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County of Fresno
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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF FRESNO
16 UNLIMITED CIVIL JURISDICTION

17 SOUTHWEST JET FUEL CO.,

18 Plaintiff,

19 v.

20 CALIFORNIA DEPARTMENT OF TAX
21 AND FEE ADMINISTRATION,

22 Defendant.

Case No.: 22CECG01224

**COMPLAINT FOR REFUND OF
TAXES AND DECLARATORY
RELIEF**

(Rev. & Tax. Code § 6931 *et seq.*;
Cal. Civ. Proc. § 1060)

1 Plaintiff Southwest Jet Fuel Co. complains of Defendant California Department of Tax
2 and Fee Administration as set forth below:

3 **PARTIES**

4 1. Plaintiff Southwest Jet Fuel Co. (“Southwest Jet Fuel” or “Plaintiff”) is a Texas
5 corporation with its principal place of business in Texas.

6 2. Defendant California Department of Tax and Fee Administration (“Defendant” or
7 “CDTFA”) is, and at all times mentioned herein was, a public agency of the State of California.
8 The CDTFA administers county sales taxes on behalf of California counties, including the
9 Counties specifically at issue in this matter.

10 **JURISDICTION AND VENUE**

11 3. Jurisdiction is proper pursuant to Rev. & Tax. Code § 6933.

12 4. Venue is proper in the County of Fresno because the California Attorney General
13 maintains an office in the County of Fresno.

14 **FACTS**

15 5. This is an action for refund of a portion of county sales taxes already paid.
16 Specifically, by this Complaint, Plaintiff Southwest Jet Fuel seeks a refund of sales taxes overpaid
17 in the amount of \$10,797,689.31 for the period July 1, 2017, to September 30, 2020 (the “Period”),
18 plus interest as provided by law. These taxes were paid to the CDTFA, which collected the taxes
19 on behalf of the seven California counties at issue in this matter. The seven counties at issue are:
20 San Bernardino County, Los Angeles County, Orange County, Alameda County, Santa Clara
21 County, Sacramento County, and San Diego County (hereinafter individually “County” or
22 collectively “Counties”).

23 **Pertinent Principles of County Taxation**

24 6. California is “divided into counties which are legal subdivisions of the State.” Cal.
25 Constitution art XI § 1(a). Constitutionally, the Legislature “provide[s] for county powers,”
26 Constitution art XI § 1(b), and by statute, the Legislature has granted counties with the power to
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1 “levy and collect taxes authorized by law.” Gov’t. Code, § 23004. A county sales tax is one of
2 the taxes authorized by law. Rev. & Tax. Code § 7201.

3 7. Although the Legislature can authorize county taxes, the Legislature is
4 constitutionally barred from imposing taxes for local purposes. Cal. Constitution art XIII, § 24(a).
5 The power to levy a local tax therefore must be exercised by a County Board of Supervisors via
6 the passage of enabling ordinances. Gov’t. Code § 25120 *et seq.*

7 8. In addition to the Legislature, since 1911, California’s constitution has allowed
8 voters to initiate legislation. Article II, § 8. The people’s legislative power is “generally
9 coextensive with the power of the Legislature to enact statutes.” *Santa Clara County Local*
10 *Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 253. Indeed, the people’s power of
11 initiative is greater than the power of the legislature because the people, unlike the legislature, can
12 bind future legislatures. See *Rossi v. Brown* (1995) 9 Cal.4th 688, 715.

13 9. On November 4, 1986, Californians voted on Proposition 62, a legislative initiative
14 titled “Voter Approval of Taxes Act.” The Legislative Analysis of Proposition 62 stated, “This
15 measure establishes new requirements for the adoption of new or higher general and special taxes
16 by local agencies. In particular, this measure: 1. Requires all proposals for a new or higher general
17 tax to be approved by two-thirds of the local agency’s governing body, and by a majority of the
18 voters. . . .” One of the Arguments in Favor of Proposition 62 likewise said, “Proposition 62 gives
19 you the right to vote on new taxes as well as increases in existing taxes.”

20 10. Californians passed Proposition 62 by a wide margin — 58% in favor. The
21 provisions of Proposition 62 are codified at Gov’t. Code § 53720 *et seq.* Section 53723 provides,
22 “No local government, or district, whether or not authorized to levy a property tax, may impose
23 any general tax unless and until such general tax is submitted to the electorate of the local
24 government, or district and approved by a majority vote of the voters voting in an election on the
25 issue.” Section 53724(a) provides, “A tax subject to the vote requirements prescribed by ...
26 Section 53723 shall be proposed by an ordinance or resolution of the legislative body of the local
27 government or district.”
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1 11. In *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11
2 Cal.4th 220, 253, the California Supreme Court said that “Proposition 62 simply adds a
3 condition—voter approval—to the Legislature’s general grant of such authority to local
4 governments to levy a general tax.” *Id.* at 244. The Court observed, “The manifest purpose of
5 Proposition 62 as a whole was to increase the control of the citizenry over local taxation by
6 requiring voter approval of all new local taxes imposed by all local governmental entities: the
7 measure defines broadly and inclusively both the taxes (§ 53721) and the entities (§ 53720) to
8 which it applies.” *Id.* at 235.

9 **The Improper Tax Increase on Common Carrier Fuel**

10 12. Southwest Airlines Co. (“Southwest Airlines”), during all relevant periods, was a
11 common carrier operator of aircraft. The jet fuel that Southwest Jet Fuel sold to Southwest Airlines
12 during the Period was tangible personal property, was used or consumed principally outside the
13 County in which the sale was made and was used directly and exclusively in aircraft that are used
14 as common carriers of persons or property under the authority of the laws of this state, the United
15 States, or a foreign government (hereinafter “Common Carrier Fuel”).

16 13. Prior to mid-1991, the California Legislature authorized California counties to tax
17 20% of Common Carrier Fuel gross receipts. In mid-1991, the Legislature changed this
18 authorization to permit California counties to tax 100% of Common Carrier Fuel gross receipts.

19 14. Six of the seven Counties did not avail themselves of this increased authority and
20 their ordinances, at all times pertinent, levied a sales tax on only 20% of the gross receipts of
21 Common Carrier Jet Fuel sales. *See* San Bernardino County Code § 14.0201(d)(6)(C); Los
22 Angeles County Code § 4.68.040(B)(4)(b); Alameda County Code § 2.08.090(B); Orange County
23 Code § 1-4-61(b)(4)(b); Santa Clara County Code § A30-14(b)(4)(2); Sacramento County Code
24 § 3.04.030(b)(4)(ii). Compare San Diego County Code § 22.103(b)(4)(B) (taxing 100%).

25 15. Notwithstanding the express provisions of the six county codes, during the Period,
26 the CDTFA, acting on behalf of each of six counties, collected county sales tax on 100% of the
27 gross receipts of Southwest Jet Fuel’s Common Carrier Fuel sales.
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1 16. In addition, the increased amount collected by the CDTFA on Common Carrier
2 Fuel on behalf of all seven of the Counties was not imposed in compliance with the requirements
3 of Proposition 62.

4 **Southwest Jet Fuel's Tax Refund Claim**

5 17. Southwest Jet Fuel is a retailer that sells jet fuel to Southwest Airlines in each of
6 the Counties.

7 18. Southwest Airlines, during all relevant periods, was a common carrier operator of
8 aircraft and purchased Common Carrier Fuel in each of the Counties from Southwest Jet Fuel.

9 19. On October 20, 2020, Southwest Fuel timely filed for a refund of sales tax collected
10 by the CDTFA on behalf of the Counties on grounds that, six of the seven Counties' ordinances
11 do not tax 100% of gross receipts of Common Carrier Fuel, and if sales tax is due on 100% of
12 Common Carrier Fuel sales, the Counties, including San Diego County, imposed an increased tax
13 in violation of Proposition 62. None of the Counties had approved an enabling ordinance by a
14 two-thirds vote of all members of the legislative body of the county and submitted the increased
15 imposition to the electorate and obtained the approval of a majority of the voters. Gov't. Code
16 §§ 53724, 53723.

17 20. On February 15, 2022, the CDTFA denied Southwest Jet Fuel's refund claim.

18 21. This lawsuit is filed within 90 days of the CDTFA's denial of Southwest Jet Fuel's
19 refund claim and therefore is timely filed.

20 22. Southwest Jet Fuel has exhausted administrative remedies.

21 **FIRST CAUSE OF ACTION**

22 **(Sales Tax Refund)**

23 23. Southwest Jet Fuel incorporates by reference each of the above allegations.

24 24. Southwest Jet Fuel overpaid county sales tax in the amount of \$10,797,689.31 for
25 the period July 1, 2017, to September 30, 2020, and is entitled to a refund from Defendant in the
26 same amount plus interest as provided by law, or an alternative amount to be proven at trial.

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SECOND CAUSE OF ACTION

(Declaratory Relief)

25. Southwest Jet Fuel incorporates by reference each of the above allegations.

26. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning their respective rights and duties in that Plaintiff contends that it was illegally overcharged sales tax for the Counties during the Period because one or more of the Counties did not amend their ordinances to tax all receipts from Common Carrier Fuel sales and one or more of the Counties imposed an increased tax without complying with Proposition 62, whereas Defendant disputes these contentions and contends that the County sales taxes for Common Carrier Fuel were lawfully collected.

27. Plaintiff desires a judicial determination of its rights and duties, and a declaration as to the legality as to whether the CDTFA, on behalf of the Counties, can keep the taxes collected on 100% of the gross receipts from sales of Common Carrier Fuel by Plaintiff during the Period or must refund a portion of the collected tax to Plaintiff.

28. A judicial declaration is necessary and appropriate at this time under the circumstances in order that Plaintiff may ascertain its rights and not suffer an unnecessary financial burden.

PRAYER

WHEREFORE, Plaintiff prays for the following relief:

1. Award Plaintiff a refund of amounts overpaid to the Counties, in the amount of \$10,797,689.31 for the Period, plus interest as provided by law, or an alternative amount as proven at trial.

2. Declare that the Counties imposed an increased tax during the Period in excess of that allowed by each County sales tax law and without complying with the requirements of Proposition 62 and/or collected tax in excess of that which is actually imposed under the County's sales tax ordinance.

3. Award Plaintiff attorneys' fees and costs of suit as permitted by law.

1 4. Award such other and further legal and equitable relief as the Court deems just
2 and reasonable.

3 Dated: April 25, 2022

VALLEJO | ANTOLIN | AGARWAL | KANTER LLP

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7 By: 

EDWIN P. ANTOLIN

Attorneys for Plaintiff

SOUTHWEST JET FUEL CO.