

COURTS: LEGAL OR NOT, PARCEL TAX CAN'T BE CHALLENGED AFTER 60 DAYS, COURT OF APPEAL RULES – REFUND CLAIM DENIED

In a setback for taxpayers, the First District Court of Appeal ruled November 25 that if the legality of a parcel tax isn't challenged within 60 days of passage, a taxpayer cannot subsequently seek a refund based on alleged illegality of the tax – even if the tax is, in fact, improper under the law.

A November 27 headline in the *San Francisco Chronicle* summarized the case accurately: “Challenge taxes in time, or you're out of luck, court rules.”

In *Golden Gate Hill Development Company Inc. v. County of Alameda*, the appellate court upheld a trial court judge's decision to dismiss the taxpayer's action on the grounds that the 60-day validation period for the two parcel tax measures in question expired years ago, and the taxes thus cannot be deemed invalid.

“If no action is brought within the 60-day timeframe, the public is ‘forever barred from contesting the validity of the agency's action in a court of law,’” the Court of Appeal wrote.

At issue were two parcel taxes (Measure I and Measure J) approved by voters in November 2009, authorizing Albany Unified School District to levy non-uniform parcel taxes. Golden Gate Hill paid the tax – more than \$197,000 in just a three-year period – and in 2014 sued for refund on the grounds that the measures improperly impose different rates on residential and nonresidential properties, and different rates on nonresidential properties of different sizes. The company noted that in 2013, the Court of Appeal found in *Borikas v. Alameda Unified School District* that a non-uniform parcel tax was invalid.

CalTax filed an amicus brief in support of the taxpayer.

Golden Gate Hill argued that since it was seeking only a return of a portion of its parcel taxes – the amount above the lowest rate paid by residential property owners – its claim was a refund, rather than a “reverse validation” action to invalidate the tax. The taxpayer also argued that denial of its refund claim would violate its right to due process under the U.S. Constitution.

“We agree the difference in the relief sought ... means appellant's claim is not properly characterized as a reverse validation action,” the court wrote. “However, that distinction does not change the result, because appellant's claim for a refund is *based on* the alleged illegality of the tax scheme enacted by the Measures.”

The court added that taxpayers “remain free to present claims for refunds not based on the validity of the Measures themselves, such as claims based on errors in implementation of the Measures. ...”

The opinion was certified for partial publication – the section dealing with due process claims was not published. In that section, the court opined that the taxpayer's due

process rights were not violated, because the taxes could have been challenged within the 60-day period.

“(A) reasonable taxpayer would have recognized the need to timely challenge the Measures, in order to prevent validation of the Measures,” the court wrote.

The taxes expired last year, and were succeeded by a new voter-approved parcel tax that applies to residential property only.