



Calculation of District's Redevelopment Payments Should Include ERAF Allocation

Recently, the California Court of Appeal issued a highly anticipated ruling regarding the correct calculation for the amount of redevelopment pass-through monies allocated to school districts. (Los Angeles Unified School Dist. v. County of Los Angeles, et. al. (Cal.App.2d., January 27, 2010) ___ Cal.Rptr.3d ___, 2010 WL 299225). For this school district, the ruling results in its entitlement to an increased amount of redevelopment pass-through monies over the next thirty years. Other school districts may also be affected by the decision if their share of redevelopment pass-through revenue has also been incorrectly calculated.

The Court held that the County improperly excluded Education Revenue Augmentation Fund ("ERAF") money when calculating the District's share of redevelopment pass-through revenue. The case focused on a single issue concerning calculation of the District's pass-through payments under two overlapping statutes in two separate statutory schemes: (1) Revenue and Taxation Code section 97.2 ("R&T 97.2"); and (2) Health and Safety Code section 33607.5 ("H&S 33607.5").

R&T 97.2 governs the allocation of property taxes to each county's ERAF. The ERAF statutes were passed in 1992 to help the state meet its legal obligation to fund education at minimum guaranteed levels (required since 1988 by Proposition 98) by directing cities, counties and redevelopment agencies to deposit a portion of their annual property taxes into the fund to be distributed to school districts. In effect, the state shifts a portion of property taxes annually through ERAF to school districts.

H&S 33607.5, on the other hand, is part of the redevelopment statutory scheme. The Community Redevelopment Law enables local government entities to revitalize blighted areas through redevelopment projects. Once a redevelopment project is established, all growth in property tax revenue that occurs after the initial year ("Property Tax Increment") may be retained by the redevelopment agency to pay off the debt incurred in financing the redevelopment project. Legislation enacted in 1993 requires redevelopment agencies to "pass through" or allocate some of that Property Tax Increment to local entities, including school districts. In determining the amount to be allocated, H&S 33607.5 requires redevelopment agencies to calculate the amount of revenue "in proportion to the *percentage share of property taxes* each affected taxing entity receives...during the fiscal year the funds are allocated."

The laws overlap and have created conflict when counties, cities or redevelopment agencies go through their calculations to determine the amount of redevelopment pass-through money due to school districts. There is a significant difference between amounts determined by including ERAF funds as part of property taxes and amounts determined without including ERAF funds.

In its lawsuit, the District alleged that the County had incorrectly calculated its share of redevelopment revenue by excluding ERAF payments from the "total percentage share of property taxes." The County agreed that it had excluded ERAF funds but claimed it was allowed to do so. The trial court concurred with the County's calculation and determined that although the District's ERAF revenue was undeniably composed

of property taxes, it was properly excluded from the calculation of its percentage share of property taxes because the statutes are “separate statutory schemes that were not intended to be read together.”

On appeal, the District argued that, because amounts deposited into ERAF are clearly deemed “property tax revenue” under the Revenue and Tax Code, the County should have incorporated ERAF payments in the District’s “percentage share of property taxes” when calculating redevelopment pass-through payments. The Court of Appeal agreed with the District. In its analysis, the Court focused on the plain language of Rev. & Tax Code section 97.2(d)(5), which states: “the amounts allocated from the [ERAF] pursuant to this subdivision... shall be deemed *property tax revenue* allocated to the [ERAF] in the prior fiscal year.”

The Court reasoned that H&S 33607.5 and R&T 97.2(d)(5) are “overlapping statutes” and must be read together to give both statutes effect. As the Court explained, excluding ERAF payments from the definition of “property taxes” under H&S 33607.5 would render R&T 97.2(d)(5) meaningless. Therefore, a correct reading of the two statutes requires that ERAF funds be included as property taxes when calculating the District’s pass-through payments.

This decision provides clarification in an extremely complex area regarding the calculation of redevelopment pass-through payments and, if it stands, is likely to result in higher redevelopment revenues for school districts. Additionally, this decision supports the idea that the Community Redevelopment Law should be interpreted with respect to other related laws, particularly the Revenue & Taxation Code. In light of this decision, we encourage school districts located within redevelopment areas to carefully examine their current pass-through allocation and determine whether their payments are being calculated correctly.

If you would like additional information on legal issues relating to redevelopment or would like assistance with the review of your redevelopment payments, please contact one of our five offices. Additionally, please take the opportunity to view a free webinar hosted by the Association of California School Administrators and F3 entitled “RDA Funds: Is Your District Getting Its Fair Share from Redevelopment Projects?.” The free webinar can be viewed by following the ACSA E-ducation link below.

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