

# REPORT

To the Honorable Mayor and City Council  
From the City Manager

January 12, 2009

## SUBJECT

Property Tax Administration Fee Dispute Tolling Agreement with County

## RECOMMENDATION

Approve an agreement with the County of San Mateo to extend the statute of limitations for the City to file suit against the County to recover excess property tax administration fees.

## BACKGROUND

In the 2003-04 and the 2004-05 fiscal years, the State Legislature diverted certain sales tax and vehicle license fee revenues from cities, and passed legislation intended to enable the cities to recover these fees from counties. Subsequently, in Fiscal Year 2006-07, the County of San Mateo implemented a new method for charging each city its respective Property Tax Administration Fee (PTAF) which deprived cities of the opportunity to recover funds diverted by the State legislation.

Similar deductions are being made by most counties in the State. There are currently lawsuits proceeding against the County of Los Angeles and the County of Fresno challenging this practice. Lawsuits against other counties are likely to be filed.

This tolling agreement would give the City and the County time to wait and see how the other lawsuits around the state are resolved – in particular, to see whether there is a decision by a court of appeal. In this way, the City and the County could avoid costly litigation.

Special counsel to Peninsula cities, including Redwood City, has negotiated a tolling agreement with the County of San Mateo to suspend the City's claims against the County to recover the lost PTAF funds. The County implemented the PTAF in the 2006-07 fiscal year. The amount of the County's deduction from Redwood City in that fiscal year was approximately \$51,000. The City will continue to incur a substantially similar PTAF loss in each succeeding fiscal year thereafter.

This tolling agreement between the County of San Mateo and the City will freeze the City's claims as they exist at the time of the execution of the agreement until July 1, 2012 or until one party terminates it with 45 days' notice. By July 1, 2012, it is expected that there will be direction from the courts on this issue. Meanwhile, the City can


continue to file claims with the County for the lost PTAF funds each fiscal year, until either the agreement is terminated or the dispute is resolved.

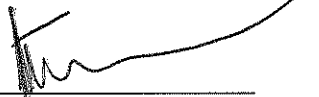
This tolling agreement is also being offered to the cities of Brisbane, Burlingame, Colma, East Palo Alto, Foster City, Menlo Park, Millbrae, Pacifica, Portola Valley, San Bruno, San Carlos, San Mateo, South San Francisco, and Woodside. After the Peninsula cities have executed their tolling agreements, they will be presented to the Board of Supervisors for the County's authorization to toll the statute of limitations.

**FISCAL IMPACT**

None. If cities in California prevail on this issue, the City could recover property tax allocation reimbursements of approximately \$51,000 per fiscal year starting in the 2006-07 fiscal year.

  
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Brian Ponty  
Finance Director

  
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Stan T. Yamamoto  
City Attorney

  
\_\_\_\_\_  
Peter Ingram  
City Manager

**ATTACHMENT**

1. Agreement Between the County of San Mateo and the City of Redwood City to toll statutes of limitations for claims regarding property tax administration fee

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND  
THE CITY OF REDWOOD CITY TO TOLL STATUTES OF LIMITATIONS FOR  
CLAIMS REGARDING PROPERTY TAX ADMINISTRATION FEES**

**WHEREAS**, the City of Redwood City (the “City”) and the County of San Mateo (the “County”) (collectively, the “Parties”) may become involved in litigation regarding the County’s calculation of the property tax administration fees (the “PTAF”) as related to the Triple Flip (Rev. & Tax Code § 97.68) and the Vehicle License Fee swap (Rev. & Tax Code § 97.70) that the County charges the City, pursuant to the Revenue and Taxation Code, beginning in the fiscal year 2004-2005;

**WHEREAS**, conflicting legal opinions as to the calculation of the PTAF have been rendered by various state and local agencies and their counsel;

**WHEREAS**, the City filed a claim against the County on or about June 27, 2008, seeking a refund of the amount of PTAF that the City claims the County overcharged the City in the 2006-2007 and 2007-2008 fiscal years and the County has not yet formally denied the claim;

**WHEREAS**, the County contends that it may have undercharged the City for the PTAF in the 2004-2005 and 2005-2006 fiscal years;

**WHEREAS**, the City and County are aware that other cities and counties in other areas of the State are involved, or may become involved, in litigation concerning the calculation of the PTAF;

**WHEREAS**, the Parties desire to avoid litigation in order to allow for additional time to evaluate the law as it develops on this state-wide issue;

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. The Parties agree to toll the applicable statutes of limitations for either party to file a claim, complaint, or petition against the other with respect to the calculation of the PTAF, including, but not limited to, the applicable statutes of limitations for the City to file a complaint or petition seeking a refund or reallocation to the City of the PTAF that the City contends the County overcharged the City for the 2006-2007 and 2007-2008 fiscal years, which the City contends resulted in an under-allocation of property taxes to the City; and including, but not limited to, the applicable statutes of limitations for the County to file a complaint, petition, or administrative claim seeking an increase or reallocation to the County of the PTAF the County contends the County may have undercharged the City in the 2004-2005 and 2005-2006 fiscal years.

2. This tolling agreement does not revive any statute of limitations period or deadline that expired before the effective date of this tolling agreement. This tolling agreement applies solely to those claims that could be alleged as of the effective date of this tolling agreement in either (i) an administrative claim to the County or the City pursuant to the applicable provisions of the Government Claims Act and/or a County or City ordinance or (ii) a lawsuit. The tolling agreement does not apply to any claims that could not be alleged as of the

effective date of this tolling agreement in an administrative claim to the County or the City pursuant to the applicable provisions of the Government Claims Act and/or any County or City ordinance or in a lawsuit.

3. The purposes of this tolling agreement are to avoid litigation and to permit the Parties additional time to evaluate the law as it develops on this state-wide issue.

4. The City and the County agree not to file any claims and not to initiate or participate in litigation against each other related to the PTAF for the 2004-2005, 2005-2006, 2006-2007, and 2007-2008 fiscal years while this agreement is in effect.

5. The tolling period for the City and the County extends from the effective date of this tolling agreement until the earlier of the following:

- a. The expiration of forty-five (45) days from the date one Party (“the terminating party”) delivers to the other Party via certified mail and facsimile at the addresses and facsimile machine numbers set forth in Section 8 below, written notice that the terminating party desires to terminate this tolling agreement, and is in fact terminating this tolling agreement; or
- b. July 1, 2012.

6. This agreement constitutes the entire understanding of the Parties with respect to the tolling of the City’s and the County’s claims as set forth in Section 1 above, and correctly states the rights, duties, and obligations of each Party as of the effective date of this agreement. Any prior understandings, promises, negotiations, or representations between the parties not expressly stated in this document are not binding.

7. Subsequent modifications of this agreement, including but not limited to the extension or amendment of the agreement, shall not be valid or effective unless set forth in writing and signed by the Parties. The Parties anticipate that they are likely to amend this Agreement to include claims brought by the City regarding the calculation of PTAF for the 2008-2009 fiscal year and further fiscal years.

8. Notices under this agreement, including specifically notice under Section 5.a above, shall be given as follows:

- a. To the City, notice shall be given to both the City Attorney and to the attorney specially representing the City in this matter, Benjamin P. Fay, at the following addresses:

City Attorney  
City of Redwood City  
1017 Middlefield Road  
Redwood City, CA 94063  
Fax: (650) 261-9102

Benjamin P. Fay  
Jarvis, Fay, Doportto & Gibson, LLP  
475 14th Street, Suite 260  
Oakland, CA 94612  
Fax: (510) 238-1404

- b. To the County, notice shall be given to the County Counsel at the following address:

Michael P. Murphy  
County Counsel of the County of San Mateo  
400 County Center, 6th Floor  
Redwood City, CA 94063  
Fax: (650) 363-4034

9. The Parties agree that this agreement shall be effective upon its execution by both Parties. The Parties further agree that the County will deny the City's claim on the date immediately preceding its execution of the Agreement.

10. Each of the undersigned hereby represents and warrants that he or she is authorized to execute this agreement on behalf of the respective parties to this agreement.

11. This tolling agreement may be executed in counterparts, and each fully executed counterpart will be considered an original document.

FOR THE COUNTY OF SAN MATEO

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Michael P. Murphy  
County Counsel of the County of San Mateo

FOR THE CITY OF REDWOOD CITY:

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to form for the City of Redwood City:

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Stan Yamamoto  
City Attorney of the City of Redwood City