



CLIENT NEWS BRIEF

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COURT UPHOLDS TIERED RATE FOR PARCEL TAX MEASURE

A growing number of school districts have received voter approval for parcel tax measures with tiered-rate, rather than flat-rate, tax structures. Tiered-rate structures typically have different rates for residential and non-residential use parcels, such as residential rates based on the number of housing units on each parcel, and non-residential rates based upon the acreage of parcel. Questions have been raised about whether such structures comply with the requirement in state law that such taxes generally must apply uniformly to all taxpayers or all property within the school district. (For this reason, parcel taxes have more commonly included flat rates for all parcels within the district.)

Recently, a trial court in Alameda County found that a tiered-rate structure complies with the meaning and intent of the “uniformity” requirement of state law. In the consolidated cases of Borikas vs. Alameda Unified School District and Berry v. Alameda Unified School District, taxpayers challenged Alameda Unified School District’s 2008 voter-approved parcel tax measure which taxed residential parcels at \$120 per year, commercial/industrial parcels of less than 2,000 sq. ft. at \$120 per year, and commercial/industrial parcels of more than 2,000 sq. ft. at \$.15 per sq. ft., up to a maximum of \$9,500, per year. The plaintiff taxpayers complained that the parcel tax measure violated the “uniformity” requirement of California Government Code section 50079. They also contended that the measure was an illegal general tax, which school districts cannot enact, rather than a special tax, because the stated purposes for which the revenue from the measure could be used were so broad that there was no effective limitation on the uses.

Superior Court Judge Kenneth Burr ruled in favor of the school district on both issues and upheld the validity of the 2008 parcel tax measure. Judge Burr found that so long as like parcels are treated in a like way, and the division of parcels into different classes has a rational basis, then, based upon a long line of other tax cases, the requirement of uniformity and equal protection of the law was met. The judge also held that the purposes for which the tax revenues could be spent enumerated in the measure were

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not so broad as to be without limitation, and thus the voter-approved tax was a special revenue, not a general tax, and so within the authority of the school district to adopt.

The taxpayers who brought the lawsuits have promised an appeal of this decision, and so Judge Burr's decision may not be the last word on this subject. However, it gives school districts, taxpayers, and others interested in parcel taxes at least one judge's view on the legality of tiered-rate structures for school district parcel taxes. We will continue to monitor this case and provide updates as the promised appeal progresses.

Please note that the August 6th deadline for placing parcel tax measure on the November 2010 ballot is fast approaching. Attorneys from LOZANO SMITH have assisted many districts in adopting parcel tax measures, including measures using tiered-rate structures.

If you have any questions about this decision, or parcel taxes in general, or would like assistance with preparing a parcel tax measure for the upcoming ballot, please do not hesitate to contact one of our [seven offices](#) located statewide or consult our [website](#).

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