SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME	**OCTOBER 1, 2021, 11:00 a.m.**	**DEPT. NO**	**21**
JUDGE	**HON. SHELLEYANNE W. L. CHANG**	**CLERK**	**K. CADENA**
CULTIVA LA SALUD, a California nonprofit corporation, and MARTINE WATKINS, **Petitioners/Plaintiffs,** **v.** **THE STATE OF CALIFORNIA, CALIFORNIA DEPARTMENT OF TAX AND FEE,** **Respondents/Defendants.**		**Case No.: 34-2020-80003458**	
Nature of Proceedings:	**PETITION FOR WRIT OF MANDATE**		

The following constitutes the Court's tentative ruling on Petitioners/Plaintiffs Cultiva La Salud and Martine Watkins' (collectively "Petitioners") Petition for Writ of Mandate, which is scheduled to be heard by the Court in Department 21 on Friday, October 1, 2021, at 11:00 a.m. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing and further advises the clerk that such party has notified the other side of its intention to appear.

In light of COVID-19 safety measures, the Court advises counsel to contact the Court clerk to obtain appearance log-in information. There shall be NO in-person appearances.

In the event that a hearing is requested, oral argument shall be limited to no more than 20 minutes per side.

Any party desiring an official record of this proceeding shall make arrangements for reporting services with the Court clerk no later than 4:30 p.m. on the day before the hearing. The fee is $30.00 for civil proceedings lasting under one hour, and $239.00 per half day of proceedings lasting more than one hour. (Local Rule 1.12(B); Gov. Code, § 68086.) Payment is due at the time of the hearing.

I. Factual Background

This action concerns the penalty provision of the "Keep Groceries Affordable Act of 2018," Revenue and Taxation Code[1] section 7284.12, subdivision (f).

A. The Parties

Martine Watkins ("Watkins") is a citizen of California who resides in the City of Santa Cruz. (Decl. of Martine Watkins ISO Pet. ("Watkins Decl.") ¶ 3.) Watkins has served on the Santa Cruz City Council since 2016 and is passionate about issues pertaining to public health. (*Id.* ¶¶ 5, 6.) Although she is a sitting Councilmember, Watkins sues Respondents in her individual capacity and as a private citizen. (*Id.* ¶ 6.)

Cultiva La Salud ("CLS") is a California nonprofit corporation based in Fresno, CA. (Decl. of Genoveva Islas ISO Pet. ("Islas Decl.") ¶ 1.) Its goals include increasing access to healthy foods and beverages, increasing access to physical activities, and increasing the daily consumption of fruits, vegetables, and healthy beverages in the Central Valley's Hispanic population. (*Id.* ¶ 7.) CLS brings this action, *inter alia,* because of its interest in reducing the overconsumption of sugary beverages, to permit local voters to be able to decide whether to tax sugary beverages in their communities, and to compel Respondents to perform their legal duties to collect and administer sales and use tax revenue for California cities. (*Id.* ¶¶ 9, 10.)

Respondent/Defendant California Department of Tax and Fee Administration (the "Department") is a department within the California Government Operations Agency, and is organized under Government Code sections 15570, et seq.

Respondent/Defendant Nicolas Maduros ("Maduros") is the Director of the Department and is sued in his official capacity.

Respondents/Defendants the State of California, the Department, and Maduros are referenced collectively as "Respondents."

B. Background Concerning State and Local Sales and Use Taxes

California's Sales and Use Tax Law imposes a tax by the State on the "privilege of selling tangible personal property at retail," along with a related "use tax" on purchases. (§§ 6001, et seq.) Cities and counties may adopt local sales and use taxes, but the Bradley-Burns Uniform Local Sales and Use Tax Law ("Bradley-Burns Law") requires such local taxes to contain "[p]rovisions identical to those contained in" California's Sales and Use Tax Law. (§§ 7200, et seq.; 7201; 7202, subds. (b) & (h); 7203.) The Bradley-Burns Law "'contemplate[d] an integrated, uniform system of city and county sales and use taxation[, where t]he counties are given authority to impose sales and use taxes as a means of raising additional revenue, and the cities are furnished with a plan of state administration which will relieve them from operating collection systems of their own[, and t]he taxpayers . . . receive . . . a scheme which . . . free[s] them from the burden of complying with differing regulations of state and local taxes, [etc. . .]'

[1] Unless otherwise noted, all subsequent statutory references are to the Revenue and Taxation Code.

[Citation.]" (*Rivera v. Fresno* (1971) 6 Cal.3d 132, 136, overruled on other grounds in *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1.)

Sales and use taxes generally do not apply to the retail sales of "food products for human consumption." (§ 6359, subd. (a).) "Carbonated beverages" are not classified as "food products," so they are subject to sales and use taxes. (§ 6359, subds. (a) & (b)(3).)

California's sales and use taxes are administered and collected by the Department. (§§ 7051, et seq.) A city or county that imposes its own sales and use tax must contract with the Department for the administration and collection of the tax. (§ 7202, subds. (d) & (h)(4).)

C. Local Taxes on the Distribution of Sugary Beverages

In July 2014, the Berkeley City Council adopted Resolution No. 66,712-N.S., putting a measure to tax sugary beverages on the November 2014 ballot. (Pet'rs Req. for Judicial Not. ("RJN"), Ex. A.) The voters of the City of Berkeley passed the measure, which imposed a one-cent per ounce tax on the distribution of sugary beverages in the city. (RJN, Ex. B.) Berkeley was the first city in the United States to pass a tax on sugary beverages. (RJN, Ex. F.)

The cities of San Francisco, Oakland, and Albany followed suit, putting taxes on sugary beverages on the ballot for the November 2016 election, which the voters passed. (RJN, Exs. C-H; see also Decl. of Aurora Castellanos ISO Pet. ("Castellanos Decl.") ¶ 5.)

In 2018, the Ad Hoc Review Committee of the Santa Cruz City Council conducted a review and analysis of revenue options and the health risks of sugary beverages. (Watkins Decl. ¶ 7.) The committee recommended to the Santa Cruz City Council that it put a one-and-a-half cent per ounce tax on the distribution of sugary beverages on the November 2018 ballot, and local polling showed support for such a tax. (Watkins Decl. ¶¶ 7-8.) Thus, on June 26, 2018, the Santa Cruz City Council adopted Resolution No. NS-29-419, which put the measure on the ballot for the November 2018 election. (Watkins Decl. ¶ 8; RJN Ex. I.)

In 2017, The Organizing and Leadership Academy ("TOLA") - a nonprofit organization based in Oakland and Stockton - commenced community organizing efforts to petition the City of Stockton to place a measure to tax sugary beverages on the November 2018 ballot. (Castellanos Decl. ¶¶ 9-10.; Decl. of Hecsa Guerrero ISO Pet. ("Guerrero Decl.") ¶¶ 3-5, 7-8.) Throughout 2017 and 2018, TOLA fellows and over 200 volunteers canvased the City of Stockton, having over 10,000 conversations and conducting over 7,000 surveys. (Castellanos Decl. ¶¶ 10-13 ; Guerrero Decl. ¶¶ 7-8.) The majority of Stockton residents surveyed were in favor of a tax on sugary beverages and wanted the tax revenue applied to public health and afterschool programs. (Castellanos Decl. ¶¶14-15; Guerrero Decl. ¶ 9.) Heading into the November 2018 election, and in preparation to petition the Stockton City Council to put a tax measure on the ballot, TOLA fellows and volunteers tabulated their results, collected over 6,000 signatures in favor of the tax, and drafted a measure to present to the City Council. (Castellanos Decl. ¶ 18; Guerrero Decl. ¶ 10.)

///

D. "The Tax Fairness, Transparency and Accountability Act of 2018" and AB 1838

In 2017, the beverage industry circulated a statewide proposition called "The Tax Fairness, Transparency and Accountability Act of 2018" (the "Proposition"), which acquired enough signatures to be placed on the November 2018 ballot. (RJN Ex. S.) If passed, the Proposition would have amended the State Constitution to, *inter alia*, raise the voter approval requirements from 50% to two-thirds for all new local tax measures. (*Ibid.*)

The proponents of the Proposition agreed to withdraw it from the November 2018 ballot if the Legislature and the Governor agreed to enact AB 1838, the "Keep Groceries Affordable Act of 2018" ("AB 1838"). In essence, AB 1838 would prohibit local governments from enacting any new taxes on "groceries" until January 1, 2031. (RJN, Ex. T.) Under AB 1838, "groceries" expressly includes "carbonated and noncarbonated nonalcoholic beverages," such as sugary beverages. (§ 7284.10.)

Faced with the risk of the Proposition passing, the Legislature passed AB 1838, and the Governor signed it into law on June 28, 2018. The Governor's signing statement described why he signed it as follows:

> To the Members of the California State Assembly:
>
> This bill establishes a moratorium on imposing new assessments on "groceries" at the local level.
>
> Out of 482 cities in the state of California, a total of 4 cities are considering passing a soda tax to combat the dangerous and ill effects of too much sugar in the diets of children. In response, the beverage industry has circulated a far reaching initiative that would, if passed, raise the approval threshold from 50% to two-thirds on all measures, on all topics in all 482 cities. Mayors from countless cities have called to voice their alarm and to strongly support the compromise which this bill represents.
>
> The initiative also contains language that would restrict the normal regulatory capacity of the state by imposing a two-thirds legislative vote on what is now solely within the competency of state agencies. This would be an abomination.
>
> For these reasons, I believe Assembly Bill 1838 is in the public interest and must be signed.

(RJN, Ex. T.)

///

AB 1838 was codified in sections 7284.8 through 7284.16 of the Revenue and Taxation Code. In addition to prohibiting any new taxes on groceries, AB 1838 contains a penalty provision targeted at charter cities (the "Penalty Provision"). (§ 7284.12, subd. (f).) The Penalty Provision states:

> The [Department] shall not administer and shall terminate its contract to administer any sales or use tax ordinance of a local agency under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) if that local agency imposes, increases, levies and collects, or enforces any tax, fee, or other assessment on groceries, as defined in subdivision (g) of Section 7284.10, for which a court of competent jurisdiction has determined both of the following:
>
> > (1) The tax, fee, or other assessment is in conflict with the prohibition set forth in subdivision (a), and is not a tax, fee, or other assessment described in subdivision (b) or (d).
> >
> > (2) The tax, fee, or other assessment is a valid exercise of a city's authority under Section 5 of Article XI of the California Constitution with respect to the municipal affairs of that city.

(*Ibid.*) Because state law requires sales and use taxes to be collected by the Department, the effect of the Penalty Provision would be to deprive a city of all of its sales and use tax revenue. (Pet. ¶ 66.)

The City of Santa Cruz is a charter city. (RJN, Ex. V.) Sales and use taxes provide approximately one quarter of its general revenues. (RJN, Exs. N-P; Watkins Decl. ¶ 11.) Fearing the financial consequences it would suffer under the Penalty Provision, the Santa Cruz City Council rescinded Resolution NO. NS-29,419 and the sugary beverage tax measure did not appear on the ballot. (Watkins Decl. ¶ 12.)

In 2021, the Santa Cruz City Council revisited the possibility of enacting a tax on sugary beverages. (RJN, Ex. L.) However, the City Council resolved that the City of Santa Cruz could not "risk submitting a tax on soda or other sugary beverages to its voters because the financial risk [w]as too great" under the Penalty Provision. (*Ibid.*)

The Penalty Provision had a similar effect in the City of Stockton, which is also a charter city. (RJN, Ex. W.) After AB 1838 became state law, the TOLA fellows and volunteers abandoned their efforts to get a tax on sugary beverages on the ballot. (Castellanos Decl. ¶¶ 23-26; Guerrero Decl. ¶¶ 13-16.)

Petitioners filed the Verified Complaint for Declaratory Relief and Injunction, and Petition for Writ of Mandate (the "Petition") on August 10, 2020. "The objective of th[e] lawsuit is to invalidate th[e] penalty provision." (Mem. of P.&A. ISO Pet. 9:8.) Petitioners allege the

penalty provision is unconstitutional on its face and request, *inter alia*, a writ of mandate directing Respondent Maduros not to implement the penalty provision. (Pet. ¶¶ 75-76; *id.* at 15:12-14.)

II. Standard of Review

Code of Civil Procedure section 1085 permits the issuance of a writ of mandate "to compel the performance of an act which the law specially enjoins." The writ will lie where the petitioner has no plain, speedy and adequate alternative remedy, the respondent has a clear, present and usually ministerial duty to perform, and the petitioner has a clear, present and beneficial right to performance." (*Sacramento County Alliance of Law Enforcement v. County of Sacramento* (2007) 151 Cal.App.4th 1012, 1020.) "Two basic requirements are essential to the issuance of the writ. (1) A clear, present and usually ministerial duty upon the part of the respondent; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty." (*Shamsian v. Dept. of Conservation* (2006) 136 Cal.App.4th 621, 640 [citations omitted].)

III. Discussion

A. Request for Judicial Notice

Petitioners' request for judicial notice in support of their opening brief is unopposed and granted.

B. The Parties' Arguments

Petitioners argue the Penalty Provision is unconstitutional on its face as "[i]t is a penalty for exercising a constitutional power - the 'home rule' power of charter cities to manage their own municipal affairs." (Mem. of P.&A. ISO Pet. 9:8-10.)[2]

Respondents oppose the Petition, responding that the Petition should be dismissed on the grounds of ripeness, the Penalty Provision is not unconstitutional, and even if subdivision (f)(2) of the Penalty Provision is unconstitutional, it can be severed from the remainder of the statute.

The parties' arguments are addressed in turn.

1) Ripeness

Respondents contend "[t]he constitutionality of the penalty should not be decided in a facial challenge[; rather,] . . . decision should . . . await the court's determination that the statutory conditions necessary to impose the penalty have been met in a particular case - i.e., that a particular local tax violates [AB 1838], and that the tax is otherwise a valid exercise of the

[2] Petitioners argue that the Penalty Provision "is also invalid for two other reasons: It violates Proposition 1A . . . . [a]nd . . . chills the right of citizens of charter cities to petition their governments . . . ." (Mem. of P.&A. ISO Pet. 9:14-19.) The Court declines to reach the merits of these arguments since it finds the first argument to be dispositive.

local government's constitutional powers [under the home rule]." (Opp'n 15:4-8.) Respondents continue: "Once a court identifies a case where both conditions have been met, the court can also consider whether it would violate the Constitution to apply the penalty under those facts." (*Id.* at 15:8-10.)

Petitioners addressed ripeness in their opening and reply briefs. They assert their facial constitutional challenge is ripe for review as it "is sufficiently definite and concrete to make judicial relief appropriate," and "withholding judicial consideration will result in hardship to the parties and the public." (Mem. of P.&A. ISO Pet.19:23-25.) Petitioners further argue that if the Court waits for the Penalty Provision to be applied to a charter city before adjudicating the challenge, it may never be heard because charter cities are fearful of the financial risk involved in imposing a local tax on sugary beverages. (*Id.* at 21:8-27.)

> The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion. It is in part designed to regulate the workload of courts by preventing judicial consideration of lawsuits that seek only to obtain general guidance, rather than to resolve specific legal disputes. However, the ripeness doctrine is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy. On the other hand, the requirement should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question.

(*Pacific Legal Foundation v. Cal. Coastal Comm'n* (1982) 33 Cal.3d 158, 169.)

"In determining whether a controversy is ripe, [courts] use a two-pronged test: (1) whether the dispute is sufficiently concrete to make declaratory relief appropriate; and (2) whether the withholding of judicial consideration will result in a hardship to the parties." (*Farm Sanctuary, Inc. v. Dep't of Food & Agric.* (1998) 63 Cal.App.4th 495, 502.) Courts often also consider whether the public interest would be served or disserved if the court provides immediate judicial review. (Asimow, et al., Cal. Practice Guide: Admin. Law (The Rutter Group 2020 update) ¶ 15:640.)

"Under the first prong, . . . courts will decline to adjudicate a dispute if 'the abstract posture of [the] proceeding makes it difficult to evaluate . . . the issues' [citation], if the court is asked to speculate on the resolution of hypothetical situations [citation], or if the case presents a 'contrived inquiry' [citation]." (*Ibid.*) By contrast, "[a] controversy is ripe when it has reached, but not yet passed, the point that the facts have sufficiently congealed to permit an intelligent and

useful decision to be made." (*Pacific Legal Foundation, supra*, at p. 171.) Facial challenges to statutes/regulations and claims involving purely legal (versus factual) issues are generally considered ripe the moment the challenged law is passed. (See *Bronco Wine Co. v. Jolly* (2005) 129 Cal.App.4th 988, 1034; *Farm Sanctuary, Inc., supra*, at p. 502.)

"Under the second prong, the courts will not intervene merely to settle a difference of opinion; there must be an imminent and significant hardship inherent in further delay." (*Pacific Legal Foundation, supra*, at p. 171.) Hardship is "often establish[ed] . . . by pointing to [a] dilemma the [party] face[s] in deciding whether to comply or refuse to comply." (Cal. Practice Guide: Admin. Law, *supra*, at ¶ 15:631 [citing cases].) Also, the public interest "would be served by a judicial response to an important legal question that might never be answered if the challenge were considered not ripe for immediate review." (*Id.* at ¶ 15:651 [citing *Farm Sanctuary, Inc., supra*, at pp. 78-79].)

The Petition is ripe for judicial review. It presents a facial (as opposed to an as-applied) challenge involving a pure legal issue to the Penalty Provision. Moreover, delaying a decision would result in hardship to charter cities and the public. The Petition raises an important legal question that might never be answered if it were considered unripe for review since charter cities, like Santa Cruz, may elect not to enact a local tax on sugary beverages rather than face the financial risk of the Penalty Provision being imposed.

2) Constitutionality of the Penalty Provision

Petitioners argue that "[t]he Penalty Provision seeks to achieve what the Legislature cannot legally do - override Article XI, Section 5 of the California Constitution[,]" which is known as the home rule provision (the "Home Rule Provision"). (Mem. of P.&A. ISO Pet. 22:4-5.) Petitioners state:

> [The Home Rule Provision] grants charter cities sovereignty in the area of municipal affairs. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* ("*California Fed. Savings*") (1991) 54 Cal.3d 1, 5-6.) "The provision represents an 'affirmative constitutional grant to charter cities of "all powers appropriate for a municipality to possess ..." and [includes] the important corollary that "so far as 'municipal affairs' are concerned," charter cities are "supreme and beyond the reach of legislative enactment."'" (*State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 556.) "Under the state Constitution, the ordinances of charter cities supersede state law with respect to 'municipal affairs.'" (*Id.* at 552.)
>
> When a state statute conflicts with a charter city's enactment that concerns a "municipal affair," the statute only prevails over the charter city enactment if "the state law addresses a matter of 'statewide concern'" and the state law is "'narrowly

> tailored' to avoid unnecessary interference in local governance." (*Id*. at 556.)
>
> "[W]hat constitutes a municipal affair (over which the state has no legislative authority) and what constitutes a statewide concern (as to which state law is controlling) is a matter for the courts, not the Legislature, to decide." (*Id*. at 562.)
>
> . . . .
>
> . . . [The drafters of AB 1838] added a carefully drafted penalty provision targeted directly at charter cities to discourage them from exercising their constitutional home rule authority to impose taxes on sugary beverages. This penalty only applies to a "local agency" that imposes a tax on "groceries" in contradiction to Revenue and Taxation Code section 7284.12 and only when "a court of competent jurisdiction has determined [that] ... [t]he tax, fee, or other assessment is a valid exercise of a city's authority under Section 5 of Article XI of the California Constitution with respect to the municipal affairs of that city." (Rev. & Tax. Code § 7284.12, subd. (f).) In other words, the penalty only applies after a court has determined that a charter city has properly imposed a tax under its constitutional home rule authority.
>
> . . . .
>
> [The California] Supreme Court explained in *Sonoma County Organization of Public Employees v. County of Sonoma* ("*Sonoma County*") (1979) 23 Cal.3d 296, when invalidating a statute through which the Legislature sought to coerce charter cities into not exercising a home rule power by withholding funds, that "constitutional power cannot be used by way of condition to attain an unconstitutional result." (*Id*. at 319.) . . .

(Mem. of P.&A. ISO Pet. 22:14-24:22.)

Respondents rejoin that Petitioners misread the Penalty Provision's conditions. (Opp'n 11:22-12:2.) Respondents maintain that subdivision (f)(2) "can more reasonably be interpreted to mean that the penalty will apply only if a court finds that the local tax would *otherwise* be a valid exercise of the local government's constitutional powers, *in the absence of* [*AB 1838*]. In other words, the penalty will apply only if [AB 1838] is the sole reason for finding that the tax is prohibited." (*Id.* at 12:2-6.) Respondents argue such an interpretation is warranted "under the canon of constitutional doubt." (*Id.*at 12:11-23.) "To avoid any constitutional doubt," Respondents contend, "the phrase in question . . . should be interpreted to require that the tax would *otherwise* be a valid exercise of the city's authority *if the tax did not violate* [*AB 1838*]." (*Id.* at 12:23-26.)

Petitioners reply that Respondents cannot rewrite the Penalty Provision to give it a meaning contrary to what it plainly states. (Reply 8:25.) Petitioners contend:

> While the "judicial doctrine governing construction of a law to avoid unconstitutionality is well settled," the State has not advanced an "equally reasonable" construction of the Penalty Provision. (*Metromedia, Inc. v. City of San Diego* (1982) 32 Cal.3d 180, 186.) Under no reasonable interpretation of its plain language can the Penalty Provision be read as saying that it applies only when no other law applies. The State advances a construction of the Penalty Provision that is not at all reflected in the language and only achievable by rewriting the statute to add in, at the very least, the word "otherwise." (See *id*. at 187 [a "court cannot... in the exercise of its power to interpret, rewrite the statute"].)

(Reply 9:8-14.)

The Court finds the Penalty Provision is unconstitutional on its face; it violates the Home Rule Provision via financial coercion. The Penalty Provision only applies after a court has determined that a charter city's tax on "groceries" is a "valid exercise of [its] authority under [the Home Rule Provision]." (§ 7284.12, subd. (f)(2).) The Penalty Provision severely penalizes a charter city for validly regulating its "municipal affairs" by ordering the Department to stop collecting the city's sales and use tax revenues.[3] "[W]hile the state may impose conditions upon the granting of a privilege, . . . 'constitutional power cannot be used by way of condition to attain an unconstitutional result.' [Citation.]" (*Sonoma County, supra,* at p. 319.)

Moreover, the Penalty Provision cannot be interpreted in the manner proffered by Respondents as their suggested interpretation is contrary to the plain language of the Penalty Provision. (*San Jose Unified School Dist. v. Santa Clara County Office of Education* (2017) 7 Cal.App.5th 967-985 [discussing principles of statutory construction, stating, "[t]he plain meaning controls if there is no ambiguity in the statutory language"]; *id.* at 983 ["It is the rule that where a statute . . . is susceptible of two constructions, one of which will render it constitutional and the other unconstitutional, . . . the court will adopt the construction which, *without doing violence to the reasonable meaning of the language used*, will render it valid in its entirety, or free from doubt as to its constitutionality, even though the other construction is equally reasonable." (emphasis added)].) The Court cannot "save a statute through judicial construction" by "rewrit[ing]" it. (*Metromedia, Inc., supra,* at p. 187; accord *Singh v. Southland Stone, U.S.A., Inc.* (2010) 186 Cal.App.4th 338, 363 ["[A court] cannot insert qualifying language where it is not stated or rewrite [a] statute to conform to a presumed intention that is not expressed."].)

///

///

[3] For example, more than one-third of Stockton's general fund revenues come from sales and use tax. (RJN, Exs. Q, R.) Sales and use taxes provide approximately one-fourth of Santa Cruz's general revenues. (RNJ, Exs. N-P.)

3) Severance

Respondents argue, in the alternative, that if the Court "agrees . . . that the condition stated in section 7284.12, subdivision (f)(2), creates an irreconcilable conflict with the operation of the penalty and the constitutional authority of local governments," it is severable from the remainder of the statute. (Opp'n 13:1-8.) Respondents state:

> Section 7284.14 allows for severability of unenforceable language and supports a presumption in favor of severance. (See *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 23l, 270.)
>
> In considering issues of severability, the courts examine whether the language in question is "grammatically, functionally, and volitionally separable" from the other terms of the statute. (*California Redevelopment Assn. v. Matosantos, supra*, 53 Cal.4th at p. 271.) . . . .
>
> Each of those considerations supports severance here. Subdivision (f)(2) imposes a separate condition that operates independently from the other provisions of subdivision (f). Subdivision (f)(2) can also be severed without undermining the Legislature's intent to impose consequences for local governments that adopt taxes in violation of [AB 1838]. . . .

(Opp'n 13:9-25.)

Petitioners reply:

> Subdivision (f)(2) of the Penalty Provision cannot be severed because it would make the remaining portion of subdivision (f) grammatically incorrect and because it would contravene the clear intent of the Legislature that the penalty applies only when a court has determined that both a city has imposed a tax that conflicts with the Groceries Act *and* "'is a valid exercise' of the city's constitutional powers." (Rev. & Tax. Code § 7284.12(f).)

(Reply 23:18-22.)

"'[A] statute that is invalid … is not ineffective and inoperative to the extent that its invalid parts can be severed from any valid ones.' [Citation.]" (*Borikas v. Alameda Unified Sch. Dist.* (2013) 214 Cal.App.4th 135, 165.) [***72] "'The presence of [a severability] clause establishes a presumption in favor of severance.' [Citations.]" (*Ibid.*)

> However, “‘“‘[s]uch a clause plus the ability to mechanically sever the invalid part while normally allowing severability, does not conclusively dictate it. The final determination depends on whether the remainder … is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidity of the statute … or constitutes a completely operative expression of legislative intent … [and is not] so connected with the rest of the statute as to be inseparable.’” [Citations.] Condensing these requirements into three components: “[t]o be severable ‘“the invalid provision must be grammatically, functionally, and volitionally separable.”’ [Citation.]”[Citation.]
>
> . . . . “To be grammatically separable, the valid and invalid parts of the statute can be separated by paragraph, sentence, clause, phrase, or even single words. [Citation.]” [Citation.] When a defect can be “‘“cured by excising any word or group of words,”’” severance may be possible and proper. [Citation.] “To be functionally separable, the remainder after separation of the invalid part must be ‘“‘complete in itself”’ and ‘capable of independent application.’ [Citation.]” [Citation.]
>
> . . . .
>
> . . . . “To be volitionally separable, ‘[t]he final determination depends on whether “the remainder … is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidation of the statute” … or “constitutes a completely operative expression of the legislative intent.”’ [Citation.]” [Citation.] “[I]f a part to be severed [(and therefore saved)] reflects a ‘substantial’ portion of the electorate’s purpose, that part can and should be severed and given operative effect.” [Citations.]

(*Id.* at pp. 165-167.)

Subdivision (f)(2) of the Penalty Provision cannot be severed from the remainder of section 7284.12. Severing subdivision (f)(2) would be grammatically incorrect since it would require word changes to and the omission of numbering from the remainder of the subdivision. Further, subdivision (f) expressly states that *both* conditions must be met for the penalty to be imposed. Disregarding this requirement and instead allowing only one condition to be met would contravene the intent of the Legislature as shown by the plain language of the statute.[4]

[4] The Court notes that even if subdivision (f)(2) of the Penalty Provision could be severed, doing so would not necessarily render the Penalty Provision constitutional. Absent subdivision (f)(2), the Court would have to determine if penalizing a charter city for imposing a tax on “groceries” would violate the Home Rule Provision following the

C. Conclusion

For the stated reasons, Petitioners' Petition for Writ of Mandate is GRANTED.[5] A judgment shall be issued in favor of Petitioners, and against Respondents, and a peremptory writ shall issue commanding Respondents to take action specially enjoined by law in accordance with the Court's ruling, but nothing in the writ shall limit or control in any way the discretion legally vested in Respondents. Respondents shall make and file a return within 60 days after issuance of the writ, setting forth what has been done to comply therewith.

In the event that this tentative ruling becomes the final ruling of the Court, in accordance with Local Rule 1.06, Petitioners' counsel is directed to prepare an order granting the Petition in part, incorporating this ruling as an exhibit to the order, a separate judgment, and a peremptory writ; submit them to counsel for Respondents for approval as to form in accordance with California Rule of Court, rule ("CRC") 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with CRC 3.1312(b).

---

analytical framework set forth in *California Fed. Savings.* (*State Building & Construction Trades Council of Calif. v. City of Vista* (2012) 54 Cal.4th 547, 555.)

[5] The Court's decision on the Petition for Writ of Mandate appears to dispose of Petitioners' Complaint for declaratory and injunctive relief as well. Thus, the Court does not discuss the Complaint separately/further.