



# CLIENT NEWS BRIEF

December 2011

Number 85

## ALAMEDA COURT AGAIN UPHOLDS TIERED RATE FOR PARCEL TAX MEASURE

Backed by voter approval, some school districts levy parcel taxes with tiered-rate, rather than flat-rate, tax structures. Typically, tiered-rate structures 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 nonresidential rates based upon the acreage of parcel. Questions have been raised about whether such structures comply with state law requiring that such taxes apply “uniformly” to all taxpayers or all property within a school district. Over the past several years, this issue has been the subject of several trial court decisions in Alameda County, the latest of which was decided recently. Two of those decisions are already up on appeal, and more legal proceedings are anticipated.

In 2010, the Alameda County Superior Court 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 parcel tax Measure H that taxed residential parcels at \$120 per year, commercial/industrial parcels with buildings of less than 2,000 square feet at \$120 per year, and commercial/industrial parcels with buildings of more than 2,000 square feet at \$.15 per square foot, up to a maximum of \$9,500 per year. The plaintiff taxpayers complained that the parcel tax measure violated the “uniformity” requirement of Government Code section 50079.

The court ruled in favor of the school district, finding that so long as like parcels are treated in a like way and the division of parcels into different classes has a rational basis, the requirement of uniformity and equal protection of the law is met. This ruling is now up on appeal. Lozano Smith has submitted an amicus curiae brief on behalf of CSBA in support of the Alameda Unified School District and the tiered-rate tax structure.

Another parcel tax measure, Measure A, replaced Measure H upon voter approval earlier this year. It levied a parcel tax of \$.32 per square feet, up to a maximum of \$7,999 per year, without regard to whether the use was residential or non-residential. Owners of parcels without buildings pay a flat tax of \$299 per year. Unlike its predecessor, Measure A does not distinguish between residential and non-residential use; rather, it distinguishes between parcels with buildings and parcels without buildings. Like its predecessor, Measure A also distinguishes between parcels with larger buildings and parcels with smaller buildings (due to application of the cap). Taxpayers challenged this new structure in the case of *Nelco, Inc., et al. v. Alameda Unified School District*.

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As before, the Alameda County Superior Court upheld the division of parcels into different classifications for tax treatment, and ruled that such a tax meets the standard if it applies uniformly to all persons or properties in the same classification.

Because the appeal of the Measure H decision is still pending, we think it is likely that the taxpayers who brought the *Nelco* case will appeal this latest decision and move to consolidate. Thus, the trial court's decision will not be the last word on this subject. We will continue to monitor these developments and provide updates as they occur. If there are any questions, please contact one of our [eight offices](#) located statewide, visit our [website](#), or follow Lozano Smith on [Facebook](#).

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