

COURTS: CALIFORNIA SUPREME COURT DENIES PETITION TO REVIEW ANTI-TAXPAYER DECISION ON PARCEL TAX REFUNDS

The California Supreme Court on February 17 denied the taxpayer's petition to review the Court of Appeal decision in *Golden Gate Hill Development Company Inc. v. County of Alameda*, putting an end to a case in which a taxpayer was barred from seeking a refund of a tax that was determined to be illegal.

The First District Court

of Appeal ruled November 25 that if 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.

“Although I always thought we were right on the law, unfortunately the Court of Appeal disagreed and now our petition for review was denied – it looks like it is up to the Legislature to fix this now,” said Greenberg Traurig attorney Brad Marsh, who represented the taxpayer.

The appellate court upheld a trial court judge's decision to dismiss the taxpayer's suit on the grounds that the 60-day validation period for two parcel tax measures expired years ago, and the taxes thus cannot be deemed invalid.

At issue were Measure I and Measure J, approved by Alameda County 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 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.

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.

CalTax filed an amicus brief in support of the taxpayer, and had asked the Supreme Court to review the case.