

TEMPLE CITY COMMUNITY REDEVELOPMENT AGENCY

Review Report

ASSET TRANSFER REVIEW

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

March 2015



BETTY T. YEE
California State Controller

March 30, 2015

Bryan Cook, City Manager
Temple City Community Redevelopment/Successor Agency
9701 Las Tunas Drive
Temple City, CA 91780

Dear Mr. Cook:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Temple City Community Redevelopment Agency (RDA) to the City of Temple City (City) or any other public agency after January 1, 2011. This statutory provision states, "The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized." Therefore, our review included an assessment of whether each asset transfer was allowable and whether the asset should be turned over to the Successor Agency.

Our review applied to all assets including, but not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payment of any kind. We also reviewed and determined whether any unallowable transfers to the City or any other public agency have been reversed.

Our review found that the RDA transferred \$4,144,233 in assets after January 1, 2011, including unallowable transfers to the City totaling \$1,061,283, or 25.61% of transferred assets.

However, as of January 31, 2012, the City had turned over \$106,732 in property to the Successor Agency. Therefore, the remaining \$954,551 in unallowable transfers must be turned over to the Successor Agency.

If you have any questions, please contact Elizabeth González, Chief, Local Government Compliance Bureau, by telephone at (916) 324-0622 or by email at egonzalez@sco.ca.gov.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/sk

cc: John Naimo, Auditor-Controller
Los Angeles County
Steven Peacock, Oversight Board Chair
Temple City Community Redevelopment/Successor Agency
Tracey L. Hause, Administrative Services Director
City of Temple City
David Botelho, Program Budget Manager
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Division of Audits, State Controller's Office

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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Temple City Community Redevelopment Agency (RDA) after January 1, 2011. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payments of any kind from any source.

Our review found that the RDA transferred \$4,144,233 in assets after January 1, 2011, including unallowable transfers to the City of Temple City (City) totaling \$1,061,283, or 25.61% of transferred assets.

However, as of January 31, 2012, the City had turned over \$106,732 in property to the Successor Agency. Therefore, the remaining \$954,551 in unallowable transfers must be turned over to the Successor Agency.

Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA successor agencies and oversight boards to oversee dissolution of the RDAs and redistribution of RDA assets.

A California Supreme Court decision on December 28, 2011 (*California Redevelopment Association et al. v. Matosantos*), upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

ABX1 26 was codified in the Health and Safety (H&S) Code beginning with section 34161.

H&S Code section 34167.5 states in part, ". . . the Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency."

The SCO identified asset transfers that occurred after January 1, 2011, between the RDA, the City and/or any other public agency. By law, the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX1 26, be turned over to the Successor Agency. In addition, the SCO may file a legal action to ensure compliance with this order.

Objective, Scope, and Methodology

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA or any other public agency, and the RDA, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency's operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the City, the RDA, the Successor Agency, and the Oversight Board.
- Reviewed accounting records relating to the recording of assets.
- Verified the accuracy of the Asset Transfer Assessment Form. This form was sent to all former RDAs to provide a list of all assets transferred between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

Conclusion

Our review found that the Temple City Community Redevelopment Agency transferred \$4,144,233 in assets after January 1, 2011, including unallowable transfers to the City of Temple City (City) totaling \$1,061,283, or 25.61% of transferred assets.

However, as of January 31, 2012, the City had turned over \$106,732 in property to the Successor Agency. Therefore, the remaining \$954,551 in unallowable transfers must be turned over to the Successor Agency.

Details of our finding are described in the Finding and Order of the Controller section of this report.

Views of Responsible Officials

We issued a draft review report on December 11, 2014. Bryan Cook, City Manager, responded by letter dated December 31, 2014, disagreeing with the review results and requesting a conference call. On March 19, 2015, SCO staff held a conference call with City representatives. The City's response is included in this final review report as an attachment.

Restricted Use

This report is solely for the information and use of the City of Temple City, the Successor Agency, the Oversight Board, and the SCO. It is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record when issued final.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

March 30, 2015

Finding and Order of the Controller

**FINDING—
Unallowable asset
transfers to the
City of Temple
City**

The Temple City Community Redevelopment Agency (RDA) made unallowable asset transfers of \$1,061,283 to the City of Temple City (City). The transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

Unallowable transfers were as follows:

- On March 15, 2011, a parcel (APN 5387-032-926) valued at \$106,732, was transferred to the City.
- On June 21, 2011, and January 31, 2012, the RDA made cash transfers totaling \$600,000 to the City, as loan repayments.
- In 1993, the City Council amended City Ordinance No. 60-2, to provide credit for the amount of sales and use tax revenues due the RDA in lieu of cash. On various dates, the RDA received various sales and use tax credits, totaling \$354,551. These subsequently were transferred to the City over various dates.

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfers totaling \$1,061,283 and turn over the assets to the Successor Agency.

However, as of January 31, 2012, the City had turned over \$106,732 in property to the Successor Agency. Therefore, the remaining \$954,551 in unallowable transfers must be turned over to the Successor Agency.

City's Response

The City disagrees with the finding and stated that the “cash transfer” on June 21, 2011 was made pursuant to an existing contract between the City and former Community Redevelopment Agency. That contract is an “Amended and Restated Repayment Agreement” entered into on March 15, 2011. Also, the City believes that Pursuant to Health & Safety Code section 34167(d)(2), the former Community Redevelopment Agency had a duty to continue to make payments on loans, and believes that the March 15, 2011 agreement was, at all relevant times, a “required repayment schedule.”

In addition, the City believes that the cash transfers that were made on various dates to the City for sales and use tax credits were transfers of funds to the City that the former redevelopment agency and the Successor Agency were not entitled to keep, as such funds were the rightful property of the City. This is because the former Community Redevelopment Agency had never committed the sales and use taxes it received to any projects, and because the Successor Agency had no legal right to collect sales and use taxes in the absence of such commitments. Under the Revenue and Taxation Code and the City's ordinance, such tax

revenues must be considered City property and not funds subject to distribution to affected taxing entities under the asset transfer review.

See Attachment for the City's complete response.

SCO's Comment

The SCO's authority under H&S Code section 34167.5 extends to all assets transferred after January 1, 2011, by the RDA to the city or county, or city and county that created the RDA or any other public agency. This responsibility is not limited by the other provisions of the RDA dissolution legislation, including H&S Code section 34167(d), which allowed the RDA to continue to make payments under enforceable obligations to private third parties.

On April 26, 2013, the Successor Agency received a Finding of Completion from the California Department of Finance. The Successor Agency may place loan agreements between the RDA and the City on the Recognized Obligation Payment Schedule, as an enforceable obligation, provided that the Oversight Board finds that the agreement was for legitimate redevelopment purposes.

The Finding and Order of the Controller remain as stated.

**Schedule 1—
Unallowable Asset Transfers to the City of Temple City
January 1, 2011, through January 31, 2012**

Cash transfers:	
Cash transfer on June 21, 2011, as loan payment	\$ 300,000
Cash transfer on January 31, 2012, as loan payment	300,000
Cash transfers on various dates to the City for sales and use tax credits	<u>354,551</u>
Total cash transfers	<u>954,551</u>
Property transfer on March 15, 2011 (APN 5387-032-926)	<u>106,732</u>
Total unallowable transfers to the City	<u>1,061,283</u>
Less:	
Property turned over to the Successor Agency as of January 31, 2012	<u>(106,732)</u>
Total transfers subject to Health and Safety Code section 34167.5	<u>\$ 954,551</u>

**Attachment—
City's Response to
Draft Review Report**



9701 LAS TUNAS DRIVE • TEMPLE CITY • CALIFORNIA 91780-2249 • (626) 285-2171

December 31, 2014

Jeffrey V. Brownfield, CPA
Chief, Division of Audits
California State Controller
P. O. Box 942850
Sacramento, California 94250-5874

Attn: Elizabeth Gonzalez, Chief, Local Government Compliance Bureau

**Re: Comments on Draft Temple Community Redevelopment Agency
Asset Transfer Review**

Dear Mr. Brownfield:

This letter is a follow-up to the December 11, 2014 draft Temple City Community Redevelopment Agency Asset Transfer Review ("ATR"). Pursuant to your invitation to provide comments, this letter provides the Successor Agency's comments with respect to the ATR, which are included within the attachment to this letter. They follow the format of the ATR. I trust that you will find them easy to follow.

Once you have reviewed the Successor Agency's comments, I would like to discuss them with the appropriate SCO staff via a conference call. Please ask the appropriate SCO staff person to let me know a convenient time for a conference call meeting for that purpose.

In the interim, if you have any questions, please contact me at (626) 285-2171, extension 2314.

Sincerely,

Bryan Cook
City Manager

BC:TLH:das

Page 2

Attachment

cc: Richard J. Chivaro, Chief Legal Counsel, SCO
Elizabeth Gonzales, Chief Division of Audits, SCO
Scott Freesmeier, Audit Manager, SCO
Claudia Corona, Auditor-in-Charge, SCO
Tracey L. Hause, Administrative Services Director, City of Temple City

ATTACHMENT

**FORMAL COMMENTS ON THE SCO'S DRAFT DECEMBER 11, 2014
TEMPLE CITY COMMUNITY REDEVELOPMENT AGENCY
ASSET TRANSFER REVIEW**

ASSET TRANSFER REVIEW REPORT

In the Summary section, the second and third paragraphs, reads as follows:

"Our review found that the RDA transferred \$4,144,233 in assets after January 1, 2011, including unallowable transfers to the City of Temple City (City) totaling \$1,061,283, or 25.61% of transferred assets.

However, as of January 31, 2012, the City had turned over \$106,732 in property to the Successor Agency. Therefore, the remaining \$954,551 in unallowable transfers must be turned over to the Successor Agency."

Proposed alternative language:

"Our review found that the RDA transferred \$4,144,233 in assets after January 1, 2011, including unallowable transfers to the City of Temple City (City) totaling \$106,732, or 2.57% of transferred assets.

However, as of January 31, 2012, the City had turned over \$106,732 in property to the Successor Agency. Therefore, no further action is required."

In the Conclusion section, the first and second paragraphs reads as follows:

"Our review found that the RDA transferred \$4,144,233 in assets after January 1, 2011, including unallowable transfers to the City of Temple City (City) totaling \$1,061,283, or 25.61% of transferred assets.

However, as of January 31, 2012, the City had turned over \$106,732 in property to the Successor Agency. Therefore, the remaining \$954,551 in unallowable transfers must be turned over to the Successor Agency."

Proposed alternative language:

"Our review found that the RDA transferred \$4,144,233 in assets after January 1, 2011, including unallowable transfers to the City of Temple City (City) totaling \$106,732, or 2.57% of transferred assets.

However, as of January 31, 2012, the City had turned over \$106,732 in property to the Successor Agency. Therefore, no further action is required."

FINDINGS AND ORDERS OF THE CONTROLLER

FINDING – Unallowable asset transfers to the City of Temple City

The first and second paragraphs in this section reads as follows:

"Our review found that the RDA transferred \$4,144,233 in assets after January 1, 2011, including unallowable transfers to the City of Temple City (City) totaling \$1,061,283, or 25.61% of transferred assets.

However, as of January 31, 2012, the City had turned over \$106,732 in property to the Successor Agency. Therefore, the remaining \$954,551 in unallowable transfers must be turned over to the Successor Agency."

Proposed alternative language:

"Our review found that the RDA transferred \$4,144,233 in assets after January 1, 2011, including unallowable transfers to the City of Temple City (City) totaling \$106,732, or 2.57% of transferred assets.

However, as of January 31, 2012, the City had turned over \$106,732 in property to the Successor Agency. Therefore, no further action is required."

Order of the Controller

The first sentence of the Order of the Controller reads as follows:

"Pursuant to H&S Code section 34167.5, the City of Temple City is ordered to reverse the transfers in the amount of \$954,551 and turn them over to the Successor Agency."

Proposed alternative language:

"No further action is required."

Schedule 1 – Unallowable Asset Transfers to the City of Temple City January 1, 2012, through January 31, 2012

The schedule reads as follows:

Cash transfer:	
Cash transfer on June 21, 2011, as loan repayment:	\$300,000
Cash transfer on January 31, 2012, as loan repayment	300,000
Cash transfers on various dates to the City for sales and use tax credits:	<u>354,551</u>

Total cash transfers:	<u>954,551</u>
Property transfer on March 15, 2011 (APN 5387-032-926):	<u>106,732</u>
Total unallowable transfers to the City:	<u>1,061,283</u>
Less:	
Property turned over to the Successor Agency as of January 31, 2012:	<u>(106,732)</u>
Total transfers subject to Health and Safety Code Section 34167.5:	\$954,551

Proposed alternative language:

Property transfer on March 15, 2011 (APN 5387-032-926):	<u>106,732</u>
Total unallowable transfers to the City:	<u>106,732</u>
Less:	
Property turned over to the Successor Agency as of January 31, 2012:	<u>(106,732)</u>
Total transfers subject to Health and Safety Code Section 34167.5:	\$0

JUSTIFICATION FOR PROPOSED REVISIONS TO ATR

Cash Transfers of June 21, 2011 and January 31, 2012

The "cash transfer" of June 21, 2011 was made pursuant to an existing contract between the City and former Community Redevelopment Agency. That contract is an "Amended and Restated Repayment Agreement" entered into on March 15, 2011, which agreement clarifies the intent of the City and Community Redevelopment Agency's 1998 agreement, as set forth in resolution form, to ensure that the Community Redevelopment Agency repaid approximately \$4,073,226 in loan principal advanced to the Community Redevelopment Agency between 1990 and 1995, and interest thereon.

Pursuant to Health & Safety Code section 34167(d)(2), the former Community Redevelopment Agency had a duty to continue to make payments on loans "to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms."

The March 15, 2011 agreement was, at all relevant times, a "required repayment schedule." It obligated the Community Redevelopment Agency in June 2011 – prior

to the adoption of Assembly Bill (First Extraordinary Session) 26 to make the payment demanded therein. Because of the *California Redevelopment Association v. Matosantos* (53 Cal.4th 231) litigation, the effectiveness of ABx1 26 was delayed until February 1, 2012, which means that the payment in January 2012 was also an obligation of the Community Redevelopment Agency.

The Successor Agency acknowledges that on February 1, 2012, the Community Redevelopment Agency ceased to exist and the Successor Agency took over all obligations of the former Community Redevelopment Agency. Further, pursuant to Health & Safety Code section 34171(d)(2) defines the term "enforceable obligation" for **Successor Agency purposes** as excluding any agreement with the City. The Successor Agency made no payments to the City after February 1, 2012. The payments identified in the ATR were instead made pursuant to a "required payment schedule" and under the dissolution law are not subject to being returned to the Successor Agency.

Cash transfers on various dates to the City for sales and use tax credits

Former Article V, Chapter 3, Part 1, Section 5308, Credit for Taxes Due to Temple City Community Redevelopment Agency, of the Temple City Municipal Code read as follow:

"Any person subject to a sales and use tax under the provisions of this chapter shall be entitled to credit against the payment of taxes due under this chapter the amount of sales and use taxes due to the Temple City community redevelopment agency pursuant to section 7202.6 of the Revenue and Taxation Code. In the event that the Temple City community redevelopment agency issues obligations secured in whole or in part by taxes levied pursuant to the provisions of section 7202.6 of the Revenue and Taxation Code, the city shall not revoke this credit in whole or in part, nor shall it reduce its sales and use tax rate, so long as such obligations are outstanding. (Ord. 93-757)"

Further, it should be noted that section 7202.6 of the California Revenue and Taxation Code was repealed effective January 1, 1994, effectively prohibiting redevelopment agencies from receiving sales and use taxes. Only those redevelopment agencies that had an antecedent ordinance and had financial obligations requiring the use of sales and use taxes could continue to do so.

Pursuant to the foregoing, the former redevelopment agency was entitled to receive specified sales and use taxes only to the extent that it had outstanding financial obligations for which such sales and uses taxes were required to be used for payment. As of June 27, 2011, the former redevelopment agency did not have any then outstanding financial obligations for which such sales and uses taxes were required for payment. Therefore, as of the date that redevelopment agencies were dissolved in California (i.e., June 28, 2011 -- pursuant to AB 1x 26), the former redevelopment agency was not entitled to receive any sales or use taxes. In addition, due to dissolution of redevelopment agencies in California, the former

redevelopment agency or the Successor Agency will never again be eligible to receive any sales or use taxes. Therefore, Section 5308 of the Temple City Municipal Code was rendered moot.

Consistent with the foregoing, on February 7, 2012, the City Council of the City of Temple City adopted Ordinance No. 12-952, repealing Section 5308 from the Temple City Municipal Code relating to the uniform local sales and use tax ordinance to terminate the existing credit for payment of sales and use taxes paid to the Temple City Community Redevelopment Agency. The City Council action was taken as the former redevelopment agency: i) did not have any outstanding financial obligations for which such sales and uses taxes were required to be used for payment; ii) was thus not legally entitled to receive any further sales and use taxes; and iii) the Successor Agency was legally prohibited from creating any new financial obligations for which such funds could be required.

Therefore, the cash transfers that were made on various dates to the City for sales and use tax credits were transfers of funds to the City that the former redevelopment agency and the Successor Agency were not entitled to keep, as such funds were the rightful property of the City. This is because the former Community Redevelopment Agency had never committed the sales and use taxes it received to any projects, and because the Successor Agency had no legal right to collect sales and use taxes in the absence of such commitments. Under the Revenue and Taxation Code and the City's ordinance, such tax revenues must be considered City property and not funds subject to distribution to affected taxing entities under the ATR.

CONCLUSION

In conclusion, it is requested that the SCO review and give consideration to the above described proposed amendments to the ATR. The proposed amendments will ensure that the ATR is accurate, complete and clear. Given these desired traits, the amended ATR will benefit, the SCO, the Successor Agency, the Oversight Board, the citizens of Temple City and the California Department of Finance.

**State Controller's Office
Division of Audits
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