LOCAL AGENCY FORMATION COMMISSION
IMPERIAL COUNTY

jurg heuberger, CEP
executive officer

memorandum

March 14, 2018

TO: All Commissioners

FROM: Jurg Heuberger, Executive Officer

RE: Property Tax Exchange

This report is intended as information to the Commission and as appropriate, can serve as information to other agencies that may be subject to the property tax exchange process between the county and any city.

In part this report is also a response to numerous questions that have been posed over the past six to eight months regarding the requirements and the process. It is however not intended to be an all-inclusive answer to every question.

This report is intended to be an overview of the property tax exchange process that is required by state law for all annexations that involve LAFCO approval. The law governing this process is the Revenue and Taxation (R&T) Code §99 provides the requirements and procedures for processing the tax exchange agreements for annexations. The R&T Code allows jurisdictions to negotiate a tax agreement for each project and it also allows for the development and implementation of a Master Agreement to be used by and between a city and the county. A Master Agreement may be executed between each individual city or there could be one agreement between all cities and the County. The purpose of the agreement is to provide a standard formula for allocating property taxes when annexations are proposed to LAFCo. As a special note, in the past 30 years there have been several "Master" agreements that included all cities and the county, however as of this writing there is no master agreement.

LAFCo does not have a legally required role in the negotiation process. R&T Code §99(b)(6) requires that a resolution approving a negotiated property tax agreement be submitted to LAFCo by both the county and city before a Certificate of Filing can be signed by the Executive Officer and the application accepted for processing by LAFCo. The Certificate of Filing is the document that accepts the application for processing. Even with a Master Agreement, the agreement being negotiated can be modified by the two jurisdictions.

SPECIAL NOTE: ICLAFCO adopted a policy many years ago that allowed a "conditional" Certificate of Filing to be issued prior to the tax sharing agreement being received. This was done to streamline the process and to avoid confusion. LAFCO found that this process while not following the normal process met the intent of the law insofar that an annexation would not go to hearing until such an agreement was reached. It should also be noted that in many instances where an agreement had been reached, by the time the project came before the Commission, it had changed and no longer reflected the project upon which the tax sharing agreement had been negotiated.

APN

PROJECT ID No.

FILE ID. No.

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If the agencies cannot reach an agreement, the R&T Code provides for a mediation process which involves a fiscal analysis, mediator and arbitrator. This process is almost never used (here or statewide) because it is unwieldy and the results are non-binding on the agencies.

Special Districts are not subject to the Master Agreement as they do not normally get a share of the property tax when an annexation is completed by LAFCo. Also, in a nuance to the R&T Code, the County represents a District in property tax negotiations. A District that does receive a portion of the property tax for a particular service might propose to apply that same rate for an annexation area that they are already receiving in the same general area. However, the County negotiates the property tax agreement on behalf of the District and has discretion over that decision.

Terminology

In negotiating a property tax agreement several terms should be defined. The State Assembly has prepared a document that has a number tax-related definitions. The following are some key terms used when negotiating tax agreements:

- **Assessment Roll:** A countywide list of all taxable property. It identifies each property, its owner, and its value for assessment purposes.

- **Base Revenue:** For property tax allocation purposes, the amount of property tax revenues received in the prior year.

- **Educational Revenue Augmentation Fund (ERAF):** The funds created to receive property tax revenues redirected from cities, counties, and special districts to schools and community college districts. The permanent redirection of property taxes reduces the state's Proposition 98 funding obligation to K-14 school districts. The revenue loss to local governments is mitigated by receipt of a half-cent sales tax for public safety purposes.

- **Increment:** For local property tax allocation purposes, the amount of property tax revenue generated by growth in assessed valuation from one year to the next.

- **Property Tax:** A tax on all real and tangible property located in the state and not specifically exempt.

- **Tax Rate:** The ratio of the tax to the tax base. For property tax purposes, the rate is applied to assessed value to determine the amount of the tax. For income and franchise tax purposes, the rate is applied to taxable income to determine the amount of the tax.

- **Tax Rate Area:** Geographic area that is served by the same combination of governmental agencies and has the same property tax allocation factors.

Property Taxes and Proposition 13 Property tax is an *ad valorem* (i.e., according to value) tax that land owners are required to pay on their property. In terms of municipal property tax, land owners in California have their property assessed annually (or upon sale or completion of new construction) by the County Assessor. The assessed value is then used to compute the annual tax, which is levied by the county.

AB 8 - Following the passage of Proposition 13, a new method was necessary to allocate taxes since taxing jurisdictions now had to share a piece of the finite pie. In 1979, Assembly Bill 8 (AB 8) was adopted to provide procedures for counties to allocate taxes. The base year for AB 8 was fiscal year 1978-79. The basic premise of AB 8 was to allocate to each taxing jurisdiction the amount it received in the prior year, plus a share of any additional revenues above the prior year that occurred within the agency s boundaries.

Tax Rate Area - A TRA is a geographical area composed of a unique combination of taxing jurisdictions that provide services to the property. As a result of changes of organization (i.e., annexations, detachments, district formations, city incorporations, etc.) a property may move from one TRA to another. The TRAs are maintained statewide by the California Department of Tax and Fee Administration (CDTFA) in conjunction with information filed by counties, LAFCos, schools and other taxing jurisdictions.

Property Tax Agreement Process

The property tax agreement process for annexations is generally covered by Sections 99 and 99.01 of the California Revenue and Taxation (R&T) Code. Upon annexation, a city takes over service responsibilities for that area and negotiates for a portion of the property tax revenues previously allocated to the county to offset service costs. It should be noted that county service costs for an annexation area may also increase as well with an intensification of land use. There have been a number of studies and fiscal reports prepared over the years that shed more light on this rather convoluted process. In a nutshell, LAFCO at one time required a "fiscal impact analysis" on all projects to ascertain the true impacts. However, at the request of the County LAFCO ceased that requirement in part due to the fact that this was extremely costly and in larger part due to the fact that the County started preparing fiscal studies even if LAFCO prepared them.

Once an annexation application has been filed, ICLAFCO provides notice of the filing to the County Assessor and the Auditor via a special form developed in concert with the County. This form is an outline of each step that needs to happen. See attached as EXHIBIT A.

The agreement allocates property tax from the county to the city based upon the fiscal impact to the respective jurisdictions related to the transfer of service responsibility caused by an annexation. Once again LAFCO does not directly involve itself in this process but does support it.

NOTICE OF FILING AND TRACKING FORM

STEPS FOR LAFCO PROJECTS

LAFCO ANNEXATION (S)

DEPARTMENTAL USE ONLY

Date: ____________City: __________________Annexation #: __________

1. ☐ Resolution of Applicant by affected local agency

   ☐ Petition with acquired signatures of landowners or registered voters

2. APPLICATION RECEIVED BY LAFCO ON: **00/00/00**

3. THE LAFCO EXECUTIVE OFFICER herewith provides "Notice of Filing" to ASSESSOR, AUDITOR, CEO, and issues a "CERTIFICATE OF FILING" to APPLICANT and other parties of interest, dated; **00/00/00**

4. ASSESSOR:

   Within twenty **20 days** of the above notice of filing date, **(step 3)**, provides report to Auditor which identifies assessed valuation for territory subject to jurisdictional changes and tax rate area(s).

   DUE TO AUDITORS OFFICE BY: 00/00/00

5. AUDITOR:

   A: Estimates amounts if property tax revenue generated in territory subject to jurisdictional changes during the current fiscal year.

   B: Estimates proportion of Property tax revenue.

   C: Within forty **40 days** of the above notice filing **(step 3)**, Auditor notifies governing body of each service area is altered, of the amount of property tax revenue estimated, and the exchange pursuant to the master agreement of subject to a negotiated exchange.

   DUE TO SUPERVISOR & CITY BY: 00/00/00

6. Each governing body transmits within thirty **(30) days** of receipt of notification from Auditor, **(step 5)** a resolution of acceptance of the exchange of property tax revenue to the LAFCO Executive officer.

   DUE TO LAFCO EXECUTIVE OFFICER BY: 00/00/00

7. Tentative Notice of LAFCO Hearing given by LAFCO EXECUTIVE OFFICER: **00/00/00**

8. After the LAFCO public hearing is held the decision is final.

Copy to: ☐ Assessor ☐ Auditor ☐ CEO ☐ PW ☐ County Counsel ☐ Applicant ☐ Other__________