

CITY AND COUNTY OF SAN FRANCISCO

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May 25, 2012

The Honorable Tani G. Cantil-Sakauye, Chief Justice  
The Honorable Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, California 94102-7303

Re: *McWilliams v. City of Long Beach*  
California Supreme Court Case No. S202037  
League of California Cities Letter Supporting City of Long Beach's Petition For  
Review (Rule 8.500(g))

Dear Chief Justice Cantil-Sakauye and Associate Justices:

We write on behalf of the League of California Cities to support the City of Long Beach's petition for review in the above case.

**Interest of the League**

The League of California Cities is an association of 469 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.

**Discussion**

The Second District Court of Appeal issued a significant holding that will have a serious impact on California cities. The Second District held that section 905(a) of the Government Code preempts local ordinances that regulate claims for refund of local taxes imposed by those same local ordinances. That holding is unsound as a matter of statutory interpretation, for the reasons already amply stated by the City of Long Beach in its petition for review and by the County of Los Angeles in its amicus curiae letter dated May 3, 2012.

On behalf of the many California general law cities and charter cities that have enacted local taxes, we urge that the Second District's holding is also unsound as a matter of tax policy. The Second District's holding undercuts local governments' ability to responsibly regulate local taxes, including the refunds of local taxes that are unlawfully or erroneously collected. We urge the Court to grant review to address this important area of local concern.

The Second District's holding – that the Government Claims Act displaces local ordinances governing local tax refund claims – creates tremendous uncertainty for local governments. More than a hundred California cities have enacted local ordinances imposing local taxes, and likewise have enacted local ordinances governing claims for refunds of local taxes. These locally enacted taxes include transient occupancy (hotel) taxes, business taxes,

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parking taxes, and utility user taxes, among others. The Second District's holding sweeps aside all of these local claim ordinances governing local taxes.

It is bad tax policy to impose a one-size-fits-all claim procedure on a variety of local taxes imposed by a variety of local jurisdictions. That is a policy that the Legislature itself has rejected. The Revenue & Taxation Code reflects the Legislature's recognition that uniformity in tax refund procedures is *not* good tax policy. Under the Revenue & Taxation Code, there are different types of refund procedures for different state taxes, such as income taxes, franchise taxes, and state sales tax. Likewise, the Revenue & Taxation Code includes several different types of refund and adjustment procedures for *local* taxes. (E.g., Rev. & Taxation Code §§ 255, 1603, 4985, 5096, 5097(b), 5141 [property taxes]; *id.* §§ 6901, 6933, 6596, 7277 [local sales taxes]; *id.* § 10901 [local vehicle license fees]; *id.* § 9152 [local motor vehicle fuel tax]; *id.* § 11934 [local documentary transfer taxes].) These Revenue & Taxation Code refund procedures are tailored specifically to the manner in which different local taxes are assessed and collected. This reflects the Legislature's conclusion that uniformity in tax refund procedures is not necessary or even advisable.

Local governments have followed the Legislature's lead. Just as the Revenue and Taxation Code authorizes different types of refund procedures tailored to the particular local tax at issue, so do local ordinances and charter provisions. There are good reasons for different refund procedures for different taxes. For example, many state and local taxes involve transactions in which one party to the transaction must remit the tax – but the party that remits the tax is not necessarily the party that pays the tax. With some taxes, the party that remits the tax collects the tax from the other party (e.g., hotel taxes and utility user taxes, like the City of Long Beach's telephone tax here). With other taxes, the party that remits the tax is designated as the "taxpayer," but the "taxpayer" is entitled to pass along the cost of the tax to someone else (e.g., sales taxes). Regardless of who is designated as the "payer" of the tax, these "third-party" taxes require refund procedures different from the refund procedures for taxes paid directly to the taxing authority (such as income tax, franchise tax, property tax, or local business taxes), because of the need to ensure that the proper party receives the refund. Specifically tailored tax refund procedures, based on the specific way the tax is assessed and collected, promote the policy of stability and certainty in the resolution of tax disputes. (Cf. *IBM Personal Pension Plan v. City and County of San Francisco* (2005) 131 Cal.App.4th 1291 [requirement that only the taxpayer itself may file a property tax refund claim avoids disputes regarding the identity of the proper party to receive a refund of a disputed tax].)

Most previous decisions of the Courts of Appeal have promoted this sound policy of enforcing local refund claim procedures that are tailored to specific local taxes. Published decisions from the First District and Second District have – contrary to the decision here – held that the Government Claims Act, and specifically Government Code sections 905(a) and 935(a), "allow a scope of operation for local statutes to occupy the field of local refund actions, if the locality so chooses." (*Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 78; accord *Pasadena Hotel Dev. Venture v. City of Pasadena* (1981) 119 Cal.App.4th 412, 414-15; but see *Oronoz v. Superior Court (County of Los Angeles)* (2008) 159 Cal.App.4th 353, 361 [construing Government Code section 905(a) not to permit locally enacted refund provisions].) Other decisions have enforced locally enacted tax refund claim procedures, without specifically addressing Government Code sections 905 and 935. (E.g., *Flying Dutchman Park, Inc. v. City and County of San Francisco* (2001) 93 Cal.App.4th 1129, 1138-39 [parking tax]; *Howard Jarvis Taxpayers Assn. v. City of Los Angeles* (2000) 79 Cal.App.4th 242, 249 n.5 [business tax].) Thus, under most previous decisions of the Courts of Appeal, if a local taxing authority considers the claim procedures under Government Code section 910 to be adequate for a particular tax, it is free to do nothing and let Government Code section 910 control tax refund

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claims. But if the local taxing authority considers that claim procedure to be ill-suited to a particular local tax, the local authority can enact specific refund claim procedures.

The League of California Cities respectfully urges the Court to grant the City of Long Beach's petition for review. The decision here strips local governments of their authority to enact specific tax refund procedures that are integrated with the administration, assessment, and collection of particular local taxes. Review is appropriate to restore stability to this area of the law that is so important to effective tax administration by local governments.

Very truly yours,

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