

LOS ANGELES COUNTY

Audit Report

PROPERTY TAX APPORTIONMENT AND ALLOCATION SYSTEM

July 1, 2006, through June 30, 2007



JOHN CHIANG
California State Controller

February 2009



JOHN CHIANG
California State Controller

February 25, 2009

Wendy Watanabe
Acting Auditor-Controller
Los Angeles County
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 525
Los Angeles, CA 90012

Dear Ms. Watanabe:

The State Controller's Office audited the methods employed by Los Angeles County to apportion and allocate property tax revenues for the period of July 1, 2006, through June 30, 2007. The audit was conducted pursuant to the requirements of Government Code section 12468.

Our audit disclosed that the county complied with California statutes, except that it included the Educational Revenue Augmentation Fund (ERAF) in the unitary tax apportionment computation during this audit period. The ERAF should not be included because it is a fund and not a taxing agency. Additionally, we noted the following observations:

- Prior to fiscal year (FY) 2006-07, counties could not impose a fee, charge, or other levy on a city, nor reduce a city's allocation of ad valorem property tax revenue, in reimbursement for the services performed by the county under Revenue and Taxation Code section 97.75. Beginning with FY 2006-07, a county may impose a fee, charge, or other levy on a city for these services, but the fee, charge, or other levy can not exceed the actual cost of providing the services.

A legal challenge has arisen regarding the method used to impose the fee for services provided under Revenue and Taxation Code sections 97.68 and 97.70. The legal challenge has raised the possibility that the county may not be in compliance with the Revenue and Taxation Code. At this time, this finding does not warrant a reportable condition, but is only an observation until the legal issues are resolved. After all legal challenges are resolved, this process will be reviewed again to determine if any adjustments or corrections are warranted and the report will be modified accordingly.

- The county placed the “no- and low-property tax cities” (also known as Tax Equity Allocations or TEA) permanently in its factor file, adjusted for the Educational Revenue Augmentation Fund (ERAF), so that future growth including the ERAF would automatically be computed within its AB 8 process. The county does not compute annually the 7% formula. Though the county’s process had been accepted in the past, a legal challenge in another county has raised the possibility that it may not be in compliance with the Revenue and Taxation Code. Until the legal issues are resolved, this process is noted here, but will not be determined complete. This process will be reviewed again to determine if any adjustments or corrections are warranted.

If you have any questions, please contact Steven Mar, Chief, Local Government Audits Bureau, at (916) 324-7226.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

cc: Jody Martin
 Joint Legislative Budget Committee
 Peter Detwiler, Consultant
 Senate Local Government Committee
 Elvia Dias, Assistant
 Senate Local Government Committee
 Dixie Martineau-Petty, Secretary
 Assembly Local Government Committee
 Martin Helmke, Consultant
 Senate Revenue and Taxation Committee
 Kimberly Bott, Chief Consultant
 Assembly Revenue and Taxation Committee
 Catherine Smith, Executive Director
 California Special Districts Association

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Audit Report

Summary

The State Controller's Office (SCO) audited the methods employed by Los Angeles County to apportion and allocate property tax revenues for the period of July 1, 2006, through June 30, 2007.

Our audit disclosed that the county complied with California statutes for the allocation and apportionment of property tax revenues, except that it included the Educational Revenue Augmentation Fund (ERAF) in the unitary tax apportionment computation during this audit period. The ERAF should not be included because it is a fund and not a taxing agency. Additionally, we noted the following observations:

- Prior to fiscal year (FY) 2006-07, counties could not impose a fee, charge, or other levy on a city, nor reduce a city's allocation of ad valorem property tax revenue, in reimbursement for the services performed by the county under Revenue and Taxation Code section 97.75. Beginning with FY 2006-07, a county may impose a fee, charge, or other levy on a city for these services, but the fee, charge, or other levy can not exceed the actual cost of providing the services.

A legal challenge has arisen regarding the method used to impose the fee for services provided under Revenue and Taxation Code sections 97.68 and 97.70. The legal challenge has raised the possibility that the county may not be in compliance with the Revenue and Taxation Code. At this time, this finding does not warrant a reportable condition, but is only an observation until the legal issues are resolved. After all legal challenges are resolved, this process will be reviewed again to determine if any adjustments or corrections are warranted and the report will be modified accordingly.

- The county placed the "no- and low-property tax cities" (also known as Tax Equity Allocations or TEA) permanently in its factor file, adjusted for the Educational Revenue Augmentation Fund (ERAF), so that future growth including the ERAF, would automatically be computed within its AB 8 process. The county does not compute annually the 7% formula. Though the county's process had been accepted in the past, a legal challenge in another county has raised the possibility that it may not be in compliance with the Revenue and Taxation Code. Until the legal issues are resolved, this process is noted here, but will not be determined complete. This process will be reviewed again to determine if any adjustments or corrections are warranted.

Background

After the passage of Proposition 13 in 1978, the California State Legislature enacted new methods for allocating and apportioning property tax revenues to local government agencies and public schools. The main objective was to provide local government agencies with a property tax base that would grow as assessed property values increased. These methods have been further refined in subsequent laws passed by the Legislature.

One key law was Assembly Bill 8, which established the method of allocating property taxes for fiscal year (FY) 1979-80 (base year) and subsequent fiscal years. The methodology is commonly referred to as the AB 8 process or the AB 8 system.

The property tax revenues that local government agencies receive each fiscal year are based on the amount received in the prior year, plus a share of the property tax growth within their boundaries. Property tax revenues are then apportioned and allocated to local agencies and schools using prescribed formulas and methods defined in the Revenue and Taxation Code.

The AB 8 base process involved numerous steps, including the transfer of revenues from schools to local agencies (AB 8 shift) and the development of the tax rate area annual tax increment apportionment factors (ATI factors), which determine the amount of property tax revenues to be allocated to each jurisdiction.

The total amount to be allocated to each jurisdiction is then divided by the total amount to be allocated to all entities to determine the AB 8 apportionment factor (percentage share) for each entity for the year. The AB 8 factors are computed each year for all entities, using the revenue amounts established in the prior year. These amounts are adjusted for growth annually, using ATI factors.

Subsequent legislation removed revenues generated by unitary and operating nonunitary property from the AB 8 system. This revenue is now allocated and apportioned under a separate system.

Other legislation established an Educational Revenue Augmentation Fund (ERAF) in each county. Most local government agencies are required to transfer a portion of their property tax revenues to the fund. The fund is subsequently allocated and apportioned to schools by the county auditor according to instructions received from the county superintendent of schools or the State Chancellor of Community Colleges.

Revenues generated by the different types of property tax are apportioned and allocated to local agencies and schools using prescribed formulas and methods, as defined in the Revenue and Taxation Code. Taxable property includes land, improvements, and other properties that are accounted for on the property tax rolls maintained primarily by the county assessor. Tax rolls contain an entry for each parcel of land, including the parcel number, the owner's name, and the value. Following are the types of property tax rolls:

- *Secured Roll*—This roll contains property that, in the opinion of the assessor, has sufficient value to guarantee payment of the tax levies and that, if necessary, can be sold by the tax collector to satisfy unpaid tax levies.
- *Unsecured Roll*—This roll contains property that, in the opinion of the assessor, does not have sufficient “permanence” or have other intrinsic qualities to guarantee payment of taxes levied against it.

- *State-Assessed Roll*—This roll contains public utility and railroad properties, assessed as either unitary or nonunitary property by the State Board of Equalization.
- *Supplemental Roll*—This roll contains property that has been reassessed due to a change in ownership or the completion of new construction, where the resulting change in assessed value is not reflected in other tax rolls.

To mitigate problems associated with the apportionment and allocation of property taxes, legislation (SB 418) was enacted in 1985 that requires the State Controller to audit the counties' apportionment and allocation methods and report the results to the California State Legislature.

Objective, Scope, and Methodology

Our audit objective was to review the county's apportionment and allocation of property tax revenues to local government agencies and public schools within its jurisdiction to determine whether the county complied with Revenue and Taxation Code requirements.

To meet the objective, we reviewed the systems for apportioning and allocating property tax revenues used by the county auditor and the subsystems used by the tax collector and the assessor.

We performed the following procedures:

- Performed tests to determine whether the county correctly apportioned and allocated property tax revenue.
- Interviewed key personnel and reviewed supporting documentation to gain an understanding of the county's property tax apportionment and allocation processes.
- Reviewed apportionment and allocation reports prepared by the county showing the computations used to develop the property tax distribution factors.
- Reviewed tax rate area (TRA) reports to verify that the annual tax increment was computed properly.
- Reviewed county unitary and operating nonunitary reports and Board of Equalization reports and verified the computations used by the county to develop the unitary and operating nonunitary property tax distribution factors.
- Reviewed redevelopment agency (RDA) reports prepared by the county and verified the computations used to develop the project base amount and the tax increment distributed to the RDA.
- Reviewed property tax administration cost reports prepared by the county and verified administrative costs associated with procedures used for apportioning and allocating property tax to local government agencies and school districts.

- Reviewed ERAF reports prepared by the county and verified the computations used to determine the shift of property taxes from local agencies to the ERAF and, subsequently, to public schools.
- Reviewed reports and computations prepared by the county to determine any increases in property tax revenues due cities having low or non-existent property tax amounts.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit covered the period of July 1, 2006, through June 30, 2007. However, we did not audit the county's financial statements. Our audit scope was limited to:

- Reviewing operational procedures and significant applicable controls over the apportionment and allocation process;
- Examining selected property tax apportionment and allocation records; and
- Reviewing related property tax revenue data used to determine the apportionment and allocation computation process.

We limited our review of the county's internal controls to gaining an understanding of the transaction flow in order to develop appropriate auditing procedures. We did not evaluate the effectiveness of all internal controls.

In addition, we tested transactions used to apportion and allocate property taxes and performed other procedures deemed necessary. This report relates solely to the method used by the county to apportion and allocate property taxes.

Conclusion

Our audit disclosed that, except for the item discussed in the Finding and Recommendation section of this report, Los Angeles County complied with California statutes for the apportionment and allocation of property tax revenues for the period of July 1, 2006, through June 30, 2007. The county should correct the item discussed in the Finding and Recommendation section.

Additionally, we noted the following observations:

- Prior to fiscal year (FY) 2006-07, counties could not impose a fee, charge, or other levy on a city, nor reduce a city's allocation of ad valorem property tax revenue, in reimbursement for the services performed by the county under Revenue and Taxation Code section 97.75. Beginning with FY 2006-07, a county may impose a fee, charge, or other levy on a city for these services, but the fee, charge, or other levy can not exceed the actual cost of providing the services.

A legal challenge has arisen regarding the method used to impose the fee for services provided under Revenue and Taxation Code sections 97.68 and 97.70. The legal challenge has raised the possibility that the county may not be in compliance with the Revenue and Taxation Code. At this time, this finding does not warrant a reportable condition, but is only an observation until the legal issues are resolved. After all legal challenges are resolved, this process will be reviewed again to determine if any adjustments or corrections are warranted and the report will be modified accordingly.

- The county placed the “no- and low-property tax cities” (also known as Tax Equity Allocations or TEA) permanently in its factor file, adjusted for the Educational Revenue Augmentation Fund (ERAF), so that future growth including the ERAF, would automatically be computed within its AB 8 process. The county does not compute annually the 7% formula. Though the county’s process had been accepted in the past, a legal challenge in another county has raised the possibility that it may not be in compliance with the Revenue and Taxation Code. Until the legal issues are resolved, this process is noted here, but will not be determined complete. This process will be reviewed again to determine if any adjustments or corrections are warranted.

Follow-up on Prior Audit Findings

Our prior audit report, issued March 21, 2007, included no findings related to the apportionment and allocation of property tax revenues by the county.

Views of Responsible Official

We issued a draft audit report on November 12, 2008. Wendy L. Watanabe, Acting Auditor-Controller, responded by letter dated December 23, 2008 (Attachment). She disagreed with the audit results.

Restricted Use

This report is solely for the information and use of Los Angeles County, the California Legislature, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

February 25, 2009

Finding and Recommendation

FINDING— Unitary and operating nonunitary apportionment

The county included the Educational Revenue Augmentation Fund (ERAF) in the unitary tax apportionment computation during this audit period. The ERAF should not be included because it is a fund and not a taxing agency.

Requirements for the apportionment and allocation of unitary and operating nonunitary property taxes are found in Revenue and Taxation Code section 100.

Unitary properties are those properties on which the Board of Equalization “may use the principle of unit valuation in valuing properties of an assessee that are operated as a unit in the primary function of the assessee” (i.e., public utilities and railroads). The Revenue and Taxation Code further states, “Operating nonunitary properties are those that the assessee and its regulatory agency consider to be operating as a unit, but the board considers not part of the unit in the primary function of the assessee.”

In fiscal year 1988-89, the Legislature established a separate system for apportioning and allocating the unitary and operating nonunitary property taxes. The Legislature established the unitary and operating nonunitary base year and developed formulas to compute the distribution factors for the fiscal years that followed.

Recommendation

For all future unitary tax apportionment computations, the ERAF should not be included since it does not qualify as a “taxing jurisdiction” under Revenue and Taxation Code section 100. Thus, an ERAF is not eligible to share and its amount should be distributed proportionately among all taxing jurisdictions that contributed to the fund.

County’s Response

My office agrees that ERAF is not a taxing entity but disagrees that ERAF is improperly included in the unitary apportionment computation.

The audit report states the requirements for the apportionment and allocation of unitary and operating nonunitary property taxes are found in Revenue and Taxation Code Section 100. Revenue and Taxation Code Section 100 (c) (3) provides:

If the amount of property tax revenues available for allocation to all taxing jurisdictions in the current fiscal year from unitary and operating nonunitary property, exclusive of revenue attributable to qualified property under Section 100.95 and levies for debt service, exceeds 102 percent of the property tax revenue received by all taxing jurisdictions from all unitary and operating nonunitary property in the prior fiscal year, exclusive of revenue attributable to qualified property under Section 100.95 and levies for debt service, the amount of revenue in excess of 102 percent shall be

allocated to all taxing jurisdictions in the county by a ratio determined by dividing each taxing jurisdiction's share of the county's total ad valorem tax levies for the secured roll for the prior year, exclusive of levies for qualified property under Section 100.95 and levies for debt services, by the county's total ad valorem tax levies for the secured roll for the prior year, exclusive of levies for qualified property under Section 100.95 and levies for debt service.

"Taxing jurisdiction" is defined in §100 (e) as including a redevelopment agency; but redevelopment agencies have no taxing power. Thus the term "taxing jurisdiction" in §100 is not necessarily confined to "jurisdictions" as defined in §95.

In the 2006-07 legislative session, §100.95 was added to change the allocation of new public utility construction after 2007. §100.95 holds harmless, (with counties and non-enterprise special districts) the allocations made to "school entities". However, there would be no need to protect school entities' allocations if such entities, including ERAF, were not entitled to any under §100.

Our view is that the term "taxing jurisdiction" in §100 was intended to broadly capture both jurisdictions (as defined in §95) and ERAF as entities, which receive defined property tax share under part 0.5, Chapter 6 of the Revenue and Taxation Code.

The Statewide Property Tax Manager's Reference Manual is consistent with this approach and illustrates the calculation as including ERAF. Further, the State Association of County Auditors (SACA) recommends that tax managers follow the Reference Manual procedures as standard practice for the county auditors throughout the State.

Representatives from your office have verbally discussed this matter with the SACA and the Statewide Property Tax Managers Subcommittee. Your staff has indicated your position is based on an unpublished State Attorney General Opinion that states ERAF is not a taxing jurisdiction and should be excluded in the unitary calculation. The SACA and the Statewide Property Tax Managers Subcommittee has requested a copy of the opinion on many occasions, however, your office has declined to provide it.

Since we consider that our current method is not inconsistent with the Revenue and Taxation Code and the computation is a statewide standard practice, the County of Los Angeles respectfully declines to exclude ERAF in the unitary calculation. Absent further legislative clarification, my office will continue to apportion and allocate the unitary property tax revenue according to the Statewide Property Tax Manager's Reference Manual.

SCO's Comment

The ERAF is a fund—an accounting entity—not a taxing jurisdiction.

The county points out that Revenue and Taxation Code section 100, subsection (e), includes redevelopment agencies as a taxing jurisdiction even though redevelopment agencies do not have taxing power. The county then concludes that the term "taxing jurisdiction" in Revenue and

Taxation Code section 100 is “not necessarily confined to ‘jurisdictions’ as defined in §95.” We do not find anything in statute that would support this conclusion. Rather, by including redevelopment agencies as taxing jurisdictions in Revenue and Taxation Code section 100, subsection (e), the Legislature has shown that it can include a non-taxing jurisdiction in the definition of taxing jurisdictions. In this case, the Legislature included redevelopment agencies and did not include the ERAF.

The county further notes that Revenue and Taxation Code section 100.95 “holds harmless . . . the allocations made to ‘school entities.’” The county concludes that there would be no need to “protect school entities’ allocations if such entities, including ERAF, were not entitled to any under §100.” The county also states its view that “the term ‘taxing jurisdiction’ in §100 was intended to broadly capture both jurisdictions (as defined in §95) and ERAF as entities, which receive defined property tax share under Part 0.5, Chapter 6 of the Revenue and Taxation Code.”

The county is referring to Revenue and Taxation Code section 100.95, subdivisions (a)(3) and (a)(3)(A)(i), which state:

The county auditor shall allocate the property tax revenues derived from applying the tax rate described in paragraph (1) of subdivision (b) of Section 100 to the qualified property described in this section as follows:

School entities, as defined in subdivision (f) of Section 95, shall be allocated an amount equivalent to the same percentage the school entities received in the prior fiscal year from the property tax revenues paid by the utility in the county in which the qualified property is located.

The section does not hold harmless or protect the allocations made to school entities. The section defines the percentage of property taxes the school entities are to receive from the property taxes generated from the qualified property, not a dollar amount. Revenue and Taxation section 100.95, subsections (3)(A)(ii) and (iii), contain similar wording for the county and specified special districts.

Similarly, Revenue and Taxation Code section 100.95, subdivisions (a)(4) and (a)(5), provides:

(4) The county auditor shall allocate the property tax revenues derived from applying the tax rate described in paragraph (2) of subdivision (b) of Section 100 to the qualified property described in this section in accordance with subdivision (d) of Section 100, except that school entities, as defined in subdivision (f) of Section 95, shall be allocated an amount equivalent to the same percentage the school entities received in the prior fiscal year from the property tax revenues paid by the utility in the county in which the qualified property is located.

(5) In order to provide the allocations required by paragraphs (3) and (4), the county auditor shall make any necessary pro rata reductions in allocations of property taxes attributable to the qualified property to jurisdictions other than those receiving an allocation under paragraphs (3) and (4).

The reference to Revenue and Taxation Code section 95, subdivision (f), would indicate that the ERAF may receive an allocation from the revenues generated from the specified qualified property in Revenue and Taxation Code section 100.95, but it does not guarantee it. There is no such reference to Revenue and Taxation Code section 95, subdivision (f), in Revenue and Taxation Code section 100, only a statement related to taxing jurisdictions.

An unpublished SCO legal opinion supports our position that the ERAF is not a taxing jurisdiction.

We are not aware of a State Attorney General Opinion on this subject.

The finding remains as written.

**Attachment—
County's Response to
Draft Audit Report**



**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2706
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
ACTING AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
MARIA M. OMS

December 23, 2008

Mr. Steven Mar, Chief
Local Government Audits Bureau
State Controller's Office, Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

Dear Mr. Mar:

**RE: PROPERTY TAX APPORTIONMENT AND ALLOCATION SYSTEM AUDIT
REPORT FOR JULY 1, 2006 THROUGH JUNE 30, 2007**

Thank you for the opportunity to reply to your finding for the audit identified above. I am responding to your audit recommendation stating that the County of Los Angeles should exclude the Educational Revenue Augmentation Fund (ERAF) from the unitary tax apportionment computation because ERAF is not a taxing entity.

My office agrees that ERAF is not a taxing entity but disagrees that ERAF is improperly included in the unitary apportionment computation.

The audit report states the requirements for the apportionment and allocation of unitary and operating nonunitary property taxes are found in Revenue and Taxation Code Section 100. Revenue and Taxation Code Section 100 (c) (3) provides¹:

If the amount of property tax revenue available for allocation to all taxing jurisdictions in the current fiscal year from unitary and operating nonunitary property, exclusive of revenue attributable to qualified property under Section 100.95 and levies for debt service, exceeds 102 percent of the property tax revenue received by all taxing jurisdictions from all unitary and operating nonunitary property in the prior fiscal year, exclusive of revenue attributable to qualified property under Section 100.95 and levies for debt service, the amount of revenue in excess of 102 percent shall be allocated to all taxing jurisdictions in the county by a ratio determined by dividing each taxing jurisdiction's share of the county's total ad valorem tax levies for the secured roll for the prior year, exclusive of levies for qualified property under Section 100.95 and levies for debt service, by the county's total ad valorem tax levies for the secured roll for the prior year, exclusive of levies for qualified property under Section 100.95 and levies for debt service.

¹ All statutory references are to the Revenue and Taxation Code.

"To Enrich Lives Through Effective and Caring Service"

Mr. Steven Mar
December 23, 2008
Page 2

"Taxing jurisdiction" is defined in §100 (e) as including a redevelopment agency; but redevelopment agencies have no taxing power. Thus the term "taxing jurisdiction" in §100 is not necessarily confined to "jurisdictions" as defined in §95.

In the 2006-07 legislative session, §100.95 was added to change the allocation of new public utility construction after 2007. §100.95 holds harmless, (with counties and non-enterprise special districts) the allocations made to "school entities". However, there would be no need to protect school entities' allocations if such entities, including ERAF, were not entitled to any under §100.²

Our view is that the term "taxing jurisdiction" in §100 was intended to broadly capture both jurisdictions (as defined in §95) and ERAF as entities, which receive defined property tax share under Part 0.5, Chapter 6 of the Revenue and Taxation Code.

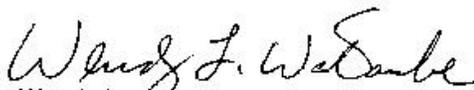
The Statewide Property Tax Manager's Reference Manual is consistent with this approach and illustrates the calculation as including ERAF. Further, the State Association of County Auditors (SACA) recommends that tax managers follow the Reference Manual procedures as standard practice for the county auditors throughout the State.

Representatives from your office have verbally discussed this matter with the SACA and the Statewide Property Tax Managers Subcommittee. Your staff has indicated your position is based on an unpublished State Attorney General Opinion that states ERAF is not a taxing jurisdiction and should be excluded in the unitary calculation. The SACA and the Statewide Property Tax Managers Subcommittee has requested a copy of the opinion on many occasions, however, your office has declined to provide it.

Since we consider that our current method is not inconsistent with the Revenue and Taxation Code and the computation is a statewide standard practice, the County of Los Angeles respectfully declines to exclude ERAF in the unitary calculation. Absent further legislative clarification, my office will continue to apportion and allocate the unitary property tax revenue according to the Statewide Property Tax Manager's Reference Manual.

Should you have any questions or desire further discussion, please contact Susan Linschoten of my staff at (213) 974-8361.

Very truly yours,



Wendy L. Watanabe
Acting Auditor-Controller

² ERAF is a "school entity" as defined in subdivision (f) of Section 95.

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>