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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

**LEAGUE OF CALIFORNIA CITIES,
CITY OF VALLEJO, SUCCESSOR
AGENCY TO THE FORMER
VALLEJO REDEVELOPMENT
AGENCY, and CHRISTOPHER K.
MCKENZIE,**

Plaintiffs and Petitioners,

v.

**ANA J. MATOSANTOS in her official
capacity as Director of the State of
California Department of Finance, et al.,**

Defendants and Respondents.

COUNTY OF SOLANO, et al.,

Real Parties in Interest.

**COUNTY OF SANTA CLARA, SANTA
CLARA UNIFIED SCHOOL
DISTRICT,**

Intervenors.

Case No. 34-2012-80001275-CU-WM-GDS

**RULING ON SUBMITTED MATTER:
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE**

Introduction

In this action, plaintiffs League of California Cities, the City of Vallejo, the Successor Agency to the former Vallejo Redevelopment Agency and Christopher K. McKenzie challenge various aspects of the

1 wind-down of redevelopment agency affairs under AB 1484.¹ The Legislature enacted AB 1484 in June,
2 2012, at least in part to address the fact that implementation of the original dissolution and wind-down
3 provisions enacted in 2011 through AB 1x26 was stayed while the California Supreme Court decided a
4 number of constitutional challenges to those laws.

5 As relevant to this action, AB 1484 enacted new statutes governing the so-called “true-up” and
6 “due diligence review” processes.² These processes are complex. In essence, both involve administrative
7 determinations of amounts due from successor agencies for distribution to local taxing entities. AB 1484
8 enacted certain enforcement provisions related to those processes. Those enforcement provisions are the
9 principal subject of plaintiffs’ challenge. In particular, plaintiffs challenge the following statutes:

- 10 • Section 34183.5(b)(2)(C), which provides that if a successor agency does not make a true-
11 up payment as required, “...any city, county or city and county that created the
12 redevelopment agency that fails to make the required payment under this paragraph by
13 July 12, 2012, shall not receive the distribution of sales and use tax scheduled for July 18,
14 2012, or any subsequent payment, up to the amount owed to taxing entities, until the
15 payment required by this paragraph is made”.
- 16 • Section 34179.6(h)(1)(C), which provides that if a successor agency does not make a due
17 diligence review payment as required, and the governmental body which created the
18 redevelopment agency is also performing the duties of the successor agency, the
19 Department of Finance³ may order an offset of the distribution provided to the sales and
20 use tax revenue to the successor agency, or, if DOF does not do so, the County Auditor-

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25 ¹ For the sake of convenience, the complaining parties will be referred to as “plaintiffs” rather than “plaintiffs and
petitioners”, while recognizing that their pleading combines a complaint for declaratory and injunctive relief with a
petition for writ of mandate under Code of Civil Procedure section 1085.

26 ² All of the provisions of AB 1484 at issue in this matter were enacted as part of the Health and Safety Code.
Accordingly, all references to statutes are to that Code unless otherwise indicated.

27 ³ The Department of Finance, which is named in this action as a respondent in the name of its director, is referred to
28 in this ruling as “respondent DOF”.

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Controller may reduce the property tax allocations of the governmental body.⁴

Plaintiffs have asserted a facial constitutional challenge to those provisions of AB 1484, arguing that they violate Article XIII, Sections 24(b), 25.5(a)(1), 25.5(a)(2)(A) and 25.5(a)(3) of the California Constitution, regardless of how they may be applied in practice.⁵

In addition, plaintiffs challenge various other provisions of AB 1484 on the ground that they represent an unconstitutional delegation of legislative power to DOF in its administration of the wind-down process. Finally, plaintiffs contend that DOF has enacted general rules governing the wind-down process under AB 1484 which amount to unlawful underground regulations because DOF did not enact them through formal rule-making procedure set forth in the Administrative Procedure Act.

The petition and complaint in this action essentially seeks declaratory relief in the form of a judgment declaring that all of the challenged provisions of AB 1484 are unconstitutional and may not be enforced and that the alleged underground regulations are unlawful and may not be enforced. Plaintiffs also seek issuance of an injunction and a writ of mandate under Code of Civil Procedure section 1085 directing respondents not to enforce any and all enforcement provisions of AB 1484 declared to be unconstitutional, unlawful and unenforceable.⁶

The petition and complaint names DOF, the State Board of Equalization and the State Controller as defendants and respondents, along with the Auditor-Controller of Solano County. The petition and complaint also names the County of Solano and a number of taxing entities in Solano County as real parties in interest. The Court previously issued an order permitting the County of Santa Clara, the Auditor-Controller of the County of Santa Clara, and the Santa Clara Unified School District to file a

⁴ In the petition and complaint, plaintiffs also allege that Section 34179.6(h)(2) is unconstitutional. Plaintiffs do not list Section 34179.6(h)(2) in the Summary of AB 1484 Violations found on page 7 of their opening brief, and make only one passing reference to that section in the opening brief. However, plaintiffs once again argue the invalidity of this section in their reply brief. Because plaintiffs did not address this section in their opening brief, the Court will treat any claim regarding Section 34179.6(h)(2) as having been abandoned. However, see footnote 13, below.

⁵ Plaintiffs also asserted a constitutional challenge to the true-up process as a whole in the petition and complaint, but have elected not to pursue that challenge, and have dismissed the causes of action asserting it without prejudice.

⁶ The petition and complaint does not seek issuance of a writ of mandate with regard to those provisions of AB 1484 challenged on the basis that they represent an unconstitutional delegation of legislative power, or with regard to the alleged unlawful underground regulations.

1 complaint in intervention in order to appear in opposition to the petition and complaint.⁷

2 The Court heard oral argument in this matter on April 19, 2013. At the close of the hearing, the
3 Court took the matter under submission for the issuance of a written ruling. The Court issued a written
4 ruling denying relief on July 10, 2013.⁸ Shortly thereafter, plaintiffs made a motion for reconsideration
5 and a motion for a new trial. The Court granted the motion for reconsideration and denied the motion for a
6 new trial in an order dated September 24, 2013, in which the Court also asked the parties to submit further
7 briefing on specified issues. The parties filed their additional briefing according to the schedule set forth
8 in the Court's order. Pursuant to the stipulation of the parties, the Court took the matter under submission
9 on November 15, 2013 without holding an additional hearing.

10 The Court has read and considered all of the original and supplemental briefing and the additional
11 supporting materials filed by the parties, and now issues its final ruling on the petition and complaint.

12 Discussion

13 AB 1484 Enforcement Provisions:

14 As summarized above, plaintiffs challenge three of the enforcement mechanisms established under
15 AB 1484. Those three enforcement mechanisms are:

- 16 1. Section 34183.5(b)(2)(C), applicable to the true-up process, which provides that a city
17 or county shall not receive its distributions of sales and use taxes if a required true-up
18 payment is not made.
- 19 2. Section 34179.6(h)(1)(C), applicable to the due diligence review process, which
20 provides that DOF may order an offset to the distribution of a city or county's sales
21 and use tax revenues if a required due diligence remittance is not made.
- 22 3. Section 34179.6(h)(1)(C), also applicable to the due diligence review process, which
23 provides that if DOF does not order a sales and use tax offset, the county auditor-
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26 ⁷ The intervening parties will be referred to in this ruling as "the Santa Clara parties".

27 ⁸ The ruling granted plaintiffs' two Requests for Judicial Notice filed on February 1, 2013 and March 29, 2013. The
28 ruling also sustained plaintiffs' Evidentiary Objections to Opposition Briefing by Respondents and Interveners,
primarily on the basis that the matters objected to constituted inadmissible hearsay or matters not within the personal
knowledge of the declarants.

1 controller may reduce the property tax allocations of a city or county if a required due
2 diligence remittance is not made.

3 **Sales and Use Tax Offsets:**

4 In its original ruling denying relief, the Court concluded, in essence, that plaintiffs' claims
5 regarding sales and use tax offsets were not ripe because there was no evidence that sales and use tax
6 offsets had been used against any local governmental body in California. In their motion for
7 reconsideration and in support of their supplemental briefing, plaintiffs have presented evidence that DOF
8 has issued letters to several counties and cities threatening to order an offset of sales and use tax revenues
9 as a result of disputes arising out of the due diligence review process.⁹ The Court thus concludes that the
10 issue of whether the use of sales and use tax offsets in the due diligence process is constitutional is now
11 ripe for review.

12 Plaintiffs have not offered any evidence demonstrating that DOF has used, or threatened to use,
13 sales and use tax offsets as part of the true-up process. Indeed, the true-up process appears to have been
14 completed without the use of offsets, which arguably would render the issue of offsets moot in that
15 context. Nevertheless, the Court is not persuaded that the issue is truly moot. Section 34183.5(b)(2)(C)
16 allows the withholding of sales and use tax distributions until the amount demanded as a result of the true-
17 up process is fully paid. Thus, the offset provisions remain a live controversy until all amounts demanded
18 from all local entities under the true-up process are fully paid. The evidence before the Court does not
19 permit a determination that all of the amounts demanded in the true-up process have been fully paid.
20 Therefore, the Court does not conclude that the issue is moot, and will treat it as ripe for review.

21 Based on its conclusion that the issue of whether sales and use tax offsets are constitutional is now
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24 ⁹ See, for example, the DOF letters attached to the Declaration of T. Brent Hawkins filed on July 22, 2013 in support
25 of plaintiffs' motion for reconsideration, and Exhibits 44-46 to plaintiffs' Request for Judicial Notice No. 4. See
26 also, Exhibit C to DOF's Request for Judicial Notice filed in support of its supplemental briefing, which is a
27 declaration by Zachary Stacy, a Manager in the Local Government Unit, filed by DOF in another action pending in
28 this Court on August 9, 2013, par. 6, which states: "As of this date, no withholds of sales and use taxes have
occurred. DOF has sent final warning letters that it intends to utilize the offsets of sales and use tax regarding a
handful of successor agencies who repeatedly refused to pay the amount demanded despite several warnings and
offers to consider a repayment plan. In these cases, the sales and use tax would be withheld from the city that was in
actual possession of the funds."

1 ripe for review, the Court vacates its original ruling denying relief, and enters a new ruling as follows.

2 Plaintiffs contend that the provisions of AB 1484 authorizing an offset of sales and use taxes are
3 facially invalid because they violate Section 24(b) (adopted by Proposition 22 in 2010) and Section
4 25.5(a)(2)(A) (adopted by Proposition 1A in 2004) of Article XIII of the California Constitution.

5 To prevail on their facial constitutional challenge to the sales and use tax offset statutes, plaintiffs
6 carry a heavy burden. “The courts will presume a statute is constitutional unless its unconstitutionality
7 clearly, positively, and unmistakably appears; all presumptions and intendments favor its validity.” (See,
8 *City of Los Angeles v. Superior Court* (2002) 29 Cal. 4th 1, 10-11.) If there is any doubt as to the
9 Legislature’s power to act in any given case, the doubt should be resolved in favor of the Legislature’s
10 action. Restrictions and limitations imposed by the Constitution are to be construed strictly, and are not to
11 be extended to include matters not covered by the language used. (See, *California Redevelopment*
12 *Association v. Matosantos* (2011) 53 Cal. 4th 231.)

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14 The traditional rule governing facial constitutional challenges has been that a statute is invalid on
15 its face only when it is incapable of any valid application. A party challenging the facial validity of the
16 statute “...cannot prevail by suggesting that in some future hypothetical situation constitutional problems
17 may possibly arise as to the particular application of the statute.... Rather, petitioners must demonstrate
18 that the act’s provisions inevitably pose a present total and fatal conflict with applicable constitutional
19 provisions.” (See, *Tobe v. City of Santa Ana* (1995) 9 Cal. 4th 1069, 1084, quoting *Pacific Legal*
20 *Foundation v. Brown* (1981) 29 Cal. 3rd 168, 180-181.) If the court can conceive of a situation in which
21 the statute could be applied in a constitutionally valid manner, the facial challenge must be rejected.

22 This traditional rule has been relaxed in certain cases in favor of a more lenient standard, in which
23 the challenger need only demonstrate that a statute conflicts with the Constitution “in the generality or
24 great majority of cases.” (See, *Guardianship of Ann S.* (2009) 45 Cal. 4th 1110, 1126.)¹⁰

25 In this case, the Court need not resolve the issue of which of these two standards applies, because
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27 ¹⁰ As the California Supreme Court has stated: “The standard governing a facial challenge to the constitutional
28 validity of a statute has been the subject of controversy in this court.” (See, *Kasler v. Lockyer* (2000) 23 Cal. 4th 457,
502.)

1 the sales and use tax offset provisions of Sections 34183.5(b)(2)(C) and 34179.6(h)(1)(C) are
2 unconstitutional under either standard. (See, *Zuckerman v. Board of Chiropractic Examiners* (2002) 29
3 Cal. 4th 32, 39: “We need not resolve this controversy [over the applicable standard] because the result
4 would be the same under any of the tests...”.)

5 Article XIII, Section 24(b) of the California Constitution provides: “The Legislature may not
6 reallocate, transfer, borrow, appropriate, restrict the use of, or otherwise use the proceeds of any tax
7 imposed or levied by a local government solely for the local government’s purposes.”

8 It is undisputed that sales and use taxes are taxes levied by local governments solely for the
9 purposes of those local governments. Sales and use tax revenues therefore fall squarely within the
10 protection of Article XIII, Section 24(b).

11 Moreover, it is undisputed that the effect of the challenged sales and use tax offset provisions,
12 once used, will be to take sales and use tax revenues from one local government entity for the ultimate
13 purpose of paying them to other local government entities. The very purpose of the due diligence review
14 process is to determine the amount of cash and cash equivalents that are available for allocation from
15 successor agencies to taxing entities. (See, Section 34179.6(a), (f).) The purpose of the sales and use tax
16 offset provisions is to give DOF a means of making this transfer when a city or county actually holds the
17 funds that DOF has determined should be transferred to other taxing entities and refuses to turn them over.
18 Thus, it is clear that the challenged sales and use tax offset provisions operate to reallocate, transfer,
19 appropriate or otherwise use the proceeds of sales and use taxes within the meaning of Article XIII,
20 Section 24(b).

21 The Court accordingly concludes that the sales and use tax offsets violate Article XIII, Section
22 24(b) on their face.

23 DOF and the Santa Clara parties contend that the sales and use tax offset provisions are
24 constitutionally valid because they represent remedies or penalties for wrongful conduct by successor
25 agencies and cities or counties in the context of redevelopment dissolution, and the Constitution does not
26 foreclose the use of sales and use tax offsets as a remedy or penalty.
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1 In making this contention, DOF and the Santa Clara parties argue that the purpose of Article XIII,
2 Section 24(b), and the intent of the voters who enacted it through Proposition 22, was to prevent statewide
3 transfers of revenue or other actions that affected the revenues of all local entities throughout the state, but
4 not to prevent the use of limited transfers in the form of remedial or penalty offsets in a handful of cases.

5 Evaluating this contention requires the Court to determine the proper construction and
6 interpretation of Article XIII, Section 24(b). In matters of legislative construction, including constitutional
7 interpretation, the overriding concern is to determine the intent of the legislation in order to effectuate the
8 purpose of the law. Where the law is one that has been enacted by the voters, it is the intent of the voters
9 that controls.

10 While the court looks first to the language of the measure, the literal meaning of a measure must
11 be in accord with its purpose. A literal construction should not prevail if it is contrary to the legislative
12 intent apparent in the measure. (See, *TrafficSchoolOnline, Inc. v. Clarke* (2003) 112 Cal. App. 4th 736,
13 740.) “The intent prevails over the letter, and the letter will, if possible, be read so as to conform to the
14 spirit of the act.” (*Id.*, quoting *Lungren v. Deukmejian* (1988) 45 Cal. 3rd 727, 735; see also, *Upland Police*
15 *Officers Association v. City of Upland* (2003) 111 Cal. App. 4th 1294, 1304.) The courts must give
16 legislation a reasonable construction which conforms to the apparent purpose and intention of the
17 lawmakers who enacted it. (See, *TrafficSchoolOnline, Inc., v. Clarke, supra*, 112 Cal. App. 4th at 740.)
18 Once the intent of the electorate has been ascertained, the provisions must be construed to conform to that
19 intent: “the voters should get what they enacted, not more and not less.” (See, *People v. Park* (2013) 56
20 Cal. 4th 782, 796, quoting *Hodges v. Superior Court* (1999) 21 Cal. 4th 109, 114..)

21 In determining the purpose of legislation, both the policy expressed in its terms and the object
22 implicit in its history and background should be recognized, by reference to the language used, the ballot
23 summary, and the argument and analysis presented to the voters. (See, *In re Schaefer* (1981) 116 Cal.
24 App. 3rd 588, 597; *Amador Valley Joint Union High School District v. State Board of Equalization* (1978)
25 22 Cal. 3rd 208, 245-246.) The object that the legislation seeks to achieve and the evil that it seeks to
26 prevent are of prime consideration in its interpretation. (See, *People ex rel. San Francisco Bay*
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1 *Conservation & Development Commission v. Emeryville* (1968) 69 Cal. 2nd 533, 543.)

2 Looking first to the language of Article XIII, Section 24(b), the Court finds that such language is
3 framed as a complete prohibition against the Legislature taking or using local tax revenues. Article XIII,
4 Section 24(b) contains no exceptions from this prohibition for any reason. The language of the
5 Constitution itself therefore provides no support for the contention that the intent of the voters in enacting
6 the measure was to permit the Legislature to take or use local tax revenues for a limited purpose as a
7 remedy or penalty applicable to only a few local entities. Instead, the broad, prohibitory language of
8 Article XIII, Section 24(b) appears to reflect the voters' intent to permit no exceptions from that
9 prohibition under any circumstances.

10 Looking next to the ballot measure through which Article XIII, Section 24(b) was enacted,
11 Proposition 22 contained an explicit statement of purpose: "The purpose of this measure is to
12 **conclusively and completely prohibit** state politicians in Sacramento from seizing, diverting, shifting,
13 borrowing, transferring, suspending, or otherwise taking or interfering with revenues that are dedicated to
14 funding services provided by local government or funds dedicated to transportation improvement projects
15 and services."¹¹

16
17 Nothing in this statement of purpose indicates that the intent of the voters was to permit the taking
18 of local tax revenues for remedial or penalty purposes, even on a limited basis. Instead, the language of
19 the statement of purpose, particularly the language highlighted above, indicates that the intent of the voters
20 was to enact a total prohibition on the taking of local tax revenues for any reason. This is clear from the
21 fact that the harm Proposition 22 was intended to prevent was explicitly described as legislative action that
22 interferes with revenues dedicated to funding services provided by local government. Taking local sales
23 and use tax revenues in any case, for any reason, including as a remedy or penalty under the
24 redevelopment dissolution laws, undeniably interferes with revenues dedicated to funding services
25 provided by the local government affected by such action. There is nothing in the statement of purpose, or
26 in Article XIII, Section 24(b), that suggests that the voters intended to permit the Legislature to interfere
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28 ¹¹ See, DOF's Request for Judicial Notice filed October 25, 2013, Exhibit A, page DOF011 (emphasis added).

1 with the revenues of even one or a few local governments, even those that could be described as
2 “wrongdoers”.

3 The Court therefore finds that the contention of DOF and the Santa Clara parties regarding the
4 inapplicability of Article XIII, Section 24(b) to remedial or penalty offsets to be unpersuasive. Instead, the
5 Court finds that the intent of the voters in enacting Article XIII, Section 24(b) was to prevent the
6 Legislature from taking local tax revenues from any local entity for any purpose, and that there is no
7 exception for remedies or penalties involving a limited number of local entities under the redevelopment
8 dissolution laws. Interpreting Article XIII, Section 24(b) in this manner gives the voters what they
9 enacted, not more and not less.

10 Based strictly on the language of the challenged statutes and Article XIII, Section 24(b), the Court
11 also concludes that there does not appear to be any manner in which sales and use tax offsets could be
12 done without violating the Constitution. Because Article XIII, Section 24(b) represents a complete
13 prohibition against the legislative use of sales and use tax revenues for any purpose, every offset, even an
14 offset imposed against a local entity wrongfully withholding funds found to be unencumbered through the
15 due diligence process, would represent a use of sales and use tax revenues forbidden by the Constitution.
16 Even construing Article XIII, Section 24(b) strictly, and resolving all doubts in favor of the Legislature’s
17 plenary authority, the use of sales and use tax offsets cannot be deemed constitutional.

18 The Santa Clara parties argue that the Court should reform the sales and use tax offset provisions
19 in order to eliminate the constitutional defect. Specifically, they suggest that the offset provisions could be
20 reformed to treat any offsets of the sales and use taxes of a sponsor city or county as a loan to the
21 successor agency.¹²

22 As a last resort, a court may reform a statute to eliminate a constitutional defect while closely
23 adhering to the legislative intent behind the statute. (See, *California Redevelopment Association v.*
24 *Matosantos, supra*, 53 Cal. 4th at 274-275.) Reformation is viewed as a comparatively drastic alternative,
25 which is to be invoked sparingly and only when the result achieved by reformation is more consistent with
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28 ¹² DOF does not suggest the possibility of reformation in its opposition briefing.

1 the Legislature's intent than the result that would attend outright invalidation. (See, *Arp v. Workers'*
2 *Compensation Appeals Board* (1977) 19 Cal. 3rd 395, 407-408.) In general, a court may reform a statute in
3 order to preserve it from invalidation under the Constitution where it may say with confidence that it is
4 possible to reform the statute in a manner that closely effectuates policy judgments clearly articulated by
5 the enacting body, and that the enacting body would have preferred the reformed construction to
6 invalidation of the statute. (See, *Kopp v. Fair Political Practices Commission* (1995) 11 Cal. 4th 607, 660-
7 661.)

8 In this case, the Court does not find that it is possible to reform the sales and use tax offset
9 provisions in order to eliminate constitutional defects. The legislative intent behind the offset provisions
10 was clear: to use sales and use tax revenues as a quick and sure source of recovery when cities or counties
11 did not respond to true-up or due diligence review demands by returning funds that DOF determined were
12 unencumbered. The Court cannot say with confidence that the offset provisions may be reformed in a
13 manner that closely effectuates this intent, or that the Legislature would have preferred another means of
14 recovery, such as deeming the offsets to be a loan to the successor agency, to invalidation of the statute.
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16 The Court therefore concludes that plaintiffs are entitled to relief with regard to the sales and use
17 tax offset provisions of Sections 34183.5(b)(2)(C) and 34179.6(h)(1)(C). Judgment shall be entered in
18 favor of plaintiffs declaring that those provisions are invalid under Article XIII, Section 24(b) of the
19 California Constitution. A writ of mandate and an injunction shall be issued directing respondent DOF to
20 cease any use or threatened use of those provisions.¹³

21 **Property Tax Reductions:**

22 As described above, Section 34179.6(h)(1)(C) provides an alternative remedy in the due diligence
23 review process. If DOF does not order a sales and use tax offset, "...the county auditor-controller may
24 reduce the property tax allocations of the city, county, or city and county that created the former
25 redevelopment agency".
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27 ¹³ In light of the ruling that the challenged sales and use tax offset provisions are unconstitutional under Article XIII,
28 Section 24(b), the Court finds it unnecessary to address the issue of whether those provisions are also
unconstitutional under Article XIII, Section 25.5(a)(2)(A), as plaintiffs argue.

1 Unlike the situation with the sales and use tax offsets, plaintiffs have provided no evidence to the
2 Court that any county auditor-controller has threatened to take, or has taken, any action under this statute
3 to reduce the property tax allocations of any local entity as a result of the due diligence process. It
4 therefore does not appear to the Court that declaratory or other relief is warranted at this time.

5 Furthermore, the Court notes that Section 34179.6(h)(1)(C) involves an action that is entirely
6 within the discretion of the county auditor-controllers, in that the statute does not provide that DOF may
7 order or direct the county auditor-controllers to reduce property tax allocations.¹⁴ Only two county
8 auditor-controllers are parties to this case: Simona Padilla-Scholtens, the Solano County Auditor-
9 Controller, as a defendant and respondent; and Vinod K. Sharma, the Santa Clara County Auditor-
10 Controller, as intervener. Because a ruling finding the property tax reduction provision of Section
11 34179.6(h)(1)(C) unconstitutional would affect the discretionary authority of all county auditor-controllers
12 in the State, it is not clear that the Court could, or should, proceed when only two of them have been made
13 parties.
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15 The Court therefore affirms its original ruling denying relief as to the property tax reduction
16 provision of Section 34179.6(h)(1)(C).

17 **Unconstitutional Delegation and Alleged Underground Regulations:**

18 The Court granted plaintiffs' motion for reconsideration solely on the basis that plaintiffs showed
19 new or different facts regarding DOF's use of the challenged sales and use tax offset provisions of AB
20 1484. Plaintiffs did not provide any new or different facts to support their claims regarding alleged
21 unconstitutional delegation of authority to DOF or DOF's alleged establishment of illegal underground
22 regulations. At most, plaintiffs argued that DOF continues to make multiple ad hoc, inconsistent
23 determinations as to individual cities and successor agencies without standards, procedures or
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25 ¹⁴ Compare Section 34179.6(h)(2), which permits DOF, as an alternative or additional remedy to those stated in
26 paragraph (1), to direct the county-auditor controller to deduct unpaid due diligence demands from future allocations
27 of property tax to a successor agency. As stated above, although plaintiffs initially challenged Section 34179.6(h)(2)
28 in the petition and complaint, they abandoned that claim in their opening brief. The Court therefore makes no ruling
on the validity of that section, but notes that no evidence has been presented that DOF has either directed or
threatened to direct any county auditor-controller to deduct an unpaid due diligence demand from the allocations of
property tax to any successor agency.

1 explanations.

2 To support this argument, plaintiffs offered two letters issued by DOF to the City of Santa Rosa in
3 which DOF stated that it was ordering the withholding of sales and use tax in significantly different
4 amounts, although the withholding was based on the same due diligence review.¹⁵ Plaintiffs do not,
5 however, link this discrepancy in the amounts to be withheld to any of the specific provisions of AB 1484
6 that they briefed in the opening brief on the unlawful delegation issue, or to any alleged underground
7 regulation. Instead, they contend, in essence, that any inconsistent or incorrect action by DOF proves their
8 claims by itself, presumably because no such errors or inconsistencies would occur if the statutes
9 contained adequate standards or if DOF properly enacted regulations pursuant to the APA.

10 This contention goes too far. The Santa Rosa case demonstrates why, for several reasons.

11 First, the Court cannot determine why the DOF withholding letters stated different amounts, let
12 alone determine whether either amount is correct, without examining the individual facts of that case. The
13 City of Santa Rosa is not directly a party to this action, and no evidence regarding the details of the due
14 diligence review process for that City is before the Court in this case. In the absence of a complete record,
15 the Court could only speculate as to whether a lack of adequate statutory standards or the use of illegal
16 underground regulations played any role in the case. This problem underscores the Court's observation in
17 its initial ruling that issues of unconstitutional delegation or underground regulations are best addressed in
18 an action brought by an entity that has been subjected to specific action.

19 Second, inconsistent action or errors by DOF in one or a few cases does not necessarily suggest a
20 basic flaw in the redevelopment dissolution statutes or the use of underground regulations. Some
21 delegation obviously will be necessary to administer the statutes. Given the scope and complexity of the
22 task, and the fact that all parties are dealing with issues of first impression involving new and untested
23 laws, errors or inconsistencies by the administering agency will occur no matter how well-drafted or
24 comprehensive the statutes are.

25 Finally, as plaintiffs present it, the crux of the issue in the Santa Rosa case does not appear to be
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28 ¹⁵ See, plaintiff's Points and Authorities Supporting Motion for Reconsideration or New Trial, pages 13-14.

1 the errors or inconsistencies themselves. Instead, plaintiffs focus on the threat that DOF will take action to
2 withhold sales or use taxes, to the great detriment of the city, before such errors or inconsistencies can be
3 addressed and corrected, either through administrative action or through judicial review. The Court's
4 ruling finding the sales and use tax offset provisions to be unconstitutional removes a great deal of the
5 urgency from such cases.

6 The Court continues to be persuaded that issues of unconstitutional delegation and underground
7 regulations are most appropriately handled in the context of a specific case challenging specific action by
8 DOF. The present case still does not rise above the abstract level as to such claims. The Court therefore
9 affirms its original ruling denying relief.

10 Conclusion

11 In this action, plaintiffs challenge various provisions of AB 1484 on constitutional grounds, and
12 allege that respondent DOF has engaged in improper underground rule-making.

13 For the reasons stated above, the Court finds that the provisions of AB 1484 permitting an offset
14 of sales and use taxes in order to satisfy demands under either the true-up or the due diligence review
15 process, specifically, Sections 34183.5(b)(2)(C) and 34179.6(h)(1)(C), violate Article XIII, Section 24(b)
16 of the California Constitution, and may not be used lawfully by DOF. The Court grants relief in the form
17 of a declaratory judgment in favor of plaintiffs, along with injunctive relief and a writ of mandate directing
18 DOF not to use, or threaten to use, such offsets.

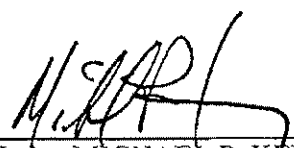
19 The Court finds that declaratory, injunctive and writ relief are not appropriate with regard to
20 property tax reductions by county auditor-controllers in connection with the due diligence review process
21 under Section 34179.6(h)(1)(C), because there is no evidence that any county auditor-controller has
22 threatened or taken such action. The Court accordingly denies plaintiffs' requests for relief as to property
23 tax reductions.

24 The Court further finds that declaratory, injunctive and writ relief are not appropriate with regard
25 to plaintiffs' claims regarding alleged unconstitutional delegation and underground regulations, and denies
26 plaintiffs' requests for relief on those claims.
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In accordance with Local Rules 2.07 and 2.15, counsel for plaintiffs is directed to prepare a formal order granting declaratory and injunctive relief and the petition for writ of mandate on plaintiffs' claims regarding sales and use tax offsets, and otherwise denying such relief, incorporating this Court's ruling as an exhibit; and a separate judgment; submit the order and judgment to all other counsel for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature and entry of judgment in accordance with Rule of Court 3.1312(b).

DATED: December 9, 2013



Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

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Superior Court of California,
County of Sacramento

Dated: December 9, 2013

By: J. ZGRAGGEN
Deputy Clerk