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A Win by LAUSD May Mean More Revenue for Your District

[Editor's Note: From time to time, we publish guest articles that we think would be of interest to our readers. Necessarily, the views and opinions of the authors are their own, but we think you will find this article valuable and informative.]

Introduction

Los Angeles Unified School District (LAUSD) recently won a court case that will result in increased Assembly Bill (AB) 1290 payments from redevelopment agencies (RDAs) to LAUSD, and may result in higher AB 1290 payments to your district as well.

Although redevelopment is a complex area, it is certainly worth understanding to what extent your district is impacted since the payments at stake are large and increase exponentially over time. In this environment of economic uncertainty and budgetary challenges, local educational agencies (LEAs) need to maximize the resources available to them and ensure that they are receiving 100% of the AB 1290 and other RDA payments to which they are entitled.

The cause of the increase in AB 1290 payments to LAUSD is the court's decision that the payments should be allocated on a post-Education Revenue Augmentation Fund (ERAF) basis (based on the percentage share of property taxes each LEA receives, or would receive, including ERAF), which Los Angeles County and most counties statewide have not been doing.

We should note that this court case is unrelated to recent allocations of RDA tax increments from the Supplemental Educational Revenue Augmentation Fund (SERAF). SERAF revenues do not constitute RDA payments, and in effect only replace a portion of unrestricted General Fund operating funds with SERAF operating funds. SERAF funds are generally restricted to schools located in, or students living in, the redevelopment project areas.

Amount of Revenue Involved

The impact to LEAs statewide will be significant—and over time will grow even more significantly. It is estimated that the increase in AB 1290 payments to K-12 districts alone will accumulate to \$12.1 billion over the next 45 years. This is just the 56.7% facilities portion of future AB 1290 payments. In addition, K-12 districts receive 43.3% of AB 1290 payments for operations. However, these operational revenues are subject to revenue limit reduction and therefore will effectively benefit the state.

On an annual basis, the increase in the facilities portion of AB 1290 payments is estimated to be a minimum of \$8 million statewide and will increase to as much as \$725 million annually over the next 45

years. Including county offices of education and community college districts, the estimated increase is \$10 million annually, growing to \$915 million annually.

Of course, LAUSD is a big district and the impact for it will be especially significant; however, most LEAs should experience an increase of 20% to 100% or more over what they otherwise would have received in AB 1290 payments. There are a number of considerations though that will determine to what extent your district is impacted.

Which Districts Are Impacted

Redevelopment is a complex area and three key factors will determine whether your district is impacted:

1. First, your district needs to be within the boundaries of one or more redevelopment project areas that were formed by an RDA.
2. Second, while LEAs may receive several different types of RDA payments, the court case primarily affects only AB 1290 entitlements. (There is one potential exception, which is pass-through agreements executed between September 14, 1992, and December 31, 1993.)
3. Third, the impact on your district will vary, depending on how AB 1290 payments were previously implemented by RDAs or the County Auditor-Controller in your county. In most counties, AB 1290 payments have been allocated on a pre-ERAF basis, so the impact of the LAUSD court case will be large for most LEAs.

As you can see, knowing how much your district will be affected requires research and knowledge of your particular district's unique situation. This is an area worth understanding, though, because there is potential for a significant increase in the payments being received.

The Court Case

On January 17, 2010, the 2nd District Appellate Court overturned a Los Angeles Superior Court decision in a strongly worded, published opinion: *Los Angeles Unified School District v. County of Los Angeles et al.* (2010), 181 Cal. App. 4th 414 (LAUSD Decision). On April 28, 2010, the Supreme Court denied a petition for review by the defendants, effectively making the LAUSD Decision "of precedential effect" throughout the state.

The court case centered on how the ERAF shift affects the amount of property taxes each local government agency receives. The Health and Safety Code requires that AB 1290 revenues shall be allocated to school districts (and other affected taxing entities, including county offices of education and community college districts) in proportion to the percentage share of property taxes received.

The ERAF shift means that property taxes that would have gone to the county, cities, and special districts are instead deposited into ERAF for allocation to LEAs (and more recently, to fund the "triple flip" and the vehicle license fee (VLF) subvention for cities and counties). For purposes of AB 1290 payment calculations, many counties and RDAs, including in Los Angeles County, ignored the allocation of ERAF to LEAs.

By ignoring the allocation of ERAF to LEAs, the percentage share of property taxes that LEAs were assumed to receive in redevelopment project areas was reduced, which caused the amount of AB 1290 payments that LEAs received to be reduced as well. The LAUSD Decision clarified that ERAF was

intended to be received only by LEAs, and that AB 1290 payments to LEAs and LEAs only should also include the property taxes received from ERAF.

While some counties and RDAs ignored ERAF, others recognized that LEAs received ERAF but allocated AB 1290 payments to ERAF itself, not as AB 1290 payments, but as property taxes. This meant that, for nonbasic aid LEAs, 100% of this (rather than 43.3%) was subject to revenue limit offset. Based on the *LAUSD Decision*, these counties and RDAs should allocate AB 1290 payments to ERAF not as property taxes to all LEAs, but as AB 1290 payments, and only to LEAs in each AB 1290 redevelopment project area.

Because the *LAUSD Decision* represents a published decision by the Appellate Court, the decision was binding not only in the 2nd District-consisting of Los Angeles, Ventura, Santa Barbara, and San Luis Obispo Counties-but statewide, pending potential review by the Supreme Court. However, when the Supreme Court denied the petition for review by the defendants, the *LAUSD Decision* became "of precedential effect" in the 2nd District and statewide.

Increase in AB 1290 Payments Won't Necessarily Be Standardized

While the *LAUSD Decision* means LEAs that receive AB 1290 payments are entitled to have them calculated on a post-ERAF basis, the case turned on a matter of law, not on a matter of facts, and effectively contains no implementation language. Hence, how post-ERAF calculations will be implemented will presumably be determined locally. Because there's such a wide variety of practice from one county to the next, LEAs in different counties can proceed in implementing the decision independent of what is happening in Los Angeles County and elsewhere.

In some counties, AB 1290 payments are made by the County Auditor-Controller on behalf of RDAs. In other counties, AB 1290 payments are made by the RDAs themselves. In yet other counties, some AB 1290 payments are made by the County Auditor-Controller and some are made by the RDAs. Regardless of the source of AB 1290 payments, how the ERAF accounting is handled will affect how the *LAUSD Decision* is implemented.

Next Steps

Because there is a wide variety of practice from one county to the next, and because the court case did not provide standardized rules governing its implementation, LEAs will need to take an active role in ensuring that they receive the increase in AB 1290 payments to which they are entitled.

In many cases, LEAs will want to work collectively through the County Office of Education (COE) to ensure proper implementation of the *LAUSD Decision*. The COE can provide economies of scale in helping all LEAs within its county receive the appropriate allocation of AB 1290 revenues. This may involve initiating discussions first with the County Auditor-Controller and County Counsel. Because this involves implementation of a court decision, school districts and/or the COE may wish to consider engaging legal counsel-not to litigate further (one hopes that won't be necessary), but to advise and ensure that negotiated implementation is consistent with the *LAUSD Decision* itself.

At some point, communication will need to be extended to the individual RDAs, especially regarding the possibility of retroactive payments. However, if possible, achieving relative unanimity between the COE and the County Auditor-Controller may provide a foundation for easier implementation with all RDAs.

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