State High Court Approves Class Claims for Local Tax Refunds:

Ardon v. City of Los Angeles

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The California Supreme Court's opinion in Ardon v. City of Los Angeles (2011) 52 Cal.4th 241(Ardon) is now final. And all public agencies that rely on fee or tax revenue should take note. In *Ardon*, the state's high court held that Government Code section 910, part of the Government Claims Act, permits local taxpayers to file class claims for refunds in the absence of a specific tax refund procedure set forth in an applicable governing claims statute. While the Court reserved the issue whether the Government Claims Act preempts local tax or fee refund ordinances, public agencies should prepare for that possibility. The result could be greater revenue instability. Local agencies should now take steps to manage their exposure.

Summary

In *Ardon*, an individual plaintiff filed a class action lawsuit on behalf of himself and similarly situated individuals challenging Los Angeles' telephone users tax (TUT) and seeking refunds of amounts paid. The City rejected his attempt to present a refund on behalf of a class and argued that each class member was required to present an individual claim as a prerequisite for filing a class action. The trial court agreed with the City and struck the class allegations. A divided Court of Appeal held that the Government Claims Act, specifically section 910, governed and that it did not permit class refund claims.

In reversing the Court of Appeal, the high court built on and harmonized two important precedents, *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447 (*City of San Jose*) and *Woosley v. State of California* (1992) 3 Cal.4th 758 (*Woosley*).

City of San Jose was a class action lawsuit involving nuisance claims over airport noise and pollution. There, the Court relied on the plain language of section 910 to conclude that the statute does not preclude class claims because the word "claimant" refers to "the class itself" and not just to an individual class member. As a result, the Court found that section 910 does not require each putative class member to first file an individual claim with a government agency. As long

as the representative class plaintiff sufficiently identifies the class to reasonably ensure that the agency can adequately investigate the merits of the claim and settle it without the expense of a lawsuit, then the representatives class claim may proceed.

Eighteen years later, the Court decided *Woosley*, which involved class-based challenges to certain DMV fees and taxes. There, the Court concluded that article XIII, section 32 of the California Constitution requires that an action for tax refunds against the state must be brought in the manner specified by the Legislature under the applicable statutes. The Court found that the statutes that governed the DMV charges did not authorize class claims.

Prior to *Ardon*, many courts and agencies understood *Woosley* as governing the refund context and as holding that class claims were permitted only if expressly authorized by the applicable legislative rule. But in *Ardon*, the Court rejected this interpretation as "overbroad." The Court explained that *City of San Jose*'s holding that that section 910 allows class claims applies in the refund context. Accordingly, the *Woosley* analysis is uncomplicated: "Claimant" in section 910 includes "the class itself" and, therefore, it is clear that the Legislature contemplated class claims, including class refund claims.

The Court also rejected the argument that article XIII, section 32 of the California Constitution only authorizes actions for local tax refunds if the Legislature expressly authorizes them. The Court found that the constitutional provision likely only refers to tax actions against the State, and even assuming it applied to local governments, section 910 provides the necessary legislative authorization for class claims of taxpayer refunds against local governmental entities.

Finally, the Court rejected the argument that policy reasons underlying article XIII, section 32 preclude class claims in local tax refund cases. The Court explained that article XIII, section 32's policy favoring fiscal responsibility is intended primarily to avoid disruption in the collection of taxes during pending litigation; article XIII, section 32 does not justify precluding legitimate class proceedings for the refund of allegedly illegal taxes.

The Court reserved the issue whether the Government Claims Act governs local tax or fee refund claims, even if the agency maintains its own refund ordinance. And, on this issue, the Court sent mixed signals. On the one hand, the Court acknowledged cases that turned on application of local refund ordinances, not the Government Claims Act. On the other hand, the Court repeatedly refers to the idea that the Government Claims Act governs absent a "statute" to the contrary; and intermediate appellate courts have held that ordinances are not statutes. If the Act preempts local ordinances, payers will be able to file claims on behalf of large groups of payers, even if the local ordinance prohibits class claims, and they may have more time to file claims, regardless of the local limitations rule. Cases entering or pending in the appellate courts. (See *Carla Villa v. City of Chula Vista* (Super. Ct. San Diego County, filed June 22, 2011, No. 00093296).) But for the foreseeable future, agencies will have to account for this uncertainty.

Implications

In light of the Court's decision, local public agencies' exposure in revenue litigation could expand exponentially. Agencies that rely on the Government Claims Act to regulate refunds must now account for the possibility of class claims or enact a local ordinance providing specific procedures for refund claims. But agencies that rely on a local ordinance are not without exposure because the Government Claims Act may preempt the local ordinance and class claims may be allowed. In

sum, all agencies must now prepare for greater revenue instability. In an era of legal uncertainty, including uncertainty about the reach of Proposition 218 and Proposition 26, planning for instability is, to say the least, daunting.

Local agencies that rely on tax or fee revenue should consider taking the following steps to manage their exposure:

1. Consider adopting a new ordinance specifying procedures for refund claims that prohibits or limits class claims.

2. Consider reviewing and updating an existing ordinance so that it properly addresses the class claim issue.

3. Anticipate that the Government Claims Act, not a local ordinance, will govern all tax and refund claims and plan for the possibility of greater revenue uncertainty.

4. Keep an eye out for cases that present the relevant issues and consider filing a friend-of-the-court brief or encouraging a municipal association to file friend-of-the-court brief.

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