

# **SAN JOAQUIN COUNTY**

Audit Report

## **APPORTIONMENT AND ALLOCATION OF PROPERTY TAX REVENUES**

*July 1, 2015, through June 30, 2018*



**BETTY T. YEE**  
California State Controller

February 2020



**BETTY T. YEE**  
California State Controller

February 28, 2020

The Honorable Jerome C. Wilverding, Auditor-Controller  
San Joaquin County  
44 North San Joaquin Street, Suite 550  
Stockton, CA 95202

Dear Mr. Wilverding:

The State Controller's Office audited the methods employed by San Joaquin County to apportion and allocate property tax revenues for the period of July 1, 2015, through June 30, 2018. We conducted the audit pursuant to the requirements of Government Code section 12468.

Our audit found an instance of noncompliance with California statutes for the apportionment and allocation of property tax revenues for the audit period. Specifically, we determined that San Joaquin County incorrectly computed and distributed property tax revenues.

The county has disputed certain facts related to the conclusions and recommendations contained in this audit report. The State Controller's Office has an informal audit review process by which to resolve a dispute of facts. To request a review, the county should submit, in writing, a request for a review and all information pertinent to the disputed issues within 60 days after receiving this audit report.

The request and supporting documents should be submitted to Richard J. Chivaro, Chief Counsel, State Controller's Office, Post Office Box 942850, Sacramento, California 94250. In addition, please provide a copy of the request letter to Lisa Kurokawa, Chief, Compliance Audits Bureau, State Controller's Office, Division of Audits, Post Office Box 942850, Sacramento, California 94250.

If you have any questions, please contact Ms. Kurokawa by telephone at (916) 327-3138.

Sincerely,

*Original signed by*

JIM L. SPANO, CPA  
Chief, Division of Audits

JLS/as

The Honorable Jerome C. Wilverding,  
Auditor-Controller

-2-

February 28, 2020

cc: Jeffery M. Woltkamp, CPA, CGMA, Assistant Auditor-Controller  
San Joaquin County  
Katherine Miller, Chair  
San Joaquin Board of Supervisors  
Stanley W. Lawrence, Chief – Tax  
San Joaquin County  
Chris Hill, Principal Program Budget Analyst  
Local Government Unit  
California Department of Finance  
Richard J. Chivaro, Chief Counsel  
State Controller's Office

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# Audit Report

## Summary

The State Controller's Office (SCO) audited the methods employed by San Joaquin County to apportion and allocate property tax revenues for the period of July 1, 2015, through June 30, 2018.

Our audit found an instance of noncompliance with California statutes for the apportionment and allocation of property tax revenues for the audit period. Specifically, we determined that the county incorrectly computed and distributed property tax revenues.

## Background

After the passage of Proposition 13 in 1978, the California State Legislature (Legislature) enacted new methods for apportioning and allocating property tax revenues to local government agencies, school districts, and community college districts. The main objective was to provide local government agencies, school districts, and community college districts with a property tax base that would grow as assessed property values increased. The method has been further refined in subsequent laws passed by the Legislature.

One key law was Assembly Bill 8, Chapter 282, Statutes of 1979, which established the method of allocating property taxes for fiscal year (FY) 1979-80 (base year) and subsequent fiscal years. The methodology is commonly referred to as the AB 8 process or the AB 8 system.

Property tax revenues that local government agencies receive each fiscal year are based on the amount received in the prior year plus a share of the property tax growth within their boundaries. Property tax revenues are then apportioned and allocated to local government agencies, school districts, and community college districts using prescribed formulas and methods defined in the Revenue and Taxation Code.

The AB 8 process involves several steps, including the transfer of revenues from school and community college districts to local government agencies (AB 8 shift) and the development of the tax rate area (TRA) annual tax increment (ATI) apportionment factors, which determine the amount of property tax revenues to be allocated to each jurisdiction.

The total amount to be allocated to each jurisdiction is then divided by the total amount to be allocated to all entities to determine the AB 8 factor (percentage share) for each entity for the year. The AB 8 factors are computed each year for all entities using the revenue amounts established in the prior year. These amounts are adjusted for growth annually using ATI factors.

Subsequent legislation removed from the AB 8 process revenues generated by unitary and operating nonunitary properties, pipelines, regulated railway companies, and qualified electric properties. These revenues are now apportioned and allocated under separate processes.

Other legislation established an Educational Revenue Augmentation Fund (ERAF) in each county. Most local government agencies are required to transfer a portion of their property tax revenues to the fund. The fund is subsequently apportioned and allocated to school and community college districts by the county auditor according to instructions received from the county superintendent of schools or the chancellor of the California community colleges.

Revenues generated by the different types of property tax are apportioned and allocated to local government agencies, school districts, and community college districts using prescribed formulas and methods, as defined in the Revenue and Taxation Code. Taxable property includes land, improvements, and other properties that are accounted for on the property tax rolls, which are primarily maintained by the county assessor. Tax rolls contain an entry for each parcel of land, including parcel number, owner's name, and value. The types of property tax rolls are:

- *Secured Roll*—Property that, in the opinion of the assessor, has sufficient value to guarantee payment of the tax levies and that, if the taxes are unpaid, the obligation can be satisfied by the sale of the property by the tax collector.
- *Unsecured Roll*—Property that, in the opinion of the assessor, does not have sufficient permanence or other intrinsic qualities to guarantee payment of taxes levied against it.
- *State-Assessed Roll*—Utility properties composed of unitary and operating nonunitary value assessed by the State Board of Equalization (BOE).
- *Supplemental Roll*—Property that has been reassessed due to a change in ownership or the completion of new construction, where the resulting change in assessed value is not reflected in other tax rolls.

To mitigate problems associated with the apportionment and allocation of property tax revenues, Senate Bill 418, which requires the State Controller to audit the counties' apportionment and allocation methods and report the results to the Legislature, was enacted in 1985.

Apportionment and allocation of property tax revenues can result in revenues to an agency or agencies being overstated, understated, or misstated. Misstated revenues occur when at least one taxing agency receives more revenue than it was entitled to, while at least one taxing agency receives less revenue than it was entitled to.

The agency that received less tax revenue than its statutory entitlement would have standing to require that adjustments be made by the county, either on a retroactive or prospective basis. SCO does not have enforcement authority or standing to require the county to take corrective action with respect to misallocation of tax revenues, unless the misallocation resulted in overpaid state funds (funds intended for the ERAF, school districts, or community college districts). SCO has authority to recover misallocations resulting in overpaid state funds pursuant to Government Code (GC) sections 12410, 12418, and 12419.5.

GC section 12410 provides the State Controller with broad authority to “superintend the fiscal concerns of the state.” GC section 12418 provides the State Controller with the authority to “direct and superintend the collection of all money due the State, and institute suits in its name” against all debtors of the State. GC section 12419.5 provides the State Controller with the authority to offset any amounts due the State against any amounts owed to the debtor by the State.

Revenue and Taxation Code (RTC) section 96.1(b) allows a reallocation of current audit findings and unresolved prior audit findings.

RTC section 96.1(c)(3) limits a cumulative reallocation or adjustment to one percent of the total amount levied at a one-percent rate of the current year’s original secured tax roll. For reallocation to the ERAF, school districts, or community college districts, a reallocation must be completed in equal increments within the following three fiscal years, or as negotiated with the State Controller.

## **Objective, Scope, and Methodology**

The objective of our audit was to determine whether the county complied with Revenue and Taxation Code, Health and Safety Code, and Government Code requirements pertaining to the apportionment and allocation of property tax revenues.

The audit period was July 1, 2015, through June 30, 2018.

To achieve our objective, we:

- Interviewed key personnel to gain an understanding of the county’s process for apportioning and allocating property tax revenues;
- Reviewed the county’s written procedures for apportioning and allocating property tax revenues;
- Performed analytical reviews to assess the reasonableness of property tax revenues;
- Judgmentally selected a non-statistical sample of five from approximately 180 taxing jurisdictions within the county for all fiscal years in the audit period (the actual number of taxing jurisdictions, which include the ERAF, can vary from year to year based on jurisdictional changes). Errors found were not projected to the intended (total) population. Then, we:
  - Recomputed apportionment and allocation reports to verify computations used to develop property tax apportionment factors;
  - Tested TRA reports to verify that the correct TRA factors were used in the computation of the ATI;
  - Reviewed supplemental property tax administrative costs and fees to determine whether recovery costs associated with administering supplemental taxes were based on actual costs and did not exceed five percent of revenues collected, as prescribed in statute;
  - Verified computations used to develop supplemental property tax apportionment factors;

- Verified unitary and operating nonunitary, and unitary regulated railway computations used to develop apportionment factors;
- Reviewed Redevelopment Property Tax Trust Fund deposits;
- Reviewed property tax administration cost reports and recomputed administrative costs associated with work performed for apportioning and allocating property tax revenues to local government agencies, school districts, and community college districts;
- Reviewed ERAF reports and verified computations used to determine the shift of property taxes from local government agencies to the ERAF and, subsequently, to school and community college districts;
- Reviewed the Sales and Use Tax letter and recomputed Vehicle License Fee computations used to verify the amount transferred from the ERAF to counties and cities to compensate for the diversion of these revenues; and
- Reviewed BOE jurisdictional change filing logs and their impact on the tax apportionment and allocation system.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We limited our review of the county's internal controls to gaining an understanding of the transaction flow to develop appropriate auditing procedures. We did not evaluate the effectiveness of internal controls relevant to the apportionment and allocation of property tax revenues. We did not audit the county's financial statements.

We conducted this audit under the authority of GC section 12468, which requires the SCO to audit the apportionment and allocation of property tax revenues. A property tax bill contains the property tax levied at a one percent tax rate pursuant to the requirement of Proposition 13. A bill may also contain special taxes, debt service levies on voter-approved debt, fees, and assessments levied by the county or a city. The scope of our audit is concerned with the distribution of the one percent tax levy. Special taxes, debt service levies on voter-approved debt, fees, and assessments levied by the county or a city are beyond the scope of our audit and were not reviewed or audited.

## Conclusion

Our audit found that San Joaquin County did not comply with California statutes for the apportionment and allocation of property tax revenues for the audit period. Specifically, we determined that the county incorrectly computed and distributed property tax revenues.

This instance of noncompliance is described in the Finding and Recommendation section of this audit report.



**Follow-up on Prior  
Audit Findings**

The county has satisfactorily resolved the findings noted in our prior audit report, for the period of July 1, 2010, through June 30, 2015, issued July 8, 2016.

**Views of  
Responsible  
Officials**

We issued a draft audit report on January 2, 2020. Jerome C. Wilverding, Auditor Controller, responded by letter dated January 13, 2020 (Attachment), partially agreeing with the finding. The county agrees that it incorrectly distributed revenues generated by aircraft values using the AB 8 factors; however, it disagrees that including aircraft property assessed values in the computation of the ATI is incorrect. The county's complete response is included as an attachment to this audit report.

**Restricted Use**

This audit report is solely for the information and use of San Joaquin County, the Legislature, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this audit report, which is a matter of public record and is available on the SCO website at [www.sco.ca.gov](http://www.sco.ca.gov).

*Original signed by*

JIM L. SPANO, CPA  
Chief, Division of Audits

February 28, 2020

# Finding and Recommendation

## **FINDING— Computation and Distribution of Property Tax Revenue**

During testing of the county's property tax revenue computation and distribution process, we found that from FY 2015-16 through FY 2017-18, the county:

- Incorrectly included aircraft properties' assessed values in its computation of the ATI; and
- Incorrectly distributed property tax revenues generated by aircraft properties by using AB 8 factors.

The errors resulted in the misallocation of the AB 8 revenues to all affected entities, including the ERAF. We did not quantify the monetary impact due to the complexity of the calculation and the various components involved.

In discussing the error with the county, we concluded that the error occurred due to a differing interpretation of statutes.

RTC sections 96 through 96.5 provide the legal requirements for the computation of ATI and the apportionment and allocation of property tax revenues.

ATI is the difference between the total amount of property tax revenues computed each year using the equalized assessment roll and the sum of the amounts allocated pursuant to RTC section 96.1(a). Each TRA will receive an increment based on its share of the incremental growth in assessed valuations. ATI added to the tax computed for the prior fiscal year will develop the apportionments for the current fiscal year.

### Recommendation

We recommend that the county:

- Update and implement policies and procedures to exclude aircraft properties' assessed values in the computation of the ATI;
- Establish and implement policies and procedures for apportionment and allocation of the property tax revenues generated by aircraft properties in accordance with RTC sections 5451 through 5456; and
- Recalculate the ATI computation for FY 2015-16 through FY 2017-18, and:
  - Make monetary adjustments to the ERAF, school districts, and community college districts; and
  - Make monetary adjustments to all other affected taxing jurisdictions, if the amounts are significant.

### County's Response

The county partially agrees with the finding:

- We respectfully disagree that San Joaquin County incorrectly included aircraft properties' assessed values in its computation of the annual tax increment. Our position on this issue is discussed in detail on the attached response made by San Joaquin, San Mateo, and Los Angeles Counties dated September 4, 2019. This attachment also includes SCO's November 18, 2019 email to the Counties' joint statement, and the Counties' second joint statement, dated December 4, 2019, responding to the SCO's November 19, 2019 email.
- We agree that San Joaquin County incorrectly distributed property tax revenues generated by aircraft properties by using AB 8 factors. We will make the appropriate adjustments to correct this issue when the matter regarding the aircraft valuation item discussed above is finally resolved. We believe that making the adjustments separately will potentially create excessive adjustments and be unnecessarily disruptive to the districts affected by these changes. We have confirmed this approach with Scott Freesmeier, Audit Manager of the State Controller's Office, and he agreed.

### SCO Comment

Our finding and recommendation remain unchanged.

On December 4, 2019, the Counties of San Joaquin, San Mateo, and Los Angeles submitted a joint statement disputing the SCO directive for the three counties to exclude noncommercial aircraft assessed value growth from the calculation of the property tax allocation factors (commonly known as the AB 8 factors) under RTC sections 96.1 and 96.5. The counties requested that the SCO provide a detailed legal analysis for the counties' consideration, or remove the finding.

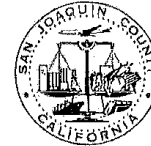
On January 15, 2020, SCO staff counsel provided its legal analysis to the three counties regarding the SCO's position that noncommercial aircraft assessed values should be excluded from the calculation of the property tax allocation factors. In summary, some reasons cited for the SCO's conclusion are 1) the longstanding BOE interpretation; 2) the views of the California Association of County Auditors, contained in the *Property Tax Managers Manual*; and 3) the fact that including the aircraft assessed values contravenes the legislative purpose of the AB 8 process.

**Attachment—  
County's Response to Draft Audit Report**

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JEROME C. WILVERDING  
**AUDITOR-CONTROLLER**  
SAN JOAQUIN COUNTY



ASSISTANT AUDITOR-CONTROLLER  
Jeffery M. Woltkamp, CPA

CHIEF DEPUTIES  
Tod Hill – Accounting  
Janice McCutcheon, CPA – Internal Audit  
Stanley Lawrence – Property Tax

PAYROLL ADMINISTRATOR  
Lori Rollieri

January 13, 2020

Ms. Lisa Kurokawa  
Chief, Compliance Audits Bureau  
State Controller's Office  
Division of Audits  
P.O. Box 942850  
Sacramento, CA 942850

RE: Property Tax Apportionment and Allocation System Audit Report Draft for the Period of  
July 1, 2015 through June 30, 2018

Dear Ms. Kurokawa:

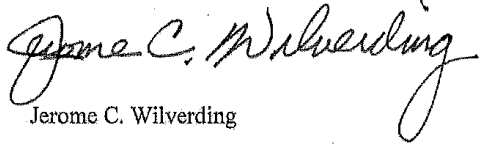
On January 2, 2020, the State Controller's Office (SCO) issued the DRAFT San Joaquin County Audit Report "Apportionment and Allocation of Property Tax Revenues" that included two findings and recommendations to the San Joaquin Auditor-Controller. This letter provides the County Auditor-Controller's Office's response to the findings and recommendations made in your letter.

- We respectfully disagree that San Joaquin County incorrectly included aircraft properties' assessed values in its computation of the annual tax increment. Our position on this issue is discussed in detail on the attached response made by San Joaquin, San Mateo, and Los Angeles Counties dated September 4, 2019. This attachment also includes the SCO's November 18, 2019 email to the Counties' joint statement, and the Counties' second joint statement, dated December 4, 2019, responding to the SCO's November 18, 2019 email.
- We agree that San Joaquin County incorrectly distributed property tax revenues generated by aircraft properties by using AB 8 factors. We will make the appropriate adjustments to correct this issue when the matter regarding the aircraft valuation item discussed above is finally resolved. We believe making the adjustments separately will potentially create excessive adjustments and be unnecessarily disruptive to the districts affected by these changes. We have confirmed this approach with Scott Freesmeier, Audit Manager of the State Controller's Office, and he agreed.

44 N. San Joaquin Street, Suite 550, Stockton, CA 95202  
Main (209) 468-3925, Main FAX (209) 468-3681 - Payroll (209) 468-3928, Payroll FAX (209) 468-0408  
[www.sjgov.org/auditor/](http://www.sjgov.org/auditor/)

SCO Property Tax Audit Draft Response  
Page Two

Sincerely,

A handwritten signature in black ink that reads "Jerome C. Wilverding". The signature is written in a cursive style with a large, sweeping initial "J".

Jerome C. Wilverding



ARLENE BARRERA  
ACTING AUDITOR-CONTROLLER  
LOS ANGELES COUNTY



JUAN RAIGOZA  
CONTROLLER  
SAN MATEO COUNTY



JEROME C. WILVERDING  
AUDITOR-CONTROLLER  
SAN JOAQUIN COUNTY

September 4, 2019

Lisa Kurokawa  
Chief, Compliance Audits Bureau  
State Controller's Office, Division of Audits  
P.O. Box 942850  
Sacramento, CA 94250

**RE: Exclusion of Noncommercial Aircraft Assessed Value Growth From Property Tax Allocation Factors**

Dear Ms. Kurokawa:

This statement is submitted jointly by the counties of Los Angeles, San Mateo, and San Joaquin (Counties) to address an audit finding issued by the State Controller's Office (SCO) that directs the Counties to exclude noncommercial aircraft assessed value growth (Aircraft Growth) from the calculation of property tax allocation factors (referred to as the "AB 8 allocation factors"). Hereafter, all future references to "aircraft" means "non-commercial aircraft."

The Counties object to the audit finding for the following of reasons:

1. There is no express provision in Revenue & Taxation Code (the "R&T Code") to exclude noncommercial aircraft when calculating the AB 8 factors. To the contrary, the plain language of the R&T Code (in defining the "last equalized roll") *requires* the inclusion of Aircraft Growth in calculating AB 8 factors. In fact, the base year property tax allocations initially established in Fiscal Year (FY) 1979-80 included the revenues of noncommercial aircraft;
2. The statutes governing the "allocation" process (which require the inclusion of Aircraft Growth in the calculation of AB 8 factors) as set forth in R&T Code Sections 96 *et seq.* are separate and distinct from the statutes governing the "apportionment" or "distribution" of noncommercial aircraft tax revenue set forth in R&T Code Sections 5451-5456. Because there is no ambiguity in the language of the relevant allocation statutes, there is no need to look to the legislative history of R&T Code Sections 5451-5456 for guidance. Moreover, even if one were to consider the legislative history of those sections, it would only be informative as to the Legislature's intent regarding the distribution of tax revenue as opposed to the calculation of AB 8 factors;

3. Excluding Aircraft Growth from the calculation of AB 8 factors in the absence of clear statutory authority leads to a number of unintended and problematic consequences with respect to the myriad of other calculations that the Counties' auditor-controllers must undertake each year;
4. To the extent that there are perceived inequities between the allocation process and distribution process for Aircraft Growth which need to be addressed, the only remedy is for the Legislature to amend the applicable statutes.

Each of these grounds is discussed in greater detail below.

1. **There is no express provision in the R&T Code allowing auditor-controllers to exclude noncommercial aircraft when calculating AB 8 factors, and, in fact, Aircraft Growth must be included in such calculations.**

One of the audit finding's fundamental problems is that it fails to differentiate between those provisions of the R&T Code which concern the "apportionment" (*i.e.*, distribution) of taxes levied on noncommercial aircraft and those provisions which concern the "allocation" of assessed aircraft values in calculating AB 8 factors and determining the "last equalized roll."<sup>1</sup>

As the SCO has acknowledged, R&T Code Sections 5451-5456 provide for the apportionment of the unsecured countywide property tax levied on aircraft and require such taxes to be distributed according to one of two schemes (*i.e.*, either "1/3 city, 1/3 county, 1/3 school districts" or a "1/2 county, 1/2 school districts"). Notably, Sections 5451-5456<sup>2</sup> fall within Division 1 ("Property Taxation"), Part 10 ("Aircraft Assessment and Taxation"), Chapter 6 ("Distribution") of the Revenue & Taxation Code. Indeed, R&T Code Section 5451, the first section of Chapter 6, expressly provides that "[t]he revenue derived from any tax levied pursuant to this part shall be distributed as prescribed in this chapter." (emphasis supplied).

Significantly, while Sections 5451-5456 clearly call for the distribution of taxes levied on aircraft pursuant to a non-AB 8 scheme, there are no parallel sections to adjust the way that local auditor-controllers are to incorporate the assessed value of such aircraft into the R&T Code's allocation calculations (*i.e.*, R&T Code Section 96 *et seq.*) which, it should be noted, are set forth within Division 1 ("Property Taxation"), Part 0.5 ("Implementation of Article XIII A of the California Constitution"), Chapter 6 ("Allocation of Property Tax Revenue"), Article 2 ("Basic Revenue Allocations") of the Revenue & Taxation Code.

<sup>1</sup> Cal. Rev. & Tax. Code § 2050 further provides that any reference to the "last equalized county assessment roll" or other similar references to the current assessment roll or latest assessment roll shall be taken to reference the "last equalized roll" as defined in Part 3, Chapter 3.

<sup>2</sup> Unless otherwise indicated, all subsequent statutory references are to the Revenue and Taxation Code.



Indeed, the various interrelated sections of the R&T Code actually *require* the inclusion of the assessed value of noncommercial aircraft in the auditor-controller's AB 8 calculations. Section 2052 provides that the "last equalized roll" is determined each year by adding the following:

The "local roll" (which is defined in Section 109 as "those parts of the secured and unsecured roll containing property which it is the county assessor's duty to assess") "as delivered to the auditor" which delivery must be prior to July 1st pursuant to Section 617;

including any changes made by the county board during the month of July,

+

together with the "board roll" (which, pursuant to Section 756, must be delivered by the BOE to the local auditor-controller on or before July 31st) and

+

the estimate (from the state) with any changes transmitted pursuant to Section 755 (which concerns total unitary value and operating nonunitary value of state-assessed property and which must be transmitted by July 15th).

Section 2052 further provides that the components listed above, taken together, "shall become the last equalized roll on August 20, and such rolls together shall continue to be the last equalized roll." (Cal. Rev. & Tax. Code § 2052).

Section 96.1 of the Revenue and Taxation Code establishes the method for auditor-controllers to calculate the AB 8 allocation factors. Specifically, Section 96.1 provides that the AB 8 allocation factors include two components: (1) the property tax allocated to that local government in the prior fiscal year (the "base"), plus (2) a share of the growth (positive or negative) in tax revenue attributable to the growth in assessed value in that local government's jurisdiction ("Annual Tax Increment").

Section 96.5 provides how auditor-controllers must calculate Annual Tax Increment: as a general matter, the auditor-controller must determine the total property tax revenue in the current year based on the equalized assessment roll (*i.e.*, the "last equalized roll" for the current year pursuant to R&T Code § 2050), then subtract the total property tax revenue allocated in the prior year under Section 96.1. Thus, calculating Annual Tax Increment—and by extension, the AB 8 allocation factors—requires use of the equalized assessment roll.

Put another way, as personal property subject to taxation at general property tax rates (*see* Rev. & Tax. Code §§ 5362, 5391), noncommercial aircraft are included in the local roll component of the last equalized roll. *See* Cal. Rev. & Tax. Code §§ 109, 2052; Cal. Code Regs., tit. 18, § 252. The last equalized roll, in turn, is used to calculate Annual Tax Increment, and Annual Tax Increment is a component of the AB 8 allocation factors. Accordingly, Aircraft Growth must be included in the AB 8 allocation factors.<sup>3</sup>

<sup>3</sup> Additionally, pursuant to Sections 106 and 109, noncommercial aircraft are part of the "unsecured roll" which is part of "the entire assessment roll."

Inclusion of noncommercial aircraft values in the property tax allocations system is not new and goes back to implementation of Proposition 13. Section 96 and Government Code Section 26912 which together established the base year property tax allocation in the 1979-80 fiscal year, required auditor-controllers to allocate to each local government an amount of property tax revenue based on the average of the taxes received by each local government in the three fiscal years prior to FY 1978-79. This three-year average of tax revenues included revenue from taxes on noncommercial aircraft. Noncommercial aircraft revenues were included in the base year allocation, and Sections 96.1 and 96.5 carry that practice forward each year thereafter. Nothing in Section 96 or Government Code Section 26912 for the base year, Section 96.1 or Section 96.5 for subsequent allocations, nor any other law passed by the Legislature since Proposition 13, allow for the exclusion of the Aircraft Growth from the AB 8 allocation factors.

**2. Because the allocation statutes are clear, there is no need to look to the legislative history of AB 1994. Moreover, AB 1994's legislative history is only informative as to the Legislature's intent regarding the *distribution* of aircraft tax revenue as opposed to the *allocation* of Aircraft Growth in connection with the calculation of AB 8 factors.**

The SCO premised its finding on legislative actions leading up to passage of Assembly Bill 1994 (Lockyer, 1980). Specifically, the SCO points to the Legislative history indicating that AB 1994 initially included, then removed, a provision repealing the sections of the Revenue and Taxation Code governing distribution of aircraft property tax revenue (Sections 5451-5456) as well as an amendment to Section 5392 which would have provided that aircraft property tax revenue be distributed in the same manner as all other personal property. We understand the SCO interprets these actions as demonstrating an intent by the Legislature to remove Aircraft Growth from the AB 8 allocation factors.

The Counties disagree with this premise on two grounds: First, general principles of statutory interpretation only look to legislative history when existing law is subject to two or more reasonable interpretations. However, the California Supreme Court stated, "[i]f there is no ambiguity in the language [of a statute], we presume the Legislature meant what it said, and the plain meaning of the statute governs." (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000.) Here, the law governing what is included in the AB 8 allocation factors is clear:

- Annual Tax Increment is a component of the AB 8 Allocation Factors (Section 96.1);
- Annual Tax Increment is derived from the equalized assessment roll (Section 96.5);
- "Roll" means the entire assessment roll, including the local roll (Section 109);
- The local roll includes all personal property subject to taxation at general property tax rates. (Cal. Code Regs., tit. 18, § 252.)
- Noncommercial aircraft are personal property on the unsecured roll subject to taxation at general property tax rates. (Sections 5362 & 5391.)

These provisions of law indicate the Legislature's intent to include Aircraft Growth in the AB 8 allocation factors. There is no reasonable alternative interpretation of these laws that suggest the

Legislature intended otherwise. There is no justification to second-guess the Legislative intent displayed by the laws listed above by examining the Legislative history of AB 1994.

Moreover, even if AB 1994's legislative history were to be considered, it would not demonstrate an intent to exclude Aircraft Growth from the AB 8 *allocation* process. This is because, as noted above, Sections 5451 through 5456 only describe how aircraft tax revenue is *distributed*—these sections do not address AB 8 allocation factors. Similarly, the proposed amendments to Section 5392 would simply have modified *distribution* of tax revenues, as opposed to *allocation* of Aircraft Growth. Had the Legislature intended to exclude aircraft from the calculation of AB 8 factors, it knew how to do so. For example, Section 96 makes the allocation of property tax revenue “subject to the allocation and payment of funds as provided for in subdivision (b) of Section 33670 of the Health and Safety Code...”). With this, the Legislature excluded tax revenues generated in redevelopment project areas because those revenues were subject to both *allocation and payment* according to other provisions of law. However, the Legislature did not do the same to exclude aircraft from the AB 8 allocation factors. This left Aircraft Growth part of the AB 8 allocation factors for purposes of allocating general property tax revenues, but preserved Sections 5451 through 5456 for purposes of distributing aircraft tax revenues. The only intent that can be derived from the Legislative history of AB 1994 is an intent to preserve *distribution* of aircraft tax revenue through the manner prescribed in Section 5451 *et seq.*, which was accomplished by not repealing those sections. But the Legislature history reveals no such intent to change the AB 8 allocation computation.

Additionally, compelling Counties to modify the computation of the AB 8 allocation factors based on the SCO's interpretation of Legislative history, rather than the clear text of the law, is a violation of the rulemaking requirements applicable to the SCO, as set forth in California's Administrative Procedure Act. (Gov. Code 11340.5.) If the SCO believes Aircraft Growth should be excluded from the AB 8 calculation, the SCO should implement that belief through the tools available to that Office: either by adopting regulations to that effect, pursuant to Section 96.1(c)(1); or recommending changes to the Legislature pursuant to Government Code Section 12468.

**3. Excluding Aircraft Growth from the calculation of AB 8 factors in the absence of clear statutory authority leads to a number of unintended and problematic consequences.**

The SCO's proposed audit finding states the Counties “incorrectly included unsecured aircraft assessed values in its computation of the annual tax increment.” This implies the Counties must exclude noncommercial aircraft from the “last equalized roll”, which leads to a number of unintended and problematic consequences. This is because, in addition to the calculation of AB 8 factors, the “last equalized roll” is utilized to calculate each taxing entity's debt limit for the purpose of issuing bonds as well as “*for all other purposes . . .*” Cal. Rev. & Tax Code § 2052(b) (emphasis supplied). For example, pursuant to Cal. Health & Safety Code § 34182(c)(1), the last equalized roll is utilized to calculate each former redevelopment agency's tax increment. (H&S § 34182(c)(1)) (“The county auditor-controller shall calculate the property tax revenues using current assessed values on the last equalized roll on August 20, pursuant to Section 2052 of the Revenue and Taxation Code . . .”). Additionally, the last equalized roll is utilized to calculate

Vehicle License Fee amounts (Sections 97.70(c)(1)(B)(i)(II)(ib), 97.70(c)(1)(C)(ii)(II), and 97.70(c)(2)(B)(ii)(II)).<sup>4</sup>

As a result, to the extent that local auditor-controllers will be required to exclude noncommercial aircraft from the last equalized roll for AB 8 calculation purposes, such Aircraft Growth must also be excluded from the last equalized roll in determining each taxing entity's bonding capacity and a myriad of other calculations.

**4. To the extent that there are perceived inequities between the allocation process and distribution process for Aircraft Growth, the only remedy is for the Legislature to amend the applicable statutes.**

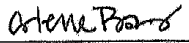
While the inclusion of Aircraft Growth in AB 8 calculations may seem inconsistent, this conclusion alone does not justify deviation from the plain language of the R&T Code. There must be an express statutory provision authorizing such exclusion. Prior to the passage of the so-called "TEA City" legislation, for example, it may have appeared inequitable that no-tax or low-tax cities would not receive their proportional share of the 1% general property tax. Until the provisions of the R&T Code were amended, however, local auditor-controllers were not permitted to simply adjust AB 8 factors to account for this perceived inequity.


It is noteworthy that when the Legislature has wanted the "last equalized roll" to exclude certain amounts or adjustments, it has specifically provided for them. Indeed, Section 2052 expressly requires that exclusions from the last equalized roll be set forth elsewhere in the R&T Code. *See* Cal. Rev. & Tax. Code § 2052 (providing that the local roll and the additions set forth therein "*shall continue to be the last equalized roll, except as otherwise provided in this chapter . . .*") (emphasis supplied). For example, Section 2053 provides that if an assessment appeals board makes any change in the local roll, then those changes (along with the State's transmissions regarding State-assessed properties) "shall become the last equalized roll on the date the auditor receives notice of the action of the board, *except for the purpose of computing any debt limit referred to in Section 2052.*" (emphasis supplied).

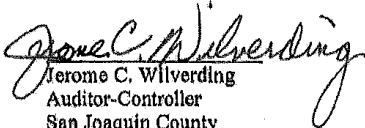
<sup>4</sup> Section 2052 provides that "last equalized roll" is utilized by local auditor-controllers "(a) for the purpose of computing any debt limit for the issuance of bonds of any public entity that is based on a percentage of assessed valuation as shown on the last equalized assessment roll and (b) *for all other purposes*, until the assessment roll for the following year becomes the last equalized roll in accordance with the provisions of this section." (Rev. & Tax. Code § 2052) (emphasis supplied). As such, the exclusion of aircraft assessed values – as proposed by the SCO – would have consequences beyond AB 8 calculations.

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September 4, 2019  
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In light of the foregoing, the Counties respectfully request the SCO withdraw its proposed recommendation concerning Aircraft Growth.

  
Arlene Barrera  
Acting Auditor-Controller  
Los Angeles County

  
Juan Raigoza  
Controller  
San Mateo County

  
Jerome C. Wilverding  
Auditor-Controller  
San Joaquin County

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ARLENE BARRERA  
AUDITOR-CONTROLLER  
LOS ANGELES COUNTY



JUAN RAIGOZA  
CONTROLLER  
SAN MATEO COUNTY



JEROME C WILVERDING  
AUDITOR-CONTROLLER  
SAN JOAQUIN COUNTY

December 4, 2019

Lisa Kurokawa  
Chief, Compliance Audits Bureau  
State Controller's Office, Division of Audits  
P.O. Box 942850  
Sacramento, California 94250

**RE: Follow-up Response to Exclusion of Noncommercial Aircraft Assessed Value Growth From Property Tax Allocation Factors**

Dear Ms. Kurokawa:

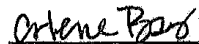
On September 4, 2019, the counties of Los Angeles, San Mateo, and San Joaquin ("Counties") submitted a joint statement disputing the State Controller's Office ("SCO") draft audit finding that directs the Counties to exclude noncommercial aircraft assessed value growth ("Aircraft Growth") from the calculation of property tax allocation factors ("AB 8 allocation factors"). The Counties' statement set out four specific concerns challenging the legal basis for the disputed audit finding, including: (1) there is no express provision of law that excludes Aircraft Growth from the AB 8 allocation factors; (2) the statutes governing calculation of the allocation factors are different from the statutes governing property tax distribution; (3) excluding aircraft growth will have unintended and problematic consequences; and (4) the proper method to correct any perceived discrepancies between the statutes governing allocation and distribution is through the legislative process. These concerns were supported with nearly seven pages of detailed legal analysis, including references to the specific statutes requiring the inclusion of Aircraft Growth in the calculation of AB 8 allocation factors.


The SCO responded on November 18, 2019, with two conclusory sentences that merely reiterated the SCO's position that Aircraft Growth should not be included in the AB 8 allocation factors. While the response indicates that SCO's legal counsel has several legal reasons justifying this conclusion, the SCO declined to disclose their counsel's analysis and instead only shared "three" of the reasons: "the aircraft assessed values runs counter to the legislative purpose of the AB 8 process, the longstanding BOE interpretation, and the view of the California Association of County Auditors (PTX Managers Manual)." Notably absent was any legal analysis explaining how the statutes governing the AB 8 allocation factor calculation support the SCO's conclusion, let alone citation to statutes actually directing the exclusion of Aircraft Growth from the calculation of AB 8 allocation factors.

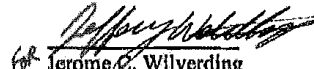
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County auditor-controllers have a legal duty to administer the property tax system according to the law as it reads in the Revenue and Taxation Code. Throughout the Sections governing the basic revenue allocations (Sections 96 through 96.81), the Legislature uses the term "shall" to mandate how property tax allocations are to be calculated. This requires the Counties to administer the property tax system according to the calculations and formulas set forth in those statutes.

Without legal justification rooted in specific statutory provisions, the SCO's proposed audit finding effectively asks the Counties to disregard the law. The Counties need more than conclusory statements from the SCO to change their AB 8 allocation factor calculation to a different one that, in the Counties' view, violates the law. The Counties therefore request the SCO either provide a detailed legal analysis for the Counties' consideration, or remove this proposed audit finding from the pending audit report.

  
Arlene Barrera  
Auditor-Controller  
Los Angeles County

  
John Raigoza  
Controller  
San Mateo County

  
for Jerome E. Wilverding  
Auditor-Controller  
San Joaquin County

**State Controller's Office  
Division of Audits  
Post Office Box 942850  
Sacramento, CA 94250**

**<http://www.sco.ca.gov>**