SUPREME COURT OF THE STATE OF CALIFORNIA

JOHN W. MCWILLIAMS, Plaintiff and Appellant, vs. CITY OF LONG BEACH, Defendant and Respondent.	Case No. S202037 Second Appellate District, No. B200831 Los Angeles County Superior Court, No. BC361469

APPLICATION FOR PERMISSION TO FILE JOINT AMICUS CURIAE BRIEF OF THE LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT CITY OF LONG BEACH

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

☒ There are no interested entities or persons to list in this Certificate per California Rules of Court, Rule 8.208.

☐ Interested entities or persons are listed below:

Name of Interested Entity or Person	Nature of Interest
1.	
2.	
3.	
4.	

Please attach additional sheets with person or entity information if necessary.

Dated: December 17, 2012

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TO THE CHIEF JUSTICE:

This Application is submitted jointly by the League of California Cities (the "League") and the California State Association of Counties ("CSAC") (collectively "Amici"). Pursuant to Rule 8.520(f) of the California Rules of Court, Amici respectfully request leave to file the attached joint amicus curiae brief in support of Respondent City of Long Beach.

The League of California Cities is an association of 467 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 have statewide or nationwide significance. The Committee has identified this case as having such significance.

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprising county counsels throughout the state. The committee monitors litigation of concern to counties statewide and has determined that this case involves matters affecting all counties.

Taken together, the League and CSAC represent more than 500 local governments. These local governments provide essential public services, which they fund with locally enacted taxes like utility user taxes, transient occupancy taxes, parking taxes, and business license taxes. And because

the power to impose a tax is meaningless without the power to collect it, local governments have also enacted the means to administer these taxes. Local governments have provided for integrated procedures for the levying, collection, cancellation, adjustment and refund of their locally enacted taxes. Here, the Appellant urges the Court to rule that local governments lack the legal authority to enact refund procedures that are integrated with the procedures for levying, assessing, and collecting local taxes. Such a ruling would invalidate literally hundreds of local government laws that are carefully tailored to meet the practical and legal requirements of efficient and fair tax administration. The League and CSAC have a common and important interest, consistent with the public interest, in ensuring that local governments retain the legal authority to enact orderly procedures for the refund of local taxes – procedures that are fully integrated with other aspects of local tax administration like tax collection, audits, and adjustments. Those integrated procedures ensure that local governments can provide for a reliable stream of tax revenue to provide essential public services, while giving taxpayers ample informal and formal opportunities to ensure that their taxes are properly calculated and assessed.

Counsel for Amici have reviewed the briefs on file in this case to date. Amici do not seek to duplicate arguments set forth in the briefs. Rather, Amici seek to assist the Court by: (1) surveying the diverse local tax refund procedures that Government Code section 905(a) permits, even under Appellant's construction of that section – a survey that rebuts Appellant's claim that the purpose of the Government Claims Act was to ensure "uniformity" in procedures for local tax refund claims; (2) discussing the broader legal and practical reasons why hundreds of local governments have enacted provisions for administering local taxes

(including tax refund provisions); and (3) discussing relevant legislation concerning telephone user taxes that the parties have not addressed, Revenue & Taxation Code sections 7284.6 and 7284.7; these provisions require local governments to maintain utility user taxpayer information in strict confidence, and thereby make it impossible for local tax administrators to administratively adjust refund claims brought by self-appointed "representative" class claimants like McWilliams – who do not have the requisite authorization and consent to receive the confidential information of other putative class taxpayers during the mandatory administrative claim process.

Accordingly, Amici respectfully request leave to file the attached amicus curiae brief.

DATE: December 17, 2012

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INTRODUCTION

This case has reached this Court by way of review of a trial court ruling that Appellant McWilliams was not authorized to file an administrative "class claim" for refund of telephone user taxes levied by the Respondent City of Long Beach. There is no question that so-called "class claims" for refund of local taxes, filed without the knowledge or consent of taxpayers in a putative class – a procedure that is not available for any State tax or State-administered local tax – have potentially devastating fiscal consequences for California cities and counties.

But the primary legal question presented for review[1] has even broader implications for local governments. Here, McWilliams challenges the authority of local governments in California to regulate *at all* the "procedures for the refund, rebate, exemption, cancellation, amendment, modification, or adjustment of any tax, assessment, fee, or charge" (Gov. Code § 905(a)) imposed by a local government – even in the absence of local tax legislation by the State. McWilliams' challenge goes to the very authority of local governments to administer their local taxes. That authority is essential to the stability and reliability of local government revenue.

The residents of California rely on their local governments to provide essential public services. Taxes enacted at the State level do not provide adequate revenue to fund those services. Moreover, citizens in many local jurisdictions in our State have decided, through the democratic

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[1] That question is: Government Code § 905(a) excepts "claims under ... [a] statute prescribing procedures for the refund ... of any tax, assessment, fee or charge" from the scope of the Government Claims Act. Did the Legislature use "statute" in this section to exclude local legislation and to require claims for refunds of local taxes, assessments, fees and charges to be governed by the Government Claims Act?

process, that they are willing to pay more in local taxes to fund more local services. Consequently, hundreds of locally enacted taxes in California provide an irreplaceable, essential source of revenue for local governments.

But local taxes do not collect themselves. When a local government enacts a tax, it must also enact an effective set of procedures for the levy, assessment, and collection of taxes – including integrated "procedures for the refund, rebate, exemption, cancellation, amendment, modification, or adjustment" of taxes. The Legislature recognized this principle of effective tax administration when it enacted section 905(a) of the Government Code. By that section, the Legislature provided that claims for refunds, exemption, adjustment, or cancellation of local taxes would be excluded from the "uniform" claim presentation procedures of the Government Claims Act applicable to tort and other types of claims against local governments. Section 905(a)[2] recognizes that local governments have authority to enact refund procedures tailored to the specific requirements of locally enacted taxes like the telephone user tax at issue in this case. The legislative history of this section is consistent with this purpose, notwithstanding the Legislature's decision to use the term "statute" in the final version of the 1959 legislation, and notwithstanding the Legislature's 1963 addition of a definition for "statute" elsewhere in the Government Claims Act.

McWilliams' arguments here narrowly focus on a mechanical reading of section 905(a), and the supposed need for a class action remedy to discipline local governments. But McWilliams' arguments ignore the *reasons* why the Legislature expressly removed tax claims from the scope

[2] All undesignated section references in this brief refer to the Government Code.

of the uniform claim presentation requirements contained in the Government Claims Act. The Legislature did not remove local tax refund claims from the scope of the Act out of distrust for local government. Rather, the Legislature recognized that tax claims were different *in kind* from tort claims, and were not suited to the "one-size-fits-all" claim provisions in the Act. The Legislature's substantive policy decision – that local tax refund claim procedures should be integrated with other local tax administration procedures – applies with equal force to local tax procedures enacted by the State and those enacted by local governments in the absence of local tax legislation by the State.

Moreover, the Legislature has since permitted local governments to enact charter provisions and ordinances governing the administration of locally enacted taxes, including procedures for local tax administration that include integrated "procedures for the refund, rebate, exemption, cancellation, amendment, modification, or adjustment" of local taxes that are not regulated by State legislation. (Gov. Code § 905(a).) In the area of local utility user tax administration, the Legislature has enacted legislation that narrowly addresses a few specific issues. The Legislature's spare approach to local utility user tax administration indicates the Legislature's understanding and approval of local governments' comprehensive regulation of local tax administration procedures.

Finally, two State statutes that the parties do not discuss in their briefs are highly relevant to the "class claim" issue before the Court here. Revenue & Taxation Code sections 7284.6 and 7284.7 require local governments to maintain utility user taxpayer information in strict confidence. That confidentiality requirement – violation of which is a crime – prohibits tax administrators from sharing the utility's tax collection

information or the taxpayer's tax payment information with anyone but the utility or the taxpayer himself. That confidentiality obligation prevents local tax administrators from adjusting administrative tax refund claims that are brought by self-appointed "representative" class claimants like McWilliams – whose claim simply describes a class but does not contain the requisite authorization and consent from each taxpayer who is in the putative class. Therefore, it is impossible for claims like McWilliams' "class claim" to satisfy what this Court has recognized as one of the chief purposes of the administrative claim requirement: to permit local authorities to settle claims without the expense of litigation.

This Court should affirm the decision of the trial court, and hold that sections 905(a) and 935 of the Government Code authorize local governments to regulate the procedures for the refund of local taxes.

DISCUSSION

I. GOVERNMENT CODE SECTION 905(A) REFLECTS THE LEGISLATURE'S DETERMINATION THAT REFUND CLAIM PROCEDURES FOR LOCAL TAXES SHOULD BE INTEGRATED WITH THE PROCEDURES FOR THE LEVY, ASSESSMENT, AND COLLECTION OF LOCAL TAXES

McWilliams contends that this Court should construe the Government Claims Act to prohibit local governments from enacting procedures specifically tailored to the refund of local taxes. McWilliams argues that his preferred construction is consistent with the purposes of the Government Claims Act. Namely, McWilliams claims that the purposes of the Government Claims Act were (1) to ensure uniform claim procedures, and (2) to strip municipalities of authority to regulate claim procedures. McWilliams contends that these purposes apply equally to claims for refund of local taxes.

However, McWilliams' contentions about the Legislature's purpose concerning local tax refund claims do not withstand scrutiny. As discussed in greater detail in the remainder of Part I, the express provisions of the Government Claims Act show that the Legislature did not require or intend a "one-size-fits-all" treatment of claim procedures for local tax refunds and several other categories of claims against local governments (*infra* Section I.A.); consistent with this purpose, the Legislature enacted diverse refund procedures for state and local taxes alike (*infra* Section I.B.); and the legislative history of section 905(a) is consistent with this purpose – notwithstanding the appearance of the term "statute" in that section (*infra* Section I.C.).

A. The Express Provisions Of The Government Claims Act Show That The Legislature Did Not Intend To Require Uniform Claim Procedures For Local Tax Refunds

McWilliams' assertions about legislative purpose ignore the express provisions of the Government Claims Act that provide for non-uniform claim procedures and for municipal authority to regulate claim procedures: sections 905 and 935.[3]

Section 905 expressly excludes entire categories of claims from the general claim presentation procedure outlined in sections 910 through 915.4 of the Act – the "uniform" procedures that control claims that are *not* of the types listed in section 905. As pertinent to this case, the Legislature excluded "[c]laims under the Revenue & Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation,

[3] When enacted in 1959, these provisions were originally numbered Gov. Code § 703 and § 730, respectively. (Stats.1959, ch. 1724, § 1, at pp. 4133-4134, 4138.) These provisions were renumbered in 1963, with no change to the language of section 905 and changes to section 935 that are not relevant to this case.

amendment, modification, or adjustment of any tax, assessment, fee, or charge or any portion thereof, or of any penalties, costs, or charges related thereto." (Gov. Code § 905(a).) Thus, the very existence of section 905 demonstrates that the purpose of the Act was not to impose "uniform" procedures on *all* types of claims for money against local governments.

Section 935, in turn, confers authority on local governments to regulate those specific categories of claims that section 905 excludes from the Act's general claim presentation procedure, and that are not already governed by some other specific statute or regulation.

B. The Legislature Has Enacted Many Different Local Tax Refund Claim Provisions – Further Proof That The Legislature's Purpose Was Not To Require Uniform Local Tax Refund Procedures

The Legislature has further demonstrated its policy of disfavoring uniformity in tax administrative procedures by enacting many different procedures under the Revenue & Taxation Code for "the refund, rebate, exemption, cancellation, amendment, modification, or adjustment" of different local taxes. (§ 905(a).)

The Revenue & Taxation Code includes several different refund and adjustment procedures for local taxes, each of which is tailored specifically to the manner in which the particular local tax is assessed and collected. This diversity is further proof that the Legislature never intended "uniform" treatment of local tax refund claims. And it is consistent with the Government Claims Act's rejection of a one-size-fits-all formula for local tax refund claim procedures. Rather, the Act embraces these diverse and heterogeneous procedures – even under McWilliams' proposed construction of section 905(a).

The following sections of the Revenue and Taxation Code are some of the statutes that define different procedures for "the refund, rebate, exemption, cancellation, amendment, modification, or adjustment" of different local taxes:

Local Property Taxes

- Revenue & Taxation Code § 255(a) (taxpayer must file affidavit attesting to facts giving rise to most property tax exemptions between lien date and February 15)
- Revenue & Taxation Code § 255(b) (taxpayer must file affidavit attesting to facts giving rise to homeowner's property tax exemptions between date of eligibility and February 15)
- Revenue & Taxation Code § 255(c) (if assessor has revoked eligibility for religious property tax exemption, taxpayer may file affidavit within 15 days of notice)
- Revenue & Taxation Code § 1603 (contents of application for reassessment of property value by County Assessment Appeals Board in mandatory administrative proceeding; application must be filed between July 2 and September 15)
- Revenue & Taxation Code § 4985 (procedures for cancellation of illegal or otherwise defective tax or charge)
- Revenue & Taxation Code § 5096 (presentation of claim for refund of property tax)
- Revenue & Taxation Code § 5097(b) (application for reduction in assessment can satisfy claim presentation

requirement for property tax refund, if it states that it is intended to constitute a claim for refund)

- Revenue & Taxation Code § 5141(a) (six-month statute of limitations for bringing suit for property tax refund after rejection of claim)
- Revenue & Taxation Code § 5141(b) (claim for property tax refund deemed denied after six months)
- Revenue & Taxation Code § 5142(a) (recovery limited to amount taxpayer sought in underlying property tax refund claim)

Local Sales And Use Taxes

- Revenue & Taxation Code § 6901 (claim for refund of sales or use tax due either three years from the last day of the month after the tax period for which overpayment was made; or if payment was made under board determination then claim for refund is due six months from the date of the determination or when the overpayments was made, whichever is later)
- Revenue & Taxation Code § 6933 (suit for refund of sales or use tax must be commenced within 90 days after board's notice of action on claim)
- Revenue & Taxation Code § 6596(a) (board may grant relief from certain penalties under certain circumstances; requires statement under penalty of perjury)
- Revenue & Taxation Code § 7277 (claims for refund of local sales and use taxes that are held unconstitutional must be filed

"within one year of the first day of the first calendar quarter commencing after the effective date of this section or after the date upon which the court decision [holding the tax unconstitutional] becomes final and nonappealable, whichever occurs later. If that one-year period does not end on the last day of a calendar quarter, it shall end on the last day of the preceding calendar quarter or on the last day of the calendar quarter which is nearest to the date the one-year period ends")

Local Vehicle License Fees

- Revenue & Taxation Code § 10901 (application for refund of county vehicle license fees must be made within three years of payment)

Local Motor Vehicle Fuel Taxes

- Revenue & Taxation Code § 9152 (refund claim must be filed three years from the last day of the month following the reporting period for which the overpayment was made, or within six months from the date the board's determinations became final, or after six months from the date of overpayment, whichever period expires later, though that period is suspended during period of provable financial disability)

Local Documentary Transfer Taxes

- Revenue & Taxation Code § 11934 (claims for refund subject to provisions for property tax refund claims under Revenue & Taxation Code section 5096)

The variety of local tax refund provisions outlined above confirms that the Legislature has never sought to impose uniform procedures for the refund of local taxes. To the contrary, the Legislature has repeatedly demonstrated its commitment to the policy of maintaining different local tax refund claim procedures that serve the specific administrative and substantive needs of each different local tax.

C. The Legislative History Of Section 905(a) Explains That The Legislature Excluded Local Tax Refund Claim Procedures From The Uniform Claim Provisions For Tort And Contract Claims, Because Refund Procedures Should Be Integrated With The Other Procedures For Levying, Assessing, And Collecting Different Local Taxes

The legislative history of the 1959 Act explains *why* the Legislature enacted section 905(a) and thereby excluded local tax refunds claims from the general claim presentation procedure outlined in sections 910 through 915.4 of the Act. The City of Long Beach has already analyzed the legislative history of the 1959 and 1963 Acts. (Opening Brief at pp. 19-26; Reply Brief at pp. 4-12.) We raise two additional points to rebut McWilliams' arguments concerning the legislative history.

1. The Legislature's Use Of The Term "Statute" In 1959 Did Not Indicate A "Rejection" Of The Commission's Recommendation That Local Tax Refund Claims Should Be Treated Differently From Other Types Of Claims

McWilliams urges that the 1959 California Law Revision Commission Report[4] is not good evidence of the Legislature's purpose in enacting section 905(a)'s predecessor (former section 703(a)), because in enacting the proposed exclusion for local tax procedures, the Legislature changed the Commission's proposed term "other provisions of law" to "statute." McWilliams relies on the principle that "'[t]he rejection by the Legislature of a specific provision contained in an act as originally introduced is most persuasive to the conclusion that the act should not be construed to include the omitted provision.'" (Answer Brief at p. 19, quoting *Estate of Sanders* (1992) 2 Cal.App.4th 462, 473-74, alterations in Answer Brief.) But McWilliams attempts to extend that principle too far. Here, the Legislature did not "reject" or "omit" this proposed section from the 1959 Act. Instead, the Legislature made a minor amendment in the proposed language of the section. Thus, that principle does not apply here.

Rather, in assessing the weight of the 1959 Report as relevant legislative history, the better question to ask is whether the Legislature's amendment of the proposed language indicates that it rejected the Commission's stated purpose and policy justifications for excluding local tax procedures from the uniform claims procedures of the Act. And here, that amendment does not show any such thing. Amending the term "other provisions of law" to "statute" did not change the effect of this section: to

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[4] The Commission Reports are an appropriate source of legislative history regarding the Government Claims Act. (*E.g., Van Arsdale v. Hollinger* (1968) 68 Cal.2d 245, 249-250; *Pasadena Hotel Dev. Venture v. City of Pasadena* (1981) 119 Cal.App.4th 412, 415 fn. 3.)

ensure that local tax refund claims were excluded from the general claim presentation procedure outlined in sections 910 through 915.4 of the Act. Rather, the Commission's two stated rationales for different treatment of tax claims apply equally to the proposed language and final language enacted in 1959.

First, with regard to tax claims not being subject to the concerns for "uniformity" that motivated the Commission's treatment of tort claims, the Commission explained:

> Provisions governing claims for refund of taxes, assessments, fees, etc. ... are frequently integrated with special procedures governing the assessment, levy and collection of revenue. They are separate and independent from the tort and contract claims provisions and do not create problems of the same nature and significance as the claims provisions embraced by the report. (2 Cal. L. Rev. Comm. Reports (1959) at p. A-17.)

This explanation applies equally to the finally enacted exclusion for local tax refund claims. The Legislature's use of the term "statute" did not change the effect of the finally enacted version of section 905(a)'s predecessor: to create *non-uniformity* in "procedures for the refund, rebate, exemption, cancellation, amendment, modification, or adjustment" of local taxes. And the Legislature's use of the term "statute" did not change the effect of section 935's predecessor: to confer authority on local governments to regulate those claims excluded by section 905, which would of course create further non-uniformity for those claims.

Second, elsewhere in the Report, the Commission explained the practical policy reasons why "[t]he scope of the proposed unified claims statute is limited." The Commission explained that local tax refund claim procedures were excluded because those procedures should be integrated with other aspects of local tax administration:

> Also excluded are (1) claims for tax exemption, cancellation or refund ... . [O]rderly administration of the substantive policies governing the enumerated types of [excluded] claims strongly suggests that claims procedure should be closely and directly integrated into such substantive policies. Obvious and compelling reasons appear for gearing tax refund claims to assessment, levy, and collection dates and procedures .... (2 Cal. L. Rev. Comm. Reports (1959) at p. A-117.)

That rationale is equally applicable to the finally enacted version of section 905(a)'s predecessor containing the term "statute." As the City of Long Beach has already explained (Opening Br. at pp. 20-22, Reply Br. at pp. 10-12), the Legislature's decision to use the term "statute" rather than "other provisions of law" in framing this exclusion simply distinguishes legislatively enacted procedures from judge-made law. This is a sensible distinction in light of the fact that taxing authorities have traditionally enacted legislation governing their tax procedures, and courts have traditionally deferred to legislative authority to regulate this area of the law. (*Woosley v. State* (1992) 3 Cal.4th 758, 789; *Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 82.)

Thus, the 1959 Commission Report is still compelling evidence of the Legislature's purpose and reasons for enacting the exclusion for local tax refund claims in the predecessor to section 905(a). When the Legislature amended the final version of that section to include the term "statute," it did not reject the Commission's recommendation to exclude local tax refund claims from the uniform claim procedures. To the contrary, the Legislature enacted that recommendation. There is no reason to think that the Legislature disagreed with the Commission's explanation of the purpose for treating local tax refund claims differently. And those purposes remain relevant to construing what the Legislature meant when it used the term "statute" in 1959.

2. In 1963, The Legislature Did Not Intend To Change The Exclusion For Local Tax Refund Claims

McWilliams also argues that the 1963 enactment of section 811.8 – containing a definition of the term "statute" – compels the Court to adopt his preferred construction of section 905(a) and to prohibit locally enacted tax refund claim procedures. (Answer Br. 21-22.) McWilliams' position is flawed.

Initially, McWilliams ignores the fact that section 810 of the Act expressly states that definitional provisions like section 811.8 do not automatically govern the construction of every section of the Government Claims Act. Rather, Section 810 contains the caveat that these definitional provisions do not govern construction if "the provision or context otherwise requires." (§ 810.)

Moreover, McWilliams places too much weight on the presumption that the Legislature has knowledge of all prior laws and amends statutes in light of those prior laws. (Answer Brief at pp. 4, 12, 21, citing *In re Marriage of Cutler* (2000) 79 Cal.App.4th 460.) McWilliams correctly observes that the bill containing section 811.8 (Stats.1963 ch. 1681) was enacted immediately before the bill that renumbered former section 703(a) to current section 905(a) (Stats.1963 ch. 1715). Under the canon of construction discussed in *In re Marriage of Cutler*, that does create a *presumption* that the Legislature was aware of section 811.8 when it re-numbered section 905(a). McWilliams, however, mistakenly treats that presumption as *conclusive* in his argument about the significance of the 1963 amendments. This is a mistake for two reasons.

First, McWilliams fails to recognize that any such presumption would apply equally to section 810 – which expressly limits the applicability of section 811.8 by stating that the this definition of "statute"

does not govern construction of the Act if "the provision or context otherwise requires." Both section 810 and section 811.8 were enacted as part of Stats.1963 ch. 1681. Therefore, the presumption stated in *In re Marriage of Cutler* would favor the City of Long Beach's construction at least as much as it would favor McWilliams' construction.

Second, these are simply *presumptions* that aid statutory construction. Presumptions can be rebutted. Here, the legislative history would rebut any argument that section 811.8's definition of "statute" was meant to change the meaning of the exclusion for local tax refund claims. The 1963 law that renumbered former section 703(a) to current section 905(a) was passed pursuant to the recommendation of the Law Revision Commission. The Commission's Report stated, with regard to renumbered section 905: "This section is the same in substance as Government Code section 703." (2 Cal. L. Rev. Comm. Reports (1963) at p. 1027 [cited excerpts of this Report are attached to this brief pursuant to California Rule of Court, Rule 8.520(h)].) And the Commission's proposal was adopted by the Legislature. (Compare *id.* at p. 1026 *with* Gov. Code § 905(a).) The Legislature's decision to adopt renumbered section 905 as "the same in substance" as former section 703 rebuts any presumption that the Legislature intended to change the meaning of its 1959 legislation.[5]

Therefore, the 1963 amendments are not dispositive here. Rather, the proper construction of section 905(a) turns on what the Legislature

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[5] The legislative history contains further evidence that in 1963 the Legislature was not particularly focused on the *procedures* for claims against local governments. As the City of Long Beach correctly observed (Opening Br. at pp. 22-26), in 1963 the Legislature was concerned chiefly with creating the *substantive* law of State and local public entity liability in the wake of this Court's decision abrogating sovereign immunity, *Muskopf v. Corning Hosp. Dist.* (1961) 55 Cal.2d 211.

meant in 1959 when it used the term "statute" in that section's predecessor, former section 703(a).

II. CONSISTENT WITH THE NEEDS OF EFFECTIVE TAX ADMINISTRATION, LOCAL GOVERNMENTS HAVE ENACTED COMPREHENSIVE PROCEDURES FOR TAX ADMINISTRATION, INCLUDING INTEGRATED PROCEDURES FOR "THE REFUND, REBATE, EXEMPTION, CANCELLATION, AMENDMENT, MODIFICATION, OR ADJUSTMENT" OF DIFFERENT LOCAL TAXES

Local governments throughout California have enacted comprehensive procedures for the administration of local taxes. These integrated procedures address the levying and collection of taxes, as well as administrative challenges to tax assessments and administrative refund claims. Local governments have enacted these procedures for a number of compelling legal, policy, and practical reasons. A ruling from this Court that section 905(a) prohibits local governments from enacting these procedures would be disastrous for local governments, taxpayers, and the residents they serve. And contrary to McWilliams' claim, such a ruling is not needed to protect citizens from overreaching local governments. Local governments in California have been diligent in placing local telephone user taxes on the ballot for democratic approval.

A. When The Legislature Has Not Enacted Provisions For The Administration Of Local Taxes, Local Governments Throughout California Have Provided By Charter And Ordinance For The Administration Of Locally Enacted Taxes

Through the democratic process, California voters at the local level have enacted literally hundreds of local taxes, including business license taxes, transient occupancy taxes, documentary transfer taxes, assorted utility user taxes, parking taxes, and other types of taxes. More than a hundred local governments have enacted telephone user taxes like that at

issue in this case. And to actually implement these taxes, local governments have enacted comprehensive tax administration provisions. Almost all California counties have local ordinances governing the administration of locally enacted county taxes. And each of California's ten largest cities by population – and scores of California's medium-sized and smaller cities – have local ordinances and charter provisions governing the administration of locally enacted city taxes. These local laws provide the necessary legal and administrative framework for local tax collection that would otherwise be missing.

As discussed above (*supra* Section I.B.), the Legislature has enacted comprehensive procedures for the administration of *some* local taxes. For example, the Legislature has enacted specific administration procedures for property taxes. The Legislature's action in the area of local property taxes is not surprising, given that property taxes are subject to many constitutional constraints, are collected in part by the State and in part by counties, and that this revenue is shared among many different governmental entities according to highly regulated formulas. Likewise, the Legislature has enacted specific administrative procedures for taxes that are enacted by voters locally but that are administered by the State, like local transaction and use taxes (the local analog to State sales and use taxes) and local motor vehicles license fees. (Revenue & Tax. Code § 7270 [providing for State agency administration of local transaction and use taxes]; *id.* § 11106 [same, local motor vehicle license fees].)[6] These State-enacted administrative procedures include integrated procedures for the

[6] The Legislature, of course, has enacted comprehensive administrative procedures for taxes enacted at the State level and administered at the State level, such as income and franchise taxes and sales and use taxes.

levy, assessment, and collection of each tax. They also include procedures for taxpayers to assert administrative challenges to the amount of tax assessed, and to obtain judicial review following the denial of a refund claim. These challenge and refund procedures are integrated with the administrative procedures for assessment and collection of the tax.

The State has not, however, enacted administrative procedures for most local taxes. Rather, the role of the State with regard to most local taxes has been simply to authorize the enactment of local taxes, and to leave to local governments the task of creating comprehensive procedures for tax administration. The State constitution itself authorizes charter cities to enact local taxes. (*The Pines v. City of Santa Monica* (1981) 29 Cal.3d 656, 660.) General law cities and counties, by contrast, require enabling legislation to enact local taxes. (Cal. Const. art. XIII, § 24.) Accordingly, the Legislature has provided enabling legislation for a number of local taxes. (See, *e.g.*, Rev. & Taxation Code § 7284 [enabling counties to enact business license tax]; *id.* § 7284.2 [enabling counties to enact utility user taxes]; *id.* § 7280 [enabling cities and counties to enact transient occupancy tax]; Gov. Code § 37100.5 [enabling general law cities to enact any tax that a charter city may enact]; *id.* § 37101 [enabling cities to enact business license tax].)

When the Legislature has enabled local enactment of local taxes, however, its enabling statutes have typically stated little or nothing about how the local tax is to be assessed, collected, and enforced, or about administrative procedures for raising and resolving tax disputes. Indeed, even when the Legislature has placed some limitation or constraint on local government tax administration, its legislation has addressed the edges of tax administration rather than the core – impliedly recognizing local

authority to otherwise regulate tax administration. For example, the Legislature has tersely enabled cities and counties to levy business license taxes, required them to properly apportion the taxes on entities that do business inside and outside the jurisdiction, and enabled local governments to "provide for collection of the license tax by suit or otherwise." (Revenue & Taxation Code § 7284; Government Code § 37101.) The legislation, however, does not provide any further guidance concerning tax administration.

In light of the Legislature's silence concerning how to administer local taxes, charter cities, general law cities, and counties have enacted provisions for the assessment, collection, and enforcement of locally enacted taxes. There can be little question that the authority of local governments to enact taxes includes the authority to enact provisions to administer, collect, and enforce those taxes. "It is basic that the power to tax carries with it the corollary power to use reasonable means to effect its collection. Otherwise, the power to impose a tax is meaningless." (See *City of Modesto v. Modesto Irr. Dist.* (1973) 34 Cal.App.3d 504, 508; see also *Ainsworth v. Bryant* (1949) 34 Cal.2d 465, 476-77.) Local governments have acted out of necessity in enacting provisions governing tax administration, because effective procedures for tax administration are necessary to ensure stable revenue. "[M]oney is the lifeblood of modern government. Money comes primarily from taxes, and, as the importance of a predictable income stream from taxes has grown, governments at all levels have established procedures to minimize disruptions...." (*Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 71.)

The procedures enacted by local governments are not limited to those related to claims for refunds. Effective tax administration requires

more than that. For example, local governments require that a tax be periodically reported and remitted.[7] Tax authorities must enforce compliance, by audits and record requests and assessments for any taxes that were underpaid or not paid at all.[8] Tax authorities may issue regulations and interpretations to clarify murky or contested issues about what is subject to the tax and who must report or remit taxes.[9] Because some taxpayers will claim entitlement to an "exemption, cancellation, amendment, modification, or adjustment" (§ 905(a)) of a local tax, tax authorities have enacted procedures to address those claims administratively, often prior to payment of a tax.[10] Likewise, tax authorities enact procedures for "the refund [or] rebate" (*id.*) of local taxes, thereby permitting further administrative review and re-examination of the

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[7] *E.g.*, Los Angeles Muni. Code § 21.1.8 [reporting and remitting utility user taxes]; San Francisco Business & Tax Regs. Code § 709 [reporting and remitting utility user taxes]; *id.* §§ 6.9-1, 6.9-2 [periodic returns to be filed on form furnished by tax collector]; *id.* § 6.1-1 [making provisions applicable to utility user taxes].

[8] *E.g.*, Los Angeles Muni. Code § 21.16 [general audit procedures for local taxes]; *id.* § 21.1.10 [making general audit procedures applicable to utility user taxes]; *id.* § 21.1.14 [requiring annual audit of utility user tax collection]; San Francisco Business & Tax Regs. Code § 713 [recordkeeping requirement for utility user tax collectors]; *id.* §§ 6.4-1, 6.5-1 [authority to obtain records for purposes of determining local tax]; *id.* § 6.1-1 [making provisions applicable to utility user taxes].

[9] *E.g.*, Los Angeles Muni. Code § 21.1.9(d) [authority to issue administrative rulings and interpretations regarding utility user taxes]; San Francisco Business & Tax Regs. Code § 6.16-1 [interpretive and rulemaking authority regarding several local taxes]; *id.* § 6.1-1 [making provisions applicable to utility user taxes].

[10] *E.g.*, Los Angeles Muni. Code § 21.16 [general procedures for tax authorities to conduct audit and issue assessment, and for taxpayer to contest assessment administratively]; *id.* § 21.1.10 [making general assessment procedures applicable to utility user taxes]; *id.* § 21.1.12(b) [pre-payment procedure for claiming exemption from utility user taxes]; San Francisco Business & Tax Regs. Code §§ 6.11-1, 6.11-2, 6.11-3 [procedures for issuing determinations of local taxes due and for petitioning tax collector for pre-payment review of determination]; *id.* § 6.1-1 [making provisions applicable to utility user taxes].

tax authority's position.[11] Local tax codes outline these and other types of provisions to ensure appropriate administration of local taxes.

Another important reason why local governments have enacted these administrative provisions is to provide due process to taxpayers and thereby avoid a devastating injunction against tax collection. Local governments have established orderly procedures for taxpayers to raise tax disputes in an administrative forum, to seek administrative refunds, and ultimately to file suit to obtain post-payment judicial review. And courts hold that when local governments enact integrated procedures for administrative hearings, tax refund claims, and tax refund suits, these procedures are exclusive. These due process procedures foreclose the possibility of injunctive and declaratory relief that would otherwise interrupt the flow of tax revenue needed to fund vital public services. (*Flying Dutchman Park, Inc. v. City and County of San Francisco* (2001) 93 Cal.App.4th 1129, 1138 [denying injunctive relief from local parking tax and citing the "well-established principle that courts should refrain from interposing equitable relief in cases involving the collection of taxes unless there is clear proof that there is no adequate remedy at law"]; *accord Writers Guild of America, West, Inc. v. City of Los Angeles* (2000) 77 Cal.App.4th 475, 481 [no injunctive or declaratory relief against local business tax]; *see also McKesson Corp. v. Florida Alcohol & Tobacco Div.* (1990) 496 U.S. 18 [requirements of federal due process are satisfied when local taxing authority provides opportunity for post-payment judicial review].)

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[11] *E.g.*, Los Angeles Muni. Code § 21.07 [general tax refund claim procedure]; *id.* § 21.1.12(d) [general tax refund claim procedure applicable to utility user taxes]; San Francisco Business & Tax Regs. Code § 6.15-1 [local tax refund claim procedure]; *id.* § 6.1-1 [making provisions applicable to utility user taxes].

B. Procedures For Challenging Local Tax Assessments And Seeking Refunds Are Inseparable From Other Tax Administration Procedures, And Must Be Specifically Tailored To Each Tax

The Legislature has already demonstrated its understanding that procedures for adjusting, canceling, or refunding a tax must be integrated with the comprehensive procedures for levying, assessing, and collecting that tax. As already discussed above, that understanding is reflected in the legislative history of section 905(a), as well as in the Legislature's enactment of several different unique tax administration provisions.

The Legislature's provisions for the administration of property taxes illustrates the way in which the administrative procedures for challenging a local tax are tied to the specific procedures for levy, assessment, and collection of the particular tax. The Revenue & Taxation Code comprehensively regulates local property taxes. That code contains many different provisions governing "the refund, rebate, exemption, cancellation, amendment, modification, or adjustment" (§ 905(a)) of local property taxes. For example, taxpayers who wish to request a property tax reduction based on certain types of common tax exemptions must actually file for those exemptions *before* the tax is collected. (*See, e.g.*, Revenue & Taxation Code § 255.) That requirement relieves tax officials of the burden of processing these exemption claims at busier times of the tax season. And taxpayers who wish to request a property tax reduction based on a claim that the property has a lower value than the enrolled value must file a timely application for assessment appeal, to be determined by the county's Board of Supervisors or Assessment Appeals Board. (*Id.* § 1603.) Those bodies are charged with the fact-intensive inquiry of assessing the value of taxable property, thereby relieving courts of the burden of addressing these issues *de novo*. Along with these administrative processes, an aggrieved

taxpayer must also pay the tax when due and file a timely claim for refund. (*Id.* § 5097.) The availability of judicial review of property tax assessments turns on whether the taxpayer has complied with *all* of these mandatory administrative procedures. (*JP Morgan Chase Bank, N.A. v. City and County of San Francisco* (2009) 174 Cal.App.4th 1201, 1211.) Finally, there are a number of informal channels that a taxpayer can pursue to obtain a cancellation or refund of local property taxes under various circumstances. (*E.g.*, Revenue & Taxation Code §§ 4985, 5097.2.)

There is no reason to conclude that the Legislature intended to deny local governments the authority to enact similarly comprehensive local tax administration procedures that include integrated procedures for handling challenges to local taxes.[12] In this regard, what is good policy for State taxes – or for local taxes administered by the State – is equally good policy for local taxes administered by local governments. Just like different state taxes, different local taxes contain provisions for taxpayer challenges tailored specifically to the way the tax is levied, assessed, and collected. The majority of Court of Appeal decisions have recognized the importance of local government tax administration procedures and the authority of local governments to enact provisions governing claims for refund of local taxes. (Opening Br. 35-39.)

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[12] The Legislature has imposed a few constraints on local government authority to control claim procedures. Namely, section 935 of the Government Code requires that local government regulation not impose a more strict claim presentation deadline or statute of limitations than those contained in sections 911.2 and 945.6, and also requires that the local government not permit itself more than 45 days to act on a claim. (*Volkswagen Pacific, Inc. v. City of Los Angeles* (1972) 7 Cal.3d 48, 62-63.) And, as discussed in greater detail below (*infra* Section II.C.), the Legislature has imposed a confidentiality requirement on local tax personnel regarding certain information they obtain in the course of administering local utility user taxes.

Taxes collected by or from third parties – like the City of Long Beach's telephone user tax – pose special problems for tax administration, and therefore provide an apt example of the need for appropriate tailored procedures for administrative challenges. For example, the State has enacted comprehensive procedures regulating the collection and refund of sales and use taxes – procedures that also apply to the "local" portion of these taxes. These taxes are imposed on retailers, but the retailer is permitted to "pass on" the cost of the tax to consumers, and the economic burden of the tax falls on the consumer. Consequently, the State has enacted procedures to ensure that the party bearing the economic burden of an erroneous sales tax receives reimbursement for the tax. (Revenue & Tax. Code § 6901.5.)

The State has not, however, undertaken the task of enacting administrative procedures for other local third-party taxes. Local governments have enacted many other third-party taxes, including transient occupancy taxes, parking taxes, and utility user taxes like the City of Long Beach's telephone user tax. In the absence of State-level action, local governments have enacted comprehensive procedures for administering these taxes.

Local governments face similar administrative challenges with regard to their third-party taxes. Local governments impose these taxes on consumers, but mandate that the providers of these taxable services (*i.e.*, hoteliers, parking operators, and utilities) collect and remit taxes from consumers and file returns with tax authorities.[13] The economic burden of

[13] Courts have held that the municipal power to impose local utility user taxes necessarily includes the authority to compel third parties to collect the tax. This authority is so powerful that even other units of government can be compelled to assist in tax collection. (See *City of Modesto v. Modesto Irr. Dist.* (1973) 34 Cal.App.3d 504, 508 [charter city

these taxes ultimately falls on consumers under most circumstances. However, under some circumstances, the economic burden of the tax may fall on the collector of the tax. For example, if the tax authority conducts an audit of the collector and determines that the collector has failed to comply with its responsibility to collect and remit the proper amount of tax, the tax authority can assess the delinquent amount directly against the collector. The collector may contest such an audit result administratively. Following determination of this challenge, the collector must pay the tax.[14] Another circumstance in which the collector may bear the economic burden of a tax is when the collector voluntarily rebates or credits to the consumer amounts that the collector erroneously collected. When that occurs, some jurisdictions – including the City of Long Beach (Long Beach Muni. Code § 3.68.160(B)) – permit the utility rather than the consumer to seek a refund of the tax.[15] Local governments must tailor their administrative procedures to address the issues that arise when there is a potential for more than one party to contest a tax or to seek a refund, and different parties bear the

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authority to compel tax collection]; *Edgemont Comm. Serv. Dist. v. City of Moreno Valley* (1995) 36 Cal.App.4th 1157 [general law city authority].)

[14] A collector may have contractual agreements with a consumer regarding a right to reimbursement for this kind of tax assessment. Courts have ruled, however, that in the area of taxation the taxing authority may identify a single proper party to pursue administrative and judicial remedies, notwithstanding such private agreements that involve other parties. (See *IBM Personal Pension Plan v. City and County of San Francisco* (2005) 131 Cal.App.4th 1291, 1305 [these requirements relieve tax officials of "the burden ... of untangling a web of agreements and/or accounts in order to ascertain who is the proper recipient of any refund due," which is "critical to avoiding a double payment"].)

[15] Dozens of other cities in California have similar provisions, including Burbank, Chula Vista, Cupertino, Daly City, Downey, El Cerrito, El Monte, Exeter, Gardena, Glendale, Guadalupe, Huntington Beach, Huntington Park, Los Altos, Los Angeles, Montclair, Moreno Valley, Mountain View, Pacific Grove, Palo Alto, Pinole, Pomona, Porterville, Richmond, San Jose, San Leandro, San Luis Obispo, Santa Cruz, Sierra Madre, Stockton, Torrance, Waterford, and Winters.

economic burden of the tax. These third-party taxes provide just one example of the way in which different local taxes require different assessment, collection, and refund procedures that are integrated and tailored to the specific local tax.

C. State Legislation Regarding Local Utility User Tax Administration Reflects The Legislature's Approval Of Locally Enacted Tax Administration Procedures – And Rejection Of Administrative Class Claims Filed By Unauthorized "Representatives" Like McWilliams

The Legislature has enacted two pieces of legislation that specifically address the administration of local utility user taxes like the City of Long Beach's telephone user tax. As with the Legislature's other actions regarding local tax administration, however, this legislation narrowly addresses specific issues that arise in local utility tax administration. The Legislature's actions have signaled its view that local governments are otherwise free to regulate the procedures for administering utility user taxes, including procedures for "the refund, rebate, exemption, cancellation, amendment, modification, or adjustment" (§ 905(a)) of those taxes.

1. Public Utilities Code Section 799 And Revenue & Taxation Code Sections 7284.6 and 7284.7 Address Narrow Aspects Of Local Utility User Administration – Leaving Other Aspects Of Local Utility User Tax Administration To Local Regulation

In 1996, the Legislature enacted section 799 of the Public Utilities Code. That section addresses primarily the circumstances in which a utility can be held liable or sued for collecting an unlawful local utility user tax. That section also addresses two aspects of utility tax administration. First, it mandates that the utility cannot be required to assist the public entity in refunding an unlawful tax without being reimbursed for the administrative

expenses for doing so. (Pub. Util. Code § 799(a)(3).) Second, it provides the utility a reasonable time to adjust its collection protocols when a local government enacts a new or revised utility tax – 90 or 60 days, respectively. (Pub. Util. Code § 799(a)(5), (6).)

This legislation is noteworthy for its narrow scope – a scope that demonstrates the Legislature understood that local governments had already enacted comprehensive legal frameworks for the administration of their local utility user taxes, including making refunds. Had the Legislature wished to otherwise limit local authority to administer local taxes, it would have enacted broader and different legislation than this. Instead, the Legislature implicitly affirmed local governments' legal authority to administer these taxes.

Then, in 1997, the Legislature enacted Revenue & Taxation Code sections 7284.6 and 7284.7. Section 7284.6 requires local jurisdictions to keep confidential a utility tax "tax return" and "records of any payment of utility user's tax" (*id.* § 7284.6(a)), with a few exceptions. Disclosure is permitted to representatives of the local jurisdiction who have "administrative or compliance responsibilities relating to the utility user's tax ordinance." (*Ibid.*) Disclosure is also permitted to "[a]n employee of the utility or other company that is required to report or pay a utility user's tax to the local jurisdiction, and that furnished the records or information." (*Ibid.*) Section 7284.7, in turn, requires local jurisdictions to maintain the confidentiality of any information obtained in the course of an "audit" or "on-site audit" for utility user tax compliance, subject to similar exceptions. Both sections make it a misdemeanor for local jurisdiction employees or representatives to violate these confidentiality requirements.

Like section 799 of the Public Utilities Code, these sections confirm the Legislature's understanding that local governments already supplied the laws governing the administration of utility user taxes. This legislation refers to "tax returns," tax "administrative" responsibilities, "compliance," "audits," and "report[ing]," and "pay[ing]" utility user taxes. These are all matters of local tax administration that are outlined in local government ordinances and charters, rather than controlled by legislation at the State level. The Legislature plainly accepted that local governments had authority to administer their local taxes under locally enacted laws. Consequently, the Legislature limited its legislation to confidentiality issues that arise in the course of utility user tax administration – leaving the remaining administration issues to local governments.

2. The Confidentiality Requirements Contained In Revenue & Taxation Code Sections 7284.6 And 7284.7 Render Insufficient Class Claims Filed By Unauthorized "Representatives" Like McWilliams

This 1997 legislation is significant for an additional reason that is particularly relevant to this case. The confidentiality requirements imposed by the 1997 legislation make it impossible for local governments to address administrative "class claims" for refunds of local utility user taxes – at least claims like the one filed by McWilliams.

One of the central purposes of the administrative claim presentation requirement is "to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, *without the expense of litigation*." (*DiCampli-Mintz v. County of Santa Clara* (Dec. 6, 2012) ____ Cal.4th ____, 2012 WL 6050500, at *3, quoting *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 738, internal quotation marks omitted, emphasis added.)

Here, however, the Legislature has established a confidentiality requirement that is incompatible with a local government settling an administrative class claim for utility user taxes prior to litigation. Section 7284.6 prohibits local government employees from sharing information about other taxpayers' utility tax payments with anyone but a particular taxpayer or the utility itself. There is no exception to this confidentiality requirement for a self-appointed "representative class claimant" who files an administrative claim without the knowledge, authorization, or consent of taxpayers who are part of the putative class. This confidentiality legislation strong suggests that the Legislature did not understand class claims for administrative refunds to be appropriate for local utility user taxes.

Certainly, a different kind of "class claim" could overcome this confidentiality hurdle and still satisfy the purposes of the administrative claim presentation requirement. For example, a "class claim" that includes the express authorization of all taxpayers who are members of the proposed class, as well as confidentiality waivers, would not run afoul of this problem. The Legislature is actually well aware of the confidentiality issues that arise in the context of class claims for tax refunds. The Legislature has expressly authorized class claims for refund of sales and use taxes – but it has imposed far more stringent requirements for "representative claimants" than simply identifying the proposed class of taxpayers, like McWilliams does. Rather, a proposed class representative must obtain express written authorization from every taxpayer who is proposed to be part of the class. (Rev. & Taxation Code § 6904(b).) Moreover, each taxpayer who is proposed to be part of the class must expressly authorize State Board of Equalization staff to share his confidential tax information with the proposed representative. (Cal. Code

Regs., tit. 18, § 5239.) The fact that the Legislature has imposed a confidentiality requirement here is a strong indication that it disfavors class claims for refund of utility user taxes – at least "class claims" like those filed by an unauthorized individual like McWilliams – or never contemplated that such claims were permitted in the first place.

D. Local Governments Have Acted Responsibly In Obtaining Voter Approval For Local Telephone User Taxes

McWilliams urges that the City of Long Beach and other local governments have not proceeded appropriately in seeking voter approval of local telephone user taxes, and the class claim remedy is necessary to discipline wayward local governments. The Court should reject these suggestions. As an initial matter, this Court ordinarily presumes that governments act in conformity with the law. (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 374.) Moreover, the recent history of local elections concerning telephone user taxes rebuts any concern that local governments have disregarded voter approval requirements. When a federal Internal Revenue Service ruling regarding a federal excise tax on telephone use gave rise to concerns about allegations of infirmity being raised as to local telephone user taxes, local governments – in an abundance of caution – have submitted their telephone user taxes to the voters. McWilliams' suggestions regarding the motivations of local governments are rebutted by the sheer number of local governments – including the City of Long Beach – that have placed their telephone user taxes on the ballot following the IRS's ruling. Those measures are listed below.[16]

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[16] City of Bellflower, Measure P (Nov. 6, 2012); City of Berkeley, Measure Q (Nov. 6, 2012); City of Downey, Measure D (Nov. 6, 2012); City of Los Alamitos, Measure DD (Nov. 6, 2012); City of Pinole, Measure M (Nov. 6, 2012); City of San Luis Obispo, Measure D (Nov. 6, 2012);

City of Stanton, Measure J (June 5, 2012); City of Sierra Madre, Measure 12-1 (April 10, 2012); City of Albany, Measure O (Nov. 2, 2010); City of Bellflower, Measure A (Nov. 2, 2010); City of Chula Vista, Proposition H (Nov. 2, 2010); City of El Segundo, Measure O (Nov. 2, 2010); City of Elk Grove, Measure J (Nov. 2, 2010); City of Guadalupe, Measure P (Nov. 2, 2010); City of Indio, Measure S (Nov. 2, 2010); City of Mountain View, Measure T (Nov. 2, 2010); City of Oroville, Measure A (Nov. 2, 2010); City of Pinole, Measure S (Nov. 2, 2010); City of Placentia, Measure W (Nov. 2, 2010); City of Pomona, Measure SP (Nov. 2, 2010); City of Port Hueneme, Measure G (Nov. 2, 2010); City of Rancho Cordova, Measure E (Nov. 2, 2010); City of Santa Cruz, Measure H (Nov. 2, 2010); City of Coachella, Measure I (June 8, 2010); City of Mammoth Lakes, Measure U (June 8, 2010); City of Winters, Measure W (June 8, 2010); City of El Segundo, Measure M (April 13, 2010); City of Tulare, Measure N (Nov. 3, 2009); Town of Portola Valley, Measure P (Nov. 3, 2009); City of Irwindale, Measure I-U (Nov. 3, 2009); City of Cupertino, Measure B (Nov. 3, 2009); City of Palm Springs, Measure G (Nov. 3, 2009); City of Vallejo, Measure U (Nov. 3, 2009); City of Pico Rivera, Measure TR (Nov. 3, 2009); City of Dinuba, Measure M (Nov. 3, 2009); City of Pomona, Measure PC (Nov. 3, 2009); City of Huntington Park, Measure E (Nov. 3, 2009); City of Newark, Measure L (Nov. 3, 2009); City of Coachella, Measure M (Nov. 3, 2009); City of Redondo Beach, Measure UU (Nov. 3, 2009); City of Hayward, Measure A (May 19, 2009); City of Desert Hot Springs, Measure A (May 19, 2009); City of Rancho Cordova, Measure B (May 19, 2009); City of Glendale, Measure U (Apr. 7, 2009); City of Carson, Measure C (Mar. 3, 2009); City of Gardena, Measure A (Mar. 3, 2009); City of Bellflower, Measure A (Mar. 3, 2009); City of Redondo Beach, Measure A (Mar. 3, 2009); County of Sacramento, Measure O (Nov. 4, 2008); City and County of San Francisco, Proposition O (Nov. 4, 2008); City of Inglewood, Measure UUT (Nov. 4, 2008); City of San Leandro, Measure RR (Nov. 4, 2008); City of San Jose, Measure K (Nov. 4, 2008); City of Lakewood, Measure L (Nov. 4, 2008); City of Moreno Valley, Measure P (Nov. 4, 2008); City of Hawthorne, Measure V (Nov. 4, 2008); City of Santa Barbara, Measure G (Nov. 4, 2008); City of Cathedral City, Measure L (Nov. 4, 2008); City of San Gabriel, Measure SG (Nov. 4, 2008); City of Indio, Measure K (Nov. 4, 2008); City of Lynwood, Measure II & Measure HH (Nov. 4, 2008); City of Sacramento, Measure O (Nov. 4, 2008); County of Los Angeles, Measure U (Nov. 4, 2008); City of Stockton, Measure U (Nov. 4, 2008); City of Sebastopol, Measure M (Nov. 4, 2008); City of Long Beach, Measure G (Nov. 4, 2008); City of Santa Monica, Measure SM (Nov. 4, 2008); City of Holtville Measure C (Nov. 4, 2008); City of Hemet, Measure O (Nov. 4, 2008); City of Morgan Hill, Measure G (Nov. 4, 2008); Proposed City of Rossmoor, Measure U2 & Measure U3 (Nov. 4, 2008); City of Pomona, Measure PC (Nov. 4, 2008); City of Seaside, Measure E (Nov. 4, 2008); County of Alameda, Measure F (June 3, 2008); City of Oakland, Measure J (June 3, 2008); City of Winters, Measure T (June 3, 2008); City of Covina, Measure C (June 3, 2008); City of Torrance, Measure T (June 3, 2008); City of McFarland, Measure E (June 3, 2008); City of Culver City, Measure W (Apr. 8, 2008); City of Malibu, Measure D (Apr. 8, 2008); City of Sierra Madre, Measure U (Apr. 8, 2008); City of Los Angeles, Measure S (Feb. 5, 2008); City of Huntington Park, Measure B (Feb. 5, 2008); City of Richmond, Measure B (Feb. 5, 2008); City of San Bernardino, Measure L (Feb. 5, 2008); City of

CONCLUSION

We respectfully urge this Court to affirm the decision of the trial court, and to hold that sections 905(a) and 935 of the Government Code authorize local governments to regulate "procedures for the refund, rebate, exemption, cancellation, amendment, modification, or adjustment of any tax, assessment, fee, or charge" levied by a local government.

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Arcata, Measure A (Feb. 5, 2008); City of Pasadena, Measure D (Feb. 5, 2008); City of Emeryville, Measure A (Nov. 6, 2007); City of Los Altos, Measure O (Nov. 6, 2007); City of Redwood City, Measure D (Nov. 6, 2007); City of Hermosa Beach, Measure H (Nov. 6, 2007); City of Benicia, Measure S (Nov. 6, 2007); City of Gilroy, Measure A (Nov. 6, 2007); City of Rialto, Measure D (Nov. 6, 2007); City of Buenaventura, Measure C7 (Nov. 6, 2007); City of El Monte, Measure A (Nov. 6, 2007); City of South Pasadena, Measure UT & Measure AV (Nov. 6, 2007); City of South Pasadena, Measure U (Mar. 6, 2007).

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 9,260 words up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on December 17, 2012.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Sovereign Immunity

Number 2—Claims, Actions and Judgments Against Public Entities and Public Employees

January 1963

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California

would be applicable thereto if there were no requirement that a claim be presented to and be acted upon by the public entity before an action could be commenced thereon.

Comment: This section is based on the second paragraph of Government Code Section 715, which applies to claims against local public entities. There is no existing comparable statutory provision that applies to claims against the State.

Article 2. General Provisions

905. There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against local public entities except:

(a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers' or materialmen's liens.

(c) Claims by public employees for fees, salaries, wages, mileage or other expenses and allowances.

(d) Claims for which the workmen's compensation authorized by Division 4 (commencing with Section 3201) of the Labor Code is the exclusive remedy.

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims which relate to a special assessment constituting a specific lien against the property assessed and which are payable from the proceeds of such an assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the State or by a State department or agency or by another local public entity.

(j) Claims arising under any provision of the Unemployment Insurance Code, including but not limited to claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 of Chapter 1 of Part 7 of Division 2 of the Labor Code (commencing with Section 1720).

(*l*) Claims governed by the Pedestrian Mall Law of 1960, Division 13 (commencing with Section 11000) of the Streets and Highways Code.

Comment: This section is the same in substance as Government Code Section 703. See new Section 935 for procedure for claims excepted from Chapters 1 and 2.

905.2. There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against the State:

(a) For which no appropriation has been made or for which no fund is available but the settlement of which has been provided for by enactment.

(b) For which the appropriation made or fund designated is exhausted.

(c) For money or damages (1) on express contract, (2) for an injury for which the State is liable or (3) for the taking or damaging of private property for public use within the meaning of Section 14 of Article I of the Constitution.

(d) For which settlement is not otherwise provided for by enactment.

Comment: This section—which restates the substance of portions of Government Code Sections 620, 621 and 641—is patterned after Section 630 (Title 2 of the CAL. ADMIN. CODE) of the Rules of the State Board of Control.

905.4. Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part shall not be construed to be an exclusive means for presenting claims to the Legislature nor as preventing the Legislature from making such appropriations as it deems proper for the payment of claims against the State which have not been submitted to the board or recommended for payment by it pursuant to Chapters 1 and 2 of this part.

Comment: This section is the same in substance as Government Code Section 625.

905.6. This part does not apply to claims against the Regents of the University of California.

Comment: This section codifies existing law as declared by two trial court decisions which, the Commission is advised, held that neither the State nor the local public entity claims presentation procedures apply to claims against the University of California.

PROOF OF SERVICE

I, COLLEEN M. GARRETT, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On December 17, 2012, I served the following document(s):

APPLICATION FOR PERMISSION TO FILE JOINT AMICUS CURIAE BRIEF OF THE LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT CITY OF LONG BEACH and AMICUS CURIAE BRIEF OF THE LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT CITY OF LONG BEACH

on the following persons at the locations specified:

SEE ATTACHED SERVICE LIST

in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed December 17, 2012, at San Francisco, California.

Colleen M. Garrett

COLLEEN M. GARRETT

SERVICE LIST

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COURTESY COPIES TO

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County of Los Angeles
600 S. Commonwealth Ave.
Los Angeles, CA 90005

Clerk of the Court
California Court of Appeal
Second Appellate Division
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Los Angeles, CA 90013