



County of El Dorado

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Date: May 1, 2014
To: All Districts Levying Direct Charges
From: Sally Zutter, Accounting Division Manager
RE: Statewide Legal Decision Regarding Special Taxes

Please be aware of a 2013 legal decision with potentially far-reaching consequences for special taxes on parcels throughout the state. This decision is called *Borikas v. Alameda Unified School District* (2013) 214 Cal.App.4th 135. You may read the published appellate decision at:

<http://law.justia.com/cases/california/court-of-appeal/2013/a129295a.html>

Brief history:

The *Borikas* decision involved the Qualified Special Tax enabling statute's (*GOV §50079*) specific requirement to "...apply uniformly to all taxpayers or all real property...". The defendant, a school district, had successfully gained voter approval and levied a Qualified Special Tax on parcels using different taxing methodologies for various classifications of property (commercial versus residential for the *Borikas* case). The plaintiff's theory was that, because of the statute's qualifying language, it must be uniformly applied to all taxpayers, regardless of the type of property or its use. The appellate court found for the plaintiff. In July 2013, the California Supreme Court denied review, thereby rendering the appellate decision final for the entire State.

What this means to districts:

Many enabling statutes for special taxes carry the same, or similar, wording as the Qualified Special Taxes. A couple of examples include Community Service Districts (*GOV §61121*) and Airport Districts (*PUC §22909*).

If the district has existing special taxes or is contemplating new special taxes, it is suggested the district, with their counsel, closely examine their special tax's enabling legislation (to determine if there are any uniformity and/or other requirements), the wording of their ballot measure, and their special tax methodology, structure, and calculation. In addition, districts should remain vigilant to potential legislation that could either further clarify or eliminate the *Borikas* decision.

While special taxes on property remain an important financing tool for districts, the *Borikas* decision suggests special taxes may face additional scrutiny in the future.