 14, 2020), page 6.

[38] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

[39] Exhibit A, IRC, filed June 8, 2020, page 119 (Claim Receipt).

09/05/2017 The Controller issued the Final Audit Report.[40]

06/08/2020 The claimant filed the IRC.[41]

01/21/2022 Commission staff issued the Draft Proposed Decision.[42]

II. Background

A. The *Municipal Storm Water and Urban Runoff Discharges* Program.

The *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 program arose from a consolidated test claim filed by the County of Los Angeles and cities within the county alleging that various sections of a 2001 stormwater permit issued by the Los Angeles Regional Water Quality Control Board, a state agency, constituted a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[43]

On July 31, 2009, the Commission adopted the Test Claim Decision, finding that the following activity in part 4F5c3 of the permit imposed a reimbursable state mandate on those local agencies subject to the permit that are not subject to a trash total maximum daily load (TDML):

> Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[44]

On March 24, 2011, the Commission adopted the Parameters and Guidelines with the following reimbursable activities:

A. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):

1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.
4. Purchase or construct receptacles and pads and install receptacles and pads.

[40] Exhibit A, IRC, filed June 8, 2020, pages 111-117 (Final Audit Report).

[41] Exhibit A, IRC, filed June 8, 2020.

[42] Exhibit B, Draft Proposed Decision, issued January 21, 2022.

[43] Exhibit A, IRC, filed June 8, 2020, page 87 (Parameters and Guidelines).

[44] Exhibit A, IRC, filed June 8, 2020, page 87 (Parameters and Guidelines).

5. Move (including replacement if required) receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

B. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):

1. Collect and dispose of trash at a disposal/recycling facility. *This activity is limited to no more than three times per week.*

2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.

3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. *Graffiti removal is not reimbursable*.

4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.[45]

The ongoing activities in Section IV. B. are reimbursed under a reasonable reimbursement methodology (RRM).[46]

Section VIII. of the Parameters and Guidelines requires offsetting revenues and reimbursements to be identified and deducted from reimbursement claims as follows:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.[47]

B. Proposition A Local Return Funds

At issue in this IRC is the claimant's use of Proposition A Local Return Funds to pay for the mandated program, the history of which is provided below.

In 1976, the Legislature created the Los Angeles County Transportation Commission (Transportation Commission) as a countywide transportation improvement agency[48] and authorized the Transportation Commission to levy a transactions and use tax throughout Los Angeles County.[49]

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[45] Exhibit A, IRC, filed June 8, 2020, pages 89-100 (Parameters and Guidelines), emphasis in original.

[46] Exhibit A, IRC, filed June 8, 2020, pages 92-93 (Parameters and Guidelines).

[47] Exhibit A, IRC, filed June 8, 2020, page 93 (Parameters and Guidelines).

[48] Public Utilities Code section 130050.

[49] Public Utilities Code sections 130231(a), 130350.

> A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the County of Los Angeles may be adopted by the Los Angeles County Transportation Commission in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, provided that a majority of the electors voting on the measure vote to authorize its enactment at a special election called for that purpose by the commission.[50]

Public Utilities Code section 130354 states that "revenues received by the Los Angeles County Transportation Commission from the imposition of the transactions and use taxes shall be used for public transit purposes."[51]

In 1980, Los Angeles County voters approved Proposition A, a one-half percent transactions and use tax to fund public transit projects throughout the county.[52] Proposition A was passed by a majority of voters as required by the original language of Public Utilities Code section 130350, but not the two-thirds vote required by article XIII A, section 4 (Proposition 13). Thereafter, the executive director of the Transportation Commission refused to levy the tax. The Transportation Commission filed a petition for writ of mandate to compel the executive director to implement the tax.

In *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, the California Supreme Court held that the Transportation Commission could, consistent with Proposition 13, impose the tax with the consent of only a majority of voters, instead of the two-thirds required under article XIII A, section 4.[53] The court reasoned that "special district" within the meaning of article XIII A, section 4 included only those districts with the authority to levy a tax on real property, and because the Transportation Commission had no such authority, it did not constitute a "special district."[54] While the court noted that the terms "special districts" and "special taxes" as used in section 4 were both ambiguous, it did not address whether Proposition A constituted a "special tax" within the meaning of section 4.[55] Nor did the court address whether the Transportation Commission or the Proposition A tax were subject to the government spending limitations imposed by article XIII B.

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[50] Public Utilities Code section 130350 (Stats. 1976, ch. 1333). Section 130350 was amended in 2007 to reflect the two-thirds vote requirement for special taxes under article XIII A, section 4.

[51] Public Utilities Code section 130354.

[52] Exhibit A, IRC, filed June 8, 2020, page 17 (Local Return Guidelines 2007 Edition).

[53] In 1978, California voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A, section 4 provides:

> Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

[54] *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 208.

[55] *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 201-202.

In *Rider v. County of San Diego* (1991) 1 Cal.4th 1, the California Supreme Court addressed "a question previously left open" in *Richmond*, regarding the validity of a supplemental sales tax "enacted for the apparent purpose of avoiding the supermajority voter approval requirement" under article XIII A, section 4.[56] The court ruled that a "special district" within the meaning of article XIII A, section 4 includes "any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of Proposition 13," regardless of whether the district has the authority to levy real property taxes.[57] However, the court declined to overrule *Richmond* with respect to local agencies created prior to Proposition 13 and which lacked the authority to levy property taxes, such as the Transportation Commission.[58] The court further held that a "special tax" within the meaning of article XIII A, section 4, "is one levied to fund a specific government project or program," even when that project or program is the agency's sole reason for being.[59]

The Transportation Commission is statutorily authorized to levy Proposition A transaction and use taxes.[60]

> The Los Angeles County Transportation Commission is authorized to impose a transactions and use tax within the County of Los Angeles pursuant to the approval by the voters of the commission's Ordinance No. 16 [Proposition A] in 1980 and its Ordinance No. 49 [Proposition C] in 1990, and has the authority and power vested in the Southern California Rapid Transit District to plan, design, and construct an exclusive public mass transit guideway system in the County of Los Angeles, including, but not limited to, Article 5 (commencing with Section 30630 of Chapter 5 of Part 3 of Division 11).[61]

The Proposition A Ordinance does not state whether Proposition A tax proceeds are subject to the Transportation Commission's appropriations limit.[62]

In 1993, the Transportation Commission was abolished and the Los Angeles County Metropolitan Transportation Authority (Metro) was created and succeeded to the Transportation Commission's and the Southern California Rapid Transit District's powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its governing body.[63] Since becoming

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[56] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 5.

[57] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 11.

[58] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 7-9.

[59] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 15.

[60] Public Utilities Code section 130231(a).

[61] Public Utilities Code section 130231(a).

[62] Exhibit X, Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on August 31, 2020).

[63] Public Utilities Code sections 130050.2, 130051.13. Section 130051.13 states as follows:

the successor agency to the Transportation Commission, Metro has continued to levy the Proposition A taxes.[64]

The purpose of the Proposition A tax is to "improve and expand existing public transit Countywide, including reduction of transit fare, to construct and operate a rail rapid transit system hereinafter described, and to more effectively use State and Federal funds, benefit assessments, and fares."[65] Under the Proposition A Ordinance, tax revenues can be used for capital or operating expenses[66] and are allocated as follows:

a. Twenty-five percent, calculated on an annual basis, to local jurisdictions for local transit, based on their relative percentage share of the population of the County of Los Angeles.

b. Thirty-five percent, calculated on an annual basis, to the commission for construction and operation of the System.

c. The remainder shall be allocated to the Commission for public transit purposes.[67]

Local jurisdictions receive transportation funding from Metro through the Proposition A local return program. Twenty-five percent of Proposition A funds is allocated to the local return programs for local jurisdictions to use for "in developing and/or improving public transit, paratransit, and the related transportation infrastructure."[68] Metro allocates and distributes local return funds to cities and the county each month, on a "per capita" basis.[69]

On April 1, 1993, the Southern California Rapid Transit District and the Los Angeles County Transportation Commission are abolished. Upon the abolishment of the district and the commission, the Los Angeles County Metropolitan Transportation Authority shall succeed to any or all of the powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its governing body.

[64] Exhibit A, IRC, filed June 8, 2020, page 96 (Local Return Guidelines 2007 Edition).

[65] Exhibit X, Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on August 31, 2020), page 3.

[66] Exhibit X, Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on August 31, 2020), page 4.

[67] Exhibit X, Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on August 31, 2020), page 4.

[68] Exhibit A, IRC, filed June 8, 2020, page 17 (Local Return Guidelines 2007 Edition).

[69] Exhibit A, IRC, filed June 8, 2020, page 17 (Local Return Guidelines 2007 Edition).

Use of Proposition A tax revenues is restricted to "eligible transit, paratransit, and Transportation Systems Management improvements" and cities are encouraged to use the funds to improve transit services.[70]

> The Proposition A Ordinance requires that LR [Local Return] funds be used exclusively to benefit public transit. Expenditures related to fixed route and paratransit services, Transportation Demand Management, Transportation Systems Management and fare subsidy programs that exclusively benefit transit are all eligible uses of Proposition A LR funds.[71]

Amongst the eligible uses of Proposition A local return funds are bus stop improvements and maintenance projects.[72] The Local Return Guidelines provide as follows:

> Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:
>
> - Concrete landings – in street for buses and at sidewalk for passengers
> - Bus turn-outs
> - Benches
> - Shelters
> - *Trash receptacles*
> - Curb cut
> - Concrete or electrical work directly associated with the above items.[73]

Proposition A local return funds may also "be given, loaned or exchanged" between local jurisdictions, provided that certain conditions are met, including that the traded funds be used for public transit purposes.[74] Jurisdictions are permitted to use local return funds to advance eligible projects that will be reimbursed by "federal, state, or local grant funding, or private funds."[75] Subsequent reimbursement funds must then be deposited into the Proposition A Local Return Fund.[76]

C. The Controller's Audit and Summary of the Issues.

The claimant filed reimbursement claims for seven fiscal years in its initial claim totaling $349,403. No claim was made for one-time activities; only for ongoing costs subject to the

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[70] Exhibit X, Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on August 31, 2020), page 3.

[71] Exhibit A, IRC, filed June 8, 2020, page 17 (Local Return Guidelines 2007 Edition).

[72] Exhibit A, IRC, filed June 8, 2020, page 23 (Local Return Guidelines 2007 Edition).

[73] Exhibit A, IRC, filed June 8, 2020, page 23 (Local Return Guidelines 2007 Edition), emphasis added.

[74] Exhibit A, IRC, filed June 8, 2020, page 29 (Local Return Guidelines 2007 Edition).

[75] Exhibit A, IRC, filed June 8, 2020, page 46 (Local Return Guidelines 2007 Edition).

[76] Exhibit A, IRC, filed June 8, 2020, page 46 (Local Return Guidelines 2007 Edition).

reasonable reimbursement methodology.[77] Upon audit, the Controller reduced the claims by 100 percent of the amount claimed on the ground that the claimant had not reported Proposition A Local Return revenues that completely offset the claim amount.[78]

Based on a review of the claimant's operating budgets and discussions with the claimant, the Controller ascertained that the claimant has a transit fund fully funded by Proposition A and other restricted funding sources.[79] According to the claimant's payroll reports, the salaries of those employees performing the state-mandated activities of ongoing maintenance of transit trash receptacles were paid from the Proposition A Local Return funds within the claimant's transit fund.[80] The Controller noted that the state-mandated activities were listed as a proper use of Local Return funds in the Proposition A Local Return Guidelines, section II. Project Eligibility, as follows:

> 2. BUS STOP IMPROVEMENTS AND MAINTENANCE
> (Codes 150, 160, & 170)
>
> Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:
>
> - Concrete landings – in street for buses and at sidewalk for passengers
> - Bus turn-outs
> - Benches
> - Shelters
> - Trash Receptacles
> - Curb cuts
> - Concrete or electrical work directly associated with the above items[81]

The Controller concluded that, in compliance with Section VIII. of the Parameters and Guidelines, the claimant should have offset $349,403 in Proposition A Local Return funds used to pay for the state-mandated activities.[82] The Controller found that the claimant was able to use non-local funds to pay for the state-mandated activities and did not have to rely on the claimant's discretionary general funds.[83]

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[77] Exhibit A, IRC, filed June 8, 2020, pages 120-133 (Initial Reimbursement Claims).

[78] Exhibit A, IRC, filed June 8, 2020, pages 111-112 (Cover letter to the Final Audit Report).

[79] Exhibit A, IRC, filed June 8, 2020, page 116 (Final Audit Report).

[80] Exhibit A, IRC, filed June 8, 2020, pages 113-117 (Final Audit Report).

[81] Exhibit A, IRC, filed June 8, 2020, page 117 (Final Audit Report) quoting IRC, page 23 (Guidelines, Proposition A and Proposition C Local Return).

[82] Exhibit A, IRC, filed June 8, 2020, page 116 (Final Audit Report).

[83] Exhibit A, IRC, filed June 8, 2020, page 117 (Final Audit Report).

III. Positions of the Parties

A. City of Arcadia

The claimant argues that the reductions are incorrect because the Proposition A Local Return funds are not revenue "in the same program as a result of the same statute or executive orders found to contain the mandate" nor are they "reimbursement for this mandate received from any federal, state or non-local source" as set forth in Section VIII., Offsetting Revenues and Reimbursements, of the Parameters and Guidelines. The claimant further argues that the Local Return funds are not "additional revenues specifically intended to fund the costs of the state mandate" or those "dedicated…for the program" as set forth in Government Code sections 17556(e) and 17570(d)(1)(D).[84] The claimant explains that the Local Return funds could have been used for various transit-related projects. Using them to pay for the costs of the mandated activities was not the claimant's preference, but this use was proper and the claimant can repay the funds from the state's subvention of costs in compliance with the Local Return Guidelines.[85]

Relying on *County of Fresno v. State of California* (1991) 53 Cal.3d 482, the claimant argues that the Controller's position is contrary to article XIII B, section 6, which was adopted to protect local government's tax revenues. The claimant reasons that since Proposition A funds are derived from a sales tax, they are no different from any other sales tax and do not require offset.[86]

The claimant asserts that the Controller's reduction constitutes a retroactive application of the Parameters and Guidelines to prohibit the use of Proposition A Local Return funds, in a manner that was lawful at the time, is arbitrary and capricious, and violates the California Constitution:

> In this regard, as a general rule a regulation will not be given a retroactive effect unless it merely clarifies existing law. *People ex rel. Deukmejian v. CHE, Inc.* (1983) 150 Cal.App.3d 123, 135. Retroactivity is not favored in the law. *Aktar v. Anderson* (1957) 58 Cal.App.4th 1166, 1179. Regulations that 'substantially change the legal effect of past events' cannot be applied retroactively. *Santa Clarita Organization for Planning and the Environment v. Abercrombie* (2015) 240 Cal.App.4th 300, 315.
>
> That rule applies here. At the time the City advanced its Proposition A funds to use for the maintenance of the trash receptacles, it was operating under the understanding, consistent with Proposition A Guidelines, that the City could advance those funds and then return them to the Proposition A and C account for other use once the City obtained a subvention of funds from the state. To retroactively apply the Parameters and Guidelines, adopted in 2011, to preclude a subvention, i.e., to now find that the City did not use its Proposition A fund as an

[84] Exhibit A, IRC, filed June 8, 2020, pages 3-4.

[85] Exhibit A, IRC, filed June 8, 2020, page 4.

[86] Exhibit A, IRC, filed June 8, 2020, page 5.

advance only, substantially changes the legal effect of these past events. Such an application is unlawful.[87]

Finally, the claimant asserts that it had very limited general revenue funds, so using those funds was not a fiscally viable option.[88] Having used the Local Return funds for the mandated activities, the claimant had to forego using the funds for other allowable purposes as prioritized by the claimant.[89]

B. State Controller's Office

The Controller did not file comments on this IRC.

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[90] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[91]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to

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[87] Exhibit A, IRC, filed June 8, 2020, pages 5-6.

[88] Exhibit A, IRC, filed June 8, 2020, page 8 (Declaration of Hue Quach, Administrative Services Director and Chief Financial Officer for the City of Arcadia).

[89] Exhibit A, IRC, filed June 8, 2020, pages 8-9 (Declaration of Hue Quach, Administrative Services Director and Chief Financial Officer for the City of Arcadia and declaration of Vanessa Hevener, Environmental Services Officer for the City of Arcadia).

[90] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[91] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[92] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" … "In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support…." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[93]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[94] In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[95]

A. The Claimant Timely Filed this IRC Within Three Years from the Date the Claimant First Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim, which Complies with Government Code Section 17558.5(c).

Section 1185.1(c) of the Commission's regulations states: "All incorrect reduction claims and amendments thereto shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c)[96] by specifying the claim components adjusted, the

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[92] *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

[93] *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

[94] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[95] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

[96] Government Code section 17558.5(c) states: "The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment.

amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment."[97]

The Controller initiated the audit in September 2016[98] and issued its final audit report on September 5, 2017,[99] resulting in a September 4, 2020, deadline for the filing of an incorrect reduction claim. The claimant filed this IRC on June 8, 2020, within three years following the date of the Controller's final audit report.[100] Accordingly, this IRC was timely filed.

B. The Controller's Reduction of Costs, Based on the Determination that Proposition A Local Return Funds Are Offsetting Revenue that Should Have Been Identified and Deducted from the Reimbursement Claims, Is Correct as a Matter of Law.

The claimant used Local Return funds from the Proposition A sales tax to pay for its ongoing maintenance costs.[101] The claimant did not identify and deduct the Proposition A Return funds as offsetting revenues in its reimbursement claims.[102] Because Proposition A Local Return funds constitute reimbursement from a non-local source and are not the claimant's proceeds of taxes within the meaning of article XIII B of the California Constitution, the Commission finds that the Controller's designation of the funds as offsetting revenues and the resulting reduction of costs claimed is correct as a matter of law.

1. Proposition A local return funds constitute reimbursement from a non-local source within the meaning of the Parameters and Guidelines.

Section VIII. of the Parameters and Guidelines states:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or *non-local* source shall be identified and deducted from this claim.[103]

While the Parameters and Guidelines do not expressly require that funds from Proposition A be identified as offsetting revenue, they do state that "reimbursement for this mandate received from any federal, state or *non-local source* shall be identified and deducted from this claim." The Parameters and Guidelines do not stand alone, but must be interpreted in a manner that is

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Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review."

[97] California Code of Regulations, title 2, section 1185.1(c), Register 2020, No. 4 (eff. April 1, 2020).

[98] Exhibit A, IRC, filed June 8, 2020, page 3.

[99] Exhibit A, IRC, filed June 8, 2020, pages 111-112 (Cover Letter to Final Audit Report).

[100] Exhibit A, IRC, filed June 8, 2020, page 1 (IRC Form).

[101] Exhibit A, IRC, filed June 8, 2020, page 116 (Audit Report).

[102] Exhibit A, IRC, filed June 8, 2020, page 116 (Audit Report).

[103] Exhibit A, IRC, filed June 8, 2020, page 93 (Parameters and Guidelines), emphasis added.

consistent with the California Constitution[104] and principles of mandates law.[105] As explained below, to qualify as reimbursable "proceeds of taxes" under mandates law, a "local tax" cannot be levied "by or for" an entity other than the local agency claiming reimbursement, nor can it be subject to another entity's appropriations limit, even if that entity is another local agency.[106] To find otherwise would disturb the balance of local government financing upon which the tax and spend limitations of articles XIII A and XIII B are built.[107]

Proposition A Local Return funds are not the claimant's local "proceeds of taxes" because they are neither levied by nor for the claimant, nor subject to the claimant's appropriations limit. Any costs incurred by the claimant in performing the mandated activities that are funded by Proposition A, non-local taxes, are excluded from mandate reimbursement under article XIII B, section 6 of the California Constitution.

Article XIII B does not limit the ability to expend government funds collected from all sources; the appropriations limit is based on "appropriations subject to limitation," meaning "any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity*."[108] For local agencies, "proceeds of taxes" subject to the appropriations limit include all tax revenues; proceeds from regulatory charges and fees to the extent such proceeds exceed the costs reasonably borne by government in providing the product or service; the investment of tax revenue; and subventions received from the state (other than pursuant to section 6).[109]

Article XIII B does not limit the ability to expend government funds collected from all sources; the appropriations limit is based on "appropriations subject to limitation," meaning "any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity*."[110] No limitation is placed on the expenditure of those revenues that do not constitute "proceeds of taxes."[111] For example, appropriations subject to limitation do not include "local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the state, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities."[112]

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[104] See *State Board of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813, 823, holding that a Board tax rule was null and void, as applied, because it violated the Constitution.

[105] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 811-812.

[106] See *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

[107] See *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 492 (Arabian, J., concurring).

[108] California Constitution, article XIII B, section 8, emphasis added.

[109] California Constitution, article XIII B, section 8; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 448.

[110] California Constitution, article XIII B, section 8(b), emphasis added.

[111] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

[112] California Constitution, article XIII B, section 8(i).

Article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of tax revenues which are subject to limitation. Thus, contrary to the claimant's assertions, the courts have consistently found that the purpose of section 6 is to preclude "the state from shifting financial responsibility for carrying out governmental functions to local governmental entities, which are 'ill equipped' to assume increased financial responsibilities *because of the taxing and spending limitations that articles XIII A and XIII B impose.*"[113] The California Supreme Court, in *County of Fresno v. State of California*,[114] explained:

> Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.; see Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.[115]

Article XIII B, section 6 must therefore be read in light of the tax and spend limitations imposed by articles XIII A and XIII B; it requires the state to provide reimbursement only when a local government is mandated to expend its own proceeds of taxes subject to the appropriations limit of article XIII B.[116]

2. Proposition A Local Return funds are not the claimant's proceeds of taxes and are not subject to the claimant's appropriations limit.

a. The Proposition A Local Return Funds are not the *claimant's* proceeds of taxes.

The revenue at issue in this IRC consists of transportation sales tax receipts from the claimant's share of the Proposition A Local Return program. However, Proposition A funds are not subject to the claimant's appropriations limit. "Appropriations subject to limitation" for local government means "any authorization to expend during a fiscal year the 'proceeds of taxes levied by or for that entity' and the proceeds of state subventions to that entity (other than

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[113] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81), emphasis added.

[114] *County of Fresno v. State of California* (1991) 53 Cal.3d 482.

[115] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, emphasis in original.

[116] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

subventions made pursuant to Section 6) exclusive of refunds of taxes."[117] It has been the long-held position, supported by case law, that only state mandates that require the expenditure of a claimant's "proceeds of taxes" limited by the tax and spend provisions in articles XIII A and XIII B are reimbursable and that local governments authorized to recoup costs through non-tax sources are not eligible for reimbursement under article XIII B, section 6.[118] While the claimant seeks to characterize Proposition A Local Return funds as "local taxes," for purposes of mandates reimbursement, they are not the claimant's proceeds of taxes.

The power of a local government to tax is derived from the Constitution and requires the Legislature's authorization.[119] "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."[120] In other words, a local government's taxing authority is derived from statute. In this case, the Transportation Commission was authorized by statute to adopt an ordinance setting transactions and use taxes to be used for public transit purposes.[121] Since 1993, Metro, the successor agency, has been authorized to levy the Proposition A transactions and use tax and to distribute the revenues from those taxes as set forth within ordinances and the Local Return Guidelines.[122]

b. The Proposition A tax is not subject to the claimant's appropriations limit.

The voters of Los Angeles County approved four separate half-cent transportation sales taxes over the past 40 years: Proposition A (1980), Proposition C (1990), Measure R (2008), and Measure M (2016).[123] With the exception of Proposition A, the remaining three tax ordinances, all adopted since 1990, expressly state that their respective transportation sales tax revenues are subject to either the Los Angeles County Transportation Commission's (as predecessor to Metro) or Metro's appropriations limit.[124]

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[117] California Constitution, article XIII B, section 8(b).

[118] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 (Article XIII B "was not intended to reach beyond taxation").

[119] California Constitution, article XIII, section 24(a).

[120] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450.

[121] Public Utilities Code former section 130350; 64 Ops.Cal.Atty.Gen. 156 (1981).

[122] Public Utilities Code section 130351.13.

[123] Exhibit X, Local Return Program 2021, https://www.metro.net/about/local_return_pgm/#overview (accessed on January 20, 2022), page 1.

[124] Exhibit X, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on October 14, 2020), page 6; Exhibit X, Measure R Ordinance, https://www.dropbox.com/s/bgam2405bekeciq/2009-MeasureR-ordinance-amended-July-2021.pdf?dl=0 (accessed on January 3, 2022), page 16; Exhibit X, Measure M Ordinance, https://www.dropbox.com/s/vs6sse7hzyw8s0h/2017-MeasureM-ordinance-with-expenditure-plan.pdf?dl=0 (accessed on January 3, 2022), page 22.

The Proposition A tax is not subject to an appropriations limit. Under *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197, the Transportation Commission is not a "special district" subject to the taxation limitations of article XIII A and could therefore impose the Proposition A tax without the two-thirds voter approval required by article XIII A, section 4. Therefore, consistent with Public Utilities Code section 99550, any tax imposed by the Transportation Commission that was approved prior to December 19, 1991 is exempt from the taxing limitations of article XIII A.

While article XIII A "imposes a direct constitutional limit on state and local power to adopt and levy taxes,"[125] the purpose of article XIII B is to provide discipline in government spending "by creating appropriations limits to restrict the amount of such expenditures."[126] As discussed above, articles XIII A and XIII B work together to impose restrictions on local governments' ability to both levy and spend taxes.[127] Because the Transportation Commission's power to adopt and levy taxes is not limited by article XIII A, it is not surprising that an appropriations limit was not established for the Proposition A revenues under article XIII B.

Furthermore, if the Transportation Commission were considered a "special district," article XIII B, section 9 states that "Appropriations subject to limitation" for each entity of government do *not* include

> (c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per $100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.[128]

The Transportation Commission was created prior to January 1, 1978, and did not levy real property taxes. Therefore, whether or not the Transportation Commission is considered to be a special district, Proposition A funds are not subject to an appropriations limit.

Accordingly, the revenue from the Proposition A transactions and use tax are Metro's proceeds of taxes, are not subject to an appropriations limit, and the portion distributed as Local Return funds are a non-local source of funds to the claimant.

Despite the claimant's ability to obtain and use Local Return funds, the Proposition A transactions and use tax was not levied by the claimant nor did the claimant have authorization to levy it.[129] Metro did not levy the taxes for the claimant.[130] In order to have done so, Metro would have had to use the claimant's power to levy taxes and acted as ex-officio officers of the

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[125] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, footnote 1.

[126] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 491 (Arabian, J., concurring).

[127] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486.

[128] California Constitution, article XIII B, section 9(c).

[129] Public Utilities Code section 130351.13 and former section 130350.

[130] California Constitution, article XIII B, section 8(b).

claimant.[131] As the claimant was not authorized to levy the Proposition A taxes, the Local Return funds are not the claimant's proceeds of taxes as defined by article XIII B of the California Constitution.[132] Indeed, the claimant does not claim Local Return funds as part of its proceeds of taxes and not part of general fund revenues in its Comprehensive Annual Financial Report, but instead labels the revenue as "intergovernmental."[133] In addition, the claimant has not shown that the Local Return funds are subject to its appropriations limit. Since the Local Return funds are not the claimant's proceeds of taxes nor subject to the claimant's appropriations limit, the amount of Local Return funds used for the state-mandated activities should have been offset from the amounts claimed for reimbursement, as explained below.

3. The claimant used Proposition A funds, a non-local funding source and not the claimant's proceeds of taxes, to pay for the state-mandated activities, but did not deduct those funds as offsetting revenue in compliance with Section VIII. of the Parameters and Guidelines; therefore, the Controller's reduction of costs is correct as a matter of law.

Section VIII. of the Parameters and Guidelines addresses offsetting revenues and reimbursements as follows:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.[134]

The claimant asserts that it has no revenue to offset because Proposition A is a local source of funds, the Local Return funds are revenue from taxes, and these funds are not revenue as defined in Section VIII. of the Parameters and Guidelines; nor are they intended or dedicated for the program under Government Code sections 17556(e) and 17570(d)(1)(D).[135] The claimant argues that the use of Proposition A funds to advance an eligible program and then to repay those funds after subvention from the state was lawful and was permitted by the Local Return Guidelines.[136] The claimant concludes that the retroactive application of the Parameters and Guidelines is arbitrary and capricious and violates the California Constitution.[137]

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[131] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32.

[132] Article XIII B, section 8 of the California Constitution.

[133] Exhibit X, Excerpt from City of Arcadia, California, Comprehensive Annual Financial Report, June 30, 2010, page 5 (https://www.arcadiaca.gov/discover/administrative_services/comprehensive_annual_financial_report.php#outer-589 (accessed on October 2, 2020).

[134] Exhibit A, IRC, filed June 8, 2020, page 93 (Parameters and Guidelines).

[135] Exhibit A, IRC, filed June 8, 2020, pages 3-4.

[136] Exhibit A, IRC, filed June 8, 2020, pages 4-5.

[137] Exhibit A, IRC, filed June 8, 2020, pages 5-6.

The Commission finds that the Controller's reduction is correct as a matter of law.

The Parameters and Guidelines must be interpreted in a manner that is consistent with the California Constitution and "the fundamental legal principles underlying state-mandated costs."[138] As explained above, the revenue from Proposition A is not the claimant's proceeds of taxes within the meaning of article XIII B and as such, the revenue derives from a non-local source within the meaning of the Parameters and Guidelines, Section VIII. Parameters and Guidelines are regulatory in nature and are binding on the parties.[139]

The claimant errs in relying on Government Code sections 17556(e) and 17570(d)(1)(D) to argue that Local Return funds are not dedicated or intended to fund the program.[140] These provisions govern test claim proceedings and whether there are any exceptions to the finding of costs mandated by the state. The Commission approved this Test Claim and, thus, found there were costs mandated by the state. Thus, these code sections are not relevant.

Further, the claimant's assertion that its use of the funds complied with the Local Return Guidelines is not relevant as consistency with the Guidelines is not at issue in this IRC and the Guidelines do not address mandate reimbursement. The rule at issue in this case stems directly from Section VIII. of the Parameters and Guidelines: Reimbursement for this mandate received "from any . . . non-local source shall be identified and deducted from this claim."

Finally, the claimant incorrectly asserts that the Parameters and Guidelines are being applied retroactively in violation of law. The claimant states that the general rule is "a regulation will not be given a retroactive effect unless it merely clarifies existing law" citing *People ex rel. Deukmejian v. CHE, Inc.* (1983) 150 Cal.App.3d 123, 135.[141] The claimant also cites *Aktar v. Anderson* (1957) 58 Cal.App.4th 1166, 1179, for the proposition that the law disfavors retroactive application and *Santa Clarita Organization for Planning and the Environment (SCOPE) v. Abercrombie* (2015) 240 Cal.App.4th 300, 315, noting that "[r]egulations that 'substantially change the legal effect of past events' cannot be applied retroactively."[142]

In *SCOPE v. Abercrombie,* the court found that "[a]lthough regulations that 'substantially change[ ] the legal effect of past events' cannot be applied retroactively,"[143] the law in question did apply retroactively because it has "*the same legal effect*--as the regulations it replaced."[144] In *Aktar v. Anderson,* the court explained that " '[r]etroactivity is not favored in the law. Thus,

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[138] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

[139] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

[140] Exhibit A, IRC, filed June 8, 2020, pages 3-4.

[141] Exhibit A, IRC, filed June 8, 2020, page 6.

[142] Exhibit A, IRC, filed June 8, 2020, page 6.

[143] *Santa Clarita Organization for Planning and the Environment (SCOPE) v. Abercrombie* (2015) 240 Cal.App.4th 300, 315, footnote 5 citing *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 504-505.

[144] *Santa Clarita Organization for Planning and the Environment (SCOPE) v. Abercrombie* (2015) 240 Cal.App.4th 300, 315, footnote 5, emphasis added.

congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.' "[145] Finally, the court in *People ex rel. Deukmejian v. CHE, Inc.* recites the rule as follows:

> For, "[w]hile it is true that as a general rule statutes are not to be given retroactive effect unless the intent of the Legislature cannot be otherwise satisfied [Citation.], an exception to the general rule is recognized in a case where the legislative amendment *merely clarifies the existing law*. [Citations.] The rationale of this exception is that in such an instance, in essence, no retroactive effect is given to the statute because *the true meaning of the statute has been always the same*." [Citations.] This statutory rule of construction applies equally to administrative regulations. [Citations.][146]

Thus, a rule is not barred as retroactive when the rule merely clarifies existing law. Like the situations in *SCOPE v. Abercrombie* and *People ex rel. Deukmejian v. CHE, Inc*, the Parameters and Guidelines clarify existing law by merely applying what article XIII B, section 6 has always required — the state to provide reimbursement only when a local government is mandated to expend its own proceeds of taxes subject to the appropriations limit of article XIII B — and they do not impose any new or different limitations. The claimant did not use its own proceeds of taxes for the costs of complying with the state-mandated activities. Instead, the claimant used Local Return funds, derived from Proposition A's transactions and use taxes, as an advance and intended to repay the funds with a subvention of costs from the state. In so doing, the claimant complied with the Proposition A Guidelines, but failed to use the proceeds of taxes that are subject to reimbursement under article XIII B, section 6. The claimant expended funds from a non-local source within the meaning of Section VIII. of the Parameters and Guidelines, which are required to be deducted from the claimant's reimbursement claims.

V. Conclusion

Based on the forgoing analysis, the Commission finds that the IRC was timely filed and the Controller's reduction is correct as a matter of law.

Accordingly, the Commission denies this IRC.

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[145] *Aktar v. Anderson* (1957) 58 Cal.App.4th 1166, 1179 citing *Bowen v. Georgetown University Hospital* (1988) 488 U.S. 204, 208.

[146] *People ex rel. Deukmejian v. CHE, Inc.* (1983) 150 Cal.App.3d 123, 135 citing *Tyler v. State of California* (1982) 134 Cal.App.3d 973, 976-977, internal citations omitted, emphasis added.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On January 21, 2022, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing Date issued January 21, 2022**

  Municipal Storm Water and Urban Runoff Discharges, 19-0304-I-03
  Los Angeles Regional Quality Control Board Order No. 01-182,
  Permit CAS004001, Part 4F5c3
  Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009
  City of Arcadia, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 21, 2022 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/15/21

Claim Number: 19-0304-I-03

Matter: Municipal Storm Water and Urban Runoff Discharges

Claimant: City of Arcadia

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