



BETTY T. YEE
California State Controller

November 6, 2017

John Naimo, Auditor-Controller
Department of the Auditor Controller
Los Angeles County
500 West Temple Street, Room 525
Los Angeles, CA 90012

Dear Mr. Naimo:

The State Controller's Office (SCO) performed a desk review of costs claimed by Los Angeles County for the legislatively mandated Municipal Storm Water and Urban Runoff Discharges Program (Los Angeles Regional Water Quality Control Board, Order No. 01-182, Permit CAS004001, Part 4F5c3) for the period of July 1, 2002, through June 30, 2013. We conducted our review under the authority of Government Code (GC) sections 12410, 17558.5, and 17561. Our review was limited to verifying the funding sources used to pay for the mandated activities.

The county claimed \$6,129,851 for the mandated program. Our review found that all costs claimed are unallowable. The costs are unallowable because the county did not offset the restricted revenues used to fund the mandated activities, as described in the attached Summary of Program Costs and Review Results. The State made no payments to the county. The SCO's Local Government Programs and Services Division will send the county a separate notification letter to reduce claimed costs to zero within 30 days from the issuance date of this report.

We issued a draft letter report on September 8, 2017. You responded by letter dated September 22, 2017 (Attachment 3), disagreeing with the review results. This final report includes the county's response.

This final letter report contains an adjustment to costs claimed by the county. If you disagree with the review finding, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (Commission). Pursuant to Section 1185, subdivision (c), of the Commission's regulations (*California Code of Regulations*, Title 3), an IRC challenging this adjustment must be filed with the Commission no later than three years following the date of this report, regardless of whether this report is subsequently supplemented, superseded, or otherwise amended. You may obtain IRC information on the Commission's website at www.csm.ca.gov/forms/IRCFForm.pdf.

If you have any questions, please contact Jim L. Spano, CPA, Assistant Division Chief, by telephone at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/as

Attachments

RE: S17-MCC-9008

cc: Hasmik Yaghobyan, J.D., SB 90 Coordinator
Department of the Auditor-Controller
Los Angeles County
Edward Jewik, Program Specialist
Department of the Auditor-Controller
Los Angeles County
Chris Hill, Principal Program Budget Analyst
Local Government Unit, California Department of Finance
Steven Pavlov, Finance Budget Analyst
Local Government Unit, California Department of Finance
Anita Dagan, Manager
Local Government Programs and Services Division
California State Controller's Office

Attachment 1— Summary of Program Costs July 1, 2002, through June 30, 2013

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment ¹
<u>July 1, 2002, through June 30, 2003</u>			
One-time costs	\$ 241,508	\$ 241,508	\$ -
Ongoing costs	107,975	107,975	-
Total direct costs	349,483	349,483	-
Indirect costs	13,316	13,316	-
Total direct and indirect costs	362,799	362,799	-
Less offsetting revenues and reimbursements	-	(362,799)	(362,799)
Total program costs	<u>\$ 362,799</u>	-	<u>\$ (362,799)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2003, through June 30, 2004</u>			
One-time costs	\$ 32,128	\$ 32,128	\$ -
Ongoing costs	540,791	540,791	-
Total direct costs	572,919	572,919	-
Indirect costs	1,850	1,850	-
Total direct and indirect costs	574,769	574,769	-
Less offsetting revenues and reimbursements	-	(574,769)	(574,769)
Total program costs	<u>\$ 574,769</u>	-	<u>\$ (574,769)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2004, through June 30, 2005</u>			
Ongoing costs	\$ 600,372	\$ 600,372	\$ -
Less offsetting revenues and reimbursements	-	(600,372)	(600,372)
Total program costs	<u>\$ 600,372</u>	-	<u>\$ (600,372)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2005, through June 30, 2006</u>			
Ongoing costs	\$ 608,784	\$ 608,784	\$ -
Less offsetting revenues and reimbursements	-	(608,784)	(608,784)
Total program costs	<u>\$ 608,784</u>	-	<u>\$ (608,784)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	

Attachment 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment ¹
<u>July 1, 2006, through June 30, 2007</u>			
Ongoing costs	\$ 624,906	\$ 624,906	\$ -
Less offsetting revenues and reimbursements	-	(624,906)	(624,906)
Total program costs	<u>\$ 624,906</u>	-	<u>\$ (624,906)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2007, through June 30, 2008</u>			
Ongoing costs	\$ 634,018	\$ 634,018	\$ -
Less offsetting revenues and reimbursements	-	(634,018)	(634,018)
Total program costs	<u>\$ 634,018</u>	-	<u>\$ (634,018)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2008, through June 30, 2009</u>			
Ongoing costs	\$ 533,323	\$ 533,323	\$ -
Less offsetting revenues and reimbursements	-	(533,323)	(533,323)
Total program costs	<u>\$ 533,323</u>	-	<u>\$ (533,323)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2009, through June 30, 2010</u>			
Ongoing costs	\$ 524,609	\$ 524,609	\$ -
Less offsetting revenues and reimbursements	-	(524,609)	(524,609)
Total program costs	<u>\$ 524,609</u>	-	<u>\$ (524,609)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2010, through June 30, 2011</u>			
Ongoing costs	\$ 528,278	\$ 528,278	\$ -
Less offsetting revenues and reimbursements	-	(528,278)	(528,278)
Total program costs	<u>\$ 528,278</u>	-	<u>\$ (528,278)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	

Attachment 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment ¹
<u>July 1, 2011, through June 30, 2012</u>			
Ongoing costs	\$ 564,392	\$ 564,392	\$ -
Less offsetting revenues and reimbursements	-	(564,392)	(564,392)
Total program costs	<u>\$ 564,392</u>	-	<u>\$ (564,392)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2012, through June 30, 2013</u>			
Ongoing costs	\$ 573,601	\$ 573,601	\$ -
Less offsetting revenues and reimbursements	-	(573,601)	(573,601)
Total program costs	<u>\$ 573,601</u>	-	<u>\$ (573,601)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>Summary: July 1, 2002, through June 30, 2013</u>			
One-time costs	\$ 273,636	\$ 273,636	\$ -
Ongoing costs	5,841,049	5,841,049	-
Total direct costs	6,114,685	6,114,685	-
Indirect costs	15,166	15,166	-
Total direct and indirect costs	6,129,851	6,129,851	-
Less offsetting revenues and reimbursements	-	(6,129,851)	(6,129,851)
Total program costs	<u>\$ 6,129,851</u>	-	<u>\$ (6,129,851)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	

¹ See Attachment 2, Review Results.

Attachment 2— Review Results July 1, 2002, through June 30, 2013

BACKGROUND—

The California Regional Water Quality Control Board, Los Angeles Region (Board) adopted a 2001 storm water permit (Permit CAS004001) that requires local jurisdiction to:

Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

On July 31, 2009, the Commission determined that Part 4F5c3 of the permit imposes a state mandate reimbursable under GC section 17561 and adopted the Statement of Decision. The Commission further clarified that each local agency subject to the permit and not subject to a trash total maximum daily load is entitled to reimbursement.

The Commission also determined that the period of reimbursement for the mandated activities begins July 1, 2002, and continues until a new National Pollutant Discharge Elimination System (NPDES) permit issued by the Board is adopted. On November 8, 2012, the Board adopted a new NPDES permit, Order No. R4-2012-0175, which became effective on December 28, 2012.

The program's parameters and guidelines establish the state mandate and define the reimbursement criteria. The Commission adopted the parameters and guidelines on March 24, 2011. In compliance with GC section 17558, the SCO issues claiming instructions to assist local agencies, school districts, and community college districts in claiming mandated program reimbursable costs.

**FINDING—
Unreported offsetting
revenues and
reimbursements**

The county did not offset any revenues or reimbursements on its claim forms for the review period. We found that the county should have offset \$6,129,851. Specifically, the county used restricted Proposition A Local Return funds to pay \$288,802 in one-time costs (which includes indirect costs) and \$5,841,049 in ongoing maintenance costs. As the county used restricted Proposition A Local Return funds to pay for the mandated activities, it did not have to rely on the use of discretionary general funds.

The following table summarizes the audit adjustment:

	Offsetting Revenue Reported	Unreported Offsetting Revenue	Audit Adjustment
One-time costs:			
Salaries, benefits, and related indirect costs	\$ -	\$ (59,077)	\$ (59,077)
Contract services	-	(229,725)	(229,725)
Total one-time costs	-	(288,802)	(288,802)
Ongoing maintenance costs	-	(5,841,049)	(5,841,049)
Total one-time costs and ongoing costs	\$ -	\$(6,129,851)	\$ (6,129,851)

Proposition A is a half-cent sales tax measure approved by Los Angeles County voters in 1980 to finance transit programs. Twenty-five percent of the sales tax revenue is dedicated to the Local Return Program to be used by cities for the development and/or improvement of public transit and related transportation infrastructure.

Proposition A Local Return Guidelines, section II. Project Eligibility, identify reimbursement for ongoing trash receptacle maintenance as follows:

2. BUS STOP IMPROVEMENTS AND MAINTENANCE (Codes 150, 160, & 170)

Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:

- Concrete landings – in street for buses and at sidewalk for passengers
- Bus turn-outs
- Benches
- Shelters
- Trash receptacles
- Curb cuts
- Concrete or electrical work directly associated with the above items

Section VIII. of the parameters and guidelines, Offsetting Revenues and Reimbursements, states:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.

Recommendation

No recommendation is applicable for this finding, as the period of reimbursement expired on December 27, 2012.

County’s Response

The County has sought \$6,129,851 in reimbursement for the cost of installing and maintaining trash receptacles at transit locations from July 1, 2002 through June 30, 2013. On July 31, 2009, the Commission on

State Mandates found that the installation and maintenance of these trash receptacles is a State mandate for which the County is entitled to reimbursement. On March 24, 2011, the Commission issued Parameters and Guidelines setting forth reimbursement criteria. The County filed its claim in accordance with the Parameters and Guidelines and the State Controller's office's (SCO) claiming instructions.

Draft Audit Report

The draft audit finds that the County's costs are not reimbursable in their entirety. The draft audit bases this finding solely on the grounds that the County advanced Proposition A funds in order to install and maintain the trash receptacles pending reimbursement by the State for the costs of this mandate. The draft audit does not otherwise question the County's right to reimbursement.

SCO's Conclusion is Erroneous

The draft audit's conclusion is erroneous for several reasons. First, as set forth below, Proposition A funds are a local tax, not a "federal, State, or non-local source" as described in the Parameters and Guidelines. Second, the County had the right to advance Proposition A funds for the purpose of installing and maintaining the trash receptacles, subject to the County's obligation to return those funds to the Proposition A account when reimbursement was received from the State. Finally, the Controller's office disallowance of reimbursement based on the Parameters and Guidelines is an unlawful retroactive application of those guidelines.

A. Proposition A

Proposition A is a one-half cent sales tax approved by Los Angeles County voters in 1980. The tax is imposed on the sale of tangible personal property at every retailer in the County and upon the storage, use or other consumption in the County of tangible personal property purchased from any retailer for storage, use or other consumption in the County. *See* Los Angeles County Metropolitan Transportation Authority Administrative Code, Sections 3-05-020 and 3-05-030.

Proposition A provides that twenty-five percent of the sales tax revenue will be returned to local jurisdictions for local transit purposes. These funds are generally referred to as "Local Return funds."

Under guidelines adopted by the Metropolitan Transportation Authority for the use of Local Return funds, the County has discretion as to the use of those funds as long as the use complies with the guidelines and is for the public transit purposes. One of the eligible uses is for bus stop improvements and maintenance. *See* Local Return Guidelines, Section II.A.2. The County was not required, however, to use the funds for that purpose. Instead, the County had the discretion to use the funds for any appropriate project.

The Metropolitan Transportation Authority's guidelines specifically provide that Proposition A Local Return funds may be used as an advance with respect to a project, with the funds subsequently being returned to the Proposition A account when the advance is reimbursed from another source. The guidelines specifically provide, "Local Return funds may be used to advance a project which will subsequently be reimbursed by federal, state or local grant funding, or private funds, if the project itself is eligible under the Local Return Guidelines." In that

case, the reimbursement must be returned to the appropriate Proposition A Local Return fund. See Guidelines, Section 4.C.10.

B. SCO's Conclusion that Proposition A Funds Constituted Reimbursement from a Federal, State or Non-Local Source is Erroneous

The draft audit asserts that the Proposition A funds advanced by the County should be offset against the County's claim. In support of this disallowance, the draft audit cites the Parameters and Guidelines provision that provides that "reimbursement for this mandate received from any *federal, state or non-local source* shall be identified and deducted from this claim." (Emphasis added.) This assertion is erroneous for several reasons.

First, Proposition A is a local tax. It is therefore not a federal or State source.

Second, Proposition A is not a non-local source. It is a local sales tax imposed on local citizens.

Third, the draft audit report fails to acknowledge that the County was required to provide a "cash flow" source for the claimed costs, therefore, it was entirely proper for the County to use Proposition A funds as an advance, with the expectation that the funds would be paid back to the Proposition A account to be used for other transit purposes when the County recovers the funds pursuant to its claim for reimbursement. As discussed, Proposition A guidelines specifically provide that "Local Return Funds may be used to advance a project which will subsequently be reimbursed by federal, state or local grant funding, or private funds, if the project itself is eligible under the Local Return Guidelines." In this regard, Proposition A did not require the County to use Proposition A funds for the installation and maintenance of trash receptacles; the County had discretion to use Proposition A funds as an advance and then to use those funds for other transit projects upon their recovery pursuant to its claim.

The purpose of Article XIII B, section 6, of the California Constitution is to protect the tax revenues of local governments (*County of Fresno v. State of California* (1991) 53 Cal3d 482, 487). Government Code §17556(d), as implemented by the Parameters and Guidelines here, excludes "expenses that are recoverable from sources other than taxes."

County of Fresno, 53 Cal.3d at 487 (emphasis added). Proposition A is not a "source other than taxes." It is a local tax whose diversion to pay the trash receptacle mandate is a much a constraint on the funds available to the County as the use of other, general funds. By not providing reimbursement, this limits the funds the County has for transportation projects just as if the State refused to reimburse County general funds used for this purpose.

Thus, it cannot be said that the County's lawful use of Proposition A funds to advance the installation and maintenance of the trash receptacles, with the understanding that, upon reimbursement, those funds would be returned to the appropriate Proposition A fund for use on other transit projects, was reimbursement from a non-local source. Because Proposition A funds will be returned to the Proposition A fund to be used for other purposes, the advancement (not payment) of those funds was not a reimbursement.

The authorities that the Controller's office shared with the County prior to the issuance of this draft audit are not to the contrary. As discussed above, in *County of Fresno v. State of California* the court held that Article XIII B, section 6 was designed "to protect the tax revenues of local governments from state mandates that would require expenditures of such revenues" (53 Cal.3d at 487). Here, Proposition A is a local sales tax, and thus fall directly within the protection of Article XIII B, section 6. Reimbursement of these tax revenues is therefore not inconsistent with the *County of Fresno*.

The Commission's decision in *Animal Adoption*, Commission on State Mandates Case No. 13-9811-I-02, is also inapplicable. This Improper Reduction Claim addressed the use of Proposition F funds, which were funds obtained through bonds issued pursuant to a ballot measure. These funds were not taxes. Again, that is not the case here. Proposition A is a local sales tax.

The Commission's decisions in the *Two-Way Traffic Signal Program* and the *Behavioral Intervention Plans* claims are likewise inapplicable. In *Two-Way Signal* the funds were derived from a *State* gas tax, outside the local agency's appropriations limit, not from a local sales tax, which Article XIII B, section 6 is meant to protect. Similarly, in *Behavioral Intervention Plans*, the funds were also State funds, not sales taxes. As the Commission said in *Behavioral Intervention Plans* "when funds other than local proceeds of taxes are thus applied, the Controller may reduce reimbursement accordingly. Commission on State Mandates Case No. CSM4464, Statement of Decision at 54 (2013) (emphasis added).

C. SCO's Finding is an Unlawful Retroactive Application of the Parameters and Guidelines

There is another reason why the draft audit is erroneous. The County commenced the advancement of Proposition A funds on or around July 1, 2002, the commencement of the first audit period, or shortly thereafter. As discussed above, at the time the County advanced the Proposition A funds for the installation and maintenance of the trash receptacles, the Proposition A guideline specifically provided that the County could advance these funds and then return them to its Proposition A account when the expenditures were reimbursed.

The Parameters and Guidelines, on the other, hand were not adopted until March 24, 2011. It would be arbitrary and capricious to find that the Parameters and Guidelines retroactively prohibited an advancement of Proposition A funds in a way that was lawful when those funds were advanced.

In this regard, as a general rule, a regulation will not be given retroactive effect unless it merely clarifies existing law (*People ex rel. Deukmejian v. CHE, Inc.* (1983) 150 Cal.App.3d 123, 135). Retroactivity is not favored in the law (*Aktar v. Anderson* (1997) 58 Cal.App.4th 1166, 1179). Regulations that "substantially change the legal effect of past events" cannot be applied retroactively. *Santa Clarita Organization for Planning and the Environment v. Abercrombie* (2015) 240 Cal.App.4th 300, 315.

That rule applies here. At the time the County advanced its Proposition A funds to use for the installation and maintenance of the trash receptacles, it was operating under the understanding, consistent with the Proposition A Guidelines, that the County could advance those funds and then return them to the Proposition A account for other use once the County obtained a subvention of funds from the state. To retroactively

apply the Parameters and Guidelines, adopted in 2011, to preclude a subvention, i.e., to now find that the County could not use its Proposition A funds as an advance only, substantially changes the legal effect of these past events. Such an application is unlawful.

SCO's Comments

The finding and recommendation remain unchanged. We will respond to the county's comments in the order presented in its letter.

A. Proposition A

The county quotes section 4.C.10. (Reimbursement) of the Proposition A Local Return Guidelines that allow for the advancement Proposition A Local Return funds pending reimbursement from "federal, state or local grant funding" As the Proposition A Local Return Guidelines state that Local Return funds may be advanced only for other grant funds, we disagree with the county's assertion that it has the ability to advance Proposition A funds pending mandate reimbursement from the State. A mandate payment is a subvention of funds to reimburse local governments for the costs of the program, which is entirely different from a grant.

B. SCO's Conclusion that Proposition A Funds Constituted Reimbursement from a Federal, State or Non-Local Source is Erroneous

The county states that Proposition A Local Return funds are proceeds of taxes that are eligible for reimbursement. The county has not provided us with any documentation to support that the Proposition A Local Return funds have been included in the city's appropriations subject to the limit. In addition, Proposition A Local Return funds are a special supplementary sales tax approved by Los Angeles County voters in 1980 and are restricted solely for the development and or improvement of public transit services. A special supplementary sales tax is not the same as an unrestricted general sales tax, which can be spent for any general governmental purposes, including public employee salaries and benefits.

C. SCO's Finding is an Unlawful Retroactive Application of the Parameters and Guidelines

The county states, "it commenced the advancement of Proposition A funds on or around July 1, 2002, the commencement of the first audit period, or shortly thereafter." We disagree. Based on the County Board of Supervisors (Board) letter to approve Contract No. 74399 with ShelterClean, Inc., dated March 6, 2003, the Board approved the use of Proposition A Local Return funds to "finance" the trash receptacle maintenance at transit stops with "no impact on net County cost(s)":

The "Maintenance Program for Bus Shelters, Bus Benches, and Trash Receptacles at Designated Transit Stops in the Unincorporated North Area of the County of Los Angeles" and the "Maintenance Program for Bus Shelters, Bus Benches, and Trash Receptacles at Designated Traffic Stops in the Unincorporated South Area of the County of Los Angeles" will be *financed* from all five Supervisorial District's allocations of Proposition A Local Return Transit Funds available in the Transit

Enterprise Fund administered by Public Works for Fiscal Year 2002-03. The Los Angeles County Metropolitan Transportation Authority has approved this project as eligible for Proposition A Local Return Transit funding. *There will be no impact on net County cost.* [Emphasis added]

We also reviewed the Board's approval letters for three other commercial waste hauler contracts in use during the engagement period (ShelterClean, Inc. Contract No. 74400 and Contract No. 76721, and Sureteck Industrial and Commercial Services, Inc. Contract No. 76492) and found nearly identical language. As such, we concluded that the Proposition A Local Return funds are being used for their intended purpose, which is to finance the county's trash receptacles maintenance program at designated bus shelters/benches.

Additionally, the county's statement that "there will be no impact on net County cost(s)" is in direct contrast with the intention of mandate reimbursement identified in Article XIII B, which is to "preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task" (*County of Fresno v. State of California*). The county was not "ill equipped" to pay for the ongoing maintenance of the transit stop trash receptacles as it had Proposition A Local Return funds available.

The county concludes that it is "arbitrary and capricious to find that the Parameters and Guidelines retroactively prohibited an advancement of Proposition A funds in a way that was lawful when those funds were advanced." We disagree. The county claimed reimbursement for eligible mandated costs that were funded by Proposition A Local Return funds; however, the parameters and guidelines state that reimbursement received from any federal, state, or non-local source must be offset from claimed costs. In addition, it is the Los Angeles County Metropolitan Transportation Authority's guidelines, rather than the parameters and guidelines, that "prohibit" advancement.

**Attachment 3—
County's Response to Draft Letter Report**



JOHN NAIMO
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
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PHONE: (213) 974-8301 FAX: (213) 626-5427

September 22, 2017

Jim L. Spano, Assistant Division Chief
State Controller's Office
Division of Audits
P.O. Box 942850
Sacramento, CA 94250

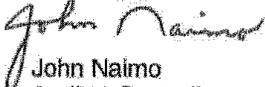
Dear Mr. Spano:

**LOS ANGELES COUNTY'S RESPONSE
TO THE STATE CONTROLLER'S OFFICE DRAFT AUDIT REPORT FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES**

We are submitting our response to the State Controller's Office Draft Audit Report, dated September 8, 2017 for Municipal Storm Water and Urban Runoff Discharges Program.

If you have any questions, please contact Hasmik Yaghobyan at (213) 974-9653 or via e-mail at hyaghobyan@auditor.lacounty.gov.

Very truly yours,


John Naimo
Auditor-Controller

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Attachment

County's Claim

The County has sought \$6,129,851 in reimbursement for the cost of installing and maintaining trash receptacles at transit locations from July 1, 2002 through June 30, 2013. On July 31, 2009, the Commission on State Mandates found that the installation and maintenance of these trash receptacles is a State mandate for which the County is entitled to reimbursement. On March 24, 2011, the Commission issued Parameters and Guidelines setting forth reimbursement criteria. The County filed its claim in accordance with the Parameters and Guidelines and the State Controller's office's (SCO) claiming instructions.

II. Draft Audit report

The draft audit finds that the County's costs are not reimbursable in their entirety. The draft audit bases this finding solely on the grounds that the County advanced Proposition A funds in order to install and maintain the trash receptacles pending reimbursement by the State for the costs of this mandate. The draft audit does not otherwise question the County's right to reimbursement.

III. SCO's Conclusion is Erroneous

The draft audit's conclusion is erroneous for several reasons. First, as set forth below, Proposition A funds are a local tax, not a "federal, State, or non-local source" as described in the Parameters and Guidelines. Second, the County had the right to advance Proposition A funds for the purpose of installing and maintaining the trash receptacles, subject to the County's obligation to return those funds to the Proposition A account when reimbursement was received from the State. Finally, the Controller's office disallowance of reimbursement based on the Parameters and Guidelines is an unlawful retroactive application of those guidelines.

A. Proposition A

Proposition A is a one-half cent sales tax approved by Los Angeles County voters in 1980. The tax is imposed on the sale of tangible personal property at every retailer in the County and upon the storage, use or other consumption in the County of tangible personal property purchased from any retailer for storage, use or other consumption in the County. See Los Angeles County Metropolitan Transportation Authority Administrative Code, Sections 3-05-020 and 3-05-030.

Proposition A provides that twenty-five percent of the sales tax revenue will be returned to local jurisdictions for local transit purposes. These funds are generally referred to as "Local Return funds."

Under guidelines adopted by the Metropolitan Transportation Authority for the use of Local Return funds, the County has discretion as to the use of those funds as long as the use complies with the guidelines and is for public transit purposes. One of the eligible

uses is for bus stop improvements and maintenance. See Local Return Guidelines, Section II.A.2. The County was not required, however, to use the funds for that purpose. Instead, the County had the discretion to use the funds for any appropriate project.

The Metropolitan Transportation Authority's guidelines specifically provide that Proposition A Local Return funds may be used as an advance with respect to a project, with the funds subsequently being returned to the Proposition A account when the advance is reimbursed from another source. The guidelines specifically provide, "Local Return funds may be used to advance a project which will subsequently be reimbursed by federal, state or local grant funding, or private funds, if the project itself is eligible under the Local Return Guidelines." In that case, the reimbursement must be returned to the appropriate Proposition A Local Return fund. See Guidelines, Section 4.C.10.

B. SCO's Conclusion that Proposition A Funds Constituted Reimbursement from a Federal, State or Non-Local Source is Erroneous

The draft audit asserts that the Proposition A funds advanced by the County should be offset against the County's claim. In support of this disallowance, the draft audit cites the Parameters and Guidelines provision that provides that "reimbursement for this mandate received from any *federal, state or non-local source* shall be identified and deducted from this claim." (Emphasis added.) This assertion is erroneous for several reasons.

First, Proposition A is a local tax. It is therefore not a federal or State source.

Second, Proposition A is not a *non-local* source. It is a local sales tax imposed on local citizens.

Third, the draft audit report fails to acknowledge that the County was required to provide a "cash flow" source for the claimed costs, therefore, it was entirely proper for the County to use Proposition A funds as an advance, with the expectation that the funds would be paid back to the Proposition A account to be used for other transit purposes when the County recovers the funds pursuant to its claim for reimbursement. As discussed, Proposition A guidelines specifically provide that "Local Return funds may be used to advance a project which will subsequently be reimbursed by federal, state or local grant funding, or private funds, if the project itself is eligible under the Local Return Guidelines." In this regard, Proposition A did not require the County to use Proposition A funds for the installation and maintenance of trash receptacles; the County had discretion to use Proposition A funds as an advance and then to use those funds for other transit projects upon their recovery pursuant to its claim.

The purpose of Article XIII B, section 6, of the California Constitution is to protect the tax revenues of local governments (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487). Government Code § 17556(d), as implemented by the Parameters and Guidelines here, excludes "expenses that are recoverable from *sources other than taxes*."

County of Fresno, 53 Cal.3d at 487 (emphasis added). Proposition A is not a “source other than taxes.” It is a local tax whose diversion to pay the trash receptacle mandate is as much a constraint on the funds available to the County as the use of other, general funds. By not providing reimbursement, this limits the funds the County has for transportation projects just as if the State refused to reimburse County general funds used for this purpose.

Thus, it cannot be said that the County’s lawful use of Proposition A funds to advance the installation and maintenance of the trash receptacles, with the understanding that, upon reimbursement, those funds would be returned to the appropriate Proposition A fund for use on other transit projects, was reimbursement from a non-local source. Because the Proposition A funds will be returned to the Proposition A fund to be used for other purposes, the advancement (not payment) of those funds was not a reimbursement.

The authorities that the Controller’s office shared with the County prior to the issuance of this draft audit are not to the contrary. As discussed above, in *County of Fresno v. State of California* the court held that Article XIII B, section 6 was designed “to protect the tax revenues of local governments from state mandates that would require expenditures of such revenues” (53 Cal.3d at 487). Here, Proposition A is a local sales tax, and thus falls directly within the protection of Article XIII B, section 6. Reimbursement of these tax revenues is therefore not inconsistent with the *County of Fresno*.

The Commission’s decision in *Animal Adoption*, Commission on State Mandates Case No. 13-9811-I-02, is also inapplicable. This Improper Reduction Claim addressed the use of Proposition F funds, which were funds obtained through bonds issued pursuant to a ballot measure. These funds were not taxes. Again, that is not the case here. Proposition A is a local sales tax.

The Commission’s decisions in the *Two-Way Traffic Signal Program* and the *Behavioral Intervention Plans* claims are likewise inapplicable. In *Two-Way Signal* the funds were derived from a State gas tax, outside the local agency’s appropriations limit, not from a local sales tax, which Article XIII B, section 6 is meant to protect. Similarly, in *Behavioral Intervention Plans*, the funds were also State funds, not sales taxes. As the Commission said in *Behavioral Intervention Plans* “when funds *other than local proceeds of taxes* are thus applied, the Controller may reduce reimbursement accordingly. Commission on State Mandates Case No. CSM4464, Statement of Decision at 54 (2013) (emphasis added).

C. SCO’s Finding is an Unlawful Retroactive Application of the Parameters and Guidelines

There is another reason why the draft audit is erroneous. The County commenced the advancement of Proposition A funds on or around July 1, 2002, the commencement of the first audit period, or shortly thereafter. As discussed above, at the time the County advanced the Proposition A funds for the installation and maintenance of the trash receptacles, the Proposition A guidelines specifically provided that the County could

advance these funds and then return them to its Proposition A account when the expenditures were reimbursed.

The Parameters and Guidelines, on the other hand, were not adopted until March 24, 2011. It would be arbitrary and capricious to find that the Parameters and Guidelines retroactively prohibited an advancement of Proposition A funds in a way that was lawful when those funds were advanced.

In this regard, as a general rule, a regulation will not be given retroactive effect unless it merely clarifies existing law (*People ex rel. Deukmejian v. CHE, Inc.* (1983) 150 Cal.App.3d 123, 135). Retroactivity is not favored in the law (*Aktar v. Anderson* (1997) 58 Cal.App.4th 1166, 1179). Regulations that "substantially change the legal effect of past events" cannot be applied retroactively. *Santa Clarita Organization for Planning and the Environment v. Abercrombie* (2015) 240 Cal.App.4th 300, 315.

That rule applies here. At the time the County advanced its Proposition A funds to use for the installation and maintenance of the trash receptacles, it was operating under the understanding, consistent with the Proposition A Guidelines, that the County could advance those funds and then return them to the Proposition A account for other use once the County obtained a subvention of funds from the state. To retroactively apply the Parameters and Guidelines, adopted in 2011, to preclude a subvention, *i.e.*, to now find that the County could not use its Proposition A funds as an advance only, substantially changes the legal effect of these past events. Such an application is unlawful.

IV. Conclusion

For the foregoing reasons, the Draft Audit Report should be modified. The County is entitled to reimbursement for the installation and maintenance of the trash receptacles. County's claim should be allowed in full.