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April 28, 2011

Honorable Diane Harkey
Room 6027, State Capitol

**COMMUNITY REDEVELOPMENT; PROPERTY TAX; PUBLIC HEALTH AND
SAFETY FUND - #1115418**

Dear Ms. Harkey:

You have asked whether the provisions in Assembly Bill No. 101 of the 2011-12 Regular Session, as amended March 15, 2011, that would provide, for the 2011-12 fiscal year, for the transfer of property tax revenues from a Redevelopment Property Tax Trust Fund to a Public Health and Safety Fund, created in each county that contains a redevelopment agency, for use solely to reimburse the state for costs of providing health care or trial court services in that county, would violate Section 1 of Article XIII A of the California Constitution.

I. Assembly Bill No. 101 of the 2011-12 Regular Session

By way of background, the Community Redevelopment Law (Pt. 1 (commencing with Sec. 33000), Div. 24, H.& S.C.;¹ hereafter the CRL) establishes a comprehensive statutory scheme to protect and promote the sound development and redevelopment of blighted areas by using all appropriate means to remedy blight conditions (Sec. 33037; see *Redevelopment Agency of City of San Diego v. San Diego Gas & Elec. Co.* (2003) 111 Cal.App.4th 912, 917). The Legislature has created in each community a public body known as the redevelopment agency of the community, authorized by statute to transact business and exercise its powers upon adoption of an ordinance by the legislative body declaring that a need for the agency exists (Secs. 33100 and 33101). Redevelopment agencies create redevelopment plans which are submitted for consideration and adoption; procedures and requirements for redevelopment activities are set forth in the CRL (Ch. 4 (commencing with

¹ All further section references are to the Health and Safety Code, unless otherwise indicated.

Sec. 33000), Pt. 1, Div. 24; *City of Stockton v. Marina Towers LLC* (2009) 171 Cal.App.4th 93, 105).

Assembly Bill No. 101 of the 2011-12 Regular Session, as amended March 5, 2011, (hereafter A.B. 101 or the bill) declares the intent of the Legislature to “[b]ar existing redevelopment agencies from incurring new obligations that would divert any more money from core functions and dissolve all existing redevelopment,” and, beginning with the 2012-13 fiscal year, to “allocate these funds according to the existing property tax allocation ... to provide core governmental services” (subd. (m), proposed Sec. 1, A.B. 101).

A.B. 101 immediately would suspend various redevelopment agency activities and prohibit the creation of new debts upon its enactment (proposed Ch. 1 (commencing with Sec. 34161), Pt. 1.8, Div. 24, A.B. 101). Effective July 1, 2011, A.B. 101 would dissolve all existing redevelopment agencies and community development agencies and withdraw all agency authority to transact business or exercise powers previously granted (proposed subds. (a) and (b), Sec. 34172, A.B. 101). The bill would designate successor agencies to, among other things, continue making payments due for enforceable obligations, as defined, and to remit unencumbered balances of former redevelopment agency funds to the county auditor-controller for distribution to taxing entities within the county (proposed Ch. 3 (commencing with Sec. 34177), Pt. 1.85, Div. 24, A.B. 101). Each successor agency would be subject to the supervision of a local oversight board (proposed Ch. 4 (commencing with Sec. 34179), Pt. 1.85, Div. 24, A.B. 101).

The bill would also require the county auditor-controller of every county that has a redevelopment agency to determine the amount of property taxes that would have been allocated to the redevelopment agency if it had not been dissolved, and to deposit those revenues into a Redevelopment Property Tax Trust Fund created and administered by the county auditor-controller within the county treasury (proposed Sec. 34170.5; proposed Ch. 5 (commencing with Sec. 34182), Pt. 1.85, Div. 24, A.B. 101). Each such fund would be used to retire the debts and contractual obligations of the dissolved agency, make “passthrough” payments to local jurisdictions, and make distributions of property tax revenue for the funding of core local services (proposed para. (2), subd. (a), Sec. 34183, A.B. 101).

For the 2011-12 fiscal year, property tax revenues deposited in the trust fund would be used to: (1) maintain the property tax “passthrough” payments made to taxing entities by redevelopment agencies pursuant to certain existing statutes or agreements; (2) transfer “grants” in an amount equal to the county’s proportionate share of a statewide total of \$1.7 billion to a Public Health and Safety Fund to be established in each county (see proposed Sec. 34170.5, A.B. 101); (3) retire the debts and contractual obligations of dissolved redevelopment agencies; (4) pay the administrative costs of successor agencies; and (5) distribute property tax revenues among local agencies and school entities (proposed subd. (a), Sec. 34183, A.B. 101). The transfer to a Public Health and Safety Fund of a county’s proportionate share of a statewide total of \$1.7 billion is subject to prior deduction, where the successor agency lacks sufficient revenues to fully fund the first four specified purposes (proposed subd. (b), Sec. 34183, A.B. 101).

Under A.B. 101, a county would transfer a proportionate share of a state total of \$1.7 billion from the Redevelopment Property Tax Trust Fund to a Public Health and Safety Fund, and this transfer would be an express condition upon the county's receipt of its share of those property tax revenues that, after dissolution of the redevelopment agency, would instead be distributed among local agencies and school entities (proposed subpara. (A), para. (2), subd. (a), Sec. 34183, A.B. 101). However, A.B. 101 would authorize a county to elect not to provide a "grant" to the Public Health and Safety Fund or to not administer the Public Health and Safety Fund (proposed subpara. (B), para. (2), subd. (a), Sec. 34183, A.B. 101). If the county makes the "grant," but chooses not to administer the fund, the Director of Finance may designate another entity to perform administrative functions (proposed subpara. (B), para. (2), subd. (a), Sec. 34183, A.B. 101). If the county elects to not provide a "grant" or administer the fund, any other local agency within the county would be allowed to elect to "perform such grants" and perform related duties (proposed subpara. (C), para. (2), subd. (a), Sec. 34183, A.B. 101). That local agency, in this instance, would thereby receive the county's share of any property tax allocable under specified provisions of the bill (proposed subpara. (C), para. (2), subd. (a), Sec. 34183, A.B. 101). In any event, A.B. 101 would require the moneys in a Public Health and Safety Fund to be "used in amounts and for those purposes as directed by the Director of Finance, exclusively to reimburse the state for the costs of providing health care and trial court services in the county, until those moneys are exhausted" (proposed subpara. (D), para. (2), subd. (a), Sec. 34183, A.B. 101).

II. General Property Tax Revenue Allocations

As to the general property tax, Article XIII of the California Constitution² mandates that all property in the state is taxable unless exempted by its provisions, federal law, or, in the case of personal property, by a statute enacted by a two-thirds vote of each house of the Legislature (Secs. 1 and 2, Art. XIII). California courts have held that the property tax that is mandated by Section 1 of Article XIII must be imposed on an ad valorem basis (*City of Oakland v. Digre* (1988) 205 Cal.App.3d 99, 109-110), and that an "ad valorem property tax" is a tax from which revenue is derived "from applying a property tax rate to the assessed value of property" (*Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481, 483).

With respect to the tax rate that is applied to the assessed value of property and the allocation of revenues that are derived from applying this tax rate to that value, subdivision (a) of Section 1 of Article XIII A provides as follows:

"SECTION 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties."

² All further article references are to the California Constitution, unless otherwise indicated.

Article XIII A was added to the California Constitution pursuant to voter approval of Proposition 13 at the June 6, 1978, statewide primary election (hereafter Proposition 13). The approval of Proposition 13 also added, in addition to other limitations on state or local taxing authority (Secs. 3 and 4, Article XIII A), provisions that limited the reassessment of real property for tax purposes at fair market value to those instances in which the real property is either transferred or newly constructed (Sec. 2, Art. XIII A). The purpose of Proposition 13 was to restrict the taxation of real property generally by limiting the growth in assessed valuation of real property and by limiting the maximum tax rate imposed on real property (*Wunderlich v. County of Santa Cruz* (2009) 178 Cal.App.4th 680, 689).

Prior to the passage of Proposition 13, the various local jurisdictions in each county imposed separate property tax rates within their jurisdictions based upon their budgetary needs (Arthur O'Sullivan et al., *Property Taxes and Tax Revolts*, p. 97 (1995); see also Kenneth A. Ehrman & Sean Flavin, *Taxing California Property* (4th Ed. 2010), Sec. 28:2). Article XIII A, in addition to generally limiting the rate of ad valorem tax on real property to 1 percent, directs, however, that "[t]he one percent (1%) tax [is] to be collected by the counties and apportioned according to law to the districts within the counties" (subd. (a), Sec. 1, Art. XIII A).

The directive to the counties to collect a general ad valorem property tax at a rate of 1 percent is implemented in statute in subdivision (b) of Section 93 of the Revenue and Taxation Code. Moreover, the courts have recognized that this single, 1 percent general ad valorem property tax rate is in lieu of the separate general ad valorem property tax rates formerly collected by each of the local jurisdictions in each county (*City of Rancho Cucamonga v. Mackzum* (1991) 228 Cal.App.3d 929, 941 (hereafter *Mackzum*)).

The requirement of Section 1 of Article XIII A that those revenues derived from a 1-percent county property tax rate be allocated among jurisdictions in the county "according to law" is implemented in statute by Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code (also see *San Miguel Consolidated Fire Protection Dist. v. Davis* (1994) 25 Cal.App.4th 134, 148-149 (hereafter *San Miguel*); *White v. State* (2001) 88 Cal.App.4th 298, 310 (hereafter *White*)). That chapter generally requires that each jurisdiction in a county be annually allocated, from those revenues derived from the county's 1-percent annual property tax rate, a total amount equal to the total amount of county property tax revenue allocated to that jurisdiction in the prior fiscal year (para. (1), subd. (a), Sec. 96.1, R.& T.C.) and that jurisdiction's portion of the annual tax increment, as defined (para. (2), subd. (a), Sec. 96.1, and Sec. 96.5, R.& T.C.). For purposes of these allocation provisions, "jurisdiction" is defined to include a "local agency" and various local educational entities (subd. (b), Sec. 95, R.& T.C.). In turn, "local agency" is defined to include a city, county, and a special district (subd. (a), Sec. 95, R.& T.C.). While providing that local jurisdictions are to receive apportionments of general ad valorem property tax revenues, these property tax allocation statutes do not specify any particular purpose or purposes for which the apportioned revenues are to be expended or direct any expenditure of the apportioned revenues for the benefit of any entity other than the recipient local jurisdiction. Thus, those

statutes governing the apportionment among local jurisdictions of the revenues derived from the single, 1 percent general ad valorem property tax collected by each county do not characterize those revenues as anything other than a general revenue source for the operations and programs of recipient local jurisdictions.

III. Analysis

We now consider whether the provisions in A.B. 101 that would require, for the 2011-12 fiscal year, that any property tax revenues that a county or local agency transferred to a Public Health and Safety Fund be used exclusively to reimburse the state for costs of providing health care or trial court services in that county would violate the requirement of Section 1 of Article XIII A that general property tax moneys be apportioned to the districts in each county.

A. Character of Revenues to be Transferred from a Redevelopment Property Tax Trust Fund to a Public Health and Safety Fund

As stated above, A.B. 101 would provide for the transfer of an amount of up to \$1.7 billion on a statewide basis from Redevelopment Property Tax Trust Funds to Public Health and Safety Funds, each created in a county that had a redevelopment agency or agencies (proposed para. (2), subd. (a), Sec. 34183, A.B. 101). As an initial matter, we must consider whether the amounts in the Redevelopment Property Tax Trust Fund, created in a county treasury, that may be transferred to a Public Health and Safety Fund, also created in a county's treasury, are ad valorem property tax revenues. As described above, under the CRL, the Legislature has created a public body known as the redevelopment agency in each community to remedy the effects of blighted areas in the community (Sec. 33100). The CRL declares that it is "the policy of the State ... [t]o protect and promote the sound development and redevelopment of blighted areas and the general welfare of the inhabitants of the communities in which they exist by remedying such injurious conditions through the employment of all appropriate means" (subd. (a), Sec. 33037). Thus, in eliminating blight through redevelopment, the agency is carrying out state policy (see *Redevelopment Agency v. City of Berkeley* (1978) 80 Cal.App.3d 158, 168).

A redevelopment agency proceeds to redevelop an area by first preparing and adopting a redevelopment plan that, among other things, describes the boundaries of the project area and methods of financing the redevelopment, and includes the agency's implementation policies and procedures (Art. 4 (commencing with Sec. 33330), Ch. 4, Pt. 1, Div. 24; see also *Marek v. Napa Community Redevelopment Agency* (1988) 46 Cal.3d 1070, 1082 (hereafter *Marek*); *Redevelopment Agency of City of Sacramento v. Malaki* (1963) 216 Cal.App.2d 480, 482).

To carry out its activities, a redevelopment agency is specifically authorized to receive property tax revenues pursuant to Section 16 of Article XVI (hereafter Section 16). Section 16, formerly Section 19 of Article XIII, states, in relevant part, as follows:

"SEC. 16. All property in a redevelopment project established under the Community Redevelopment Law as now existing or hereafter amended, except

publicly owned property not subject to taxation by reason of that ownership, shall be taxed in proportion to its value as provided in Section 1 of this article,^{3]} and those taxes (the word “taxes” as used herein includes, but is not limited to, all levies on an ad valorem basis upon land or real property) shall be levied and collected as other taxes are levied and collected by the respective taxing agencies.

“The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, so levied upon the taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called “taxing agencies”) after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

“(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of those taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of that property by the taxing agency, last equalized prior to the effective date of the ordinance, shall be allocated to, and when collected shall be paid into, the funds of the respective taxing agencies as taxes by or for those taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of the ordinance but to which that territory has been annexed or otherwise included after the ordinance’s effective date, the assessment roll of the county last equalized on the effective date of that ordinance shall be used in determining the assessed valuation of the taxable property in the project on that effective date); and

“(b) Except as provided in subdivision (c), that portion of the levied taxes each year in excess of that amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in the project as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the redevelopment

³ The reference to “this article” is an incorrect cross-reference derived from former Section 19 of Article XIII and refers to Article XIII, which contains general provisions governing taxation, including the taxation of real and personal property.

project shall be paid into the funds of the respective taxing agencies. When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, then all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.” (Emphasis added.)

Section 33670 was enacted by the Legislature to implement what is now Section 16 by providing for the allocation of those property tax revenues that are tax increment revenues (*Redevelopment Agency of City and County of San Francisco v. Cooper* (1968) 267 Cal.App.2d 70, 72-73). The mechanics of tax increment financing were described by the California Supreme Court in *Redevelopment Agency v. County of San Bernardino* (1978) 21 Cal.3d 255, 259, as follows:

“In essence this section [Sec. 16] provides that if, after a redevelopment project has been approved, the assessed valuation of taxable property in the project increases, the taxes levied on such property in the project area are divided between the taxing agency and the redevelopment agency. The taxing agency receives the same amount of money it would have realized under the assessed valuation existing at the time the project was approved, while the additional money resulting from the rise in assessed valuation is placed in a special fund for repayment of indebtedness incurred in financing the project.” (Emphasis added.)

More specifically, subdivision (b) of Section 33670 authorizes the use of tax increment revenues by redevelopment agencies to repay any indebtedness incurred in implementing the redevelopment project (*Marek, supra*, at p. 1082). As stated in subdivision (b) of Section 16, after a redevelopment agency has repaid its indebtedness, “then all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.” Thus, at the conclusion of a redevelopment project, when the tax increment revenue is no longer needed by the redevelopment agency to repay its indebtedness associated with the project, that revenue is paid to local jurisdictions in the county as are other property taxes.

Based on the foregoing constitutional and statutory provisions, it is our view that the tax increment revenues diverted for redevelopment purposes would be property taxes that, but for allocation to a redevelopment agency under the authority of Section 16, would be subject to constitutional provisions that govern the collection and allocation of property taxes generally. Consequently, it is our view that the excess revenue that remains after abolishing redevelopment agencies and meeting the legal obligations of those agencies, which was previously allocated tax increment revenue under Section 16, would be considered and treated as general ad valorem property tax revenue under the California Constitution.

This analysis is consistent with the general characterization in A.B. 101 of what, but for the dissolution of redevelopment agencies, would be redevelopment agency increment revenues. A.B. 101 would provide that, upon the dissolution of redevelopment agencies, any

property taxes that would have been allocated to redevelopment agencies pursuant to subdivision (b) of Section 16 of Article XVI would no longer be deemed tax increment revenues within the meaning of the Community Redevelopment Law (proposed subd. (d), Sec. 34172, A.B. 101). Instead, A.B. 101 would provide that those property taxes are to be deemed property tax revenues within the meaning of subdivision (a) of Section 1 of Article XIII A (proposed subd. (d), Sec. 34172; proposed para. (1), subd. (c), Sec. 34182, A.B. 101).

Therefore, we are of the opinion that if A.B. 101 is enacted, any property taxes that would have been allocated to redevelopment agencies prior to dissolution, including the \$1.7 billion in the Redevelopment Property Tax Trust Funds that is to be transferred for the 2011-12 fiscal year to Public Health and Safety Funds, would be general ad valorem property tax revenues to be apportioned in accordance with subdivision (a) of Section 1 of Article XIII A.

B. Apportionment of Property Tax Revenues

Based on our conclusion that the statewide total \$1.7 billion in the Redevelopment Property Tax Trust Funds that is to be transferred to Public Health and Safety Funds for the 2011-12 fiscal year would be ad valorem property tax revenues subject to the apportionment requirement of subdivision (a) of Section 1 of Article XIII A, we now consider whether the requirement that those revenues be used solely to reimburse the state for costs of providing health care or trial court services in that county would violate subdivision (a) of Section 1 of Article XIII A.

As we will explain below, it is our view that A.B. 101 would violate subdivision (a) of Section 1 of Article XIII A because use of the \$1.7 billion to reimburse the state for the costs of state programs would be the apportionment of those revenues to the state, rather than to “the districts within the counties” as required by that subdivision. As we will discuss, it is our view that ad valorem property tax revenues are apportioned according to law to the “districts” within a county, in accordance with subdivision (a) of Section 1 of Article XIII A, only when those revenues become moneys of a “district” for its use to fund its own operations and programs.

As set forth above, subdivision (a) of Section 1 of Article XIII A specifies that the revenue derived from the general 1-percent property tax rate is to be “collected by the counties and apportioned according to law to the districts within the counties” (emphasis added). While courts have held that subdivision (a) generally authorizes the statutory apportionment of property tax revenues (*San Miguel*, supra, at pp. 148-149; *White*, supra, at p. 310), no reported court decisions have considered the validity of a statute that requires the allocation of property tax revenues to reimburse state costs. In this connection, as with a statute, to ascertain the meaning of a constitutional provision (see *Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal.3d 402, 407 (hereafter *Mutual Life*); *Hyatt v. Allen* (1880) 54 Cal. 353, 356 (hereafter *Hyatt*)), we begin with the language in which the statute is framed (see *Leroy T. v. Workmen’s Comp. Appeals Bd.* (1974) 12 Cal.3d 434, 438; *Visalia School Dist. v. Workers’ Comp. Appeals Bd.* (1995) 40 Cal.App.4th 1211, 1220). Under these principles, it is our view that the express language of subdivision (a) of Section 1 of Article XIII A requires

that the revenues derived from the 1 percent general property tax that is collected by a county be apportioned only to districts within the county in which the revenues were collected (see Sec. 95, R.& T.C., regarding the definition of “district”). The term “apportioned” is not defined in the California Constitution or in the Revenue and Taxation Code, but words are to be given their usual and ordinary meaning (*IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 98). “Apportioned” is based on the word “apportion,” which means “to divide and assign in proportion; divide and distribute proportionately” (Webster’s Third New International Dictionary, Unabridged Merriam-Webster (2002) <http://unabridged.merriam-webster.com> (April 26, 2011)).

It could be argued that A.B. 101 would apportion the \$1.7 billion to districts within the counties because each proportionate share of that statewide amount would be transferred from a Redevelopment Property Tax Trust Fund, created in a county treasury, into a Public Health and Safety Fund, also created in the county treasury. Under this argument, although not clearly delineated in A.B. 101, each proportionate share of the \$1.7 billion is presumably “apportioned” to the county, as that amount would be deposited in a fund in the county treasury.⁴

We think, however, that the deposit of property tax revenues into a fund required by statute to be established in a county treasury is not sufficient to comply with the apportionment requirements of subdivision (a) of Section 1 of Article XIII A. Instead, as we explain below, we think subdivision (a) of Section 1 of Article XIII A also requires that

⁴ A.B. 101 would require for passage approval of two-thirds of the membership of each house of the Legislature, as required by Section 25.5 of Article XIII. Section 25.5 of Article XIII expressly prohibits the reduction, for any fiscal year, of “the percentage of the total amount of ad valorem property tax revenues in a county that is allocated among all of the local agencies” (subpara. (A), para. (1), subd. (a), Sec. 25.5), which include the county and the cities and special districts within that county (see subd. (a), Sec. 95, R.& T.C.); para. (2), subd. (b), Sec. 25.5), below the percentage of the total amount of revenues allocated to those local agencies, collectively, under the laws in effect on November 3, 2004. With respect to the allocation of general property tax revenues among local agencies, paragraph (3) of subdivision (a) of Section 25.5 of Article XIII expressly requires any bill that changes “for any fiscal year the pro rata shares of property tax revenue that are allocated among local agencies in a county” to be passed by a two-thirds vote of the membership in each house of the Legislature. The Legislative Counsel’s Digest notes that “[b]ecause this measure would provide property tax revenues that would otherwise be received by enterprise special districts from former redevelopment tax increment allotments instead be received by the respective county, and may result in property tax moneys in the Redevelopment Property Tax Trust Fund not being allocated to the county if it declines to administer the Public Health and Safety Fund, the bill would constitute a change in the pro rata share of property tax allocations in that county and require the passage of the bill by a 2/3 vote” (A.B. 101, as amended in Senate, March 15, 2011, p. 3).

property tax revenues become moneys of a “district” for use for its own operations and programs.

In this connection, where the plain meaning of the words of the statute is not dispositive, the statute’s legislative history and the wider historical circumstances of its enactment may be considered in ascertaining legislative intent (*International Medication Systems, Inc. v. Assessment Appeals Bd.* (1997) 57 Cal.App.4th 761, 765). The imposition of a general property tax for local revenue purposes is a longstanding policy of this state, as articulated by the California Supreme Court in *San Francisco & S. M. Elec. Ry. Co. v. Scott* (1904) 142 Cal. 222, at page 229:

“It is plainly the general policy of the law that property situated in one county or city should be taxable in that county or city for local purposes for its actual value, and that that local subdivision alone should have the benefit of this value for the purpose of raising its revenue.”

Thus, since at least 1904, the California Supreme Court has recognized that the local jurisdictions that should benefit from the revenues derived from the taxation of property situated within a county are the local jurisdictions within whose territorial boundaries that property is situated. As stated earlier, prior to the passage of Proposition 13 in 1978, generally each local government jurisdiction was authorized to impose a property tax rate within its boundaries that was sufficient to support the level of service to be provided by that jurisdiction. As also stated earlier, Section 1 of Article XIII A and implementing statutes established a single 1 percent general property tax rate to be collected by each county in lieu of the separate general property tax rates formerly imposed by local jurisdictions in that county (subd. (a), Sec. 3, Art. XIII A; subd. (b), Sec. 93, R.& T.C.). This single tax rate is part of an interdependent and interrelated system of provisions necessary for effective real property tax relief (see *Amador Valley Joint Union High Sch. Dist. v. State Board of Equalization* (1978) 22 Cal.3d 208, 231 (hereafter *Amador*). As the proceeds of a single tax rate that is a substitute for the various separate general property tax rates formerly imposed by the various jurisdictions within each county, the revenues derived from the 1 percent general property tax rate are, as provided in statute, allocated in each county among local jurisdictions as general revenues for the funding of each jurisdiction’s operations and programs (Ch. 6 (commencing with Sec. 95), Pt. 0.5, Div. 1, R.& T.C.). In this connection, the Legislature treated the reduction in local government funding resulting from the approval of Proposition 13 as an emergency (see *Mackzum*, supra, at p. 937) and, in the measure enacted to add those revenue allocation statutes that implemented the apportionment requirement of Section 1 of Article XIII A, made the following declaration:

“SEC. 106. ...

“The adoption of Article XIII A of the California Constitution has reduced the amount of property tax revenues available to local government and schools to meet operating and debt expenses, and may cause the curtailment or

elimination of programs and services which are vital to the state's public health, safety, education, and welfare ..." (Sec. 106, Ch. 282, Stats. 1979).

Consequently, notwithstanding the substitution of a single 1 percent tax rate for the separate rates previously imposed, there is nothing in Article XIII A and implementing statutes that changes the character of the revenues derived from the general ad valorem property tax as a general funding source for local jurisdictions.

This interpretation is consistent with the manner in which the property tax revenue allocation requirements of Section 1 of Article XIII A have been described by the California Supreme Court. In *Amador*, it was contended that Proposition 13 constituted a revision of the California Constitution because, among other things, it revised the ability of chartered cities, counties, and cities and counties to control and finance local affairs without undue interference by the Legislature, and, therefore, could not be adopted through the initiative process (Art. XVIII; *Amador*, supra, at pp. 224-225). The petitioners in *Amador* raised the argument that Article XIII A had the effect of vesting in the Legislature the power to "allocate to local governmental agencies the revenues derived from real property taxation" (*Amador*, supra, at p. 225). The suggestion was, because subdivision (a) of Section 1 of Article XIII A requires allocating the property tax revenues that are collected "according to law," that "the Legislature is thereby empowered, at its whim, and upon whatever conditions it may impose, to pick and choose among the local agencies, rewarding 'deserving' agencies with substantial amounts while penalizing others by reduced awards" (*Amador*, supra, at p. 226). The Supreme Court, however, held that Article XIII A "does not by its terms empower the Legislature to direct or control local budgetary decisions or program or service priorities ... local agencies retain the same constitutional and statutory authority over municipal affairs which they possessed and exercised prior to the adoption of [Article XIII A]. The mere fact of reduction in local revenues does not lead us to the conclusion that local agencies have forfeited control over allocations and disbursements of their remaining funds" (*Amador*, supra, at p. 226). Thus, although the directive in Section 1 of Article XIII A to "[apportion] according to law" may have given the Legislature discretion in how to make the allocation among the districts in the county, Section 1 of Article XIII A did not additionally empower the Legislature to direct or control the use of the apportioned fund for other than local purposes of the recipient local jurisdictions. This interpretation is consistent with doctrine recognized by earlier decisions of the California Supreme Court that the Legislature has no power to devote the funds of a municipal corporation to purposes having no relation to municipal affairs (*Conlin v. Board. of Sup'rs of City and County of San Francisco* (1896) 114 Cal. 404, 409 (hereafter *Conlin*); *Sinton v. Ashbury* (1871) 41 Cal. 525, 530). The court has stated that "[w]hile the funds in a municipal treasury are in a certain sense public, there are so only for the limited public which has contributed them, but not for the entire state, and the power of the legislature over these funds is not coextensive with its power over the state funds, but is limited by certain provisions of the constitution" (*Conlin*, supra, at p. 407).

Thus, based on that historical background and understanding of Proposition 13, it is our view that Section 1 of Article XIII A, in requiring the ad valorem property taxes collected by the county to be apportioned according to law to the districts within the county, is intended to continue general ad valorem property tax revenues as a funding source for local government operations and programs.

This interpretation is also consistent with those provisions of the California Constitution that prohibit the Legislature from allocating general ad valorem property tax revenues to a local jurisdiction in reimbursement of a state-mandated local program. Those constitutional provisions are Section 6 of Article XIII B and Section 25.5 of Article XIII.

Section 6 of Article XIII B requires the state to reimburse local governments for the costs of state mandates of a new program or higher level of service. That constitutional provision, in relevant part, provides as follows:

“SEC. 6. (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

“(1) Legislative mandates requested by the local agency affected.

“(2) Legislation defining a new crime or changing an existing definition of a crime.

“(3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

“(b) (1) Except as provided in paragraph (2), for the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

“(2) Payable claims for costs incurred prior to the 2004-05 fiscal year that have not been paid prior to the 2005-06 fiscal year may be paid over a term of years, as prescribed by law.

“(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

* * * (Emphasis added.)

As can be seen, Section 6 of Article XIII B, which had been amended to add subdivision (b) by the approval of Proposition 1A at the November 2, 2004, statewide general election, provides that whenever the Legislature mandates a new program or higher level of service of an existing program on any entity of local government, the state is required, with

certain exceptions, to provide a subvention of funds to reimburse the entity for the costs of the program or increased level of service.⁵ Courts have held that the requirement of reimbursement by the state for a state mandate was enshrined in Section 6 of Article XIII B in order to provide local governments with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; see also *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1189). Thus, Section 6 of Article XIII B generally requires the state to pay for any new governmental programs, or for higher levels of service under existing programs that the state imposes upon local governments so that any resulting increased costs are not borne by those local governments. Paragraph (3) of subdivision (b) of Section 6 of Article XIII B provides a further stipulation that “[a]d valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.” Consequently, the state is prohibited from using ad valorem property tax revenues to fulfill the state’s obligation to pay any reimbursement to local governments required pursuant to Section 6 of XIII B. We think it is reasonable to infer from this prohibition that ad valorem property taxes are not revenues of the state, but rather, that ad valorem property taxes are revenues of local governments. Thus, Section 6 of Article XIII B is consistent with our view that ad valorem property tax revenues are considered to be revenues for local governments to fund their own operations and programs, rather than any obligation of the state.

Our view that Section 1 of Article XIII A is intended to constitutionally preserve general property tax revenues as a funding source for local government operations and programs is also consistent with certain provisions in Section 25.5 of Article XIII. Section 25.5 was added to Article XIII pursuant to voter approval of Proposition 1A at the November 2, 2004, statewide general election. Among other things, Section 25.5 of Article XIII (hereafter Section 25.5) prohibits the reduction, for any fiscal year, of the “percentage of the total amount of ad valorem property tax revenues in a county that is allocated among all of the local agencies” (subpara. (A), para. (1), subd. (a), Sec. 25.5), which include the county and the cities and special districts within that county (see subd. (a), Sec. 95, R.& T.C.; para. (2), subd. (b), Sec. 25.5, Art. XIII), below the percentage guarantee of the total amount of revenues allocated to those local agencies, collectively, under the laws in effect on November 3, 2004. With respect to the allocation of general property tax revenues among local agencies, paragraph (3) of subdivision (a) of Section 25.5 expressly requires any bill that changes “for any fiscal year the pro rata shares of property tax revenue that are allocated among local agencies in a county” to be passed by a two-thirds vote of the

⁵ Subdivision (c) of Section 6 of Article XIII B also provides that “[a] mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.”

membership in each house of the Legislature. Section 25.5 was amended pursuant to voter approval of Proposition 22 at the November 3, 2010, statewide general election to add the following to paragraph (3) of subdivision (a) of that provision:

“The Legislature shall not change the pro rata shares of ad valorem property tax pursuant to this paragraph ... to reimburse a local government when the Legislature or any state agency mandates a new program or higher level of service on that local government.”

It is well established that the principles of statutory construction are also applicable to constitutional provisions (*Mutual Life*, supra, at p. 407; *Hyatt v. Allen*, supra, at p. 356). In accordance with these principles, when the language of a constitutional measure is clear, its plain meaning should be followed (see *Droeger*, supra, at p. 38). In this regard, the plain language of paragraph (3) of subdivision (a) of Section 25.5, as amended by the approval of Proposition 22, expressly prohibits the Legislature from changing the pro rata shares of ad valorem property tax revenues allocated among local agencies in a county to reimburse a local agency for any new governmental programs, or for higher levels of service under existing programs that the state imposes upon that local agency. As discussed above, paragraph (3) of subdivision (b) of Section 6 of Article XIII B already prohibits the use of ad valorem property tax revenues to reimburse local governments for the costs of a new program or higher level of service. Thus, in our view, paragraph (3) of subdivision (a) of Section 25.5 further reflects the principle that ad valorem property taxes are the revenues of local governments, and thus the state cannot use those revenues to fulfill its own obligations, including the reimbursement of local governments required by Section 6 of Article XIII B.

Moreover, this interpretation is also consistent with Section 3 of Article XIII D, which was added to the California Constitution pursuant to voter approval of Proposition 218, at the November 5, 1996, statewide general election. Article XIII D establishes certain approval and other procedural requirements for the imposition of existing, new, and increased assessments and “fees” or “charges” by local governments. Article XIII D also prohibits taxes, assessments, fees, and charges from being “assessed” by an “agency” upon any parcel of property, except for, among other things, “the ad valorem property tax imposed pursuant to Article XIII and Article XIII A” (subd. (a), Sec. 3, Art. XIII D).⁶ The specification of the general ad valorem property tax in Section 3 of Article XIII D as an “assessment” made by a local government is consistent with the interpretation of that tax as a local revenue source.

⁶ An “agency” is defined in the same manner as a “local government” under Article XIII C (subd. (a), Sec. 2, Art. XIII D, Cal. Const., referencing subd. (b), Sec. 1, Art. XIII C, Cal. Const.). Article XIII C defines “local government” as “any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity” (subd. (b), Sec. 1, Art. XIII C, Cal. Const.).

As to the use of \$1.7 billion of property taxes for the 2011-12 fiscal year to reimburse state costs as proposed by A.B. 101, we think the transfer of money in a Redevelopment Property Tax Trust Fund to a Public Health and Safety Fund cannot reasonably be said to be an apportionment to a district, as required by Section 1 of Article XIII A, if the funds are required to be used exclusively to reimburse the state for the costs of providing health care and trial court services, as the Director of Finance directs (proposed subpara. (D), para. (2), subd. (a), Sec. 34183, A.B. 101). Because the use of the moneys in the Public Health and Safety Fund would be restricted to reimbursing the state for health care and trial court services costs, the moneys would not be available for use by the county to fund its own operations or programs. Thus, it is our view that any moneys deposited in a Public Health and Safety Fund as provided in A.B. 101 would, in substance, not be apportioned under that measure to the districts within the county in accordance with subdivision (a) of Section 1 of Article XIII A.

Instead, the beneficiary of the money deposited in and allocated from a Public Health and Safety Fund under A.B. 101 would be the state itself. In this regard, A.B. 101, in proposed paragraph (2) of subdivision (c) of Section 34182, would provide that “each county auditor-controller shall administer the Redevelopment Property Tax Trust Fund for the benefit of the holders of former redevelopment agency enforcement obligations, the beneficiaries of the Public Health and Safety Fund, and the taxing entities that receive passthrough payments and distributions of property taxes pursuant to this part” (emphasis added). Neither the county nor any other local jurisdiction is a “beneficiary” of a Public Health and Safety Fund, as no local jurisdiction may use moneys to be transferred from the Redevelopment Property Tax Trust Fund to the Public Health and Safety Fund for its own operations or programs.

In essence, A.B. 101 would provide that the county in which a Public Health and Safety Fund is created, or any other local agency electing to transfer moneys from the Redevelopment Property Tax Trust Fund to that fund, is to act as an agent of the state, holding property tax revenues and distributing those revenues for state purposes as the state itself directs. This “apportionment” would be nothing more, in fact, than the naming by the state of counties or local agencies to administer money on behalf of the state. In our view, the mere custody or possession of the property tax revenues by the county or local agency is not enough to satisfy the requirement in subdivision (a) of Section 1 of Article XIII A that the property tax revenues have been “apportioned according to law” to the districts within a county. Rather, it is our view, as indicated above, that revenues derived from the general ad valorem property tax is constitutionally dedicated for use by local jurisdictions for their own operations or programs.

C. Summary

We conclude that the requirement in Assembly Bill No. 101 that, for the 2011-12 fiscal year, property tax revenues in a Redevelopment Property Tax Trust Fund that are transferred to a Public Health and Safety Fund, both of which would be created in each county that contains a redevelopment agency, for use solely to reimburse the state for costs of

providing health care or trial court services in that county, would violate Section 1 of Article XIII A of the California Constitution. It is our view that a court would conclude that those property tax revenues, as so used, would be deemed to be apportioned to the state, rather than to the districts within a county as required by subdivision (a) of Section 1 of Article XIII A.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By 
Elaine Chu
Deputy Legislative Counsel

EC:ktn

Two copies to Honorable Bob Blumenfield, Chair,
Committee on Budget,
pursuant to Joint Rule 34.