

CLIENT NEWS BRIEF

California Supreme Court Rejects Appeal in Parcel Tax Case

June 2013
Number 34

Last week, the California Supreme Court declined the request of Alameda Unified School District and its supporters to appeal the recent court of appeal decision invalidating the district's tiered rate parcel tax measure. The Supreme Court also denied the companion request to "depublish" the decision (*i.e.*, to make it apply only to Alameda Unified School District and not allow it to be cited as precedent in future cases).

In *Borikas v. Alameda Unified School District* (March 6, 2013 __ Cal.App.4th __ (2013 WL 820593)), the court of appeal granted a rehearing after its December 2012 decision relating to the important issue of whether school district parcel taxes could be structured with tiered rates. Upon rehearing, the court again held that a tiered-rate parcel tax exceeded the school district's taxing authority and was invalid because the rate structure was not uniform for all taxpayers and parcels.

This case is significant as an increasing number of school districts have obtained 2/3 voter approval for parcel tax measures with tiered-rate, as opposed to flat-rate, tax structures. Tiered-rate tax structures generally 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 on the square footage of the parcel. It was previously understood that these tiered-rate structures complied with state law requiring that such taxes generally must apply uniformly to all taxpayers or all property within the school district, under general principals of tax law. Since each type of parcel would pay the same tax, school districts have taken the position that there is adequate uniformity to comply with the statutory requirements under equal protection clause principles. *Borikas* holds that, for at least the time being, school districts are not authorized to use a tiered-rate parcel tax because it does not apply *uniformly* to all parcels in the school district.

In *Borikas*, plaintiffs challenged Alameda Unified School District's 2008 voter-approved parcel tax measure (Measure H) that taxed residential parcels at \$120 per year, commercial/industrial parcels of less than 2,000 square feet at \$120 per year, and commercial/industrial parcels of more than 2,000 square feet at \$0.15 per square feet, up to a maximum of \$9,500 per year. Measure H also included exemptions for residential parcels owned and occupied by senior citizens or by those receiving Supplemental Security Income, regardless of age.

The trial court in *Borikas* ruled in favor of the school district, concluding that so long as like parcels are treated in a like way and the division of parcels into different classes has a rational basis, Government Code section 50079's requirement of uniformity and equal protection of the law is satisfied. The trial court also found that the statute allowed Measure H's exemptions for some senior and disabled taxpayers. This was the second time that Alameda Unified School District's tiered-rate structure was upheld in a trial court.

The court of appeal partially reversed the trial court, holding that the tiered-rate parcel tax was invalid, but that Measure H's exemptions for some senior and



Jeffrey Kuhn
Partner

Fresno Office

jkuhn@lozanosmith.com

LS Lozano Smith
ATTORNEYS AT LAW



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

disabled taxpayers were expressly allowable under section 50079. The *Borikas* court read section 50079 literally as requiring that special taxes apply “uniformly” to everyone and all lots within the district, regardless of whether what sits on those lots is radically different from what sits on other lots. The *Borikas* court reviewed the 1989-1990 legislative history behind the “apply uniformly” language found in section 50079 and concluded that the legislature clearly stated that the language does not give districts authority to create classifications and impose differential rates; rather, the legislature must provide separate express authority for a school district to do so.

The court acknowledged in passing that school districts and other local governmental entities are more dependent than ever on the revenues from parcel taxes, but any “fix” to the wording of the statute must come from the legislature and not the courts.

It remains to be seen whether the legislature will take up the court’s invitation to fix the statute. AB 59 (Bonta), introduced earlier this session with the hope of saving Alameda Unified’s Measure H, has been shelved in light of concerns about retroactively redefining “uniformity.” In the meantime, we urge districts that have passed tiered-rate parcel taxes or are considering new or renewal parcel tax measures to work closely with their legal counsel to determine how to respond to this important development. It should be noted that the law provides a very short period of time within which a taxpayer can challenge a parcel tax and so districts with tiered rates other than Alameda Unified may be able to avoid paying refunds of parcel taxes already paid.

If you have any questions about the *Borikas* decision, or parcel taxes generally, or would like assistance with preparing a parcel tax measure, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).