

Complying with the Borikas Ruling: The Details

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Not complying with the law exposes PUSD to the risk of litigation. This could impose unaffordable costs on PUSD and potentially leave our schools unfunded.

Piedmont's School Support Tax is a "qualified special tax" authorized by California Government Code § 50079, which provides such a tax "means special taxes that apply uniformly to all taxpayers or all real property within the school district, except that unimproved property may be taxed at a lower rate than improved property." (Emphasis added). In *Borikas v. Alameda Unified School District*, 214 Cal.App.4th 135 (2013), the Court invalidated Alameda's school parcel tax (Measure H), which taxed residential and commercial properties, and commercial properties above and below 2000 square feet, differently. The plaintiffs argued that Section 50079 "means all taxpayers and all real property must be treated the same, and school districts are not empowered to treat different kinds of taxpayers, and different kinds of real property, differently." *Id.* at 147. The Court agreed, holding that Section 50079 "does not empower school districts to classify taxpayers and property, and impose different tax rates." *Id.* at 151. The Court found it could "sever" the invalid parts of Measure H, and upheld a parcel tax of \$120 per parcel. *Id.* at 166-67.

Mr. Schiller, and others before him, have argued that *Borikas* does not bar a tax under Section 50079 based on a uniform rate per square foot (either of land or buildings). *Borikas* did not expressly rule on such a tax. However, *Borikas* found it must follow Section 50079's text, and the text refers to "special taxes that apply uniformly to all taxpayers or all real property." It does not refer to a uniform rate, but to a tax that applies uniformly. The tax imposed on small vs. large parcels/homes would be different under a "per square foot" tax. Further, looking to Section 50079's legislative history, *Borikas* rejected Alameda's claim that it would be unfair for "all parcels [to] bear the same tax, regardless of size," noting: "The Legislature was aware, however, that uniform parcel taxes were considered 'more inequitable' than ad valorem property taxes because all parcels, regardless of size, are subject to the same tax. ... Nevertheless, the Legislature made no adjustments or provisions in this regard." *Id.* at 158 (emphasis added); *accord id.* at fn. 27.

Nothing since *Borikas* has removed the risk that a Piedmont "per square foot" tax under Section 50079 will be ruled invalid. In 2014, SB 1021 was introduced in the California Legislature to amend Section 50079 to expressly authorize a "per square foot" tax—it did not pass. In 2018, the Legislature adopted AB 2954, which amended Section 50079 to allow school districts to tax unimproved property "at a lower rate than improved property," but did not authorize a "per square foot" tax. While the reference to a "rate" rather than an "amount," provides an argument that uniformity refers to "rate" also, there is no ruling on point. Mr. Schiller notes that the Alameda Superior Court has twice upheld Alameda School District's later parcel taxes, which impose a "per square foot" taxes. However, the Alameda Superior Court also upheld Measure H, and the lawsuits against Alameda's later taxes were settled before the First District Court of Appeals, which issued *Borikas*, ruled on appeal. Mr. Schiller also relies on *Dondlinger v. Los Angeles County Regional Park*, No. B284932 (2019), but that case addressed Pub. Resources Code § 5566, a different statute, which expressly states that a park district may establish a "rate" which "is to be applied uniformly." Further, *Dondlinger* is a Second District decision; Piedmont is in the First District, which is governed by the *Borikas* decision.

Until the First District Court of Appeals or the California Supreme Court upholds a "per square foot" school parcel tax, or the Legislature amends Section 50079 to expressly allow such a tax, I do not think it is prudent for PUSD to take the litigation risk of asking Piedmonters to approve such a tax.