

No. B201035

**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE**

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ESTUARDO ARDON,  
*Plaintiff/Appellant,*

v.

CITY OF LOS ANGELES,  
*Defendant/Respondent.*

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Appeal from the Superior Court for the County of Los Angeles  
Hon. Anthony J. Mohr, Judge  
Trial Court Case No.: BC363959

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**BRIEF *AMICUS CURIAE* OF  
THE TAX FOUNDATION  
IN SUPPORT OF PLAINTIFF/APPELLANT**

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## INTEREST OF THE *AMICUS CURIAE*

The Tax Foundation is a non-partisan, non-profit research institution founded in 1937 to educate taxpayers about sound tax policy. Based in Washington, D.C., the Foundation's economic and policy analysis is guided by the principles of neutrality, simplicity, transparency, and stability. The Tax Foundation aims to make information about government finance understandable, such as with its annual calculation of "Tax Freedom Day," the day of the year when taxpayers have earned enough to pay for the nation's tax burden and begin earning for themselves.

The Tax Foundation furthers its mission by educating the legal community and the general public about economics and taxpayer protections, and by advocating that judicial and policy decisions on tax law promote principled tax policy. Recent federal and state tax-related cases in which the Tax Foundation has participated as *amicus curiae* include *Department of Revenue of Kentucky v. Davis*, 128 S. Ct. 1801 (2008); *CSX Transportation, Inc. v. Georgia State Board of Equalization*, 128 S. Ct. 467 (2007); *Heatherly v. State*, 658 S.E.2d 11 (N.C. 2008), *Bonner v. Indiana*, No. 49S02-0809-CV-525 (Ind. 2008), and *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2005).

This case involves an important issue of tax policy. By addressing the question of when class action suits by taxpayers are permitted, the decision of this Court may be cited as authority by other states confronting similar questions, and would affect the ability to challenge illegal taxes. Furthermore, the Tax Foundation has conducted extensive research into taxpayer protection provisions and their impacts which may prove helpful to the Court. Accordingly, the Tax Foundation has an institutional interest in this case.

### **STATEMENT OF THE CASE**

Appellant sued the City of Los Angeles for a refund of telephone users tax (TUT), contending said tax was illegal. Appellant filed suit against the City “on behalf of himself and all others similarly situated.” Prior to filing suit, Appellant presented a government claim to the City, in accordance with the Government Claims Act. Appellant presented the claims for refund of TUT on behalf of himself “and all similarly situated taxpayers in the City of Los Angeles.”

### **SUMMARY OF ARGUMENT**

The California Government Code requires that a claimant seeking money or damages against a local public entity follow the conditions set forth in Government Code § 910, absent another statute

prescribing procedures for a refund claim. A “claimant” in section 910 refers to the class itself, and thus an individual claim need not be filed for each member of the purported class. The California Supreme Court has stated that the sufficiency of the information provided in the claim must be measured by the substantial compliance test. *See City of San Jose v. Superior Court*, (1974) 12 Cal. 3d 447. Thus, the City must prove that the Appellants claim failed to satisfy these requirements in order to deny the class claim.

The Appellant in this case has substantially followed the requirements set forth in section 910 in presenting his class claim. The procedures set forth in section 910 take precedent over Los Angeles Municipal Code refund claim provisions since such provisions would not be classified as a statute under the Government Code. A ruling for the Appellee would not only be contrary to a long line of decisions set forth by this court and the California Supreme Court but also would impede the ability of class actions to take place for refund claims, when such suits are clearly authorized by section 910. It would also cause even greater inefficiency for the judicial system, since class actions generally provide a means for suits of similarly situated taxpayers to be tried together, saving trial time and

government dollars. Class actions can also provide an effective remedy for the group without incurring the costs of thousands of separate lawsuits and risking inconsistent decisions by the courts.

## **ARGUMENT**

### **I. CLASS REFUND CLAIMS AGAINST LOCAL GOVERNMENTS ARE PERMITTED UNDER SECTION 905, ABSENT A SPECIFIC EXCEPTION.**

At issue in this case is the Telephone User's Tax (TUT) established by Los Angeles Municipal Code Section Chapter II, Article 1.1. In order to seek a refund if this tax is overpaid, a taxpayer must follow the procedures dictated under Los Angeles's rules. *See* Los Angeles Municipal Code § 21.1.12(d) ("Except as otherwise provided in this section, refunds of overpaid taxes shall be made in the same manner as is provided in Section 21.07 of this chapter for refunds of overpayments in Business Taxes"). The referenced Section 27.01 establishes a claims presentation requirement for certain claims against the city and prescribes procedures for those claims. For a taxpayer to seek a refund, no claim is "allowed in whole or in part unless filed by the person claiming the overpayment, or his authorized agent on his behalf." Los Angeles Municipal Code § 21.07(c).

The Government Claims Act provides the procedural rules taxpayers seeking a refund against a local public entity must follow when presenting a claim. *See* Gov. Code § 910. The Government Claims Act permits taxpayers to bring a class claim for a refund against a local public entity. *See County of Los Angeles v. Superior Court*, (2008) 159 Cal. App. 4th 353; *San Jose*, *supra*; Gov. Code § 900. A person seeking to sue a local public entity for money or damages must first present their claim to the local public entity. *See* Gov. Code § 900.

However, the Government Claims Act is not applicable when the claim falls within certain specified exceptions. The primary exception is in cases where more narrow refund procedures have been created in “the Revenue and Taxation Code or other *statute*. . . .” Gov. Code § 905, subd. (a) (emphasis added).

While this language may be interpreted as limiting class claims such as Appellant’s, it is inapplicable in this case because no other *statute* prescribes procedures to claim a refund or other adjustment of the city’s telephone user taxes. A “statute” is defined under California law as “an act adopted by the Legislature of this State or by the Congress of the United States, or a statewide initiative act.” Gov.

Code § 811.8. Section 21.1.12 of the Los Angeles Municipal Code is consequently not a “statute” within the meaning of § 905(a).

Because the Los Angeles refund ordinance does not qualify as an exception to § 905(a), only the default rules of § 910 are applicable. There is precedent for such a conclusion. In *Volkswagen Pacific, Inc. v. City of Los Angeles*, (1972) 7 Cal. 3d 48, this Court held that tax refund claims procedures prescribed by a city ordinance and charter provision did not establish an exception under § 905(a) because the local enactments were not statutes. Earlier this year, in *County of Los Angeles*, the taxpayer presented a class claim seeking damages for a purportedly illegal utility user’s tax. *See County of Los Angeles*, 159 Cal. App. 4th at 356. Though there was a local ordinance that provided a procedure for requesting a refund, the court ruled that the procedure was not a *statute* and thus only Government Claims Act claims presentations provisions applied. *See id.* at 367 (“The parties have identified and we are aware of no statute specifically governing the claims for refund of the utility user taxes at issue here.”).

Thus even where a city has passed an ordinance providing taxpayer refund procedures, the Government Claims Act may still supersede them where no *statute* specifies narrower rules. Because no

such statute exists in this case, Plaintiff/Appellant need only satisfy the requirements of the Government Claims Act and can therefore bring his class claim.

**II. TO BE PERMITTED, A CLASS CLAIM NEED ONLY SUBSTANTIALLY COMPLY WITH THE GOVERNMENT CLAIMS ACT.**

**A. The “substantial compliance” test is appropriate in this case because it satisfies the Government Claims Act without unduly harming revenue collection.**

Under the Government Claims Act, requirements for class actions are satisfied by a claim of a representative claimant, without the additional requirement of having a claim from each individual class member. A claim presented by a taxpayer is sufficient if (1) there is “some compliance with all of the statutory requirements”; and (2) the claim discloses sufficient information to enable the public entity adequately to investigate the merits of the claim so as to settle the claim, if appropriate. *See San Jose*, 12 Cal. 3d at 456.

This “substantial compliance test,” *see also County of Los Angeles*, 159 Cal. App. 4th at 360, evaluates claims to ensure they contain sufficient information to enable the governmental entity, either from its own records, or from the claim itself, to reasonably determine the circumstances that have given rise to liability and the

possible outer limits of that liability. *See id.* The test was first articulated in *City of San Jose v. Superior Court*, which involved a class action suit by landowners against the City of San Jose for nuisance and inverse condemnation due to overflights of airplanes approaching a nearby airport. The California Supreme Court concluded that in a class action brought under the Government Claims Act, a “claimant” in section 910 refers to the class itself rather than to each individual class member. *See San Jose*, 12 Cal. 3d at 457 (“We conclude ‘claimant,’ as used in section 910, must be equated with the class itself and therefore reject the suggested necessity for filing an individual claim for each member of the purported class.”). The Court thus rejected requiring each individual member of the purported class to file a claim. *See id.* at 458. The Court believed that requiring “such detailed information in advance of the complaint would severely restrict the maintenance of appropriate class actions—contrary to recognized policy favoring them.” *Id.* at 457.

Such a procedure does not automatically harm revenue collection. A class claim must also provide the name, address, and other specified information concerning the representative plaintiff and must also provide sufficient information to identify and make

ascertainable the class itself. *See* Gov. Code § 910; *see also* *Eaton v. Ventura Port Dist.*, (1975) 45 Cal. App. 3d 862, 868 (“Thus, at a minimum, in order for a class claim to be considered to substantially comply with Government Code section 910, it must contain sufficient information to enable the governmental entity, either from its own records or from the claim itself, to reasonably determine the circumstances which it is claimed give rise to liability and the possible outer limits of that liability.”). Once the claim has been presented, the public entity has 45 days within which to act, unless the parties agree to extend the period. *See* Gov. Code, § 912.4(a)-(b). The claim is deemed rejected if the public entity fails to act within the time provided, thus leaving the claimant with only judicial means of relief. *Id.*, § 912.4, subd. (c). The public entity must provide written notice of its action on the claim or of the claim's rejection by operation of law. *See* § 913. These procedural requirements, as well as the judicial consideration inherent in class certification and granting injunctive relief, ensures that local revenue collection will not be irreparably damaged and obviates the need for a ban on class claims beyond the statute’s limits.

In this case, the substantial compliance test is appropriate and its standard has been met by Plaintiff/Appellant. Plaintiff/Appellant's complaint provides sufficient notice about the extent of his claim and the parameters of the proposed class. The City can calculate its revenue collections from the challenged tax based on the information provided and therefore know the extent of its liability. Plaintiff/Appellant has therefore met the burden imposed by the purpose and language of the statute.

**B. Strict compliance is inappropriate in this case because there is no specific statute governing TUT refund claims.**

A separate line of cases requires strict compliance with local procedures in determining whether a class claim can be asserted. *See, e.g., Farrar v. Franchise Tax Bd.*, (1993) 15 Cal. App. 4th 10; *Neecke v. City of Mill Valley*, (1995) 39 Cal. App. 4th 946; *Howard Jarvis Taxpayers Ass'n. v. City of Los Angeles*, (2000) 79 Cal. App. 4th 242.

These cases are premised on the holding in *Woosley v. State*, (1992) 3 Cal. App. 4th 758, where a taxpayer brought a class action suit to recover refunds for motor vehicle license fees and use taxes. The Court in *Woosley* ruled that the class could not be certified based on article XIII, section 32 of the California Constitution:

[Section 32] expressly provides that actions for tax refunds must be brought in the manner prescribed by the Legislature. . . [and] this constitutional limitation rests on the premise that *strict* legislative control over the manner in which tax refunds may be sought is necessary so that governmental entities may engage in fiscal planning based on expected tax revenues.

*Woosley*, 3 Cal. App. 4th at 789 (emphasis added). The Court found that the statutes governing refunds of motor vehicle license fees required the claim to “be filed by *the person* who has paid the erroneous or excessive fee or penalty, *or his agent on his behalf.*” *See Veh. Code § 42231* (emphasis added). Within the context of this statute, the term ‘person’ does not include a class, and a class representative who files a claim on behalf of all others similarly situated, without the knowledge or consent of such other persons, is not the agent of the members of the class. *See Woosley*, 3 Cal. App. 4th at 780. As a result, the Court only permitted the plaintiff class to include those persons who timely filed valid claims.

The present case can be distinguished from the *Woosley* case and its progeny that have prohibited class suits for tax refunds. In these cases, courts typically are enforcing a statute that governs the refund procedures for a particular law and not using default § 910 procedures. The Government Claims Act applies only if there is no

other statute relevant; where another statute applies, one need not meet any of the § 910 requirements.

*Woosley* does not support the proposition that constitutional restrictions on the manner of seeking tax refunds apply to all refund actions against local public entities. The cases requiring strict compliance involve specific authorizing statutes. *See, e.g., Farrar*, 15 Cal. App. 4th at 20-21 (holding that a state tax refund claim must strictly comply with the procedures prescribed of Rev. & Tax. Code § 19055); *Neecke*, 39 Cal. App. 4th at 961 (extending *Woosley* by holding that a local tax refund claim must strictly comply with the procedures prescribed by Rev. & Tax Code § 5097). These cases did not hold that the class claims were impermissible under 910 or apply the strict compliance test to claims under section 910. *See County of Los Angeles*, 159 Cal. App. 4th at 365. *Woosley* also relies on article XIII, section 32 to explain the requirement of strict compliance. Section 32 applies only to actions against the state. *See Brown v. County of Los Angeles*, (1999) 72 Cal. App. 4th 665, 670 (First, the constitutional prohibition cited by the County (Cal. Const., art. XIII, § 32) applies to actions against the State of California, not those involving assessments by local governments.”); *Pacific Gas &*

*Electric Co. v. State Bd. of Equalization*, (1980) 27 Cal. 3d 277, 281 (“Section 32 applies only to actions against the state.”); *Eisley v. Mohan*, (1948) 31 Cal. 2d 637, 641 (“However, the section applies only to an action against the state or an officer thereof with respect to his duties in assessing or collecting a state tax for state purposes.”).

The present case is not against the state but against a local government, and therefore Section 32 is inapplicable. This court was thus correct in *County of Los Angeles* by extending *City of San Jose* (thereby limiting the possible extension of *Woosley*) to permit a claim for a tax refund to a local public entity on behalf of a purported class. *See County of Los Angeles*, 71 Cal. App. 4th at 357. Even though the *San Jose* case did not directly deal with taxes, the principles covering claims against governments and § 910 would apply in both cases. In *County of Los Angeles*, there was no statute governing the claims for refund of the utility user taxes at issue. Accordingly, this Court correctly permitted a claim for a tax refund to a local public entity on behalf of a purported class.

The same reasoning should be applied in the present case. There is no *statute* governing the refunding of the telephone user’s tax, thus Appellants should be able to assert a class claim under

Government Claims Act, even if not all of the claimants have agreed to the suit.

### **III. PERMITTING CLASS REFUND CLAIMS FURTHERS THE DUE PROCESS AND TAXPAYER PROTECTION GOALS OF THE CALIFORNIA CONSTITUTION.**

California's Constitution reflects a number of important goals. On one hand it is paramount that local governments have a stable source of money, and injunctions that prevent revenue collection are consequently disfavored. *See, e.g., Pacific Gas & Electric*, 27 Cal. 3d at 283 ("The policy behind section 32 is to allow revenue collection to continue during litigation so that essential public services dependent on the funds are not unnecessarily interrupted."); *Dows v. City of Chicago*, 78 U.S. (11 Wall.) 108, 110 ("Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public.").

On the other hand, taxpayer protection provisions and due process favor procedures that invalidate illegal taxes and efficiently disgorge improperly collected funds in the form of refunds. *See, e.g., Cal. Const. art. XIII § 32* (authorizing refund actions to recover tax paid plus interest). Under Proposition 13 in 1978 and Proposition 218

in 1996, all tax and fee increases by local governments must be submitted to the voters for approval. *See* Cal. Const. art. XIII C. Proposition 218 further stated that it “shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.” Text of Proposition 218 § 5.

Local governments have an interest in protecting revenue collection, but only to the extent that the revenue collection is legal. If a tax or fee is illegally imposed, part of the judicial resolution must be the refund of the money so as to prevent unjust enrichment and an incentive to impose illegal taxes.

This case has a broader importance in deterring illegal taxes and refunding the money to taxpayers. By aggregating claims, class actions reduce legal and transaction costs for taxpayers seeking refunds and procedural costs for courts processing claims. A class action also ensures that one legal decision will govern all similar claims. Unless class actions are permitted in refund cases, the hurdles of legal process may deter taxpayers from pursuing refund claims, permitting governments to keep the proceeds of illegally collected taxes.

## CONCLUSION

This court should follow the precedent set by the California Supreme Court by holding that a class action for a refund of telephone users tax is permissible under section 910. In doing so, this court will not only be promoting judicial efficiency but also saving time and money cost for claimants. For the foregoing reasons, *Amicus* respectfully request that this court reverse the decision below.

This the 14th day of November, 2008.

Respectfully submitted,

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I, Joseph D. Henschman, counsel for *Amicus* Tax Foundation, hereby certify that according to Microsoft Word, the computer program used to prepare this Brief *Amicus Curiae* of Tax Foundation in Support of Plaintiff/Appellant, the number of words in the document, including footnotes is 3,221, exclusive of captions, tables, signature block, and this certification.

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