

Parcel Taxes for Schools Must Apply Uniformly to All Parcels, Court Rules Again

After a rehearing, the First District Court of Appeal again has ruled that a parcel tax levied by the Alameda Unified School District is illegal because its rates did not apply uniformly to all real property within the district. The published opinion in [George J. Borikas v. Alameda Unified School District](#), filed March 6, reaches the same general conclusion as the first ruling, filed December 6.

At issue is a parcel tax, approved by voters in the school district in June 2008, that is imposed on residential parcels at \$120 per year, and large commercial and industrial parcels at 15 cents per square foot, with a maximum of \$9,500 per year. The parcel tax includes exemptions for seniors and recipients of Supplemental Security Income (SSI) benefits who own and reside in single-family homes.

The court said state law does not allow school districts to create property classifications and impose differential parcel tax burdens. However, the court did not strike down the entire tax, noting that the tax measure contained a severability clause. Thus, the school district may impose the tax, as long as it is applied at the \$120-per-year rate on all parcels, regardless of size or use.

The court also ruled that exemptions for seniors and SSI recipients do not exceed the statutory authority provided to school districts by state law, and thus will be allowed.

The opinion was authored by Justice Kathleen Banke, with concurrence from Justice Robert Dondero.

Presiding Justice James Marchiano wrote a concurring opinion in which he agreed with the outcome of invalidating the higher tax rate on certain properties, but not for the same reasons cited by Justices Banke and Dondero. Justice Marchiano said the school district seeks “an enlargement” of the Government Code section requiring that special taxes for schools apply uniformly, “so that what was omitted intentionally or inadvertently may be included within its scope.” Justice Marchiano continued: “We do not have the power to ignore the common sense reading of the words ‘apply uniformly to all taxpayers or all real property’ to judicially supply a meaning that may seem wiser than what was omitted at the time of enactment. ... There is nothing in the statute to suggest that we should deviate from the straightforward and literal sense of the words ‘apply uniformly’ to carve out subclasses or follow a special vernacular used in unrelated tax cases by tax specialists.”

Alameda Unified School District trustees previously voted 4-1 to ask the state Supreme Court to review the December decision, and they now are expected to petition for a review of the latest decision. They have 40 days to petition for review.

David Brilliant, a lawyer for a property owner who challenged the tax, said in a written statement: “My clients in the *Borikas* case and in the new parcel tax cases that we filed in Yolo, Alameda, Contra Costa and Los Angeles counties are very pleased with the

decision from the First District Court of Appeal. The decision is very much the same as the initial decision from December except it addressed many of the arguments the District raised in its Petition for Rehearing. All of those new arguments in the Petition for Rehearing were rejected. At this point, the case will either return to Alameda County Superior Court for hearings on the refund amount and interest due to the taxpayers or move to the California Supreme Court. ... Taxpayers should be pleased with this result but again I caution that we are still far away from the potential large refunds due to taxpayers.”

The tax measure in dispute was replaced by a different voter-approved parcel tax in 2011, and school officials said the court’s decision will not impact the 2011 tax, which calls for residential and commercial property owners to pay 32 cents per square foot of a building (owners of properties with no buildings pay \$299).

In the Legislature, Assemblyman Rob Bonta has introduced a bill ([AB 59](#)) stating that the provisions of Government Code Section 50079 requiring uniform application of school district parcel taxes “shall not be construed as limiting a school district from assessing taxes in accordance with rational classifications among taxpayers or types of property within the school district.” The bill states that it is declaratory of existing law, and also expresses the Legislature’s intent to “clarify, and not change, existing law, and to abrogate the holding in *Borikas v. Alameda Unified School District*.”