



June 4, 2021

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Los Angeles, CA 90012

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City of Glendora  
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Glendora, CA 91741

Mr. Adam Pirrie  
City of Claremont  
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Claremont, CA 91711

Ms. Hannah Shin-Heydorn  
City of Signal Hill  
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Signal Hill, CA 90755

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: Decision**

*Municipal Storm Water and Urban Runoff Discharges*, 19-0304-I-04, 20-0304-I-06,  
20-0304-I-08, 20-0304-I-09, 20-0304-I-10, 20-0304-I-11, and 20-0304-I-13

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,  
2008-2009, 2009-2010, 2010-2011, 2011-2012

City of Claremont, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006

City of Downey, Claimant

Fiscal Years: 2008-2009, 2009-2010, 2010-2011, 2011-2012

City of Glendora, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008,  
2008-2009, 2009-2010, 2010-2011, 2011-2012

City of Pomona, Claimant

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

City of Santa Clarita, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008,  
2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013

City of Signal Hill, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008,  
2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013

County of Los Angeles, Claimant

J:\MANDATES\IRC\2020\0304 (Municipal Storm Water and Urban Runoff Discharges)\20-0304-I-08  
consolidated with 19-0304-I-04, 20-0304-I-06, 09, 10, 11, 13\Correspondence\decisiontrans.docx

Messrs. Gandhi, Gest, Mowbray, and Pirrie, and Mss. Barrera, Magaña, Overholt, Shin-  
Heydorn, and Sidarous  
Page 2

Dear Messrs. Gandhi, Gest, Mowbray, and Pirrie, and Mss. Barrera, Magaña, Overholt, Shin-  
Heydorn, and Sidarous:

On May 28, 2021, the Commission on State Mandates adopted the Decision on the above-  
entitled matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE CONSOLIDATED 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, 2008-  
2009, 2009-2010, 2010-2011, 2011-2012, City  
of Claremont, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-  
2005, 2005-2006, City of Downey, Claimant

Fiscal Years: 2008-2009, 2009-2010, 2010-  
2011, 2011-2012, City of Glendora, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-  
2005, 2005-2006, 2006-2007, 2007-2008, 2008-  
2009, 2009-2010, 2010-2011, 2011-2012, City  
of Pomona, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-  
2005, 2005-2006, 2006-2007, 2007-2008, 2008-  
2009, City of Santa Clarita, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-  
2005, 2005-2006, 2006-2007, 2007-2008, 2008-  
2009, 2009-2010, 2010-2011, 2011-2012, 2012-  
2013, City of Signal Hill, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-  
2005, 2005-2006, 2006-2007, 2007-2008, 2008-  
2009, 2009-2010, 2010-2011, 2011-2012, 2012-  
2013, County of Los Angeles, Claimant

Case Nos.: 19-0304-I-04, 20-0304-I-06,  
20-0304-I-08, 20-0304-I-09, 20-0304-I-10,  
20-0304-I-11, and 20-0304-I-13

*Municipal Storm Water and Urban Runoff  
Discharges*

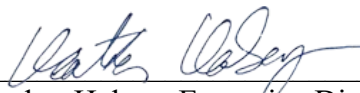
DECISION PURSUANT TO  
GOVERNMENT CODE SECTION 17500  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7.

*(Adopted May 28, 2021)*

*(Served June 4, 2021)*

**CONSOLIDATED INCORRECT REDUCTION CLAIM**

The Commission on State Mandates adopted the attached Decision on May 28, 2021.

  
\_\_\_\_\_  
Heather Halsey, Executive Director

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE CONSOLIDATED 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,  
2008-2009, 2009-2010, 2010-2011, 2011-  
2012, City of Claremont, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-  
2005, 2005-2006, City of Downey, Claimant

Fiscal Years: 2008-2009, 2009-2010, 2010-  
2011, 2011-2012, City of Glendora, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-  
2005, 2005-2006, 2006-2007, 2007-2008,  
2008-2009, 2009-2010, 2010-2011, 2011-  
2012, City of Pomona, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-  
2005, 2005-2006, 2006-2007, 2007-2008,  
2008-2009, City of Santa Clarita, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-  
2005, 2005-2006, 2006-2007, 2007-2008,  
2008-2009, 2010-2011, 2011-2012, 2012-  
2013, City of Signal Hill, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-  
2005, 2005-2006, 2006-2007, 2007-2008,  
2008-2009, 2009-2010, 2010-2011, 2011-  
2012, 2012-2013, County of Los Angeles,  
Claimant

Case Nos.: 19-0304-I-04, 20-0304-I-06,  
20-0304-I-08, 20-0304-I-09, 20-0304-I-10,  
20-0304-I-11, and 20-0304-I-13

*Municipal Stormwater 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 May 28, 2021)*

*(Served June 4, 2021)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this Consolidated Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on May 28, 2021. Howard Gest and William Winter appeared on behalf of the claimants. Lisa Kurokawa appeared on behalf of the State Controller's Office (Controller).

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 the Proposed Decision to deny the IRC by a vote of 6-0, as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Yes
Spencer Walker, Representative of the State Treasurer	Yes
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	Yes

**Summary of the Findings**

This Consolidated Incorrect Reduction Claim (IRC) alleges that the State Controller’s Office (Controller) incorrectly reduced reimbursement claims filed by the cities of Claremont, Downey, Glendora, Pomona, Santa Clarita, and Signal Hill, and the County of Los Angeles for costs claimed to implement the *Municipal Stormwater and Urban Runoff Discharges* program. This IRC and Decision are limited to the issue of whether local return revenues received by the claimants from the Los Angeles County Metropolitan Transportation Authority under the Proposition A and Proposition C local return programs, which were used to fund the costs of the mandated program, are required to be identified as offsetting revenues.

The Controller found that the claimants failed to identify and deduct as offsetting revenues the Proposition A and Proposition C local return funds received from the Los Angeles County Metropolitan Transportation Authority (Metro) that the claimants used to pay for the installation and maintenance of trash receptacles at transit stops required by the mandated program.

The Commission finds that the IRCs and Notices of Intent to Join a Consolidated IRC (Notice of Intent to Join) were timely filed.

The Commission further finds that the Controller’s reduction, based on its determination that Proposition A and Proposition C 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 and Proposition C are transactions and use taxes levied by Metro. A portion of the Proposition A and Proposition C tax revenues are distributed to the claimant cities and county through the Proposition A and Proposition C local return programs for use on eligible transportation projects. These taxes, however, are not levied “by or for” the cities and county, as that constitutional phrase is interpreted by the courts, because the claimants do not have the authority to levy Proposition A and C taxes, and thus, these taxes are not the claimants’ local

proceeds of taxes.<sup>1</sup> Nor are the proceeds subject to the cities' or the county's respective appropriations limits.<sup>2</sup> 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.<sup>3</sup>

Accordingly, the Commission denies this Consolidated IRC.

## COMMISSION FINDINGS

### I. Chronology

- 08/01/2011            The City of Pomona filed its reimbursement claims for fiscal years 2002-2003 through 2010-2011.<sup>4</sup>
- 09/21/2011            The City of Downey filed its reimbursement claims for fiscal years 2002-2003, 2003-2004, 2004-2005, and 2005-2006.<sup>5</sup>
- 09/22/2011            The County of Los Angeles filed its reimbursement claim for fiscal year 2009-2010.<sup>6</sup>
- 09/28/2011            The City of Claremont filed its reimbursement claims for fiscal years 2002-2003 through 2010-2011.<sup>7</sup> The City of Glendora filed its reimbursement claims for fiscal years 2008-2009 and 2009-2010.<sup>8</sup> The City of Santa Clarita filed its reimbursement claims for fiscal years 2002-

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<sup>1</sup> *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32; Article XIII B, section 8(b) of the California Constitution.

<sup>2</sup> Public Utilities Code sections 130350 (Stats. 1976, ch. 1333), 130354; Exhibit L, Proposition C Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_c\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf) (accessed on February 22, 2021), page 6.

<sup>3</sup> *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.

<sup>4</sup> Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, pages 13, 17, 19, 21, 23, 25, 28, 30, 32.

<sup>5</sup> Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, pages 33, 41, 43, 45.

<sup>6</sup> Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 206.

<sup>7</sup> Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, pages 11, 12, 14, 18, 20, 22, 24, 26, 28, 30.

<sup>8</sup> Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, pages 20, 22.

	2003 through 2008-2009. <sup>9</sup> The City of Signal Hill filed its reimbursement claims for fiscal years 2002-2003 through 2009-2010. <sup>10</sup>
12/15/2011	The County of Los Angeles filed its reimbursement claim for fiscal year 2010-2011. <sup>11</sup>
02/15/2012	The City of Signal Hill filed its reimbursement claim for fiscal year 2010-2011. <sup>12</sup>
09/26/2012	The County of Los Angeles filed its reimbursement claims for fiscal years 2002-2003 through 2008-2009. <sup>13</sup>
01/22/2013	The City of Claremont filed its reimbursement claims for fiscal year 2011-2012. <sup>14</sup>
02/11/2013	The City of Glendora filed its reimbursement claims for fiscal years 2010-2011 and 2011-2013. <sup>15</sup> The County of Los Angeles filed its reimbursement claim for fiscal year 2011-2012. <sup>16</sup>
02/15/2013	The City of Pomona filed its reimbursement claim for fiscal year 2011-2012. <sup>17</sup> The City of Signal Hill filed its reimbursement claim for fiscal year 2011-2012. <sup>18</sup>
02/04/2014	The County of Los Angeles filed its reimbursement claim for fiscal year 2012-2013. <sup>19</sup>
02/13/2014	The City of Signal Hill filed its reimbursement claim for fiscal year 2012-2013. <sup>20</sup>

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<sup>9</sup> Exhibit F, City of Santa Clarita’s Notice of Intent to Join, filed February 9, 2021, pages 2, 3, 7, 11, 15, 19, 23, 28.

<sup>10</sup> Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed February 9, 2021, pages 24, 31, 38, 45, 52, 59, 66, 73.

<sup>11</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 209.

<sup>12</sup> Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed February 9, 2021, page 80.

<sup>13</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, pages 168, 178, 191, 194, 197, 203.

<sup>14</sup> Exhibit B, City of Claremont’s Notice of Intent to Join, filed February 10, 2021, page 32.

<sup>15</sup> Exhibit D, City of Glendora’s Notice of Intent to Join, filed January 28, 2021, pages 24, 26.

<sup>16</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 212.

<sup>17</sup> Exhibit E, City of Pomona’s Notice of Intent to Join, filed February 10, 2021, page 34.

<sup>18</sup> Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed February 9, 2021, page 87.

<sup>19</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 218.

<sup>20</sup> Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed February 9, 2021, page 94.

06/30/2017	The Controller issued the final audit report to the City of Downey. <sup>21</sup>
10/20/2017	The Controller issued the final audit report to the City of Claremont. <sup>22</sup>
11/06/2017	The Controller issued the final audit report to the County of Los Angeles. <sup>23</sup>
05/21/2018	The Controller issued the final audit report to the City of Pomona. <sup>24</sup>
06/25/2018	The Controller issued the final audit report to the City of Signal Hill. <sup>25</sup>
08/09/2018	The Controller issued the final audit report to the City of Glendora. <sup>26</sup>
08/28/2018	The Controller issued the final audit report to the City of Santa Clarita. <sup>27</sup>
06/30/2020	The City of Downey filed its IRC.
10/16/2020	The City of Claremont filed its IRC.
11/05/2020	The County of Los Angeles filed its IRC with intent to consolidate on behalf of other similarly situated claimants. <sup>28</sup>

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<sup>21</sup> Exhibit C, City of Downey’s Notice of Intent to Join, filed February 4, 2021, page 4.

<sup>22</sup> Exhibit B, City of Claremont’s Notice of Intent to Join, filed February 10, 2021, page 3. The Controller refers to its review of the reimbursement claims filed by the cities of Claremont and Pomona and the County of Los Angeles as “reviews” or “desk reviews” (instead of audits) and its reports thereon as “final letters” or “final letter reports” (instead of final audit reports). While Government Code section 17558.5 authorizes the Controller to audit or review a reimbursement claim filed by a local agency or school district and to make adjustments thereto, the Controller’s underlying authority, as prescribed by Government Code 12410, is to “superintend the fiscal concerns of the state,” including auditing “the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.” Furthermore, section 1185.1(c) of the Commission’s regulations refers to the deadline for filing an incorrect reduction claim as no later than three years after the date the claimant first receives 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).” For the sake of simplicity and because whether it is called an “audit” or a “desk review” the requirements of 1185.1(c) are met so long as notice that complies with 17558.5(c) is given, this decision refers to the Controller’s audits and reviews of the claimants’ reimbursement claims as “audits” and the final reports and letters issued thereon as “final audit reports.”

<sup>23</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 148.

<sup>24</sup> Exhibit E, City of Pomona’s Notice of Intent to Join, filed February 10, 2021, page 2.

<sup>25</sup> Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed November 9, 2021, page 5.

<sup>26</sup> Exhibit D, City of Glendora’s Notice of Intent to Join, filed January 28, 2021, page 3.

<sup>27</sup> Exhibit F, City of Santa Clarita’s Notice of Intent to Join, filed February 9, 2021, page 33.

<sup>28</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020.



01/28/2021 The City of Glendora filed its Notice of Intent to Join a Consolidated IRC (Notice of Intent to Join).<sup>29</sup>

02/04/2021 The City of Downey filed its Notice of Intent to Join.<sup>30</sup>

02/09/2021 The City of Santa Clarita filed its Notice of Intent to Join.<sup>31</sup> The City of Signal Hill filed its Notice of Intent to Join.<sup>32</sup>

02/10/2021 The City of Claremont filed its Notice of Intent to Join.<sup>33</sup> The City of Pomona filed its Notice of Intent to Join.<sup>34</sup>

03/19/2021 Commission staff issued the Draft Proposed Decision.<sup>35</sup>

04/08/2021 The City of Claremont filed comments on the Draft Proposed Decision.<sup>36</sup>

04/08/2021 The Controller filed comments on the Draft Proposed Decision.<sup>37</sup>

04/09/2021 The County of Los Angeles filed comments on the Draft Proposed Decision.<sup>38</sup>

## II. Background

This Consolidated IRC challenges the Controller’s reduction of reimbursement claims filed by the cities of Claremont, Downey, Glendora, Pomona, Santa Clarita, and Signal Hill, and County of Los Angeles for the *Municipal Stormwater and Urban Runoff Discharges* program for fiscal years ranging from 2002-2003 through 2012-2013 (audit period). Specifically, this IRC addresses the issue of whether local return revenues received by the claimants from the Los Angeles County Metropolitan Transportation Authority under Proposition A and Proposition C local return program, which the claimants used to fund the costs of the mandated program, are required to be identified as offsetting revenues.

### A. The Municipal Stormwater 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

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<sup>29</sup> Exhibit D, City of Glendora’s Notice of Intent to Join, filed January 28, 2021.

<sup>30</sup> Exhibit C, City of Downey’s Notice of Intent to Join, filed February 4, 2021.

<sup>31</sup> Exhibit F, City of Santa Clarita’s Notice of Intent to Join, filed February 9, 2021.

<sup>32</sup> Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed February 9, 2021.

<sup>33</sup> Exhibit B, City of Claremont’s Notice of Intent to Join, filed February 10, 2021.

<sup>34</sup> Exhibit E, City of Pomona’s Notice of Intent to Join, filed February 10, 2021.

<sup>35</sup> Exhibit H, Draft Proposed Decision, issued March 18, 2021.

<sup>36</sup> Exhibit I, City of Claremont’s Comments on the Draft Proposed Decision, filed April 8, 2021.

<sup>37</sup> Exhibit J, Controller’s Comments on the Draft Proposed Decision, filed April 8, 2021.

<sup>38</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021.

cities within the county alleging that various sections of a 2001 stormwater permit issued by the Los Angeles Regional Water Control Board, a state agency, constituted a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.<sup>39</sup>

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.<sup>40</sup>

The Commission adopted the Parameters and Guidelines for this program on March 24, 2011.<sup>41</sup> The Parameters and Guidelines provide for reimbursement as follows:

For each eligible local agency, the following activities are reimbursable:

- 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.
  - 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.

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<sup>39</sup> Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 132 (Parameters and Guidelines).

<sup>40</sup> Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 132 (Parameters and Guidelines).

<sup>41</sup> Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 132 (Parameters and Guidelines).

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.<sup>42</sup>

Section VIII of the Parameters and Guidelines provides the following regarding offsetting revenues and reimbursements:

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.<sup>43</sup>

**B. The Controller’s Audits and Summary of the Issues**

*City of Claremont:* The Controller performed an audit of reimbursement claims filed by the City of Claremont for fiscal years 2002-2003 through 2011-2012 and found that of the total amount of \$170,182 claimed, \$166,345 was unallowable.<sup>44</sup> The Controller determined that the claimant “did not offset any revenues on its claim forms for the review period” and “should have offset \$166,345 in Proposition C local return funds that were used to pay for the ongoing maintenance of transit stop trash receptacles.”<sup>45</sup>

The Controller characterized Proposition C funds as “special revenue” funds, which it defined as funds that “are used to account for the proceeds of specific revenue sources that are legally restricted to expenditures for specified purposes.”<sup>46</sup> Because the claimant used Proposition C funds to pay for the mandated activities, “it was not required to rely on the use of discretionary general funds.”<sup>47</sup> The Controller determined that under the Parameters and Guidelines, the

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<sup>42</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 135 (Parameters and Guidelines).

<sup>43</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 138 (Parameters and Guidelines).

<sup>44</sup> Exhibit B, City of Claremont’s Notice of Intent to Join, filed February 10, 2021, page 3.

<sup>45</sup> Exhibit B, City of Claremont’s Notice of Intent to Join, filed February 10, 2021, page 8.

<sup>46</sup> Exhibit B, City of Claremont’s Notice of Intent to Join, filed February 10, 2021, page 8.

<sup>47</sup> Exhibit B, City of Claremont’s Notice of Intent to Join, filed February 10, 2021, page 9.

claimant should have identified and offset the Proposition C funds from the reimbursement claims.<sup>48</sup>

*City of Downey:* The Controller audited costs claimed by the City of Downey for fiscal years 2002-2003 through 2013-2014 and determined that of the \$716,563 claimed, \$652,652 was unallowable.<sup>49</sup> The audit report contains two findings: That the claimant overstated ongoing maintenance costs (Finding 1) and did not report offsetting revenues or reimbursements on its claim forms for the audit period (Finding 2).<sup>50</sup> Only Finding 2 is at issue in this consolidated IRC.

Finding 2 states that the claimant did not offset any revenues or reimbursements on its claim forms and should have offset \$186,921 for the audit period.<sup>51</sup> The Controller found that for fiscal years 2002-2003 through 2005-2006, the claimant used Proposition A local return funds to pay for the mandated activities.<sup>52</sup> Specifically, one-time costs to purchase and install transit stop trash receptacles during the 2002-2003 fiscal year were reduced, as were ongoing trash receptacle maintenance costs for fiscal years 2002-2003 through 2005-2006, to the extent the claimant paid for those activities with Proposition A local return funds.<sup>53</sup>

The Controller reasoned that because the claimant used Proposition A funds to pay for both the one-time and ongoing mandated activities, “it did not have to rely solely on discretionary general funds to pay for the mandated activities.”<sup>54</sup> The Controller determined that under section VIII of the Parameters and Guidelines, the Proposition A funds were required to be identified and deducted from the reimbursement claims.<sup>55</sup>

*City of Glendora:* The Controller audited costs claimed by the City of Glendora for fiscal years 2002-2003 through 2011-2012.<sup>56</sup> Of \$190,310 in total claimed costs, the Controller found that \$79,856 was unallowable because the claimant did not offset Proposition C local return funds used to pay for the mandated activities.<sup>57</sup> The Controller determined that the claimant used Proposition C revenues in fiscal years 2008-2009 through 2011-2012 to pay for the salaries and benefits of employees who maintained transit stop trash receptacles.<sup>58</sup> To the extent the claimant

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<sup>48</sup> Exhibit B, City of Claremont’s Notice of Intent to Join, filed February 10, 2021, pages 8-9.

<sup>49</sup> Exhibit C, City of Downey’s Notice of Intent to Join, filed February 4, 2021, page 4.

<sup>50</sup> Exhibit C, City of Downey’s Notice of Intent to Join, filed February 4, 2021, pages 14, 17.

<sup>51</sup> Exhibit C, City of Downey’s Notice of Intent to Join, filed February 4, 2021, pages 17-18.

<sup>52</sup> Exhibit C, City of Downey’s Notice of Intent to Join, filed February 4, 2021, page 18.

<sup>53</sup> Exhibit C, City of Downey’s Notice of Intent to Join, filed February 4, 2021, pages 18-19.

<sup>54</sup> Exhibit C, City of Downey’s Notice of Intent to Join, filed February 4, 2021, page 19.

<sup>55</sup> Exhibit C, City of Downey’s Notice of Intent to Join, filed February 4, 2021, page 19.

<sup>56</sup> Exhibit D, City of Glendora’s Notice of Intent to Join, filed January 28, 2021, page 6.

<sup>57</sup> Exhibit D, City of Glendora’s Notice of Intent to Join, filed January 28, 2021, page 3.

<sup>58</sup> Exhibit D, City of Glendora’s Notice of Intent to Join, filed January 28, 2021, page 12.

“used Proposition C monies to fund the payroll costs of city staff who performed the reimbursable activities,” it was required under section VII of the Parameters and Guidelines to deduct those revenues from its costs claimed.<sup>59</sup>

The Controller described Proposition C as a “special supplementary sales tax” whose revenues are “restricted solely to benefiting public transit,” as opposed to unrestricted general sales taxes which can be used for any general governmental purpose.<sup>60</sup> Because Proposition C funds constitute “revenues raised outside of [the claimant’s] appropriations limit,” to the extent it paid for the mandated activities using Proposition C funds, the claimant did not incur increased costs as a direct result of the mandate program.<sup>61</sup> Additionally, the Local Return Guidelines permit advancement of Proposition C funds only when reimbursement is available from grant or private funding; mandate reimbursement does not qualify as such.<sup>62</sup>

*City of Pomona:* The Controller audited reimbursement claims filed by the City of Pomona for fiscal years 2002-2003 through 2011-2012 and found that the entire claimed amount of \$272,474 was unallowable.<sup>63</sup> The Controller made two findings: That the claimant claimed ineligible on-time costs for the 2002-2003 fiscal year (Finding 1) and did not report offsetting revenues or reimbursements on its claim forms for the audit period (Finding 2).<sup>64</sup> Only Finding 2 is at issue in this consolidated IRC. In Finding 2, the Controller determined that the claimant should have offset \$264,515 in Proposition A local return funds used to pay \$81,392 in one-time costs and \$183,123 in ongoing maintenance costs.<sup>65</sup>

The Proposition A and Proposition C Local Return Guidelines identify installation and maintenance of transit stop trash receptacles as projects eligible to be paid for using Proposition A funds.<sup>66</sup> Under section VIII of the Parameters and Guidelines, the claimant was required to identify and deduct from its claims those Proposition A funds used to pay for the mandated activities.<sup>67</sup> The Controller reasoned that because mandate reimbursement is limited to costs incurred solely from a local agency’s tax revenues, to the extent the claimant elected to use Proposition A funds, reimbursement was not required.<sup>68</sup>

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<sup>59</sup> Exhibit D, City of Glendora’s Notice of Intent to Join, filed January 28, 2021, page 13.

<sup>60</sup> Exhibit D, City of Glendora’s Notice of Intent to Join, filed January 28, 2021, page 14.

<sup>61</sup> Exhibit D, City of Glendora’s Notice of Intent to Join, filed January 28, 2021, page 15.

<sup>62</sup> Exhibit D, City of Glendora’s Notice of Intent to Join, filed January 28, 2021, page 15.

<sup>63</sup> Exhibit E, City of Pomona’s Notice of Intent to Join, filed February 10, 2021, page 2.

<sup>64</sup> Exhibit E, City of Pomona’s Notice of Intent to Join, filed February 10, 2021, pages 7-8.

<sup>65</sup> Exhibit E, City of Pomona’s Notice of Intent to Join, filed February 10, 2021, page 8.

<sup>66</sup> Exhibit E, City of Pomona’s Notice of Intent to Join, filed February 10, 2021, page 9.

<sup>67</sup> Exhibit E, City of Pomona’s Notice of Intent to Join, filed February 10, 2021, page 9.

<sup>68</sup> Exhibit E, City of Pomona’s Notice of Intent to Join, filed February 10, 2021, page 10.

*City of Santa Clarita:* The Controller audited costs claimed by the City of Santa Clarita for fiscal years 2002-2003 through 2008-2009.<sup>69</sup> The Controller found the entire claimed amount of \$362,982 was unallowable because the claimant misstated the annual number of trash collections and did not offset “restricted funds” used to pay for the mandated activities.<sup>70</sup> At issue in this consolidated IRC is only Finding 2, wherein the Controller found that the claimant should have, but did not, offset \$177,692 in “restricted funds,” including Proposition A and Proposition C local return funds, as revenues or reimbursements on its claim forms for the audit period.<sup>71</sup>

Specifically, the Controller found that the claimant should have offset \$24,372 in Proposition A and Proposition C funds that were used to purchase and install transit-stop trash receptacles in fiscal year 2007-2008 and \$153,320 in revenues from the claimant’s Transit System Fund that were used to pay for ongoing trash receptacle maintenance throughout the audit period.<sup>72</sup> The Controller reasoned that because the Transit System Fund (which is funded with Proposition A and Proposition C local return funds) is used to account for revenues from fee-generating activities, and no general funds were transferred into the Fund during the audit period, the claimant did not have to rely on discretionary funds to pay for the mandated activities.<sup>73</sup>

The Controller describes Proposition A and Proposition C as special supplementary sales taxes, the proceeds of which are restricted to the development and/or improvement of public transit services, as opposed to unrestricted general sales taxes, which “can be spent for any general governmental purpose.”<sup>74</sup> The Controller further notes that the claimant did not provide any documentation showing that the Proposition A and Proposition C local return funds were included in the claimant’s appropriations limit.<sup>75</sup>

*City of Signal Hill:* The Controller audited costs claimed by the City of Signal Hill for fiscal years 2002-2003 through 2012-2013.<sup>76</sup> Of the total claimed amount of \$233,135, the Controller found that \$199,732 was unallowable because the claimant overstated the number of trash collections and did not offset Proposition A local return funds used to pay for the mandated

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<sup>69</sup> Exhibit F, City of Santa Clarita’s Notice of Intent to Join, filed February 9, 2021, page 33.

<sup>70</sup> Exhibit F, City of Santa Clarita’s Notice of Intent to Join, filed February 9, 2021, page 33.

<sup>71</sup> Exhibit F, City of Santa Clarita’s Notice of Intent to Join, filed February 9, 2021, page 44.

<sup>72</sup> Exhibit F, City of Santa Clarita’s Notice of Intent to Join, filed February 9, 2021, pages 44-45. The Transit System Fund includes Proposition A and Proposition C local return funds, as well as other transit funds and fees received, as identified on page 45 of Exhibit F, City of Santa Clarita’s Notice of Intent, filed February 9, 2021. These consolidated IRCs pertain only to the Controller’s determination that Proposition A and Proposition C local return funds are offsetting revenues; no IRC was filed disputing the other Transit System Fund revenues.

<sup>73</sup> Exhibit F, City of Santa Clarita’s Notice of Intent to Join, filed February 9, 2021, page 45.

<sup>74</sup> Exhibit F, City of Santa Clarita’s Notice of Intent to Join, filed February 9, 2021, page 47.

<sup>75</sup> Exhibit F, City of Santa Clarita’s Notice of Intent to Join, filed February 9, 2021, page 47.

<sup>76</sup> Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed February 9, 2021, page 5.

activities.<sup>77</sup> At issue in this consolidated IRC is only Finding 2, wherein the Controller found that the claimant failed to report as offsetting revenues the Proposition A funds it used to pay for ongoing trash receptacle maintenance.<sup>78</sup> The Controller asserts that, because the claimant used Proposition A funds which the Controller characterizes as “revenues outside [the claimant’s] appropriations limit,” the claimant did not have to rely on discretionary funds to pay for the mandated activities.<sup>79</sup> Under section VIII of the Parameters and Guidelines, the claimant was required to offset its claims for reimbursement in the amount of Proposition A funds applied to the mandated activities.<sup>80</sup>

*County of Los Angeles:* The County of Los Angeles claimed \$6,129,851 for fiscal years 2002-2003 through 2012-2013.<sup>81</sup> The Controller found that all costs claimed were unallowable because the claimant did not offset Proposition A local return funds used to pay for the mandated activities.<sup>82</sup> Specifically, the Controller found that the claimant used Proposition A funds to pay \$288,802 in one-time costs and \$5,841,049 in ongoing maintenance costs.<sup>83</sup>

The Controller described Proposition A as a “special supplementary sales tax” that is “restricted solely for the development and or improvement of public transit services.”<sup>84</sup> The claimant did not provide the Controller with any documentation showing that the Proposition A funds are included in the claimant’s appropriation limit.<sup>85</sup> The Controller asserts that because the claimant used “restricted” Proposition A funds to pay for the mandated activities, it did not have to rely on discretionary general funds and was required under the Parameters and Guidelines to offset the Proposition A funds from its reimbursement claims.<sup>86</sup> Furthermore, the Controller disagrees with the claimant’s assertion that Proposition A funds may be advanced pending mandate reimbursement.<sup>87</sup> Under the Local Return Guidelines, Proposition A funds may only be advanced for projects that will be reimbursed from federal, state, or local grant funding; mandate reimbursement does not qualify as grant funding.<sup>88</sup>

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<sup>77</sup> Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed February 9, 2021, page 5.

<sup>78</sup> Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed February 9, 2021, page 19.

<sup>79</sup> Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed February 9, 2021, page 20.

<sup>80</sup> Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed February 9, 2021, page 20.

<sup>81</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 148.

<sup>82</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 153.

<sup>83</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 153.

<sup>84</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 158.

<sup>85</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 158.

<sup>86</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, pages 153-154.

<sup>87</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 158.

<sup>88</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 158.

### **C. Proposition A and Proposition C Local Return Funds**

In 1976, the Legislature created the Los Angeles County Transportation Commission (Transportation Commission) as a countywide transportation improvement agency<sup>89</sup> and authorized the Transportation Commission to levy a transactions and use tax throughout Los Angeles County.<sup>90</sup>

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.<sup>91</sup>

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.”<sup>92</sup>

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.<sup>93</sup> 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.<sup>94</sup> The court reasoned that “special district” within the meaning of

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<sup>89</sup> Public Utilities Code section 130050.

<sup>90</sup> Public Utilities Code sections 130231(a), 130350.

<sup>91</sup> 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.

<sup>92</sup> Public Utilities Code section 130354.

<sup>93</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

<sup>94</sup> 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



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.”<sup>95</sup> 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.<sup>96</sup> 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.

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.<sup>97</sup> 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.<sup>98</sup> 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.<sup>99</sup> 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.<sup>100</sup>

In 1990, voters approved Proposition C, a second one-half percent transactions and use tax, also used to fund public transit projects countywide.<sup>101</sup> Similar to Proposition A, Proposition C was also approved by a majority of voters, not the two-thirds required under Proposition 13 and Proposition 62.<sup>102</sup> In an unpublished decision, the Second District Court of Appeal upheld a challenge to Proposition C, finding that the proposition did not require a two-thirds vote under either Proposition 13 or Proposition 62.<sup>103</sup> The court reasoned that the Transportation

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taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

<sup>95</sup> *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 208.

<sup>96</sup> *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 201-202.

<sup>97</sup> *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 5.

<sup>98</sup> *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 11.

<sup>99</sup> *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 7-9.

<sup>100</sup> *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 15.

<sup>101</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

<sup>102</sup> *Vernon v. State Bd. of Equalization (Los Angeles County Transp. Com'n)* (1992) 5 Cal.Rptr.2d 414, 416.

<sup>103</sup> *Vernon v. State Bd. of Equalization (Los Angeles County Transp. Com'n)* (1992) 5 Cal.Rptr.2d 414, 423. Proposition 62 was a statutory initiative adopted by California voters in

Commission was not a “district” within the meaning of Proposition 13 or Proposition 62 because it lacked the power to levy a property tax and was formed prior to the enactment of Proposition 13.<sup>104</sup>

Public Utilities Code section 99550, which was added in 1992, states as follows:

The decision of the California Supreme Court in *Los Angeles County Transportation Agency v. Richmond* (1982), 31 Cal.3d 197, shall be applicable to and control, and the decision of the California Supreme Court in *Rider v. County of San Diego* (1991), 1 Cal. 4th 1, shall not be applicable to and shall not control, any action or proceeding wherein the validity of a retail transactions and use tax is contested, questioned, or denied *if the ordinance imposing that tax was adopted by a transportation agency and approved prior to December 19, 1991, by a majority of the voters.*

For purposes of this section, “transportation agency” means any agency, authority, district, commission, or other public entity organized under provisions of this code and authorized to impose a retail transactions and use tax.<sup>105</sup>

The Transportation Commission is statutorily authorized to levy both the Proposition A and Proposition C transaction and use taxes.<sup>106</sup>

The Los Angeles County Transportation Commission is authorized to impose a transactions and use tax within the County of Los Angeles pursuant to the

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1986, which added a new article to the Government Code (sections 53720-53730). Under Proposition 62, no local government or district may impose a special tax, defined as a tax imposed for specific purposes, without two-thirds voter approval. Government Code sections 53721, 53722.

<sup>104</sup> *Vernon v. State Bd. of Equalization (Los Angeles County Transp. Com'n)* (1992) 5 Cal.Rptr.2d 414, 423.

<sup>105</sup> Public Utilities Code section 99550 (Stats. 1992, c. 1233), emphasis added. In *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 236, the California Supreme Court held that “district” within the meaning of Proposition 62 was not limited to “special districts” as construed by the *Richmond* court but instead encompassed all “districts,” as defined by Government Code section 53720(b) (a provision of Proposition 62), including those without the power to levy real property taxes. Government Code section 53720(b) defines “district” as “an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.”

In 1996, Proposition 218 added some of the statutory language from Proposition 62 to the California Constitution, including the definitions of “special district” and “special tax.” California Constitution, article XIII C, section 1. Under article XIII C, section 2, any tax imposed by a local government is either general or special, and special districts have no authority to levy general taxes. California Constitution, article XIII C, section 2(a).

<sup>106</sup> Public Utilities Code section 130231(a).

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).<sup>107</sup>

The Proposition A Ordinance does not state whether Proposition A tax proceeds are subject to the Transportation Commission's appropriations limit.<sup>108</sup> The Proposition C Ordinance, however, expressly includes a provision establishing an appropriations limit for the Transportation Commission for the Proposition C proceeds.<sup>109</sup>

3-10-080 Appropriations Limit. A [Los Angeles County Transportation] Commission appropriations limit is hereby established equal to the revenues collected and allocated during the 1990/91 fiscal year plus an amount equal to one and a half times the taxes that would be levied or allocated on a one-half of one percent transaction and use tax in the first full fiscal year following enactment and implementation of this Ordinance.<sup>110</sup>

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.<sup>111</sup> Since becoming

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<sup>107</sup> Public Utilities Code section 130231(a).

<sup>108</sup> Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 31-39 (Proposition A Ordinance).

<sup>109</sup> Exhibit L, Proposition C Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_c\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf) (accessed on February 22, 2021), page 6.

<sup>110</sup> Exhibit L, Proposition C Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_c\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf) (accessed on February 22, 2021), page 6.

<sup>111</sup> Public Utilities Code sections 130050.2, 130051.13. Section 130051.13 states as follows:

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.

the successor agency to the Transportation Commission, Metro has continued to levy the Proposition A and Proposition C taxes.<sup>112</sup>

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.”<sup>113</sup> Under the Proposition A Ordinance, tax revenues can be used for capital or operating expenses<sup>114</sup> 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.<sup>115</sup>

The purpose of the Proposition C tax is to “improve transit service and operations, reduce traffic congestion, improve air quality, efficiently operate and improve the condition of the streets and freeways utilized by public transit, and reduce foreign fuel dependence.”<sup>116</sup> The enumerated purposes of the tax include:

- (1) Meeting operating expenses; purchasing or leasing supplies, equipment or materials; meeting financial reserve requirements; obtaining funds for capital projects necessary to maintain service within existing service areas;
- (2) Increasing funds for existing public transit service programs;
- (3) Instituting or increasing passenger or commuter services on rail or highway rights of way;

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<sup>112</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

<sup>113</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 33 (Proposition A Ordinance).

<sup>114</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 33 (Proposition A Ordinance).

<sup>115</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 34 (Proposition A Ordinance).

<sup>116</sup> Exhibit L, Proposition C Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_c\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf) (accessed on February 22, 2021), page 3.

(4) Continued development of a regional transportation improvement program.<sup>117</sup>

Under the Proposition C Ordinance, tax revenues are allocated as follows:

- (1) Forty percent to improve and expand rail and bus transit, including fare subsidies, graffiti prevention and removal, and increased energy-efficiency;
- (2) Five percent to improve and expand rail and bus security;
- (3) Ten percent to increase mobility and reduce congestion;
- (4) Twenty percent to the Local Return Program; and
- (5) Twenty-five percent to provide transit-related improvements to freeways and state highways.<sup>118</sup>

Local jurisdictions receive transportation funding from Metro through the Proposition A and Proposition C local return programs. Twenty-five percent of Proposition A funds and twenty percent of Proposition C funds are 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.”<sup>119</sup> Metro allocates and distributes local return funds to cities and the county each month, on a “per capita” basis.<sup>120</sup>

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.<sup>121</sup>

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.<sup>122</sup>

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<sup>117</sup> Exhibit L, Proposition C Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_c\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf) (accessed on February 22, 2021), page 3.

<sup>118</sup> Exhibit L, Proposition C Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_c\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf) (accessed on February 22, 2021), pages 3-4.

<sup>119</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

<sup>120</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, pages 47, 74 (Local Return Guidelines).

<sup>121</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, pages 33, 35 (Proposition A Ordinance).

<sup>122</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

The Proposition C Ordinance requires that Proposition C local return funds be used to benefit “public transit, paratransit, and related services including to improve and expand supplemental paratransit services to meet the requirements of the Federal Americans With Disabilities Act.”<sup>123</sup> Eligible projects include “Congestion Management Programs, bikeways and bike lanes, street improvements supporting public transit service, and Pavement Management System projects.”<sup>124</sup>

Amongst the eligible uses of Proposition A and Proposition C local return funds are bus stop improvements and maintenance projects.<sup>125</sup> 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.<sup>126</sup>

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.<sup>127</sup> Proposition C funds cannot be traded.<sup>128</sup> Jurisdictions are permitted to use local return funds to advance eligible projects that will be reimbursed by “federal, state, or

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<sup>123</sup> Exhibit L, Proposition C Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_c\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf) (accessed on February 22, 2021), page 4.

<sup>124</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

<sup>125</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 53 (Local Return Guidelines).

<sup>126</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 53 (Local Return Guidelines), emphasis added.

<sup>127</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 59 (Local Return Guidelines).

<sup>128</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

local grant funding, or private funds.”<sup>129</sup> Subsequent reimbursement funds must then be deposited into the Proposition A or Proposition C Local Return Fund.<sup>130</sup>

### III. Positions of the Parties

#### A. Cities of Claremont, Downey, Glendora, Pomona, Santa Clarita, and Signal Hill and County of Los Angeles

The claimants challenge the Controller’s finding that their use of Proposition A and Proposition C local return funds during the audit period to pay for the mandated activities of installing and maintaining transit stop trash receptacles constituted reimbursement from a non-local source.<sup>131</sup> The claimants do not dispute the Controller’s determination that the claimants used Proposition A and Proposition C funds to perform mandated activities. Rather, the claimants argue that requiring the claimants to offset Proposition A and Proposition C local return funds from their reimbursement claims (1) violates article XIII B, section 6 of the California Constitution; (2) is inconsistent with the Parameters and Guidelines; and (3) constitutes an unlawful retroactive application of the Parameters and Guidelines.<sup>132</sup> The claimants assert that the Controller’s actions were arbitrary, capricious, and lacking in evidentiary support.<sup>133</sup>

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<sup>129</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 76 (Local Return Guidelines).

<sup>130</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 76 (Local Return Guidelines).

<sup>131</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 10. The claimants’ position is derived from the IRC filed by the County of Los Angeles, the lead claimant in this consolidated IRC, which was joined by all claimants to this consolidated claim. While the County of Los Angeles’ IRC involves Proposition A only, the County asserts that there is no relevant distinction here between Proposition A and Proposition C.

Propositions A and C both were adopted for transit purposes, and both provide local agencies with direct “local return” funds that were available to the municipalities for local transit needs. Gest Decl. at ¶ 7.

In addition to these factual similarities, the main legal issue in each IRC is essentially identical, because all relate to the same essential SCO argument – that because special sales tax, instead of other tax revenues were advanced to pay for the receptacles, such sales tax revenues should have offset the reimbursement request.

Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 5. Because of the factual and legal similarities between Proposition A and Proposition C, reference to Proposition C has been added to the County of Los Angeles’ discussion of Proposition A in order to capture the reimbursement claims involving Proposition C.

<sup>132</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 10.

<sup>133</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 14.

The claimants argue that offsetting Proposition A and Proposition C local return funds is unconstitutional.<sup>134</sup> The Controller characterizes Proposition A and Proposition C as “special supplementary” sales taxes, the use of which is restricted, and distinguishes restricted sales taxes from unrestricted general sales taxes, the latter of which the Controller asserts can be used for any general governmental purpose.<sup>135</sup> The claimants challenge the Controller’s conclusion that because the claimants used Proposition A or Proposition C tax revenues to perform the mandated activities of installing and maintaining trash receptacles, they did not have to rely on general funds.<sup>136</sup> Neither article XIII B, section 6 nor the case law interpreting it distinguishes between general and restricted taxes.<sup>137</sup> Proposition A and Proposition C are local sales and use taxes, the revenues of which article XIII B, section 6 was designed to protect.<sup>138</sup> Furthermore, whether the Proposition A and Proposition C local return funds are subject to the claimants’ appropriations limit “is irrelevant to the question before the Commission, which is whether the State has mandated a program that requires the expenditure of local tax revenue.”<sup>139</sup> By requiring the claimants to use local tax revenues to pay for the mandated activities simply because the revenues are restricted to public transit purposes, the Controller has added a new requirement that violates article XIII B, section 6 and precludes the claimants from using local tax revenues on other transit programs of their choosing.<sup>140</sup>

The claimants further assert that the offset is inconsistent with the Parameters and Guidelines.<sup>141</sup> The Controller’s approach shifts the financial burden of a state-mandated program onto a local agency simply because the local agency uses a “restricted” local sales tax to fund the mandate.<sup>142</sup> The claimants reason that Proposition A and Proposition C local return funds do not constitute offsetting revenues under section VIII of the Parameters and Guidelines because Proposition A and Proposition C are local taxes and therefore not a “federal, state, or non-local source.”<sup>143</sup> The claimants point out that the Controller does not dispute that “Proposition A is a local sales tax imposed on local citizens,” citing to the fact that the Controller did not seek to revise the

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<sup>134</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 14.

<sup>135</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 14.

<sup>136</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 17.

<sup>137</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, pages 14-15.

<sup>138</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, pages 14-15.

<sup>139</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 15, footnote 4.

<sup>140</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 15.

<sup>141</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 16.

<sup>142</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 16.

<sup>143</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 16.



Parameters and Guidelines before they were adopted to require deduction of “special local taxes” like Proposition A.<sup>144</sup>

The claimants did not err in using Proposition A or Proposition C funds to pay for the installation and maintenance of the trash receptacles because the trash receptacles qualified for such use.<sup>145</sup> Under the Local Return Guidelines, the claimants were permitted to initially use the Proposition A or Proposition C funds for trash receptacles and then, upon reimbursement by the state, apply those funds to other transit projects.<sup>146</sup> This is exactly the sort of “advance” contemplated by the Local Return Guidelines.<sup>147</sup>

The claimants challenge the Controller’s position that Proposition A and Proposition C funds can only permissibly be used as an advance where funds will be repaid by federal, state, or local grants, or private funds, all of which are distinguishable from subvention of funds to reimburse a local government for the cost of state mandated activities.<sup>148</sup> The claimants assert that whether reimbursement is from a non-grant source is irrelevant; the Local Return Guidelines anticipate “reimbursement not only from grant funds but also other ‘fund sources.’”<sup>149</sup>

Expending Proposition A or Proposition C funds prior to reimbursement is consistent with the intent behind article XIII B, section 6.<sup>150</sup> Neither Proposition A nor Proposition C is a “source other than taxes” under Government Code section 17556(d) and the Parameters and Guidelines, the use of which to pay for mandated expenses renders the expenses ineligible for reimbursement.<sup>151</sup> By denying the claimants this portion of their claims for reimbursement, the claimants’ transportation project funding is limited as though the state were to refuse to reimburse the claimants for general funds used for the same purpose.<sup>152</sup>

The claimants further allege that the Controller is retroactively applying the Parameters and Guidelines in contravention of applicable law.<sup>153</sup> The fiscal years during which the claimants used Proposition A funds to pay for the mandated activities preceded the effective date of the Parameters and Guidelines.<sup>154</sup> The claimants argue that in addition to being unlawful, it is arbitrary and capricious for the Controller to find that the Parameters and Guidelines

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<sup>144</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, pages 16-17.

<sup>145</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 17.

<sup>146</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 17.

<sup>147</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 17.

<sup>148</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, pages 17-18.

<sup>149</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 17.

<sup>150</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 18.

<sup>151</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 18.

<sup>152</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 18.

<sup>153</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 18.

<sup>154</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 18.

retroactively prohibited the use of Proposition A and Proposition C funds in way that was lawful at the time the funds were used.<sup>155</sup> The claimants challenge the Controller’s determination that Proposition A and Proposition C funds are from a non-local source on the basis that they are “restricted” tax revenues, arguing that article XIII B, section 6 makes no distinction between restricted and non-restricted taxes.<sup>156</sup>

In comments filed on the Draft Proposed Decision, the City of Claremont asserts that the determination that the Proposition A and Proposition C local return funds are not included in the City’s appropriations limit is incorrect.<sup>157</sup> In support, the claimant has provided a declaration from Adam Pirrie, Finance Director for the City of Claremont, stating that the Proposition A and Proposition C funds received by the City were included in its appropriations limit for fiscal years 2002-2003 through 2011-2012, as well as resolutions adopted by the City of Claremont City Council showing that the appropriations limits for those fiscal years included Proposition A and Proposition C funds.<sup>158</sup>

The County of Los Angeles argues that the Commission’s Draft Proposed Decision misinterprets article XIII B, section 6 by conditioning mandate reimbursement on a local agency using its own proceeds of taxes, subject to the agency’s appropriations limit.<sup>159</sup> The county alleges that there is no language in section 6 tying the state’s duty to reimburse to any other section of article XIII B, including section 1 (appropriations limit) or section 8(c) (defining “proceeds of taxes”).<sup>160</sup> As such, the county reasons, the California Constitution does not require taxes used to fund mandated activities to have been levied “by or for” the local agency or included in the agency’s appropriations limit, so long as the taxes are designated for the agency’s use.<sup>161</sup>

The county asserts that it is undisputed that the Proposition A and Proposition C local return funds are the claimants’ “local sales and use tax revenues” and therefore, under the plain meaning of article XIII B, section 6, the claimants were permitted to use those funds to pay for

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<sup>155</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 18.

<sup>156</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, page 11.

<sup>157</sup> Exhibit I, City of Claremont’s Comments on the Draft Proposed Decision, filed April 8, 2021, page 1.

<sup>158</sup> Exhibit I, City of Claremont’s Comments on the Draft Proposed Decision, filed April 8, 2021, pages 2-71.

<sup>159</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, page 2.

<sup>160</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, page 4.

<sup>161</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, page 2.

the mandated activities.<sup>162</sup> The county states that “appropriations subject to limitations” and “proceeds of taxes” as defined in article XIII, section 8, specifically exclude subventions made pursuant to section 6, which the claimant interprets to mean that section 6 does “not condition the subvention obligation on the funds having first been subject to the Claimants’ appropriations limit or the funds falling within the definitions of ‘appropriations subject to limitation’ and ‘proceeds of taxes.’”<sup>163</sup>

To support its position that article XIII B, section 6 operates independent of sections 1 and 8, the claimant cites to the Voter Pamphlet that accompanied Proposition 4 for the proposition that “neither the ballot summary nor the arguments in favor of the proposition linked Section 6’s obligations to the appropriations limit sections.”<sup>164</sup>

The county argues that no court has conditioned reimbursement under section 6 on a local agency’s expenditures being subject to the agency’s appropriations limit or “proceeds of taxes” within the meaning of article XIII B, sections 1, 8(b), and 8(c).<sup>165</sup> The county cites to a number of cases interpreting article XIII B for the purpose of showing that while courts have found that article’s intent is to limit the growth of government appropriations at both the state and local levels, courts interpreting section 6 “have emphasized the limitations article XIII A has placed on local government’s ability to assess taxes, not the appropriations limit of article XIII B.”<sup>166</sup>

The county contends that because the state’s obligation to provide a subvention of funds for state-mandated activities existed prior to section 6, the voters’ approval of Proposition 4 cannot be interpreted as limiting that obligation.<sup>167</sup> According to the county, the state’s duty to reimburse local agencies for state mandates originated in 1972 with the Property Tax Relief Act and neither the law as originally passed or its subsequent forms tied the state’s duty to provide mandate reimbursement to ‘proceeds of taxes,’ or ‘appropriations subject to limitation,’ because no such limitations had been adopted.”<sup>168</sup> Furthermore, the claimant argues that in adopting

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<sup>162</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, page 3.

<sup>163</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, pages 5-6.

<sup>164</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, pages 5-6. The adoption of Proposition 4 added Article XIII B to the California Constitution.

<sup>165</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, page 6.

<sup>166</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, pages 6-7.

<sup>167</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, pages 8-9.

<sup>168</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, pages 8-9.

Proposition 4, the voters did not intend to make state mandate reimbursement narrower than what already existed under the then-existing Revenue and Taxation Code.<sup>169</sup> The county challenges the characterization of Proposition A and Proposition C as “non-local” sources of revenue.<sup>170</sup> The county reasons that the Proposition A and Proposition C local return revenues constitute “proceeds of taxes” within the meaning of article XIII B, section 8(c) because that section defines “proceeds of taxes” to include “all tax revenues” and does not require the taxes to be “levied by or for that entity,” a requirement that exists separately within the definition of “appropriations subject to limitation” in section 8(b).<sup>171</sup>

According to the county, “‘non-local’ means non-local...” not “...local, with a caveat attached to it.”<sup>172</sup> The claimant argues that during the administrative process to develop the Parameters and Guidelines, the claimants were not informed that a revenue source such as local return funds from a local county tax would be considered a “non-local” source if not included in a claimant’s appropriations limit.<sup>173</sup> The term “non-local source” is not defined in the Parameters and Guidelines, nor was it defined during the drafting phase.<sup>174</sup> Furthermore, there was no discussion in the Decision on the Parameters and Guidelines of offsetting non-fee revenues from any source.<sup>175</sup> Therefore, the claimants had no notice and opportunity to address the determination that a local sales tax assessed by another local entity and made available for use by the claimants would constitute funds from a “non-local source” under the Parameters and Guidelines.<sup>176</sup> To read the Parameters and Guidelines as requiring such “eighteen years after the first expenditure of Proposition A funds and eight years after the expenditure of such funds ceased” is an unlawful retroactive application of the Parameters and Guidelines.<sup>177</sup>

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<sup>169</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, pages 9-10.

<sup>170</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, pages 10-11.

<sup>171</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, page 11.

<sup>172</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, page 12.

<sup>173</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, page 12.

<sup>174</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, pages 11-12.

<sup>175</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, page 12.

<sup>176</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, pages 11-12.

<sup>177</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, pages 12-13.

## **B. State Controller's Office**

The Controller agrees with the Commission's conclusion that Proposition A and Proposition C local return funds are offsetting revenues that should have been identified and deducted from the claimed costs and that costs for the applicable time period were correctly reduced as a result.<sup>178</sup>

### **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.<sup>179</sup> 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.<sup>180</sup> 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."<sup>181</sup>

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.<sup>182</sup> 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

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<sup>178</sup> Exhibit J, Controller's Comments on the Draft Proposed Decision, filed April 8, 2021, page 1.

<sup>179</sup> *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64, 71, fn. 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

<sup>180</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>181</sup> *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.

<sup>182</sup> *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.

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.]’ ”<sup>183</sup>

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.<sup>184</sup> 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.<sup>185</sup>

Claims challenging reductions made by the Controller for the same mandate may be consolidated, provided certain requirements are met. Under Government Code section 17558.7(b) and section 1185.3 of the Commission’s regulations, an individual claimant may seek to consolidate incorrect reduction claims on behalf of a class of claimants if all of the following apply:

- (1) The method, act, or practice that the claimant alleges led to the reduction has led to similar reductions of other parties' claims, and all of the claims involve common questions of law or fact.
- (2) The common questions of law or fact among the claims predominate over any matter affecting only an individual claim.
- (3) The consolidation of similar claims by individual claimants would result in consistent decision making by the Commission.
- (4) The claimant filing the consolidated claim would fairly and adequately protect the interests of the other claimants.<sup>186</sup>

The Commission may also consolidate incorrect reduction claims, in part or in whole, as necessary to ensure the complete, fair, or timely consideration of any such claims.<sup>187</sup>

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<sup>183</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>184</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>185</sup> 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.

<sup>186</sup> Government Code section 17558.7(b); California Code of Regulations, title 2, section 1185.3.

<sup>187</sup> California Code of Regulations, title 2, section 1185.6.

A claimant seeking to file a consolidated incorrect reduction claim must notify the Commission of its intent to do so at the time of filing.<sup>188</sup> Under Government Code section 17558.7(b) and section 1185.3 of the Commission's regulations, the Commission shall request that the Controller provide, within 30 days, the Commission and the claimant with a list of claimants for whom the Controller has reduced similar claims under the same mandate, and the date each claimant was notified of the adjustment. Upon receipt of this list from the Controller, the claimant may notify, and the Commission shall notify, the claimants on the list and other interested parties of the claimant's intent to file a consolidated incorrect reduction claim.<sup>189</sup> Within 30 days of receiving the Commission's notice, any other eligible claimant shall file a notice of intent to join the consolidated incorrect reduction claim.<sup>190</sup>

Any claimant that joins a consolidated incorrect reduction claim may opt out and not be bound by any determination made on the consolidated claim within 15-days of service of the Controller's comments.<sup>191</sup> A claimant that opts out of a consolidated claim shall file an individual IRC no later than one year after opting out or within the three-year period of limitation under section 1185.1(c) of the Commission's regulations.<sup>192</sup> If a claimant opts out and an individual IRC for the claimant is already on file with the Commission, the individual filing is automatically reinstated.<sup>193</sup>

**A. The Claimants Timely Filed the IRCs and Notices of Intent to Join the Consolidated IRC.**

At the time the final audit reports were issued, section 1185.1(c) of the Commission's regulations required an incorrect reduction claim to be filed with the Commission no later than three years after the date the claimant first receives 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). Under Government Code section 17558.5(c), the Controller is required to 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 notice must specify which claim components were adjusted and in what amount, as well as interest charges on claims adjusted, and the reason for the adjustment.<sup>194</sup> A notice of intent to join a consolidated

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<sup>188</sup> California Code of Regulations, title 2, section 1185.3(b).

<sup>189</sup> Government Code section 17558.7(d); California Code of Regulations, title 2, section 1185.3(f).

<sup>190</sup> Government Code section 17558.7(e); California Code of Regulations, title 2, section 1185.4(a).

<sup>191</sup> Government Code section 17558.7(f); California Code of Regulations, title 2, section 1185.5.

<sup>192</sup> Government Code section 17558.7(f); California Code of Regulations, title 2, section 1185.5(b).

<sup>193</sup> California Code of Regulations, title 2, section 1185.5(c).

<sup>194</sup> Government Code section 17558.5(c).

incorrect reduction claim is subject to the three-year statute of limitations specified in section 1185.1(c).<sup>195</sup>

This means that, to join the consolidated claim, the claimant must either already have a timely filed IRC pending or else file the Notice of Intent within three years from the first notice of reduction. Additionally, all Notices of Intent must be filed within 30 days of the Notice of the Opportunity to Join a Consolidated IRC.<sup>196</sup>

*City of Claremont:* The Controller issued its final audit report to the City of Claremont on October 20, 2017, which complied with section 17558.5(c).<sup>197</sup> The claimant filed the IRC *Municipal Stormwater and Urban Runoff Discharges*, 20-0304-I-06 on October 16, 2020, within three years of the date of the final audit report. The Commission finds that the IRC was timely filed. On January 13, 2021, Commission staff issued the Notice of Claimant's Intent to Consolidate and Opportunity for Eligible Claimants to Join the Consolidated Claim. The City of Claremont filed its Notice of Intent to Join on February 10, 2021, within 30 days of the Notice of Opportunity for Eligible Claimant's to Join the Consolidated Claim. The Commission finds that the Notice of Intent was timely filed.

*City of Downey:* The Controller issued its final audit report to the City of Downey on June 30, 2017, which complied with section 17558.5(c).<sup>198</sup> The claimant filed the IRC *Municipal Stormwater and Urban Runoff Discharges*, 19-0304-I-04 on June 30, 2017, three years from the date of the final audit report. The Commission finds that the IRC was timely filed. On January 13, 2021, Commission staff issued the Notice of Claimant's Intent to Consolidate and Opportunity for Eligible Claimants to Join the Consolidated Claim. The City of Downey filed its Notice of Intent to Join on February 4, 2021, within 30 days of the Notice of Opportunity for Eligible Claimant's to Join the Consolidated Claim. The Commission finds that the Notice of Intent was timely filed.

*City of Glendora:* The Controller issued its final audit report to the City of Glendora on August 9, 2018, which complied with section 17558.5(c).<sup>199</sup> On January 13, 2021, Commission staff issued the Notice of Claimant's Intent to Consolidate and Opportunity for Eligible Claimants to Join the Consolidated Claim. The claimant filed the Notice of Intent to Join *Municipal Stormwater and Urban Runoff Discharges*, 20-0304-I-09 (20-0304-I-08) on January 28, 2021, within three years of the date of the final audit report and within 30 days of the Notice of Opportunity for Eligible Claimant's to Join the Consolidated Claim.<sup>200</sup> The Commission finds that the Notice of Intent was timely filed.

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<sup>195</sup> California Code of Regulations, title 2, section 1185.4(d).

<sup>196</sup> Government Code section 17558.7(d), California Code of Regulations, title 2, section 1185.3(f).

<sup>197</sup> Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, page 3.

<sup>198</sup> Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, page 4.

<sup>199</sup> Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, page 3.

<sup>200</sup> Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, page 1.



*City of Pomona:* The Controller issued its final audit report to the City of Pomona on May 21, 2018, which complied with section 17558.5(c).<sup>201</sup> On January 13, 2021, Commission staff issued the Notice of Claimant’s Intent to Consolidate and Opportunity for Eligible Claimants to Join the Consolidated Claim. The claimant filed the Notice of Intent to Join *Municipal Stormwater and Urban Runoff Discharges*, 20-0304-I-09 (20-0304-I-08) on February 10, 2021, within three years of the date of the final audit report and within 30 days of the Notice of Opportunity for Eligible Claimant’s to Join the Consolidated Claim .<sup>202</sup> The Commission finds that the Notice of Intent was timely filed.

*City of Santa Clarita:* The Controller issued its final audit report to the City of Santa Clarita on August 28, 2018, which complied with section 17558.5(c).<sup>203</sup> On January 13, 2021, Commission staff issued the Notice of Claimant’s Intent to Consolidate and Opportunity for Eligible Claimants to Join the Consolidated Claim. The claimant filed the Notice of Intent to Join *Municipal Stormwater and Urban Runoff Discharges*, 20-0304-I-11 (20-0304-I-08) on February 9, 2021, within three years of the date of the final audit report and within 30 days of the Notice of Opportunity for Eligible claimant’s to Join the Consolidated Claim.<sup>204</sup> The Commission finds that the Notice of Intent was timely filed.

*City of Signal Hill:* The Controller issued its final audit report to the City of Signal Hill on June 25, 2018, which complied with section 17558.5(c).<sup>205</sup> On January 13, 2021, Commission staff issued the Notice of Claimant’s Intent to Consolidate and Opportunity for Eligible Claimants to Join the Consolidated Claim. The claimant filed the Notice of Intent to Join *Municipal Stormwater and Urban Runoff Discharges*, 20-0304-I-10 (20-0304-I-08) on February 9, 2021, within three years of the date of the final audit report and within 30 days of the Notice of Opportunity for Eligible claimant’s to Join the Consolidated Claim.<sup>206</sup> The Commission finds that the Notice of Intent was timely filed.

*County of Los Angeles:* The Controller issued its final audit report to the County of Los Angeles on November 6, 2017, which complied with section 17558.5(c).<sup>207</sup> The claimant filed the IRC with intent to consolidate *Municipal Stormwater and Urban Runoff Discharges*, 20-0304-I-08 on November 5, 2020, within three years of the date of the final audit report.<sup>208</sup> The Commission finds that the IRC was timely filed.

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<sup>201</sup> Exhibit E, City of Pomona’s Notice of Intent to Join, filed February 10, 2021, page 2.

<sup>202</sup> Exhibit E, City of Pomona’s Notice of Intent to Join, filed February 10, 2021, page 1.

<sup>203</sup> Exhibit F, City of Santa Clarita’s Notice of Intent to Join, filed February 9, 2021, page 33.

<sup>204</sup> Exhibit F, City of Santa Clarita’s Notice of Intent to Join, filed February 9, 2021, page 1.

<sup>205</sup> Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed February 9, 2021, page 5.

<sup>206</sup> Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed February 9, 2021, page 1.

<sup>207</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 148.

<sup>208</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 1.

Based on the above, the Commission finds that the IRCs and Notices of Intent to Join were timely filed by the cities of Claremont, Downey, Glendora, Pomona, Santa Clarita, and Signal Hill, and the County of Los Angeles.

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

The Controller found that the claimants failed to report offsetting revenues for the audit period in the following amounts:

City of Claremont:	\$166,345 <sup>209</sup>
City of Downey:	\$186,921 <sup>210</sup>
City of Glendora:	\$79,856 <sup>211</sup>
City of Pomona:	\$264,515 <sup>212</sup>
City of Santa Clarita:	\$177,692 <sup>213</sup>
City of Signal Hill:	\$101,656 <sup>214</sup>
County of Los Angeles:	\$6,129,851 <sup>215</sup>

The Controller determined that the claimants received tax revenues from the Los Angeles County Metropolitan Transportation Authority’s Proposition A and Proposition C local return programs and used those funds to perform the mandated activities of installing and maintaining transit-stop trash receptacles.<sup>216</sup> The Controller reasoned that under section VIII of the Parameters and Guidelines, Proposition A and Proposition C local return funds are non-local

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<sup>209</sup> Exhibit B, City of Claremont’s Notice of Intent to Join, filed February 10, 2021, page 3.

<sup>210</sup> Exhibit C, City of Downey’s Notice of Intent to Join, filed February 4, 2021, page 17.

<sup>211</sup> Exhibit D, City of Glendora’s Notice of Intent to Join, filed January 28, 2021, page 3.

<sup>212</sup> Exhibit E, City of Pomona’s Notice of Intent to Join, filed February 10, 2021, page 8.

<sup>213</sup> Exhibit F, City of Santa Clarita’s Notice of Intent to Join, filed February 9, 2021, page 44.

<sup>214</sup> Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed February 9, 2021, page 19.

<sup>215</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 148.

<sup>216</sup> Exhibit B, City of Claremont’s Notice of Intent to Join, filed February 10, 2021, pages 8-9; Exhibit C, City of Downey’s Notice of Intent to Join, filed February 4, 2021, pages 18-19; Exhibit D, City of Glendora’s Notice of Intent to Join, filed January 28, 2021, pages 12-13; Exhibit E, City of Pomona’s Notice of Intent to Join, filed February 10, 2021, pages 8-9; Exhibit F, City of Santa Clarita’s Notice of Intent to Join, filed February 9, 2021, pages 44-46; Exhibit G, City of Signal Hill’s Notice of Intent to Join, filed February 9, 2021, pages 19-20; Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, pages 153-154.

source funds and therefore constitute offsetting revenues or reimbursements that should have been deducted from the reimbursement claims and reduced the claims accordingly.<sup>217</sup>

The claimants do not contest receiving and using Proposition A and Proposition C local return funds in the manner alleged by the Controller. Rather, the claimants argue that the Controller's determination that the Proposition A and Proposition C funds are unreported offsets that must be deducted from the reimbursement claims violates article XIII B, section 6 of the California Constitution, is inconsistent with the Parameters and Guidelines, and constitutes an unlawful retroactive application of the Parameters and Guidelines.<sup>218</sup>

**1. Proposition A and Proposition C 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 addresses offsetting revenues 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.<sup>219</sup>

The claimants assert that Proposition A and Proposition C local return funds do not fall within section VIII because Proposition A and Proposition C are local taxes and therefore not a "federal, state, or non-local source."<sup>220</sup> According to the claimants, the Controller does not dispute that "Proposition A is a local sales tax imposed on local citizens," citing to the fact that the Controller did not comment on, or seek modification of, the Parameters and Guidelines before they were adopted.<sup>221</sup> In comments filed on the Draft Proposed Decision, the claimants argue that because "non-local source" is not defined in the Parameters and Guidelines and was not discussed during the drafting phase, the claimants lacked notice and an opportunity to challenge the determination

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<sup>217</sup> Exhibit B, City of Claremont's Notice of Intent to Join, filed February 10, 2021, pages 8-9; Exhibit C, City of Downey's Notice of Intent to Join, filed February 4, 2021, pages 18-19; Exhibit D, City of Glendora's Notice of Intent to Join, filed January 28, 2021, pages 12-13; Exhibit E, City of Pomona's Notice of Intent to Join, filed February 10, 2021, pages 8-9; Exhibit F, City of Santa Clarita's Notice of Intent to Join, filed February 9, 2021, pages 44-46; Exhibit G, City of Signal Hill's Notice of Intent to Join, filed February 9, 2021, pages 19-20; Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 153-154.

<sup>218</sup> Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 10.

<sup>219</sup> Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 138 (Parameters and Guidelines).

<sup>220</sup> Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 16.

<sup>221</sup> Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 16-17.

that “non-local source” includes a local sales tax assessed by another local agency and made available for use by the claimants.<sup>222</sup>

The Commission disagrees. While the Parameters and Guidelines do not expressly require that funds from Proposition A or Proposition C 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.”<sup>223</sup>

The Parameters and Guidelines do not stand alone; they must be interpreted in a manner that is consistent with the California Constitution<sup>224</sup> and principles of mandates law.<sup>225</sup> 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.<sup>226</sup> 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.<sup>227</sup>

Neither Proposition A nor Proposition C are the claimants’ local “proceeds of taxes” because they are neither levied by nor for the claimants, nor subject to the claimants’ respective appropriations limits. Any costs incurred by the claimants in performing the mandated activities that are funded by Proposition A or Proposition C, non-local taxes, are excluded from mandate reimbursement under article XIII B, section 6 of the California Constitution.

**2. Proposition A and Proposition C local return tax revenues are not the claimants’ “proceeds of taxes” within the meaning of article XIII B of the California Constitution because the taxes are not levied by the claimants nor subject to the claimants’ appropriations limit.**

The claimants’ reliance on the former provisions of the Revenue and Taxation Code in this case is misplaced. The California Supreme Court has made it clear that when “construing the meaning of the constitutional provision, our inquiry is not focused on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979.”<sup>228</sup>

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<sup>222</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, pages 11-12.

<sup>223</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 138 (Parameters and Guidelines), emphasis added.

<sup>224</sup> 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.

<sup>225</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 811-812.

<sup>226</sup> See *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>227</sup> See *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 492 (Arabian, J., concurring).

<sup>228</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

Interpreting the reimbursement requirement in article XIII B, section 6 of the California Constitution requires an understanding of articles XIII A and XIII B, which “work in tandem, together restricting California governments’ power both to levy and to spend taxes for public purposes.”<sup>229</sup>

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A drastically reduced property tax revenue previously enjoyed by local governments by providing that “the maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value” and that the one percent (1%) tax was to be collected by counties and “apportioned according to law to the districts within the counties...”<sup>230</sup> In addition to limiting property tax revenue, section 4 also restricts a local government’s ability to impose special taxes by requiring a two-thirds approval by voters.<sup>231</sup>

Article XIII B was adopted by the voters less than 18 months after the addition of article XIII A, and was billed as “the next logical step to Proposition 13.”<sup>232</sup> While article XIII A is aimed at controlling ad valorem property taxes and the imposition of new special taxes, “the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, Article XIII B places limits on the authorization to expend the ‘proceeds of taxes.’”<sup>233</sup>

Article XIII B established “an appropriations limit,” or spending limit for each “local government” beginning in fiscal year 1980-1981.<sup>234</sup> Section 1 of article XIII B defines the appropriations limit as follows:

The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided by this article.<sup>235</sup>

No “appropriations subject to limitation” may be made in excess of the appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.<sup>236</sup>

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

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<sup>229</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486.

<sup>230</sup> California Constitution, article XIII A, section 1.

<sup>231</sup> California Constitution, article XIII A, section 1.

<sup>232</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

<sup>233</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

<sup>234</sup> California Constitution, article XIII B, section 8(h).

<sup>235</sup> California Constitution, article XIII B, section 1.

<sup>236</sup> California Constitution, article XIII B, section 2.

authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity.*<sup>237</sup> 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).<sup>238</sup>

No limitation is placed on the expenditure of those revenues that do not constitute “proceeds of taxes.”<sup>239</sup> 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.”<sup>240</sup>

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 claimants’ 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.*”<sup>241</sup> The California Supreme Court, in *County of Fresno v. State of California*,<sup>242</sup> 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

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<sup>237</sup> California Constitution, article XIII B, section 8(b), emphasis added.

<sup>238</sup> California Constitution, article XIII B, section 8(c); *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 448.

<sup>239</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

<sup>240</sup> California Constitution, article XIII B, section 8(i).

<sup>241</sup> *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.

<sup>242</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482.

historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.<sup>243</sup>

Article XIII B, section 6 must therefore be read in light of the fact that “articles XIII A and XIII B severely restrict the taxing and spending powers of local governments”; 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.<sup>244</sup>

- a. The Proposition A and Proposition C sales taxes are not proceeds of taxes levied by or for the claimants.

The crux of the claimants’ position is that Proposition A and Proposition C are “local taxes” because they are imposed on “local citizens” and therefore do not fall into any of the offsetting revenue categories enumerated in section VIII the Parameters and Guidelines, which include “federal, state, or non-local source” revenue.<sup>245</sup> The claimants disagree with the Controller’s characterization of Proposition A as a supplementary, restricted use tax, as opposed to a general tax, which the claimants assert is a distinction that exists in neither article XIII B, section 6 nor the case law interpreting it.<sup>246</sup>

There is no difference between a municipality using local sales tax monies to install trash receptacles, receiving a subvention of funds, and then using those funds for other general purposes, and a municipality using Proposition A local sales tax revenues to install trash receptacles, receiving a subvention of funds, and then using those funds for other public transit purposes. In both cases, the State has mandated the expenditure of funds for a program the State believes should be implemented in lieu of other programs the municipality believes should have priority, requiring the municipality to expend funds not on the municipality’s priorities, but on the programs mandated by the State.<sup>247</sup>

In comments on the Draft Proposed Decision, the claimants argue that it is an error to limit mandate reimbursement to taxes levied “by or for” the claimants and subject to the claimants’ respective appropriations limits.<sup>248</sup> The claimants assert that the California Constitution does not condition a local agency’s right to reimbursement under article XIII B, section 6 on the agency using its own “proceeds of taxes,” subject to the agency’s appropriations limit, and that the claimants should be entitled to reimbursement because the Proposition A and Proposition C taxes

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<sup>243</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, emphasis in original.

<sup>244</sup> *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.

<sup>245</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, pages 16-17.

<sup>246</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, pages 14-15.

<sup>247</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 15.

<sup>248</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, page 2.

are “local taxes” that, while not levied by or for the claimants, were designated for the claimants’ use.<sup>249</sup>

The Commission disagrees. 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.<sup>250</sup> While the claimants seek to characterize Proposition A and Proposition C as “local taxes,” for purposes of mandates reimbursement, they are not the claimants’ proceeds of taxes.

The power of a local government to tax is derived from the Constitution, upon the Legislature’s authorization.<sup>251</sup> “The Legislature may not impose taxes for local purposes but may authorize local governments to impose them.”<sup>252</sup> In other words, a local government’s taxing authority is derived from statute.

Metro, as the successor to the Los Angeles County Transportation Commission, is authorized by statute to levy the Proposition A and Proposition C transactions and use taxes throughout Los Angeles County.<sup>253</sup> Public Utilities Code section 130350, as originally enacted, states as follows:

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.<sup>254</sup>

Under the Proposition A and Proposition C ordinances, twenty-five percent of Proposition A taxes and twenty percent of Proposition C taxes, respectively, are allocated to the local return

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<sup>249</sup> Exhibit K, County of Los Angeles’ Comments on the Draft Proposed Decision, filed April 9, 2021, pages 2-3.

<sup>250</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 (Article XIII B “was not intended to reach beyond taxation”).

<sup>251</sup> California Constitution, article XIII, section 24(a).

<sup>252</sup> *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”).

<sup>253</sup> Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

<sup>254</sup> Public Utilities Code section 130350 (Stats. 1976, ch. 1333).



program funds for cities and the county to use for public transit purposes.<sup>255</sup> As discussed above, local jurisdictions are then permitted to use those funds on public transit projects as prescribed by the Local Return Guidelines.<sup>256</sup> Permissible uses include bus stop improvements and maintenance projects, which include the installation, replacement and maintenance of trash receptacles.<sup>257</sup>

The claimants do not dispute receiving Proposition A and Proposition C revenues through the local return program during the audit period, at least a portion of which was used for the eligible purposes of installing and maintaining trash receptacles at transit stops. Nonetheless, the claimants misunderstand what constitutes a local agency's "local sales tax revenues" for purposes of determining eligibility for reimbursement under article XIII B, section 6. Contrary to the claimants' assertions, the Proposition A and Proposition C transactions and use taxes are *not* the claimants' local "proceeds of taxes" because they are neither levied by nor for the claimants.

The phrase "to levy taxes by or for an entity" has a special meaning of long-standing. The concept of one entity levying taxes for another dates back to at least 1895 (stats. 1895, p. 219) and the adoption of an act providing for the levy of taxes "by or for" municipal corporations. This act allowed general law and charter cities to continue to exercise their taxing power directly or, if they so desired, to have the county levy and collect their taxes for them. (*Griggs v. Hartzoke* (1910) 13 Cal.App. 429, 430–432, 109 P. 1104; *County of Los Angeles v. Superior Court* (1941) 17 Cal.2d 707, 710–711, 112 P.2d 10.) The legal effect of this arrangement, as explained by case law, was that the taxing power exercised was that of the city, and it remained in the city. The county officers in levying taxes for the city became ex-officio officers of the city and exercised the city's taxing power. (*Madary v. City of Fresno* (1912) 20 Cal.App. 91, 93–94, 128 P. 340.) In levying taxes for the city the county was levying "municipal taxes" through the ordinary county machinery. (*Griggs, supra*, 13 Cal.App. at p. 432, 109 P. 1104.)

Thus, the salient characteristics of one entity levying taxes "for" another entity are: (1) the entity for whom the taxes are levied has the taxing power; (2) the levying officers of the county exercise the taxing power of the entity for whom they are levying; (3) they exercise such power as ex-officio officers of that entity, and (4) the taxes collected are those of the "levied for" entity.<sup>258</sup>

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<sup>255</sup> Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 47 (Local Return Guidelines).

<sup>256</sup> See Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, pages 41-111 (Local Return Guidelines).

<sup>257</sup> Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 53 (Local Return Guidelines).

<sup>258</sup> *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32.

Similar to the redevelopment agency in *Bell Community Redevelopment Agency v. Woosley*, the claimants here do not have the power to levy the Proposition A and Proposition C taxes.<sup>259</sup> Public Utilities Code section 130350 authorizes the Los Angeles Transportation Commission (through its successor, Metro) to levy the Proposition A and Proposition C retail transactions and use taxes. The Proposition A and Proposition C ordinances authorize Metro to allocate a portion of those tax proceeds to local jurisdictions within Los Angeles County for use on specified local transit programs.<sup>260</sup> Therefore, Metro is not levying the Proposition A and Proposition C taxes “for” the claimants. The claimants’ receipt and use of Proposition A and Proposition C tax revenues through the local return programs does not render those funds the claimants’ “proceeds of taxes.”

b. The Proposition A and Proposition C local return funds allocated to the claimants are not subject to the claimants’ appropriations limits.

Contrary to the claimants’ assertions, article XIII B, section 6 does not operate independent of the appropriations limit as set forth in article XIII B. The reimbursement requirement in article XIII B, section 6 “was included in recognition of the fact ‘that articles XIII A and XIII B severely restrict the taxing and spending powers of local government.’”<sup>261</sup> In other words, it was “designed to protect the tax revenues of local governments from state mandates that would require the expenditure of such revenues.”<sup>262</sup> Article XIII B does not limit a local government’s ability to expend tax revenues that are not its “proceeds of taxes.”<sup>263</sup> Therefore, where a tax is neither levied by nor for the local government claiming reimbursement, the resulting revenue is not the local government’s “proceeds of taxes” and is therefore not the local government’s “appropriations subject to limitation.”<sup>264</sup>

Reimbursement under article XIII B, section 6 is only required to the extent that a local government must incur “increased actual expenditures of limited tax proceeds that are counted

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<sup>259</sup> See *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 27 [Because redevelopment agency did not have the authority to levy a tax to fund its efforts, allocation and payment of tax increment funds to redevelopment agency by county, a government taxing agency, were not “proceeds of taxes levied by or for” the redevelopment agency and therefore were not subject to the appropriations limit of Article XIII B].

<sup>260</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 34 (Proposition A Ordinance); Exhibit L, Proposition C Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_c\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf) (accessed on February 22, 2021), pages 3-4.

<sup>261</sup> *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>262</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>263</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

<sup>264</sup> California Constitution, article XIII B, section 8.

against the local government’s spending limit.”<sup>265</sup> Where a local agency expends tax revenues other than its own proceeds of taxes, the need under article XIII B, section 6 to protect the local agency’s own tax revenues is not present; the agency is not called upon to expend its limited tax proceeds, nor does it bear the burden of increased financial responsibility for carrying out state governmental functions.<sup>266</sup> Because the Proposition A and Proposition C local return funds are not the claimants’ “proceeds of taxes levied by or for that entity,” they are not the claimants’ “appropriations subject to limitation.”<sup>267</sup>

*i. The Proposition A tax is not subject to an appropriations limit.*

Los Angeles County has passed 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).<sup>268</sup> 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.

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,”<sup>269</sup> the purpose of article XIII B is to provide discipline in government spending “by creating appropriations limits to restrict the amount of such expenditures.”<sup>270</sup> As discussed above, articles XIII A and XIII B work together to impose restrictions on local governments’ ability to both levy and spend taxes.<sup>271</sup> 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.

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<sup>265</sup> *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.

<sup>266</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 492-493 (Arabian, J., concurring).

<sup>267</sup> California Constitution, article XIII B, section 8.

<sup>268</sup> Exhibit L, Metro, Local Return Program, [https://www.metro.net/projects/local\\_return\\_pgm/](https://www.metro.net/projects/local_return_pgm/) (accessed on February 25, 2021), page 1.

<sup>269</sup> *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, footnote 1.

<sup>270</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 491 (Arabian, J., concurring).

<sup>271</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486.

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.<sup>272</sup>

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.

ii. *The Proposition C tax is subject to the Transportation Commission’s appropriations limit.*

Los Angeles County voters, when approving Proposition C, established a Transportation Commission appropriations limit for Proposition C revenues as follows:

3-10-080 Appropriations Limit. A [Los Angeles County Transportation] Commission appropriations limit is hereby established equal to the revenues collected and allocated during the 1990/91 fiscal year plus an amount equal to one and a half times the taxes that would be levied or allocated on a one-half of one percent transaction and use tax in the first full fiscal year following enactment and implementation of this Ordinance.<sup>273</sup>

Under Government Code section 7904, “[i]n no event shall the appropriation of the same proceeds of taxes be subject to the appropriations limit of more than one local jurisdiction or the state.”<sup>274</sup> Because the Proposition C taxes are levied “by and for” Metro, Proposition C tax revenues are subject *only* to Metro’s appropriations limit; they cannot be subject to both Metro and the claimants’ appropriations limits.

iii. *Neither Proposition A nor Proposition C revenues are subject to the claimants’ appropriations limits.*

Despite the fact that the claimants do not have statutory authority to levy the Proposition A or Proposition C taxes, the City of Claremont has provided documentation purporting to show that during the audit period, the City’s appropriation limit included Proposition A and Proposition C

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<sup>272</sup> California Constitution, article XIII B, section 9(c).

<sup>273</sup> Exhibit L, Proposition C Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_c\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf) (accessed on February 22, 2021), page 6.

<sup>274</sup> Government Code section 7904.

local return funds.<sup>275</sup> As explained above, Proposition A revenues are not the claimants' proceeds of taxes and are not subject to an appropriations limit because the taxing and spending limitations of articles XIII A and XII B did not apply to the Transportation Commission at the time Los Angeles County voters approved Proposition A.<sup>276</sup> Any decision by a local jurisdiction receiving Proposition A local return revenues to characterize them as subject to the local jurisdiction's appropriations limit is in error and does not change their exemption from the appropriations limit.

Nor can the Proposition C revenues be subject to the claimants' appropriations limits. The Proposition C Ordinance establishes that Proposition C revenues are subject to the Transportation Commission's appropriations limit. In light of the prohibition against proceeds of taxes being subject to more than one government entity's appropriations limit,<sup>277</sup> any decision by a local jurisdiction receiving Proposition C local return revenues to characterize them as subject to the local jurisdiction's appropriations limit is in error and does not change their nature as "proceeds of taxes" belonging to the Transportation Commission (through its successor, Metro).

The claimants are incorrect in asserting that the Controller's finding functionally reduces the claimants' transportation funding as though the state were to refuse to reimburse the claimants as if they had relied upon general funds for the same purpose.<sup>278</sup> While Proposition A and Proposition C are imposed on the "local citizens" of the claimants' jurisdictions, the taxes are levied throughout Los Angeles County by and for Metro, who then distributes a portion of the revenues to cities and the county.

Because the Proposition A and Proposition C taxes are neither levied by nor for the claimants, nor subject to the claimants' appropriations limits, the Proposition A and Proposition C local return revenues do not constitute the claimants' "local proceeds of taxes" for which claimants are entitled to reimbursement under article XIII B, section 6. Local government cannot accept the benefits of non-local tax revenue that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.<sup>279</sup> To the extent that the claimants funded the mandated activities using Proposition A or Proposition C revenues, reimbursement is not required under article XIII B, section 6 of the California Constitution.

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<sup>275</sup> Exhibit I, City of Claremont's Comments on the Draft Proposed Decision, filed April 8, 2021, pages 2-71.

<sup>276</sup> Section 130350, which gives the Transportation Commission the authority to levy a transactions and use tax, was amended in 2007 to reflect the two-thirds vote requirement for special taxes under article XIII A, section 4.

<sup>277</sup> Government Code section 7904.

<sup>278</sup> Exhibit A, County of Los Angeles' Consolidated IRC, filed November 5, 2020, page 18.

<sup>279</sup> See *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

**3. The advancement of Proposition A or Proposition C funds to pay for the installation and maintenance of the trash receptacles does not alter the nature of those funds as offsetting revenues, nor does the deduction of those funds from the costs claimed constitute a retroactive application of the law.**

The claimants argue that because the Local Return Guidelines permit the claimants to use Proposition A and Proposition C funds on mandated activities and then, upon reimbursement from the state, apply those funds to other transit projects, the claimants cannot now be penalized for doing so through retroactive application of the Parameters and Guidelines.<sup>280</sup> The claimants allege that the Controller’s application of the Parameters and Guidelines is both incorrect as a matter of law and arbitrary and capricious.<sup>281</sup> Whether the Controller correctly interpreted the Parameters and Guidelines in finding that Proposition A and Proposition C are non-local sources of funds that must be deducted from the reimbursement claims is purely a question of law subject to the de novo standard of review and to which the arbitrary and capricious standard does not apply.<sup>282</sup>

Because the claimants used “non-local source” funds to install and maintain trash receptacles, they were required to identify and deduct those funds from their claims for reimbursement. As discussed above, the Proposition A and Proposition C funds received by the claimants are not the claimants’ “proceeds of taxes” within the meaning of article XIII B, section 8. The requirement in section VIII of the Parameters and Guidelines that reimbursement received from any “non-local source” must be identified and deducted from the claim simply restates the requirement under article XIII B, section 6 that mandate reimbursement is only required to the extent that the local government expends its own proceeds of taxes.<sup>283</sup> A rule that merely restates or clarifies existing law “does not operate retrospectively even if applied to transactions predating its enactment because the true meaning of the [rule] remains the same.”<sup>284</sup>

Where, as here, a local government funds mandated activities with *other than* its own proceeds of taxes (e.g., revenue from a tax levied by a separate local government entity), it is required to deduct those revenues from its reimbursement claim. The fact that the Commission did not adopt the Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program until well into the audit period<sup>285</sup> does not alter the analysis, nor does the

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<sup>280</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, pages 18-19.

<sup>281</sup> Exhibit A, County of Los Angeles’ Consolidated IRC, filed November 5, 2020, page 18.

<sup>282</sup> *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64, 71, fn. 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

<sup>283</sup> *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; see also Government Code section 17553(b)(1)(F)(iii) and California Code of Regulations, title 2, section 1183.7(g)(2).

<sup>284</sup> *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

<sup>285</sup> The Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program were adopted March 24, 2011. The reimbursement claims at issue range from fiscal years 2002-2003 through 2012-2013.

claimants' ability under the Local Return Guidelines to expend Proposition A or Proposition C funds on the installation and maintenance of transit stop trash receptacles prior to mandate reimbursement.

The Commission finds that the Controller's determination, that the Proposition A and Proposition C local return funds are offsetting revenue that should have been identified and deducted from the reimbursement claims, is correct as a matter of law.

## **V. Conclusion**

Based on the forgoing analysis, the Commission finds that the IRCs and Notices of Intent to Join were timely filed and the Controller's determination, that Proposition A and Proposition C local return funds are offsetting revenues that should have been identified and deducted from the reimbursement claims, is correct as a matter of law. Accordingly, the Commission denies this Consolidated IRC.

**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 June 4, 2021, I served the:

- **Decision adopted May 28, 2021**

*Municipal Storm Water and Urban Runoff Discharges*, 19-0304-I-04, 20-0304-I-06, 20-0304-I-08, 20-0304-I-09, 20-0304-I-10, 20-0304-I-11, and 20-0304-I-13

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, 2008-2009, 2009-2010, 2010-2011, 2011-2012

City of Claremont, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006

City of Downey, Claimant

Fiscal Years: 2008-2009, 2009-2010, 2010-2011, 2011-2012

City of Glendora, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012

City of Pomona, Claimant

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

City of Santa Clarita, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2010-2011, 2011-2012, 2012-2013

City of Signal Hill, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013

County of Los Angeles, 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 June 4, 2021 at Sacramento, California.



---

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**Matter:** Municipal Storm Water and Urban Runoff Discharges

**Claimants:** City of Claremont  
 City of Downey  
 City of Glendora  
 City of Pomona  
 City of Santa Clarita  
 City of Signal Hill  
 County of Los Angeles

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Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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