A126357

IN THE COURT OF APPEAL, STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION ONE

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CITY OF SCOTTS VALLEY,
Plaintiff and Respondent,

vs.

COUNTY OF SANTA CRUZ and MARY JO WALKER,
Defendants and Appellants.

_____

APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS CURIAE LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF RESPONDENT CITY OF SCOTTS VALLEY

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Appeal from the Superior Court of San Mateo County, State of California
Case No. 467230
The Honorable Steven L. Dylina

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APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE PRESIDING JUSTICE MARCHIANO:

Pursuant to Rule 8.520(f) of the California Rules of Court, the League of California Cities (the "League"), respectfully requests leave to file the attached *amicus curiae* brief in support of Respondent City of Scotts Valley.

The League of California Cities is an association of 478 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide – or nationwide – significance. The Committee has identified this case as being of such significance, in view of California cities' reliance on local taxes as a source of revenue to fund essential public services. The League has a common and important interest – that dovetails with the public interest – in ensuring that local governments can adequately plan and provide for a reliable stream of tax revenue to fund essential public services.

The League and its member cities have a substantial interest in the outcome of this case. In this case, the County of Santa Cruz ("the County") advocates an interpretation of the Tax Equity Allocation Act ("TEA") that

would deny to qualifying cities the minimum property tax allocations to which the Legislature has determined they are entitled. In defense of its interpretation, the County relies on guidelines prepared by the California State Association of County Auditors ("County Auditors' Association"). Although the Legislature requires these guidelines be subject to the public review process of the Administrative Procedure Act before they can be deemed authoritative, the County Auditors' Association has persistently declined to do so. Because other counties may also follow the guidelines and applying Santa Cruz County's erroneous interpretation of the TEA to deny qualifying cities their minimum property tax share, this matter is of great interest to the cities of California, almost 100 of which are likewise entitled to the protects of TEA and all of which have an interest in the status of the Auditors' Association guidelines in controlling County's allocation of property taxes to other agencies entitled to those funds.

The League believes its perspective on this matter will assist the Court in deciding this matter. Counsel for Amicus has reviewed the briefs on file in this case to date. The League does not seek to duplicate arguments set forth in the briefs. Rather, the League seeks to assist the Court by demonstrating: 1) The importance of the issues warrants the Court converting the County's defective appeal into a writ of mandate so that it rule on the merits and provide guidance not only to these parties, but to all cities and Counties without needless delay and further litigation expense. 2) The guidelines relied on by the County they have not been adopted via the APA process as the Legislature declared would be necessary for those guidelines to be worthy of deference and are therefore of little persuasive value here. 3) Counties may not withhold more property

tax from qualifying cities than the Legislature has declared. 4) Counties should not be shielded from claims arising from erroneous interpretations of TEA and other property tax statutes.

Accordingly, the League respectfully request leave to file the attached *amicus curiae* brief.[1]

DATED: April 26, 2010 COLANTUONO & LEVIN PC

By: _____
Holly O. Whatley
Attorneys for Amicus Curiae
League of California Cities

[1] No party or counsel for a party in this appeal wrote any part of the attached amicus curiae brief or made any monetary contribution to fund the preparation of the brief. No person or entity other than the League and its attorneys in this matter made any monetary contribution to fund the preparation of the brief.

I. INTRODUCTION

The County of Santa Cruz interprets the Tax Equity Allocation Act (TEA) to deny the City of Scotts Valley the minimum property tax allocation the Legislature has declared the City should receive. The County argues for an interpretation that would similarly decrease property tax allocations to almost 100 No and Low Property Tax cities throughout the State. Essentially, the County has used its control of the property tax allocation system to interpret the TEA to increase its property tax share at the expense of Scotts Valley. It then argues that because Scotts Valley allegedly did not discover the County's error when it was first made, the County should be allowed to apply the erroneous TEA interpretation to forever withhold from Scotts Valley the minimum funding the Legislature guaranteed qualifying cities to provide the fiscal resources necessary to fund critical public services.

As did the trial court, this Court should reject the County's arguments and compel the County to restore the property tax revenue wrongly withheld from Scotts Valley. As detailed below, public policy supports converting the appeal into a petition for writ of mandate to allow the Court to rule on the merits of the action, which will affect 92 No and Low Property Tax cities throughout the State[2] and the seventeen counties

[2] The beneficiaries of TEA are known as "No and Low Property Tax Cities" because they had no property tax in 1978 when Proposition 13 became law, or a very low property tax rate. As explained in the parties' briefing, property tax levels as they existed in 1978, with a few legislative adjustments, have been the basis of allocating property taxes among local governments ever since.

that allocate property tax funds to those cities. In particular, the County's interpretation of TEA defeats the Legislature's intent that such cities receive a minimum share of property taxes generated within their jurisdictions, regardless of legislative changes in property tax allocations related to public school districts, so those cities – all of which are responsible for law enforcement, among other services, to fund vital public services to their residents who, of course, are residents of counties and the state as well.

Moreover, the Court need not defer to the administrative materials on which the County relies to support its self-serving interpretation of TEA, especially the Auditors' Association manual, written by county auditors, who have an obvious interest in maximizing counties' share of property taxes. Nor need the Court allow the County to benefit from the lack of transparency that characterizes the complex property tax allocation process to forever maintain a plainly illegal allocation of taxes to its advantage and Scotts Valley's disadvantage. That the City did not catch the County's misallocation when it was first made does not forever barred it from seeking its due under TEA now that the problem has come to light. Adopting a contrary argument would simply encourage counties to bury the information necessary to uncover unlawful allocations like that in issue here in the hope that they would not be timely discovered. Accordingly, the League requests the Court affirm the trial court's ruling granting the writ of mandate requested by Scotts Valley to compel the County to disgorge those ill-gotten gains which are within the three-year statute of limitations and to allocate taxes accordingly to law in the future.

II. THE STATEWIDE IMPORTANCE OF THE ISSUE SUPPORTS THE COURT CONVERTING THE APPEAL INTO A WRIT OF MANDATE TO RULE ON THE MERITS

It is undisputed that the County does not appeal a final judgment here (Appellant's Opening Brief ("AOB") p. 1.) However, it is well established that the Court may convert a defective "appeal" into a petition for an extraordinary writ. (*Olson v. Cory* (1983) 35 Cal.3d 390, 400; *Barnes v. Molino* (1980) 103 Cal.App.3d 46, 51; *Brahnam v. State Farm Mut. Auto Ins. Co.* (1975) 48 Cal.App.3d 27, 32). Although courts will do so only under unusual circumstances, such circumstances are present here and, indeed, both Appellant and Respondent support doing so. (Appellant's Reply Brief, p. 1, fn. 1; Respondent's Opposition Brief, pp. 24-26.) Respondent addressed in its Opposition Brief the unique situation in the present case, namely that the City and County have demonstrated their willingness to dismiss their remaining claims against each other and have only refrained from doing so because the State Controller has to date refused to be bound by the trial court's writ against the County. (Respondent's Opposition Brief, p. 26.)

However, the interest in avoiding a delay in resolution of this case on the merits extends beyond just the parties. In particular, there are 92 No and Low Property Tax cities in seventeen counties around California.[3] Each of these cities potentially qualifies under TEA to receive the

[3] *See* Assem. Com. on Local Government, Hearing on June 14, 2000 on SB 1581 as amended June 12, 2000 (1999-2000 Reg. Sess.). This document may be viewed at http://info.sen.ca.gov/pub/99-00/bill/sen/sb_1551-1600/sb_1581_cfa_20000613_171350_asm_comm.html.

legislatively-declared minimum property tax share that its residents pay. Further, the Respondent's admit that the California Property Tax Managers' Reference Manual ("CAAC Manual"), on which the County relies in support of its interpretation of TEA, is a "reference tool utilized by auditor-controllers and property tax professionals throughout the State," (Joint Appendix, Vol. IV, Tab 19, p. 637). Thus, seventeen counties and 92 cities have a keen interest in the lawfulness of the TEA calculation method advocated in the CAAC Manual and used by Santa Cruz County. Even counties that do not follow the method suggested in the CAAC Manual, can be expected to follow the decision of this Court here if it decides this case now and that may protect other cities from the loss of funding Scotts Valley experienced here

Further, the issues presented are pure questions of law that do not turn on facts which might be better developed if the decision were deferred until a final judgment issued in the trial court. The public interest is served by speedy resolution of this dispute and little benefit to the judicial endeavor would flow from requiring more time and more tax-payer funded legal fees to determine it. A failure to convert the appeal into a writ would reward the County and penalize Scotts Valley for the County's counsel's error by deferring the time when the County must disgorge its ill-gotten gains and the time when Scotts Valley obtains its due. If the Courts of Appeal commonly allowed such rewards, such procedural errors might become more common serving neither the administration of justice nor justice itself.

Accordingly, the public interest, not just the interests of the named parties, warrant converting the County's defective appeal into a petition for

writ of mandate and ruling on the merits so that the proper TEA calculation method can be resolved without unnecessary delay.

III. THIS COURT NEED NOT DEFER TO THE COUNTY AUDITORS GUIDELINES

The County asks this Court to rely upon the California Property Tax Managers' Reference Manual of the County Auditors Association of California ("CAAC Manual") and the 1993 Legislative Session Property Tax Shift Uniform Guidelines ("Uniform Guidelines") to implement the TEA. (AOB, p. 23.) However, it is well established that "[a]n administrative agency cannot alter or enlarge the legislation, and an erroneous administrative construction does not govern the court's interpretation of the statute." (*Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 526.) Moreover, neither the Uniform Guidelines nor the CAAC Manual has been subjected to the public review and comments mandated for regulations in our State under the Administrative Procedure Act. The Legislature has expressly provided that these Guidelines must be subject to that process before any deference is warranted:

> Guidelines for legislation implementation issued and determined necessary by the State Association of County Auditors, and **when adopted as regulations** by either the Controller or the Department of Finance pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, **shall be considered an authoritative source deemed correct until some future clarification by legislation or court decision**. (Rev. & Tax Code § 96.1(c)(1).) (Emphasis added.)

The Association, however, has been persistently unwilling to undergo the rigors of the Office of Administrative Law's process to ensure the integrity

of the CAAC Manual. Rigorous review of the CAAC Manual is needed to ensure transparency. This legislative determination is reasonable given that the property tax system is complex, Counties have unique control over the administration of that system, in which there are many stakeholders – including the State itself which, under our Constitution, must supplement property tax revenues to school districts to ensure equal and adequate funding of public education.

This is more the case because counties are not disinterested observers of the property tax allocation system, but the largest beneficiary of it, and because counties vary in the depth of the talent pool available to serve in the elected post of Auditor – Counties range in population from more than 10 million in Los Angeles to 1,201 in Alpine.[4] Deferring to cash-strapped counties' in the allocation of scarce property tax dollars during the "Great Recession" (as some has dubbed our current economic condition) is akin to allowing a thirsty man in a desert *carte blanche* to administer a party's water supply. Given the stakes, scrutiny, no deference is in order here.

Recent decisions illustrate the hazards of allowing elected County Auditors to act without meaningful judicial scrutiny given that their interpretations of the Revenue & Taxation Code can inflate the coffers of financially strapped counties by millions of dollars annually. (See, e.g., *Los Angeles Unified School District v. County of Los Angeles* (2010) 181

[4] These data are drawn from a fact sheet published by the Senate Local Government Committee, which may be viewed at http://senweb03.senate.ca.gov/committee/standing/LOCAL_GOV/CountyFactSheet2009.pdf

Cal.App.4th 414 [Los Angeles County improperly reduced school district's share of redevelopment agency pass through payments, thus wrongfully increasing the County's share of such payments at the expense of the school district to the tune of **hundreds of millions of dollars**]; also, *City of Alhambra*, et al. *v. County of Los Angeles, et al*, California Court of Appeal, 2nd Appellate District, Case No. B218347, appeal of Superior Court of Los Angeles County, Case No. BS 116375, [Pending appeal challenging Los Angeles County's practice of including in-lieu funds from the Triple Flip and VLF swap to calculate cities' property tax administration fees resulting in $10 million annual windfall to County].)[5] To put unexamined faith in the CAAC Manual is to leave a desperately hungry fox to guard the hen house in the dark of night. Moreover, one need not question the competence or integrity of County officials to acknowledge that the property tax statutes are complex, the stakes are large, the issues important, and thus create a need for transparency and scrutiny of their work.

IV. COUNTIES CANNOT WITHHOLD THE MINIMUM PROPERTY TAX SHARE THE LEGISLATURE HAS DECLARED NO AND LOW PROERTY TAX CITIES LIKE SCOTTS VALLEY ARE DUE

Cities provide critical public services that are vital to ensure the public health and safety of their citizens, such as fire suppression and

[5] This same issue is pending before the Fresno County Superior Court in *City of Clovis, et al. v. County of Fresno, et al.* (Fresno County Superior Court Case No. 08 CW CG 03535 AMC).

prevention, law enforcement and emergency medical services. Cities also supply other fundamental public services including, for example, public parks and recreation programs, libraries, land use regulation, building inspections and water and sewer services. Thus, in an incorporated city, the residents typically receive the bulk of necessary public services from the city itself. By enacting the TEA, the Legislature recognized that No and Low Property Tax cities require a minimum share of property taxes to ensure them the funds needed to adequately provide these vital and expensive municipal services on which city residents – the bulk of Californians – depend. This guaranteed minimum, a small percentage of the property tax revenue generated within a city's jurisdiction, is required by TEA notwithstanding that some cities had no property taxes pre-Proposition 13 and others did not exist at that time, having been incorporated after 1978.

Consistent with its goal to ensure a minimum level of municipal public services, the Legislature could not intend, nor expect, that the guaranteed share of property taxes generated within a city's jurisdiction be reduced by that portion of the city's property tax revenue shifted via the second Educational Revenue Augmentation Fund shift ("ERAF II") (Rev. & Tax. Code §§ 97.1, 97.3) or ERAF III (Rev. & Tax Code § 97.71). Such conclusion is further supported by the text of the relevant statutes. Neither Section 97.3 nor 97.71 contain any reference to the TEA, in contrast to the statutes (Rev. & Tax. Code §§ 97 and 97.2.), which do provide that the ERAF I shift should be deducted from a qualifying city's TEA allocation.[6]

[6] Amicus will not repeat the detailed argument on this issue set forth fully in Respondent's Opposition Brief at pages 12-15 and 32-40.

Thus, by interpreting the TEA to allow it to calculate Scotts Valley's TEA allocation based on property tax revenue the City never received (i.e., the ERAF II and ERAF III shifts), Santa Cruz County thwarted the Legislature's plain intent. This Court should refuse to countenance the County's self-serving interpretation of the TEA to deny Scotts Valley the property tax funds the Legislature has guaranteed it receive. Simply put, the County cannot take more than the Legislature authorized. Proposition 13 requires that property shall be "apportioned according to law" (California Constitution, Art. XIII A, § 1(a)) and our highest Court has determined this means "according to statute." *Amador Valley Joint Union High School District V. State Board of Equalization* (1978) 22 Cal.3d 208. Property taxes are not to be allocated in defiance of the plain legislative intent.

The trial court recognized the County's error in this case, and the League urges this Court to uphold that ruling.

V. THE COUNTY MAY NOT AVOID LIABILITY BASED ON ITS EARLIER, ERRONEOUS INTERPRETATION OF THE TEA

The County argues that Scotts Valley is time-barred from challenging the County's TEA calculations because the City did not catch the County's error when it was first made. (AOB, pp. 36-39.) However, public policy does not support permanently shielding the County from its unlawful retention of property tax revenue due the City. The Legislature has placed the burden on counties to allocate property tax revenues among the various public entities entitled to those revenues. (Rev. & Tax. Code §

95.3.) As a result of this responsibility, the counties control the tax allocation process. They have more information than any other entity as to how they conduct such allocations, and unfettered access to such information. Moreover, counties are paid a fee by each public entity that receives property tax allocations to reimburse the county for the costs associated with the allocation services. (*Id.*) In other words, counties are paid to allocate property taxes consistently with legislative mandate and would be bound by that mandate even if this were not so.

If this Court accepted the County's argument that it is entitled to unlawfully interpret the TEA to permanently deny the City the minimum share of property tax revenues guaranteed by the Legislature, it would lead to an inequitable and impossibly sustainable situation. Specifically, all 478 cities within the State would need to retain experts to review their county's property tax allocations *every year* to ensure a city caught any errors in interpretation that a county may have made and which the county, like Santa Cruz County does here, might try to extend *ad infinitum* despite a later ruling that such interpretation was incorrect in the first instance.[7] Moreover, if the County's' argument were accepted, each city would need to defer accepting the property tax funds allocated to it while it engaged in these annual audits. Though the counties are reimbursed for their services to allocate property taxes, cities would receive no compensation to conduct

[7] The League does not address the trial court's ruling regarding a bar on the City's claims stretching back more than three years before the suit was filed. The only issue addressed here is the County's argument that it cannot be liable for the three years immediately preceding the lawsuit and that it may forever apply its unlawful TEA interpretation into the future.

such annual audits. Public policy dictates that counties not be able to capitalize on their control of the property tax allocation system to permanently misinterpret the TEA to their advantage and forever be shielded from correcting such error. To do so would turn the Legislature's intent on its head by encouraging a county to make such "errors" and hope no city notices when it is first made, thereby effectively, and unilaterally, rewriting the property tax allocation system.

Further, such a rule would eliminate our uniform system of statutes governing the allocation of property taxes, controlled as Proposition 13 demands, by the Legislature. Instead, property tax allocations would vary from County to County based on the unique history of each County's "errors" and how quickly each City in that County learns of and acts on the County's errors. Indeed, the law of property tax allocations might easily vary from City to City within a County.

Still further, the County bears a mandatory, ministerial duty to comply with the Revenue & Taxation code in every year. Its duty to allocate property taxes consistent with the legislative mandate is not once satisfied, but requires lawful action annually. *Cf. Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809 (each payment of utility user tax passed without voter approval required by Prop. 62 created a new cause of action such that action could be maintained more than three years after adoption of tax notwithstanding 3-year statute of CCP 338(a)).

The League urges the Court to reject the County's argument that it is entitled to create an ad hoc property tax allocation system that denies Scotts Valley what the Legislature determined to be its due. Accordingly, the trial court's ruling should be affirmed.

VI. CONCLUSION

For these reasons, Amicus Curiae respectfully requests this Court construe the County's defective appeal as a petition for writ and affirm the Superior Court's order granting the writ of mandate against the County of Santa Cruz to compel it to remit to Scotts Valley its fair share of property taxes under TEA.

DATED: April 26, 2010

COLANTUONO & LEVIN PC

By: _____
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CERTIFICATION OF COMPLIANCE

Pursuant to California Rules of Court 8.204(c)(1), the foregoing Amicus Curiae Brief of the League of California Cities contains 3,862 words (including footnotes, but excluding tables and this Certificate). In preparing this certificate, I relied on the word count generated by MS Word 2007.

Executed on April 26, 2010, at Los Angeles, California.

COLANTUONO & LEVIN PC

By: _____
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