



July 9, 2012

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Re: AB 1484 "True Up" Payment Due Under HSC 34183.5

Ladies and Gentlemen:

The Successor Agency to the El Cerrito Redevelopment Agency and the City of El Cerrito (the "Successor Agency" and "Sponsoring Community") wish to meet and confer with the Department of Finance (the "DOF") to discuss the payment due on July 12, 2012 under Health and Safety Code Section 34183.5 (the "34183.5 Payment"). The Successor Agency and Sponsoring Community also request that the DOF notify the Auditor-Controller of the County of Contra Costa and the State Controller's Office that no payment is due and no penalties or sales tax offsets should be assessed during the pendency of these discussions. Because serious concerns were raised while AB 1484 was before the Senate Committee on the Budget and Fiscal Review on June 26-27, 2012 regarding the processes for calculating and collecting the 34183.5 Payment, the DOF committed that it would work with Sponsoring Communities and Successor Agencies to avert assessment of the penalty and offset provisions. We wish to immediately commence that process.

The El Cerrito Redevelopment Agency (the "RDA" or "Dissolved RDA") was dissolved on February 1, 2012. Prior to dissolution, the RDA received its December 2011 installment of tax increment from the County of Contra Costa (the "County") on December 16, 2011 (the "Last Tax Increment"). Since ABx1 26 was stayed at this time, the RDA deposited the Last Tax Increment into its reserve fund. The RDA, prior to February 1, 2012, used the proceeds of the Last Tax Increment to pay costs of the RDA authorized under the Community Redevelopment Law. After February 1, 2012, the Successor Agency used the remaining proceeds of the Last Tax Increment to pay costs listed on the EOPS, and later, ROPS, all pursuant ABx1 26.

On July 3, 2012, DOF provided guidance on the 34183.5 Payment, which DOF refers to as the "July True Up Process" (the "Guidance"). There is an error and an inconsistency between the Guidance and AB 1484.

Health and Safety Code Section 34183.5(b), added by AB 1484, provides as follows:

*"The amount to be retained by taxing entities pursuant to paragraph (4) of subdivision (a) of Section 34183 for the January 1, 2012, through June 30, 2012, period is determined based on the Recognized Obligation Payment Schedule approved by the Department of Finance pursuant to subdivision (h) of Section 34179 and any amount determined to be owed pursuant to subdivision (b)." [emphasis added]*

The relevant portion of the Guidance states that:

*"For purposes of determining the amount of RPTTF that a successor agency was authorized by Finance to expend for the January 2012-June 2012 period, county auditor-controllers must use the amounts shown in Column E of the Exhibit 12 document on this webpage."*

Column E of Exhibit 12 deals only with a subset of the approved January through June 2012 Recognized Obligation Payment Schedule (the "First ROPS") and does not include all enforceable obligations approved by DOF. In particular, Column E includes only the portion of the First ROPS payable from the Redevelopment Property Tax Trust Fund (the "RPTTF"), and fails to recognize that other enforceable obligations were payable from other sources, including the Last Tax Increment. The First ROPS showed amounts to be paid from the Last Tax Increment as payable from "Fund Balance" rather than from the RPTTF, because at the time the Last Tax Increment was received, ABx1 26 had been stayed, and the RPTTF did not exist. To exclude from the approved First ROPS those payments for enforceable obligations made from the Last Tax Increment results in double payments by agencies, as further highlighted below.

Had the RPTTF system been in effect at the time the Last Tax Increment was paid, the distribution waterfall that the Legislature directs to be simulated through Section 34183.5(b) would first have allowed all enforceable obligations on the approved First ROPS to be paid from amounts distributed under Section 34183(a)(2) before arriving at the residual amount available to taxing entities under the distribution prescribed in Section 34183(a)(4). Unless the entire enforceable obligation payment amount shown in the First ROPS is deducted from the Last Tax Increment, the Section 34183.5(b) calculation will overstate the amount of revenues from the Last Tax Increment available for distribution to the affected taxing entities in a manner inconsistent with the legislative intent that requires the use of all enforceable obligations listed on the First ROPS, not just a portion of them, as the basis for the calculation.

Since previous DOF guidance and AB 1484 stated that there would be no RPTTF distribution on May 16, 2012 to make payments for approved enforceable obligations on the First ROPS, as a practical matter, the only source of funds the Successor Agency had to make their First ROPS enforceable obligations payments was the Last Tax Increment. The new Guidance calculation would in effect require the Successor Agency to spend the Last Tax Increment twice over—once for the approved enforceable obligations listed on the First ROPS and then again to make the 34183.5 Payment. This is not consistent with ABx1 26 or AB 1484.

Further it is our position that no 34183.5 Payment is due because the RPTTF did not exist until February 1, 2012 and thus there would be no residual from the RPTTF for the period for which the CAC is required to calculate a residual distribution under Section 34183.5. The 34183.5 Payment violates numerous state laws, including Proposition 1A and Proposition 25. The 34183.5 Payment also violates Proposition 22, since the Last Tax Increment was "tax increment" at the time it was received by the RDA and therefore cannot be redirected by the State.

Please contact Economic Development Manager Lori Treviño at (510) 215-4383 or [ltrevino@ci.el-cerrito.ca.us](mailto:ltrevino@ci.el-cerrito.ca.us) at your earliest convenience to arrange for our conference on this matter. In the meantime, we request your immediate confirmation to us, the Auditor-Controller of the County of Contra Costa, and the State Controller's Office that the Successor Agency and Sponsoring Community 34183.5 Payment obligation is suspended and postponed pending the outcome of our meet and confer discussions with DOF on this matter.

Thank you for your prompt attention to our request.

Sincerely,

A handwritten signature in cursive script that reads "Scott Hanin". The signature is written in black ink and includes a horizontal line extending to the right from the end of the name.

Scott Hanin  
City Manager

cc: Senator Mark DeSaulnier, 7th Senate District  
Assemblymember Nancy Skinner, 14th Assembly District  
Senate President pro Tem Darrell Steinberg  
Steve Shea, Policy Consultant, Senate President pro Tem Darrell Steinberg  
Assemblymember Loni Hancock, 9th Assembly District  
Jennifer Rockwell, General Counsel, California Department of Finance  
Sky Woodruff, City Attorney, Meyers Nave  
Susan Bloch, Legal Counsel, Meyers Nave  
Jack Nagle, Legal Counsel, Goldfarb & Lipman