



COUNTY OF LOS ANGELES  
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May 27, 2009

TO: SACHI A. HAMAI  
Executive Officer  
Board of Supervisor

Attention: Agenda Preparation

FROM: JOHN F. KRATTLI   
Senior Assistant County Counsel

RE: **AES Redondo Beach LLC v. County of Los Angeles, et al.**  
**Los Angeles Superior Court Case No. BS 118 450**  
**AES Alamitos LLC v. County of Los Angeles, et al.**  
**Los Angeles Superior Court Case No. BS 118 451**

Attached is the Agenda entry for the Los Angeles County Claims Board's recommendation regarding the above-referenced matters. Also attached are the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Plan to be made available to the public.

It is requested that this recommendation, the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Plan be placed on the Board of Supervisors' agenda.

JFK:rfm

Attachments

Board Agenda

MISCELLANEOUS COMMUNICATIONS

Los Angeles County Claims Board's recommendation: Authorize settlement of the matters entitled AES Redondo Beach LLC v. County of Los Angeles, et al., Los Angeles Superior Court Case No. BS 118 450; and AES Alamitos LLC v. County of Los Angeles, et al., Los Angeles Superior Court Case No. BS 118 451, in the amount of \$471,210.74.

These lawsuits concern the payment of interest on property tax refunds.

## CASE SUMMARY

### INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	AES Redondo Beach LLC v. County of Los Angeles, et al., AES Alamitos LLC v. County of Los Angeles, et. al.
CASE NUMBER	LASC Nos. BS 118450 and BS118451 respectively
COURT	Los Angeles Superior Court Department 85
DATE FILED	12/30/2008
COUNTY DEPARTMENT	Auditor-Controller
PROPOSED SETTLEMENT AMOUNT	\$ 471,210.74 (AES Redondo \$174,337.89) (AES Alamitos \$296,872.85) County Gen. Fund Share: \$119,048.64
ATTORNEY FOR PLAINTIFF	Wade E. Norwood
COUNTY COUNSEL ATTORNEY	Thomas M. Tyrrell
NATURE OF CASE	Property Tax Refund
PAID ATTORNEY FEES, TO DATE	\$ AES Redondo - \$1,518.94 AES Alamitos - \$1,627.43
PAID COSTS, TO DATE	\$ 0

# Summary Corrective Action Plan



## DEPARTMENT OF AUDITOR-CONTROLLER

Date of incident/event:	Fiscal Years 1997 through 2002
Briefly provide a description of the incident/event:	<p>Revenue and Taxation Code § 5151 provides that interest must be paid on refunded property tax payments. For the time period relevant to these lawsuits, interest was to be calculated at the greater of 3% or the County pool apportioned rate, defined as the treasury pool rate for "the preceding fiscal year for which the refund is calculated." Los Angeles County has consistently paid interest at the rate earned by its treasury pool in the year preceding the year in which the refund is paid. The statute's use of the term "fiscal year" is ambiguous, and could mean the tax roll year, the year the taxpayer paid the taxes, or the year the refund was calculated and issued.</p> <p>Approximately 37 counties participate in a statewide Tax Managers forum, which discusses and seeks to standardize tax calculation methodology and practice. The tax managers' Manual prescribes calculating interest according to Los Angeles County's refund-issue-date methodology. However, other counties do not uniformly use that approach. In 2005, two other counties settled cases on the same issue after an unfavorable tentative trial court ruling.</p> <p>In 2007, Los Angeles County settled a similar claim involving the 1999 through 2003 tax roll years on several parcels. The financial stakes were of less importance than settling the issue. But since litigation resulting in an adverse ruling could have exposed the County to many more claims, it was decided to settle the case and pursue legislative, rather than court, clarification.</p>

1. Briefly describe the root cause of the claim/lawsuit:

Los Angeles County found itself exposed to ongoing claims of miscalculation of statutory interest on refunds because of the ambiguity of the statute. These claims

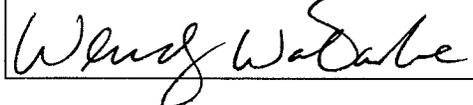
would only be made when it was advantageous to the claimant, and only when significant amounts of money were in issue.

2. Briefly describe recommended corrective actions:  
(Include each corrective action, due date, responsible party, and any disciplinary actions if appropriate)

Auditor-Controller's 2007 Corrective Action Plan was to pursue legislation "including if possible a saving clause to validate past practice." Through the statewide Association of County Auditors, we secured passage of Assembly Bill 2411. AB 2411 confirms Los Angeles County's methodology and includes a savings clause. But it preserved litigation "...pending before January 1, 2009." These lawsuits were the only such cases preserved. The Auditor-Controller has obtained legislative clarification settling the issue for it and other counties and is no longer subject to litigation based on differing interpretations. The deadline for initiation of other similar claims or litigation has passed, and barring some extraordinary circumstance, this issue will not arise in future.

3. State if the corrective actions are applicable to only your department or other County departments:  
(If unsure, please contact the Chief Executive Office Risk Management Branch for assistance)

- Potentially has County-wide implications.
- Potentially has implications to other departments (i.e., all human services, all safety departments, or one or more other departments).
- Does not appear to have County-wide or other department implications.

Signature: (Risk Management Coordinator) 	Date: 5/12/09
Signature: WENDY WATANABE, Auditor-Controller 	Date: 5/12/09

**DEPARTMENT OF AUDITOR-CONTROLLER  
CORRECTIVE ACTION PLAN**

**INCIDENT DATE:** Fiscal Years 1997 through 2002

**INCIDENT LOCATIONS:** Not Applicable

**LAWSUITS OF:** AES Redondo Beach LLC, AES Alamitos LLC

**RISK ISSUE:** Claims of miscalculation of statutory interest on refunds. County of Los Angeles could be periodically subject to repeated and financially significant lawsuits on the same basis here asserted.

**INVESTIGATIVE REVIEW:**

Revenue and Taxation Code § 5151 provides that interest must be paid on refunded property tax payments. For the time period relevant to these lawsuits, interest was to be calculated at the greater of 3% or the County pool apportioned rate, defined as the treasury pool rate for "the preceding fiscal year for which the refund is calculated.". Los Angeles County has consistently paid interest at the rate earned by its treasury pool in the year preceding the year in which the refund is paid.

The statute's use of the term "fiscal year" is ambiguous. "Fiscal year" could mean the tax roll year, the year the taxpayer paid the taxes, or the year the refund was calculated and issued. Since interest rates vary randomly, no method is fiscally preferable.

Approximately 37 counties participate in a statewide Tax Managers forum, which discusses issues of tax calculation methodology and seeks to standardize practice. The tax managers' Manual prescribes calculating interest according to Los Angeles County's refund-issue-date methodology. However, other counties do not uniformly use that approach. In 2005, two other counties settled with Exxon Mobil on the same issue after an unfavorable tentative trial court ruling.

In 2007, Los Angeles County settled a similar claim of Exxon Mobil for the 1999 through 2003 tax roll years on several parcels. Legal counsel believed the County position was defensible, but the point of litigating the issue would have been to obtain the certainty of a binding published appellate opinion. Litigation which produced an adverse ruling would have exposed the County to numerous additional claims.

Therefore, the decision was made to settle. Auditor-Controller's Corrective Action Plan was to pursue legislative clarification "including if possible a saving clause to validate past practice." Working closely with legislative advocates for the statewide Association of County Auditors, passage of Assembly Bill 2411 was secured. AB 2411 adopts the Los Angeles County methodology and includes a savings clause, but preserves the rights of litigants for interest underpayment litigation "...pending before January 1, 2009."

**DEPARTMENT OF AUDITOR-CONTROLLER  
CORRECTIVE ACTION PLAN**

**POLICY ISSUES:**

With the legislative clarification, Auditor-Controller is no longer subject to litigation based on differing interpretations. Accordingly, litigating these cases accomplishes nothing in terms of clarifying Auditor-Controller's obligations. Therefore, the benefit of further litigation is limited to potential cost avoidance. The County share of the proposed settlement is not insignificant. However, the County will bear its own attorneys fees, which could approximate the potential benefit, particularly if there is an appeal.

**CORRECTIVE ACTION:**

The Auditor-Controller has accomplished the necessary legislative clarification to settle the issue for it and other counties. While the legislation included a saving clause to validate past practice, litigation pending as of the statutes effective date -- as is typical -- was preserved. We have not received any other similar claims, and this should be the last time this issue arises.

Reviewed and Recommended

Approved

John Naimo  
John Naimo  
Assistant Auditor-Controller

5/12/09  
Date

Wendy L. Watanabe 5/12/09  
Wendy Watanabe  
Auditor-Controller  
Date