

STATE OF CALIFORNIA

Report to the California State Legislature

PROPERTY TAX APPORTIONMENTS

Calendar Year 2012



JOHN CHIANG
California State Controller

March 2013



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California State Controller

March 27, 2013

To the Members of the State Legislature
and the People of California:

Re: Property Tax Apportionments Report to the Legislature for Calendar Year 2012

I am pleased to present the Property Tax Apportionments report for calendar year 2012. This report, prepared pursuant to Government Code section 12468, is intended to help mitigate problems associated with the counties' apportionment and allocation of property tax revenues.

The audits completed by the State Controller's Office in 2012 found the audited counties generally to be in compliance with the legal requirements for allocating property tax revenues. However, this report notes specific problem areas relative to individual counties.

I hope you find the report informative and useful for future policy decisions.

Sincerely,

Original signed by

JOHN CHIANG
California State Controller

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Executive Summary

This report summarizes the results of the State Controller's Office (SCO) audit of county property tax apportionments and allocations during the 2012 calendar year. After the passage of Proposition 13 in 1978, the California 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 agencies with a property tax base that would grow as assessed property values increase.

Property tax revenues that local governments receive each year are based on the amount received the prior year plus a share of the property tax growth within their boundaries. Property tax revenues are then allocated to local agencies and schools using prescribed formulas and methods defined in the California Revenue and Taxation Code. This methodology is commonly referred to as the AB 8 process or the AB 8 system. The method has been further refined in subsequent laws passed by the Legislature.

The SCO's property tax audit program began on July 1, 1986, pursuant to Revenue and Taxation Code section 95.6 (now Government Code section 12468). The statute mandates that the SCO perform audits of the allocation and apportionment of property tax revenues by counties and make specific recommendations to counties concerning their property tax administration. The statute also specifies that the SCO is to prepare an annual report summarizing the results of its findings under this audit program.

We developed and implemented a comprehensive audit program that includes, but is not limited to, a detailed analysis of past and current requirements of property tax laws and an examination of property tax systems, processes, and records at the county level. Each audit encompasses an evaluation of a county's property tax apportionment methodology, allocation procedures, and compliance with applicable laws and regulations. We applied procedures considered necessary and appropriate to provide a basis for reporting on the areas examined.

Government Code section 12468 requires that audits be conducted periodically for each county according to a prescribed schedule based on county population. During 2012, the SCO completed audits of two counties' property tax apportionment and allocation systems, processes, and records. The two counties are Calaveras and Ventura.

Recent legislation added and amended sections of the Health and Safety Code which mandated the winding down of redevelopment agency activities and imposed additional duties on the Controller related to the winding down process. Property tax auditors have been assigned to perform these additional duties, which are documented in separate reports for each redevelopment agency.

Current statute does not allow counties to charge school and community college districts, the county superintendent of schools and the Educational Revenue Augmentation Fund (ERAF) for property tax administrative costs. The Legislature may wish to consider legislation to address an apparent conflict between Revenue and Taxation Code section 95.3 and Health and Safety Code sections 34183 and 34188 which may indirectly charge those costs to school and community college districts, the county superintendent of schools and the ERAF.

As a part of our audit, we performed follow-up reviews to ensure that the counties properly addressed the findings identified in our previous audit reports. Ventura County did not resolve all findings noted in the prior audit.

Except for the findings and recommendations noted in this report, the processes used by the two counties audited during 2012 appear to comply with the requirements for the apportionment and allocation of property tax revenues.

Our audit report findings are broadly classified as follows:

Prior Audits

Ventura County did not resolve all findings noted in the prior audit.

Current Audits

- Calaveras County miscalculated the annual tax increment growth percentages used to compute the Educational Revenue Augmentation Fund shift, causing the AB 8 revenues and apportionment factors to be incorrect.
- The above error caused the factors and allocations in the supplemental property tax system to be incorrect for all fiscal years.
- Ventura County excluded the Educational Revenue Augmentation Fund from the supplemental apportionment computations.
- In Ventura County, redevelopment agency mandatory pass-through payments included the Educational Revenue Augmentation Fund.
- Both Calaveras and Ventura counties included the Educational Revenue Augmentation Fund in the unitary and operating nonunitary apportionment computations. In addition, Calaveras County incorrectly computed the apportionment factors and allocations.
- In Calaveras County, because of other errors in the AB 8 system, the factors and allocations in the property tax administrative cost system were incorrect.
- In Ventura County, the County Superintendent of Schools was included in the payment for the Educational Revenue Augmentation Fund shortfall into the county's vehicle license fee fund. In Calaveras County, errors in the computation of the annual tax increment percentages caused the Educational Revenue Augmentation Fund shift amounts to be incorrect.

We previously noted two pending legal issues that could have an impact on many counties:

- The first issue concerns the computation of administrative cost pro rata shares chargeable to local agencies and whether certain subvention revenues are to be included in the computation.
- The second issue concerns the computation of tax equity allocation amounts for low- and no-tax cities.

The counties audited generally agreed with most findings, except as noted in the findings of individual audits, and have stated that corrective action has been, or will be taken, to rectify the issues noted in our audit reports.

Overview

Introduction

This report presents the results of the audits of Calaveras County's and Ventura County's property tax apportionments and allocations completed by the State Controller's Office (SCO) in calendar year 2012. Government Code section 12468 requires that such audits be conducted periodically for each county according to a prescribed schedule based on county population. The purpose of the audits is to help mitigate problems associated with property tax apportionment and allocation.

Except for the findings and recommendations noted in this report, the two audited counties complied with the requirements for the apportionment and allocation of property tax revenues.

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 agencies with a property tax base that would grow as assessed property values increase. These methods have been further refined in subsequent laws passed by the Legislature.

One key law was Assembly Bill 8 (AB 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.

Property tax revenues that local governments receive each fiscal year are based on the amount received 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 process involves several steps, including the transfer of revenues from schools to local agencies and the development of the tax rate area annual tax increment growth (ATI) factors, which determine the amount of property tax revenues allocated to each entity (local agency and school). The total amount allocated to each entity is then divided by the total amount to be allocated to all entities to determine the AB 8 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 has removed revenue generated by unitary and operating nonunitary property and pipelines 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 ERAF. The fund is subsequently allocated and apportioned by the county auditor according to instructions received from the local superintendent of schools or chancellor of the California community colleges.

Taxable property includes land, improvements, and other properties that are accounted for on the property tax rolls, which are primarily maintained by the county assessor. Tax rolls contain an entry for each parcel of land, including parcel number, owner's name, and value. The types of property tax rolls are:

- *Secured Roll*—Property that, in the opinion of the assessor, has sufficient value to guarantee payment of the tax levies and that, if unpaid, can be satisfied by the sale of the property by the tax collector.
- *Unsecured Roll*—Property that, in the opinion of the assessor, does not constitute sufficient “permanence” or have other intrinsic qualities to guarantee payment of taxes levied against it.
- *State-Assessed Roll*—Utility properties, composed of unitary and nonunitary value, assessed by the State Board of Equalization.
- *Supplemental Roll*—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.

Audit Program

The property tax audit program began on July 1, 1986, under Revenue and Taxation Code section 95.6 (now Government Code section 12468). The statute mandates that the State Controller periodically perform audits of the allocation and apportionment of property tax revenues by counties and make specific recommendations to counties concerning their property tax administration. However, the State Controller's authority to compel resolution of its audit findings is limited to those findings involving an overpayment of State funds.

Overpayment of State General Fund money is recoverable by the State under several provisions of law. In addition, the State Controller has broad authority to recover overpayments made from the State Treasury. If an audit finds overpayment of State funds, and the State agency that made or authorized the payment does not seek repayment, the SCO is authorized to pursue recovery through a variety of means (according to Government Code sections 12418–12419.5). The specific remedy employed by the SCO depends on the facts and circumstances of each situation.

The SCO developed and implemented a comprehensive audit program to carry out the mandated duties. The comprehensive audit program includes, but is not limited to, a detailed analysis of past and current requirements of property tax laws and an examination of property tax records, processes, and systems at the county level.

These property tax apportionment audits have identified and aided in the correction of property tax underpayments to public schools. The underallocation of property taxes by individual counties to their public schools results in a corresponding overpayment of State funds to those schools by the same amount. This, in turn, causes public schools in other counties to receive less State funding because the total funds available are limited. Subsequent legislation forgave some counties for underpayments to schools without requiring repayment or assessment of penalties. However, the legislation required that the cause of the underallocations, as identified by the audits, be corrected.

Audit Scope

Each audit encompasses an evaluation of a county's property tax apportionment methodology, allocation procedures, and compliance with applicable laws and regulations. The auditors used procedures considered necessary to provide a basis for reporting on the areas examined. In conducting the audits, the auditors focused on the following areas to determine if:

- The apportionment and allocation of the ATI was in accordance with Revenue and Taxation Code sections 96 through 96.5;
- The methodology for redevelopment agencies' base-year calculations and apportionment and allocation of the ATI was in accordance with Revenue and Taxation Code sections 96.4 and 96.6, and Health and Safety Code sections 33670 through 33679;
- The effect of jurisdictional changes on base-year tax revenues and the ATI was in accordance with Revenue and Taxation Code section 99;
- The apportionment and allocation of property tax revenues from supplemental assessments was in accordance with Revenue and Taxation Code sections 75.60 through 75.71;
- The apportionment and allocation of state-assessed unitary and operating nonunitary property taxes was in accordance with Revenue and Taxation Code section 100;
- The computation and apportionment of property tax revenues to low- and no-tax cities was in accordance with Revenue and Taxation Code section 98;
- The computation and collection of local jurisdictions' property tax administrative costs was in accordance with Revenue and Taxation Code sections 95.2 and 95.3;
- The computation and apportionment of property tax revenues to the ERAF was in accordance with Revenue and Taxation Code sections 97 through 97.3; and
- The payment from ERAF was made in compliance with Revenue and Taxation Code section 97.68, commonly known as the "Triple Flip," and section 97.70, commonly known as the "VLF Swap."

Pending Litigation

Property Tax Administration Fees

A dispute arose between the counties and the cities regarding the application of Revenue and Taxation Code section 95.3 relating to the computation of Property Tax Administration Fees (PTAF). The counties generally contended that distribution factors for purposes of distributing PTAF to taxing agencies should be computed including amounts received by cities under Revenue and Taxation Code section 97.68, commonly known as the “Triple Flip,” and section 97.70, commonly known as the “VLF Swap.” The cities generally believed that the Triple Flip and the VLF (Vehicle License Fee) Swap should be excluded from the computation.

Two legal actions were filed on this issue.

In the first action, 47 cities (petitioners) in Los Angeles County filed suit against the county (respondent). In the summary of facts included in the decision, a retired judge acting as referee, noted:

The financial consequences of RESPONDENTS’ method of calculating the PTAF for PETITIONERS are that PETITIONERS’ PTAF fees were, collectively, over \$4.8 million in fiscal year 2006-07 and \$5.3 million in fiscal year 2007-08, more than such fees would have been had the Triple Flip and the VLF Swap additional property tax revenues not been included in PETITIONERS’ property tax share used for apportioning PTAF, [sic] the County’s actual cost of incremental tax allocation/distribution duties required by the Triple Flip and VLF Swap was approximately \$35,000 per year.

On June 2, 2009, the referee determined that the above-described method used by Los Angeles County was correct.

In the second action, filed in Fresno County, seven cities (petitioners) filed suit against the county (respondent). In this action, the court ruled that the method used by Fresno County was not in accordance with statute. This is the same method approved by the referee in Los Angeles County. In relevant part, the court ruled:

Under the County’s methodology, each city’s allocation of property tax revenue is reduced by the amount of PTAF. In the first sentence of section 97.75, the Legislature prohibited counties from reducing the allocation in reimbursement for the services performed under the two swaps. But when the Legislature said what the counties can do to get reimbursed in the second sentence, it did not say that counties could reduce a city’s property tax revenue allocation. But that is exactly the effect of the County’s approach. . . .

Pursuant to section 97.75, Respondents are permitted to charge no more than their actual incremental costs in providing the services specified in Rev. & Tax Code §§ 97.68 and 97.70.

Appellate proceedings in the Fresno case were stayed pending resolution of the appeal to the California Supreme Court in the Los Angeles Case.

On November 19, 2012, the California Supreme Court ruled that the county method of calculating property tax administration fees violated the statutory scheme. The ruling concluded:

We conclude that the Court of Appeal correctly held that section 97.75 does not authorize County's collection of the disputed administration fee, but we further conclude that the Legislature intended no change in how property tax administration fees are calculated under section 95.3 and that ERAF monies diverted by the Triple Flip and VLF Swap remain exempt from the property tax administration fee. Therefore, the County's method of calculating property tax administration fees violates the statutory scheme.

For the reasons discussed above, the Court of Appeal's judgment is affirmed.

Tax Equity Allocation Computations

Some cities historically received little or no property tax allocations from the taxes generated in their jurisdictional boundaries. Legislation was subsequently enacted to provide 7% of the property tax revenue, generated within the boundary of the qualifying city, phased in over a seven-year period. Some counties perform the tax equity allocation (TEA) calculation annually. Other counties have brought the TEA cities into the AB 8 process at 7%, and do not perform the calculation annually. In the past, the SCO has accepted either methodology.

A dispute has arisen between a city and a county concerning the proper method of computing the minimum 7% share, commonly known as "tax equity allocation" or "TEA payment." Among the items of contention is whether or not the TEA city's ERAF shift, pursuant to Revenue and Taxation Code section 97.3, is restored through the TEA payment process, thus effectively making the TEA city exempt from the second shift. The first ERAF shift, under Revenue and Taxation Code section 97.2, requires that the TEA calculations be done "so that those computations do not result in the restoration of any reduction required pursuant to this section." Revenue and Taxation Code section 97.3 does not include similar language.

On October 26, 2011, the First Appellate District Court of Appeal, Division One, ruled among other items:

Here, the operation of the statutory formula accords with the legislative history and effectively defines the reach of ERAF II with respect to qualifying cities entitled to TEA under section 98. That reach is *limited* to *pre*-Proposition 13 low-property-tax cities. The statute does not apply to no-property-tax cities or to low-property-tax cities incorporated after Proposition 13 (i.e., "newly incorporated cities").

We therefore conclude the absence of *any* reference to qualifying cities in the legislative history of ERAF III is consistent with the lack of *any* such reference in the statutory language and indicative of intent that ERAF III is not applicable to any qualifying cities entitled to TEA under section 98.

We thus conclude the publications prepared by the California Auditor-Controller's Association and the State Auditor's report (which simply cites to the materials prepared by the association) are largely at odds with the language and intent of ERAF's II and III and entitled to no deference as to the ERAF issues before us.

We therefore conclude that, unless the Legislature has otherwise provided, it intends that no- and low-property tax cities *actually receive* 7 percent of local property tax revenues as guaranteed by section 98.

Conclusion

The property tax allocation and apportionment system is generally operating as intended. In the interest of efficiency and cost control for both the counties and the State, we submit the Summary of Findings and Recommendations in this report to assist in initiating changes that will help improve the system.

Summary of Findings and Recommendations

Introduction

Except for the findings and recommendations cited in this report, the audit reports issued in 2012 indicated that the two audited counties complied with the legal requirements for the apportionment and allocation of property tax revenues. However, problem areas were identified and are described below. Recommendations to resolve the problems are included with the individual county findings.

Unresolved Prior Audit Findings

Ventura County did not resolve all findings noted in the prior audit.

Computation of Annual Tax Increment Factors

The Revenue and Taxation Code requires that each jurisdiction in a tax rate area (TRA) must be allocated property tax revenues in an amount equal to the property tax revenues allocated to it in the prior fiscal year. The difference between this amount and the total amount of property tax assessed in the current year is known as the annual tax increment (ATI). The computation of the annual tax increment results in a percentage that is used to allocate growth in assessed valuation to a county's local government jurisdictions and schools from the base year forward. Revenue and Taxation Code sections 96 through 96.5 prescribe this methodology. (Some exceptions to this allocation are contained in the Revenue and Taxation Code for specified TRAs.)

Calaveras County miscalculated the annual tax increment growth percentages used to compute the Educational Revenue Augmentation Fund shift, causing the AB 8 revenues and apportionment factors to be incorrect.

Jurisdictional Changes

Revenue and Taxation Code section 99 prescribes the procedures the county must perform in order to make adjustments for the apportionment and allocation of property taxes resulting from changes in jurisdictional controls or changes in responsibilities of local government agencies and schools. The statute requires the county to prepare specific documentation that takes into consideration services and responsibilities.

No errors were noted in this area.

Supplemental Property Tax Apportionments

When a revaluation of property occurs during the fiscal year due to changes in ownership or completion of new construction, supplemental taxes are usually levied on the property. Revenue and Taxation Code sections 75.70, 75.71, and 100.2 provide for the apportionment and allocation of these supplemental taxes.

In Calaveras County, the annual tax increment error caused the factors and allocations in the supplemental property tax system to be incorrect for all fiscal years.

Ventura County excluded the Educational Revenue Augmentation Fund from the supplemental apportionment computations.

Supplemental Property Tax Administrative Fees

In addition to the fee allowed by Revenue and Taxation Code section 95.3 for the administration of the secured tax roll, Revenue and Taxation Code section 75.60 allows the charging of a fee for the administration of the supplemental tax roll. Once the counties adopt a method of identifying the actual administrative costs associated with the supplemental roll, they are allowed to charge an administrative fee for supplemental property tax collections. This fee is not to exceed 5% of the supplemental taxes collected.

No errors were noted in this area.

Redevelopment Agencies

The legal requirements for the apportionment and allocation of property tax to redevelopment agencies (RDA) are found in Revenue and Taxation Code sections 96.4 and 96.6 and Health and Safety Code sections 33670 through 33679. California community redevelopment law entitles a community redevelopment agency to all of the property tax revenue realized from growth in values since the redevelopment project's inception, with specified exceptions.

In Ventura County, redevelopment agency mandatory pass-through payments included the Educational Revenue Augmentation Fund.

Current Requirements

Recent legislation, ABX1 26 (Chapter 5, Statutes of 2011) and AB 1484 (Chapter 26, Statutes of 2012), added and amended sections of the Health and Safety Code and mandated the winding down of redevelopment agency activities. Under ABX1 26, the county auditor-controller is required to "create within the county treasury a Redevelopment Property Tax Trust Fund for the property tax revenues related to each former redevelopment agency, for administration by the county auditor-controller." Distributions from the Redevelopment Property Tax Trust Fund (RPTTF) are made in accordance with specified priorities in Health and Safety Code section 34183.

Excess revenues in the RPTTF are distributed according to the requirements of Health and Safety Code section 34188. Proceeds from asset sales are to be transferred to the auditor-controller for distribution as property tax proceeds under section 34188. Unencumbered balances of redevelopment agency funds, including housing funds, are to be remitted to the auditor-controller for distribution by the auditor-controller using the same methodology for allocation and distribution of property tax revenues provided in Section 34188.

Unitary and Operating Nonunitary Property Taxes

The process for allocating and apportioning property taxes from certain railroad and utility companies functions through the unitary and operating nonunitary tax system employed by the State Board of Equalization. Unitary properties are those properties on which the State Board of Equalization "may apply 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." Revenue and Taxation Code section 100 prescribes the procedures counties must perform to allocate unitary and operating nonunitary property taxes beginning in FY 1988-89.

Both Calaveras and Ventura counties included the Educational Revenue Augmentation Fund in the unitary and operating nonunitary apportionment computations. In addition, Calaveras County incorrectly computed the apportionment factors and allocations.

Property Tax Administrative Fees

Counties are allowed to collect from each appropriate jurisdiction that jurisdiction's share of the cost of assessing, collecting, and apportioning property taxes. Revenue and Taxation Code section 95.3 prescribes the requirements for computing and allocating property tax administrative fees (PTAF). The assessor, tax collector, and auditor generally incur county property tax administrative costs. The county is generally allowed to be reimbursed for these costs.

For FY 2004-05 and FY 2005-06, the county is prohibited by Revenue and Taxation Code section 97.75 from charging a fee for the services provided under Revenue and Taxation Code sections 97.68 and 97.70.

Prior to 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 services performed by the county under Revenue and Taxation Code sections 97.68 and 97.70. Pursuant to 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 shall not exceed the actual cost of providing the services.

A legal challenge arose regarding the method some counties used to impose the fee for the services provided under Revenue and Taxation Code section 97.68 and 97.70.

On November 19, 2012, the California Supreme Court ruled that the method some counties were using to calculate property tax administration fees violated the legislative intent of the statutes.

The SCO did not express an opinion on the computation of the PTAF for the two counties audited. However, it was noted that in Calaveras County, the ATI computation errors resulted in erroneous factors regardless of the method used.

The SCO will review the PTAF process for these two counties as well as for all other counties for which we have not expressed an opinion.

Educational Revenue Augmentation Fund

The legal requirements for the local agency shift of property tax revenues to the Education Revenue Augmentation Fund (ERAF) are contained in Revenue and Taxation Code sections 97 through 97.3. Beginning in FY 1992-93, each local agency was required to shift an amount of property tax revenues to the ERAF using formulas prescribed by the Revenue and Taxation Code. The property tax revenues in the ERAF are subsequently allocated to schools and community colleges using factors supplied by the county superintendent of schools or chancellor of the California community colleges.

Since the passage of the ERAF shift requirements, the Legislature has enacted numerous bills that affect the shift requirements for various local government agencies. One bill was Assembly Bill (AB) 1589 (Chapter 290, Statutes of 1997). This bill primarily addressed three areas related to the ERAF shift: (1) ERAF shift requirements for certain county fire funds for FY 1992-93 (Revenue and Taxation Code section 97.2(c)(4)(B)), (2) a special provision for counties of the second class when computing the ERAF shift amount for county fire funds in FY 1993-94 (Revenue and Taxation Code section 97.3(c)(4)(A)(I)), and (3) ERAF shift requirements for county libraries for FY 1994-95 and subsequent years. After the passage of AB 1589, the State Controller requested advice from the California Attorney General regarding the application of Chapter 290, Statutes of 1997. The Attorney General responded in May 1998.

The Attorney General advised that the amendment to Revenue and Taxation Code section 97.2(c)(4)(B) significantly narrowed the scope of the exemption granted by the code section and was to be given retroactive application. The result is that many counties and special fire protection districts that were able to claim an exemption under the section as it formerly read lost the exemption retroactive to FY 1992-93. Consequently, those counties and special districts were required to shift additional funds to the county ERAF.

In response to the advice by the Attorney General, and noting the severe fiscal impact the loss of the exemption would have on local government agencies, the SCO recommended that the Legislature consider restoring the exemption previously granted to fire protection districts and county fire funds that was eliminated as a result of AB 1589, Chapter 290, Statutes of 1997. Subsequently, the Legislature enacted AB 417 (Chapter 464, Statutes of 1999), restoring the exemption to fire districts.

We noted that, in both counties, the errors in the AB 8 system and the failure to carry forward the correct ERAF shift amounts (with growth) from the prior year caused the ERAF shift amounts for some agencies to be incorrect.

In Ventura County, the County Superintendent of Schools was included in the payment for the Educational Revenue Augmentation Fund shortfall into the county's vehicle license fee fund. In Calaveras County, errors in the computation of the annual tax increment percentages caused the Educational Revenue Augmentation Fund shift amounts to be incorrect.

Tax Equity Allocation

Revenue and Taxation Code section 98 and the Guidelines for County Property Tax Administration Charges and “No/Low Property Tax Cities” Adjustment, provided by the County Accounting Standards and Procedures Committee, provide a formula for increasing the amount of property tax allocated to a city that had either no- or low-property tax revenues.

In the past, SCO auditors have accepted the tax equity allocation formula computations completed by the counties. However, a legal challenge raised the possibility that the methods used may not be in compliance with the Revenue and Taxation Code. On October 26, 2011, the First Appellate District Court of Appeal, Division One, issued its ruling regarding the application of the TEA formula. The SCO will review the no- or low-property-tax revenue procedures again to determine if any adjustments or corrections are warranted, and we will modify any reports accordingly.

Sales and Use Tax/Vehicle License Fee Adjustment

The Revenue and Taxation Code requires allocation of ad valorem property tax revenue by ERAF to Sales and Use Tax and Vehicle License Fee adjustment amount under code sections 97.68 and 97.70. If there is not enough ad valorem property tax revenue in ERAF, the difference shall be reduced from all school districts and community college district that are not excess tax school entities.

No errors were noted in this area.

Item for Legislative Consideration

Revenue and Taxation Code section 95.3 allows a county to charge for the cost of administering the property tax program in the county. While the county computes the school and community college districts and the county superintendent of schools (schools) and Educational Revenue Augmentation Fund (ERAF) shares of these costs, statute does not allow the county to collect these shares. School entities and the ERAF are thus held harmless from administrative cost charges. The Legislature has stated the intent to reimburse the costs attributable to school entities and the ERAF “by a future act of the Legislature that makes an appropriation for purposes of that reimbursement.”

Health and Safety Code section 34183 allows the county auditor-controller to deduct from the RPTTF administrative costs allowed under Health and Safety Code section 34182 and Revenue and Taxation Code section 95.3 prior to making the prioritized distributions that follow. As a result, any balance to be distributed pursuant to section 34188 is reduced, thus reducing all taxing agencies (including schools) and the ERAF’s shares of residual revenues. Consequently, schools and the ERAF are paying a portion of the administrative costs.

Recommendation

Because the Health and Safety Code sections referred to above are not appropriations, the Legislature may wish to consider legislation regarding the charging of administrative costs allowed under Health and Safety Code section 34182 and Revenue and Taxation Code section 95.3 to schools and the ERAF as a result of sections 34183 and 34188.

Findings of Individual County Audits

Introduction

The findings and recommendations included below are presented as they were stated in the County Property Tax Apportionment and Allocation reports issued by the State Controller's Office (SCO) in calendar year 2012. Unless otherwise indicated, the counties agreed with the findings and recommendations.

These findings and recommendations are solely for the information and use of the California Legislature, the respective counties, the Department of Finance, and the SCO; they are not intended to be and should not be used by anyone other than those specified parties. This restriction is not intended to limit distribution of this report or the respective audit reports, which are a matter of public record.

Calaveras County (July 1, 2003, through June 30, 2010)

Follow-up on Prior Audit Findings

The county has satisfactorily resolved the findings noted in our prior audit report, issued October 2005.

FINDING 1— Calculation and distribution of ATI

The county miscalculated the annual tax increment (ATI) growth percentages used to compute the Educational Revenue Augmentation Fund (ERAF) shift, causing the AB 8 revenues and apportionment factors to be incorrect.

Requirements for the apportionment and allocation of the ATI are found in Revenue and Taxation Code sections 96 through 96.5. The annual increment of property tax, which is the change in assessed value from one year to the next, is allocated to tax rate areas (TRA) on the basis of each TRA's share of the incremental growth in assessed valuations. The tax increment is then multiplied by the jurisdiction's annual tax increment apportionment factors for each TRA. These factors were developed in the 1979-80 base year and are adjusted for jurisdictional changes. The tax increment is then added to the tax computed for the prior fiscal year to develop the apportionment for the current fiscal year.

Recommendation

During the audit fieldwork, as recommended by SCO auditors, the county re-computed AB 8 factors and revenue allocations for all fiscal years. These revisions have been verified and documented by the SCO auditors. We will review the tax allocations and correcting adjustments again during the next audit to ensure that the county implemented the corrections for FY 2010-11 and each year thereafter.

County's Response

This office has reviewed the findings and agrees with the recommendations regarding findings 1, 2, 4, and 5. The appropriate steps have been taken to ensure that the calculations be corrected utilizing the recommendations put forth by your office for 2010, going forward. Additionally, this office is in agreement on the amount owed to ERAF based on the 1% of 1% rule per Revenue and Taxation code section 96.1(c)(3).

**FINDING 2—
Supplemental
property tax**

The errors in the AB 8 system, identified in Finding 1, caused the factors and allocations in the supplemental property tax system to be incorrect for all fiscal years.

The legal requirements for supplemental roll property tax apportionment and allocation are found in Revenue and Taxation Code sections 75.60 through 75.71, and 100.2. When there is a change in assessed property value due to changes in ownership or completion of new construction, the property owner is charged a supplemental property tax. This process enables the counties to retroactively tax property for the period when changes in ownership or completion of new construction occurred, rather than at the time the secured roll is developed.

Recommendation

The county should re-compute supplemental factors and revenue re-allocations for all fiscal years. We will review the tax allocations and correcting adjustments during the next audit to ensure that the county implemented the correction for FY 2010-11 and each year thereafter.

County's Response

This office has reviewed the findings and agrees with the recommendations regarding findings 1, 2, 4, and 5. The appropriate steps have been taken to ensure that the calculations be corrected utilizing the recommendations put forth by your office for 2010, going forward. Additionally, this office is in agreement on the amount owed to ERAF based on the 1% of 1% rule per Revenue and Taxation code section 96.1(c)(3).

**FINDING 3—
Unitary and operating
nonunitary
apportionment**

The county incorrectly computed the unitary and operating nonunitary property tax apportionment factors and allocations. In addition, the county included the ERAF in the unitary and operating nonunitary tax apportionment computation during this audit period.

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 FY 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

The county should re-compute unitary factors and revenue re-allocations for all fiscal years. We will review the tax allocations and correcting adjustments during the next audit to ensure that the county implemented the corrections for FY 2010-11 and each year thereafter.

The county should not include the ERAF in the future unitary and operating nonunitary tax apportionment computations, as the ERAF does not qualify as a “taxing jurisdiction” under Revenue and Taxation Code section 100. Thus, the 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

With regards to finding 3, whether or not ERAF should be included in the unitary apportionment is an ongoing issue across the state caused by inconsistency in Revenue and Taxation law. Calaveras County has included ERAF in the allocation of unitary revenue since being written up by the State Controller’s Office for NOT including ERAF in a prior audit. Since that time, the SCO appears to have supported this methodology without a finding until now. While we understand that the position of the SCO has changed on this matter since the prior audit, we are concerned with changing methodology based solely on that fact. Tax law has not changed nor have the guidelines in the California Property Tax Managers’ Reference Manual. Therefore until clear, consistent direction is given through the Tax Law and the California Property Tax Managers’ Reference Manual, we will take this recommendation under advisement.

SCO’s Comment

The ERAF is a fund—an accounting entity, not a taxing jurisdiction—and with respect to the allocation and apportionment of unitary and operating nonunitary taxes, the Legislature has not defined the ERAF as a taxing jurisdiction and, therefore, it should be excluded from the allocation process.

**FINDING 4—
Property tax
administrative costs**

The errors in the AB 8 system, identified in Finding 1, caused the factors and allocations in the property tax administrative costs system to be incorrect.

Requirements for the reimbursement of county property tax administrative costs are found in Revenue and Taxation Code section 95.3. County property tax administrative costs are incurred by the assessor, the tax collector, the assessment appeals board, and the auditor. The county is allowed, depending on the fiscal year and any corresponding exclusions, to be reimbursed by local agencies and public schools for these administrative costs.

Recommendation

The county should re-compute the property tax administrative cost factors, revenue re-allocations, and correcting adjustments for all fiscal years. We will review the property tax administrative cost factors during the next audit to ensure that the county implemented the corrections for FY 2010-11 and each year thereafter.

County's Response

This office has reviewed the findings and agrees with the recommendations regarding findings 1, 2, 4, and 5. The appropriate steps have been taken to ensure that the calculations be corrected utilizing the recommendations put forth by your office for 2010, going forward. Additionally, this office is in agreement on the amount owed to ERAF based on the 1% of 1% rule per Revenue and Taxation code section 96.1(c)(3).

**FINDING 5—
Educational Revenue
Augmentation Fund
(ERAF)**

The error in the computation of the ATI growth percentages, identified in Finding 1, caused the ERAF shift amounts for all fiscal years to be incorrect (Schedule 1).

Requirements for the local agency shift of property tax revenues to the ERAF are primarily found in Revenue and Taxation Code sections 97.1 through 97.3. Beginning in FY 1992-93, most local agencies were required to shift an amount of property tax revenues to the ERAF using formulas detailed in the code. The property tax revenues in the ERAF are subsequently allocated to the public schools using factors supplied by the county superintendent of schools.

For FY 1992-93, the ERAF shift amount for cities was determined by adding a per capita amount to a percentage of property tax revenues received by each city. The amount for counties was determined by adding a flat amount, adjusted for growth, to a per capita amount. The amount for special districts was generally determined by shifting the lesser of 10% of that district's total annual revenues as shown in the FY 1989-90 edition of the State Controller's Report on Financial Transactions Concerning Special Districts, or 40% of the FY 1991-92 property tax revenues received, adjusted for growth. Specified special districts were exempted from the shift.

For FY 1993-94, the ERAF shift for cities and counties was generally determined by:

- Reducing the FY 1992-93 ERAF shift by the FY 1992-93 per capita shift;
- Adjusting the result for growth; and
- Adding the result to a flat amount and a per capita amount determined by the Department of Finance, adjusted for growth.

The FY 1993-94 ERAF shift for special districts, other than fire districts, was generally determined by:

- Multiplying the property tax allocation for FY 1992-93, pre-ERAF, by the Special District Augmentation Fund (SDAF) factor for the district effective on June 15, 1993;
- Adjusting this amount by subtracting the FY 1992-93 shift to the ERAF;
- If the above amount is greater than zero, adjusting this amount for FY 1993-94 growth (zero is used for negative amounts); and
- Adding this amount to the FY 1992-93 ERAF shift, adjusting for growth.

For fire districts, the FY 1993-94 ERAF shift was generally determined by:

- Deducting the FY 1992-93 ERAF shift for the district from the FY 1992-93 property tax allocation;
- Multiplying the result by the SDAF factor for the district effective on June 13, 1993 (net current-year bailout equivalent);
- For a district governed by a board of supervisors, deducting the amount received from the SDAF in FY 1992-93 from the net current-year bailout equivalent; or, for an independent district, deducting the amount received from the SDAF and the difference between the net current-year bailout equivalent and the amount contributed to the SDAF from the net current-year bailout equivalent;
- Adjusting this amount for growth; and
- Adding this amount to the FY 1992-93 ERAF shift, adjusted for growth.

For fiscal years subsequent to FY 1993-94, the amounts determined are adjusted for growth annually to determine the ERAF shift amounts for that year.

Recommendation

During the audit fieldwork, as recommended by SCO auditors, the county re-computed the ERAF shift amounts and factors for all fiscal years. These revisions have been verified and documented by the SCO auditors.

Revenue and Taxation Code section 96.1(c)(3) states “. . . the cumulative reallocation or adjustment may not exceed 1 percent of the total amount levied at a 1-percent rate of the current years’ original secured tax roll.” Therefore, the audit error of \$2,714,054 due the ERAF is reduced to the 1% of the current year’s original secured roll equaling \$594,512.

The county should pay \$594,512 into the ERAF for FY 2003-04 through FY 2009-10.

County’s Response

Due to the size of the payment and the size of our County budget, I would ask that consideration be made by your office to allow for adjustments over a period of 3 years concerning Finding 5, whereby the County owes \$594,512 to ERAF.

SCO’s Comment

Revenue and Taxation Code section 96.1(c)(3) states:

The reallocation shall be completed in equal increments within the following three fiscal years, or as negotiated with the Controller in the case of reallocation to the Educational Revenue Augmentation Fund or school entities.

SCO concurs with the county’s request to make three equal payments within the following three fiscal years. A separate, executed quadruplicate agreement will be submitted to the county for its review and signature.

Ventura County (July 1, 2006, through June 30, 2009)**Follow-up on Prior Audit Findings**

A finding noted in our prior audit, issued December 2008, regarding ERAF supplemental apportionment, has not been satisfactorily resolved.

**FINDING 1—
Supplemental
property tax**

The county excluded the Education Revenue Augmentation Fund (ERAF) from the supplemental apportionment computations during this audit period.

The legal requirements for supplemental roll property tax apportionment and allocation are found in Revenue and Taxation Code sections 75.60 through 75.71, and 100.2. When there is a change in assessed property value due to changes in ownership or completion of new construction, the property owner is charged a supplemental property tax. This process enables the counties to retroactively tax property for the period when

changes in ownership or completion of new construction occurred, rather than at the time the secured roll is developed.

Recommendation

The county should include the ERAF in future supplemental apportionments.

County's Response

We reiterate our position from the prior audit report comments: Ventura County did not improperly exclude ERAF from the supplemental apportionment computations. We further disagree with the finding based upon discussion of the issue of Betty Yee, Chair, State Board of Equalization. (Our discussion with Ms. Yee was communicated to the auditor during the course of his fieldwork). Ms. Yee was responsible for drafting the language in the Revenue and Taxation (R&T) code for the implementation of ERAF, and she confirmed that the Supplemental Roll was not included in ERAF. Ms. Yee further agreed with us that the audit report is attempting to apply the principles for apportioning the Equalized Roll (Secured, Unsecured and State Utility Rolls), which is governed by R&T code 95, et seq., to the apportionment of the Supplemental Roll, which is governed by R&T code 75, et seq. In the R&T code 75.70, ERAF is not referenced as a "school entity" that is to receive Supplemental Roll apportionments. According to the code, "all elementary, high school, and unified school districts within the county," are to participate in the Supplemental Roll apportionments. R&T code 75.70 further specifies that the allocation of property tax revenues to these entities is to occur "without respect to the allocation of property tax revenues pursuant to Chapter 6 (commencing with section 95)," which governs the apportionment of the Equalized Roll and does include ERAF as a "school entity," as defined by R&T code 95(f) [school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendents of schools].

Given R&T code 75.80 identifies the specific entities that participate in the Supplemental Roll apportionments, and the code does not reference school entities as defined under R&T code 95(f), which does include ERAF as a participating school entity, the County of Ventura is correct in its exclusion of ERAF from Supplemental Roll apportionments. In addition, as verified by the State Controller auditor, Ventura County is using the proper factors to apportion Supplemental Roll collections to, "all elementary, high school, and unified school districts within the county;" therefore, all school entities are receiving the correct apportionment of the Supplemental Roll.

Given that our current method is consistent with Revenue and Taxation Code and agrees with the legislative intent per the author of the R&T Code, the County of Ventura respectfully declines to include ERAF in the Supplemental Roll apportionments.

SCO's Comment

Revenue and Taxation (R&T) Code section 75.70(c) provides that supplemental property tax allocations to counties, cities, and special districts are to be calculated on the basis of each entity's property tax apportionment factor determined "pursuant to section 97.5" (now section 96.2) (i.e., in accordance with section 96.2).

Supplemental property tax revenues are not included in the computation of property tax apportionment factors. However, the applicable law makes it clear that the allocation of such revenues is to be made on the basis of, and in accordance with, the apportionment factors.

After the supplemental property tax laws were enacted, section 97.5 (now section 96.2) was amended by Chapter 448, Statutes of 1984, adding as subdivision (f) the identical provision that is now in subdivision (c) of section 96.1 (i.e., supplemental tax revenues are not to be included for purposes of the section). But subdivision (f) was in effect for less than two months (July 16 to September 10, 1984). It was deleted from section 97.5 by Chapter 946, Statutes of 1984, which substituted the following as subdivision (h) of section 97.5:

- (h) Supplemental property tax revenues for 1985-86 and each year thereafter, generated by sections 75 to 75.80, inclusive, shall be apportioned using the property tax apportionment factors for the current year.

Subdivision (h) remained section 97.5 until reorganization of the property tax allocation statutes (Chapter 1167, Statutes of 1994). Former section 97.5 became section 96.2, and the above quoted subdivision (h) became section 100.2. The primary purpose of Chapter 1167 was to "clarify and reorganize" the property tax allocation code provisions. The Legislature did not intend any substantive change in transferring subdivision (h) to section 100.2. This provision was intended to have the same application it had over the previous ten years. The supplemental tax revenues are to be allocated by application of the current year's apportionment factor.

However, the pertinent ERAF sections (section 97, et seq.) specifically provide that "Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to section 96.1 or its predecessor section . . . shall be modified. . . ." This supersedes the pre-ERAF apportionment factor formula.

Section 96.1 is modified by law. There is no unmodified section 96.1, nor any statute that provides for allocation of property tax revenues based on a pre-modified section 96.1 apportionment factor. Section 75.70(c) specifies that supplemental revenues are to be distributed using apportionment factors "pursuant" to section 96.2—that is, factors developed on the basis of a modified section 96.1.

In this regard, sections 97.2(d)(5), 98.2(e)(3), and 97.3(d)(5) specify that amounts allocated from the ERAF “shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.” Additionally, section 95(f) defines “school entities” as including ERAF. As a result of these sections, the ERAF is, in effect, treated the same as a school district with its own property tax apportionment factor. This is consistent with and supports the above interpretation that apportionment factors must be determined for all entities on the basis of a modified section 96.1—that is, after deduction of the ERAF shift moneys.

It should also be noted that Chapter D-6 of the California Property Tax Managers Reference Manual includes the ERAF as an entity to receive supplemental property taxes.

The county has also addressed the exclusion of the ERAF from the unitary and operating nonunitary apportionment process.

The ERAF is a fund—an accounting entity, not a taxing jurisdiction—and with respect to the allocation and apportionment of unitary and operating nonunitary taxes, the Legislature has not defined it as a taxing jurisdiction.

R&T Code section 95(b) defines a jurisdiction as a “local agency, school district, community college district, or county superintendent of school. . . .” R&T Code section 95(f) includes the ERAF in the definition of school entities. It states “School entities means school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendent of schools.” It is clear that the definition of jurisdiction does not include the ERAF but does include all defined school entities except the ERAF. Defining the ERAF as a school entity does not make it a jurisdiction.

R&T Code section 100(e)(3) includes a redevelopment agency as a taxing jurisdiction, demonstrating that the Legislature knows how to include non-taxing entities in the definition of taxing jurisdiction if it so desires. In this case, it omitted the ERAF from the definition of taxing jurisdiction.

The county has stated that its application of law “to include all taxing jurisdictions, including ERAF, in the Unitary Roll apportionment . . . is correct and is fully supported [sic] by clarification to R&T code 100.95(a)(3)(A)(i) for the 2007-08 fiscal year.” The county then quotes the section as included in its response above.

However, the county did not note that R&T Code section 100.95 is concerned with certain “qualified property” and not the unitary and operating nonunitary property of R&T Code section 100. R&T Code section 100.95(c)(1) states:

“Qualified property” means all plant and associated equipment, including substation facilities and fee-owned land and easements, placed in service by the public utility on or after January 1, 2007, and related to the following:

- (A) Electrical substation facilities that meet either of the following conditions:
 - (i) The high-side voltage of the facility’s transformer is 50,000 volts or more.
 - (ii) The substation facilities are operated at 50,000 volts or more.
- (B) Electric generation facilities that have a nameplate generating capacity of 50 megawatts or more.
- (C) Electrical transmission line facilities of 200,000 volts or more.

In addition, the county should exclude the ERAF from the unitary and operating nonunitary apportionment process. The finding remains as written.

**FINDING 2—
Redevelopment
agencies**

The Redevelopment Agency (RDA) AB 1290 mandatory pass-through included the ERAF.

Requirements for the apportionment and allocation of property tax to RDAs are found in Revenue and Taxation Code sections 96.4 and 96.5. California Community Redevelopment Law generally entitles a community redevelopment agency to all of the property tax revenues that are realized from growth in values since the redevelopment project’s inception.

Recommendation

The RDA mandatory AB 1290 pass-through should exclude the ERAF.

County’s Response

We disagree that Ventura County is incorrectly including ERAF in the Redevelopment Agency (RDA) mandatory AB 1290 pass-through. The methodology utilized by Ventura County in include ERAF in the RDA AB 1290 mandatory pass-through is consistent with our interpretation of the applicable statutes.

We understand this issue was raised by the Community Redevelopment Association (CRA) as a result of some counties requiring payment of pass-through to ERAF, even though ERAF is outside the counties’ AB 8 process, and ERAF did not contribute tax increment to the RDAs. In Ventura County, however ERAF is included in our AB 8 process and contributes tax increment to the RDAs; therefore, ERAF appropriately receives AB 1290 pass-through.

The CRA's position is supported by an unpublished opinion from the State Attorney General and a follow-up opinion from the State Controller; however, this issue is the subject of ongoing discussion statewide, and we will continue our current methodology until the issue is resolved either through direction from the State Association of County Auditors (SACA), through legislation, or through litigation.

SCO's Comment

ERAF is not considered an "effected taxing entity" for the purpose of computing pass-through amounts under the requirements of AB 1290. Therefore, it should be excluded from any redevelopment pass-through allocation. This finding remains as written.

FINDING 3— ERAF included in unitary and operating nonunitary apportionment

The county included the ERAF in the unitary and operating nonunitary tax apportionment computations for this audit period.

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 FY 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

The county should not include the ERAF in future unitary and operating nonunitary tax apportionment computations, as the ERAF does not qualify as a "taxing jurisdiction" under Revenue and Taxation Code section 100. Thus, the 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

We disagree with the State Controller's position that Ventura County is incorrectly including ERAF in unitary and operating nonunitary apportionments. Our apportionment process is correct and is fully supported by clarification to R&T code 100.95(a)(3)(A)(i) for the 2007-08 fiscal year. R&T code 100.95(a)(3)(A)(i) states:

“School entities, as defined in subdivision (f) of section 95 [school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendents of schools], 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.”

Our inclusion of ERAF in unitary and operating nonunitary apportionments is further supported by a discussion with Betty Yee, Chair, Board of Equalization. (Our discussion with Ms. Yee was communicated to the auditor during the course of his fieldwork). Ms. Yee was responsible for drafting the language in the Revenue and Taxation (R&T) code for the implementation of ERAF, and she confirmed that ERAF participates in all revenue from the Equalized Roll, which includes unitary and operating nonunitary revenues.

The Statewide Property Tax Managers’ Reference Manual is consistent with our approach and illustrates the calculation to include ERAF. Furthermore, the State Association of County Auditors (SACA) recommends all county auditors make no changes in regards to ERAF in unitary and operating nonunitary apportionments and Revenue and Taxation Code and the Statewide Property Tax Managers’ Reference Manual, and, in addition, agrees with the legislative intent per the author of the R&T Code, the County of Ventura respectfully declines to exclude ERAF from unitary and operating nonunitary apportionments.

SCO’s Comment

The ERAF is a fund—an accounting entity, not a taxing jurisdiction. Revenue and Taxation Code section 100 requires that taxes for unitary and operating nonunitary property be allocated to taxing jurisdictions. As the ERAF is not taxing jurisdiction, it is not eligible to receive unitary and operating nonunitary taxes.

Revenue and Taxation Code section 100(c) states:

The property tax revenue derived from the assessed value assigned to the countywide tax rate area pursuant to subdivision (a) and pursuant to paragraph (2) of subdivision (a) of section 100.1 by the use of the tax rate determined in paragraph (1) of subdivision (b) shall be allocated as follows:

- (1) For the 1988-89 fiscal year and each fiscal year thereafter, each taxing jurisdiction shall be allocated an amount of property tax revenue

Revenue and Taxation Code section 95(a) defines a local agency as a “city, county and special district.” In addition, section 95(b) defines a jurisdiction as a “local agency, school district, community college district or county superintendent of schools.”

The county states that it will continue to follow the guidelines from the State Property Tax Managers’ Manual to allocate unitary and operating nonunitary tax to ERAF. While we recognize the guidelines prepared by the County Property Tax Managers’ Association as a guide, it is important to note that we audit to applicable statutes.

Our finding remains as written.

**FINDING 4—
Educational Revenue
Augmentation Fund
(ERAF)**

The office of the Ventura County Superintendent of Schools was included in the payment for the ERAF shortfall into the county's vehicle license fee (VLF) fund.

Requirements for the local agency shift of property tax revenues to the ERAF are primarily found in Revenue and Taxation Code sections 97.1 through 97.3. Beginning in FY 1992-93, most local agencies were required to shift an amount of property tax revenues to the ERAF using formulas detailed in the code. The property tax revenues in the ERAF are subsequently allocated to the public schools using factors supplied by the county superintendent of schools.

For FY 1992-93, the ERAF shift amount for cities was determined by adding a per capita amount to a percentage of property tax revenues received by each city. The amount for counties was determined by adding a flat amount, adjusted for growth, to a per capita amount. The amount for special districts was generally determined by shifting the lesser of 10% of that district's total annual revenues as shown in the FY 1989-90 edition of the State Controller's Report on Financial Transactions Concerning Special Districts or 40% of the FY 1991-92 property tax revenues received, adjusted for growth. Specified special districts were exempted from the shift.

For FY 1993-94, the ERAF shift for cities and counties was generally determined by:

- Reducing the FY 1992-93 ERAF shift by the FY 1992-93 per capita shift;
- Adjusting the result for growth; and
- Adding the result to a flat amount and a per capita amount determined by the Department of Finance, adjusted for growth.

The FY 1993-94 ERAF shift for special districts, other than fire districts, was generally determined by:

- Multiplying the property tax allocation for FY 1992-93, pre-ERAF, by the Special District Augmentation Fund (SDAF) factor for the district effective on June 15, 1993;
- Adjusting this amount by subtracting the FY 1992-93 shift to the ERAF;
- If the above amount is greater than zero, adjusting this amount for FY 1993-94 growth (zero is used for negative amounts); and
- Adding this amount to the FY 1992-93 ERAF shift, adjusting for growth.

For fire districts, the FY 1993-94 ERAF shift was generally determined by:

- Deducting the FY 1992-93 ERAF shift for the district from the FY 1992-93 property tax allocation;
- Multiplying the result by the SDAF factor for the district effective on June 13, 1993 (net current-year bailout equivalent);
- For a district governed by a board of supervisors, deducting the amount received from the SDAF in FY 1992-93 from the net current-year bailout equivalent; or, for an independent district, deducting the amount received from the SDAF and the difference between the net current-year bailout equivalent and the amount contributed to the SDAF from the net current-year bailout equivalent;
- Adjusting this amount for growth; and
- Adding this amount to the FY 1992-93 ERAF shift, adjusted for growth.

For fiscal years subsequent to FY 1993-94, the amounts determined are adjusted for growth annually to determine the ERAF shift amounts for that year.

Recommendation

The only districts identified in the Revenue and Taxation Code sections to make payments for the ERAF shortfall into the VLF fund are school districts and community college districts. For future ERAF shortfall payments, the office of the Ventura County Superintendent of Schools should be excluded from paying into the VLF fund.

County's Response

We disagree with the State Controller's position that the Ventura County Office of Education should be excluded from the payment for the ERAF shortfall ("negative ERAF") into the County's vehicle license fee (VLF) fund.

Revenue and Taxation Code Section 97.70(a)(1)(B) states that negative ERAF is to be allocated to **all** [emphasis added] school districts and community college districts in the county. The language of the R&T section only excludes school districts that are excess tax school entities, as defined in section 95 of the R&T Code. Earlier in that Chapter, under R&T Code 97.3, a "qualifying school entity" is defined to mean any school district, *county office of education* [emphasis added], or community college district that is not an excess tax school entity as defined in Section 95. The definition is further supported by R&T Code 95(f), which defines "school entities" as school districts, community college districts, the Educational Revenue Augmentation Fund, and *county superintendents of schools* [emphasis added].

We understand that basis for this finding is the absence of the county office of education in the example of how to allocate negative ERAF in the AB 1096 implementation guidelines (“VLF Swap & Triple Flip”). We have discussed the implementation guidelines with various members of county auditors’ offices who were part of the committee that drafted the guidelines. We have been assured that the county office of education is to be included in negative ERAF allocations. In addition, discussions with county property tax managers statewide indicate counties are allocating negative ERFA [sic] to the office of education as a standard practice.

Given that our current method is consistent with Revenue and Taxation Code, the AB 1096 implementation guidelines, and the standard practices of county auditors statewide, the Count of Ventura respectfully declines to exclude the county office of education from negative ERAF allocations.

SCO’s Comment

The county is correct in defining superintendent of schools as a school entity in Revenue and Taxation Code section 97.3. But Revenue and Taxation Code section 97.70 specifically excludes the superintendent of schools from the allocation of negative ERAF. This Revenue and Taxation Code section defines the methodology to reimburse the Vehicle License Fee Property Tax Compensation Fund and prohibits any reduction of allocation from the superintendent of schools as follows:

97.70(f) This section shall not be construed to do any of the following:

- (1) Reduce any allocations of excess, additional, or remaining funds that would otherwise have been allocated to county **superintendents of school**, cities, counties, and cities and counties pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of sections 97.2 and 97.3 or Article 4 (commencing with Section 98) had this section not been enacted. The allocations required by this section shall be adjusted to comply with this paragraph.

The finding remains as written.

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