



**Date:** April 1, 2014

**To:** Members, Senate Governance and Finance Committee

**From:** Gina Rodriguez, CalTax Vice President of State Tax Policy

**Subject:** OPPOSITION to SB 1021 (Wolk), as introduced February 14, 2014

The California Taxpayers Association and the organizations listed in this letter oppose SB 1021, which would authorize more than 1,000 California school districts to impose unlimited tax increases on select property owners by allowing the imposition of nonuniform parcel taxes, further complicating an already complex tax regime. Under the bill, school districts could split parcel tax assessments within a district based on the square footage of a parcel, the square footage of improvements on a parcel or how a parcel is used. The bill also would allow school districts to

impose a different tax rate on unimproved parcels; and to treat multiple parcels as one — for purposes of a parcel tax — where the parcels are contiguous, under common ownership, and constitute one economic unit (they must have “the same primary purpose and are not separate and distinct properties that may be independently developed and sold”).

## **BACKGROUND**

Under state law, school districts that impose parcel taxes must apply them “uniformly to all taxpayers or real property within the school district.” State law does not allow school districts to impose parcel taxes “on a particular class of property or taxpayers.” There are exemptions for seniors who are 65 years of age or older and for certain disabled persons (Government Code Section 50079).

The California Constitution, Art. XIII, Sec. 1(a) states, “All property is taxable and shall be assessed at the same percentage of fair market value.” This addresses the *ad valorem*, or acquisition-value, property tax assessments. That section goes on to say: “When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value.” Art. XIII, Section 4 authorizes cities, counties and special districts, by a two-thirds vote of the electorate, to impose special taxes within the district, “except *ad valorem* taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.”

Some school districts are in violation of state law, because they are imposing nonuniform parcel taxes. For example, some districts impose parcel taxes at a higher rate on commercial and industrial parcels than on residential parcels.

In *Borikas v. Alameda Unified School District*, the First District Court of Appeal ruled on December 6, 2012, that the school district’s imposition of nonuniform parcel taxes violated Government Code Section 50079. The Alameda Unified School District taxed commercial parcels larger than 2,000 square feet at a higher rate (up to \$9,500 per year) than residential and small commercial properties. The court concluded that the school district’s property classifications and differential tax burdens exceeded its taxing authority, and the property owner won the case. AB 59 (Bonta), introduced January 7, 2013, attempted to overturn the *Borikas* decision retroactively before the California Supreme Court denied the petition for review. A large coalition opposed AB 59, and the bill was never set for a hearing in a policy committee.

## **KEY POLICY CONCERNS**

SB 1021 would overturn the *Borikas* decision on a prospective basis by allowing more than 1,000 school districts to impose nonuniform parcel taxes. In other words, the bill would allow school districts to use property classifications — commercial, industrial, single-family residential and multifamily residential — to impose different tax rates. For example, a school district may choose to tax commercial property (shopping malls, restaurants, etc.) at \$2 per square foot; industrial property (manufacturing facilities, warehouses, etc.) at \$1 per square; single-family residential property at \$200 per parcel; and multifamily residential property (apartment buildings, duplexes, etc.) at \$1,000 per parcel.

Further complicating the parcel tax regime, SB 1021 would allow school districts to treat multiple parcels as one under certain conditions for purposes of a parcel tax. If a developer owns an office building on one parcel, and a to-be-developed, but currently unimproved adjacent parcel, SB 1021 would give the taxing authority the ability to collapse the two parcels into a single taxable site, and

apply a parcel tax on the unimproved site at a much higher rate. The bill also appears to allow school districts to impose layered parcel taxes: A school district could impose a parcel tax based upon square footage as well as a parcel tax based upon the parcel's use, for example.

**Homeowners Would Lose Their Parcel Tax Deduction, and Face Higher State and Federal Income Taxes.** To be deductible for both state and federal income tax purposes, real property taxes must be levied for the general public welfare "at a like rate against all property" in the taxing authority's jurisdiction under Treas. Regs. Sec. 1.164-4(a). [IRS Information Letter 2012-0018A](#) (March 30, 2012) states that non-*ad valorem* assessments may be deductible only if they are "are levied for the general public welfare by a proper taxing authority **at a like rate on owners of all properties in the taxing authority's jurisdiction**, and if the assessments are not for local benefits (unless for maintenance or interest charges)." A school district that imposes a higher parcel tax rate on commercial and industrial property than on residential property would cause homeowners in the district to lose their income tax deduction for the parcel tax. Likewise, a school district that levies different parcel tax rates for residential property and commercial or industrial property would trigger the nondeductibility rule for both state and federal income tax purposes.

**Further Weakens Low-Wealth School Districts.** School districts that impose higher parcel taxes raise equity issues reminiscent of the *Serrano* decisions, and may put California's system of public school finance back on trial. In 1971, the California Supreme Court held in the first *Serrano v. Priest* decision that school revenue based on *ad valorem* taxes is unconstitutional, stating: "So long as the assessed value within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into excellence which its tax rolls cannot provide." In 1977, in a second *Serrano v. Priest* decision, the California Supreme Court again ruled against a property-tax-based school finance system. An attempt by the Legislature to address the court decision was headed to court in 1978, when Proposition 13 helped solve the problem by limiting the property tax to 1 percent and by not allowing school districts to have *ad valorem* property tax overrides. Because low-wealth school districts are less likely to raise as much revenue as high-wealth districts, *Serrano* and Proposition 13 brought equity to California's school financing system, effectively requiring equalization of per-pupil spending. Nonuniform parcel taxes would undermine the *Serrano* decision, as low-wealth districts would be able to raise only a fraction of the money that high-wealth districts would be able to raise.

**Deteriorates Proposition 13's Protections for Homeowners.** All of the numerous "add-ons" to property tax bills that homeowners receive each year, including add-ons for parcel taxes, erode the property tax relief provided by Proposition 13. Some homeowners may find themselves paying more in parcel taxes than their basic 1 percent property tax under Proposition 13.

**Potentially Higher Taxes on Businesses.** Nonuniform parcel taxes likely would target both small and large businesses, and would adversely impact them. Small businesses would be hit hardest, because they would not be able to absorb higher lease costs that would result from higher parcel taxes. Lease payments on commercial buildings, business parks, and warehouses, to name a few, would increase to reflect increased parcel taxes, as most commercial leases allow for such increases to be passed through to lessees.

**Discriminatory.** Manipulation of the components of a parcel tax — its rates, property classifications, methods of assessment, and exemptions — can produce substantial discriminatory effects. The problems created by discriminatory property taxes are no different from those created by

discriminatory non-property taxes, namely, certain taxpayers are forced to pay more than other similarly situated taxpayers; and some businesses are forced to pay more than their competitors, thus putting them at an economic disadvantage.

Moreover, school districts may have incentives to discriminate against certain property owners, and favor others. SB 1021 allows school districts to classify property, and opens the door to discrimination. Class-action suits were filed in February 2014 challenging New York City's and New York State's real estate taxes, claiming they discriminate against African-American and Hispanic renters. SB 1021 is headed in this direction, as it would set up a tax system similar to New York City's property tax classification system. Because of the property tax classifications, New York's property tax system illegally burdens African-American and Hispanic New Yorkers who live in big rental buildings, as compared to predominantly white-owned condos and co-ops, and predominantly white- and Asian-owned homes, according to the suit. Taxing certain classes of property, as SB 1021 authorizes, certainly would lead to similar litigation (see [\*Ernest Robinson and Rosa Rodriguez v. City of New York and State of New York in the New York Supreme Court\*](#)).

**Property Owners Are Singled Out.** Parcel taxes single out property owners to pay for programs and services that benefit the community at large, such as for fire prevention and public safety. Many residents of a school district that imposes a nonuniform parcel tax would benefit from such services without bearing the financial burden of paying the tax.

**Conclusion.** Under SB 1021, school districts not only would be able to split parcel taxes between commercial and residential parcels, but could tax different types of residential and commercial use dissimilarly. This would further complicate the parcel tax regime by allowing a free-for-all system. The Legislature should equalize parcel tax rates by continuing to require uniformity for parcel taxes imposed by school districts, and by adopting a uniform rate structure for all types of parcel taxes. Parcel taxes have the potential to generate wide funding disparities among school districts, raising a number of equal protection issues. The California Supreme Court ruled in 1971 that California's system of funding public schools through local property taxes was unconstitutional because it unfairly discriminated against children who live in low-wealth school districts. Nonuniform parcel taxes move the state back in time toward that unconstitutional and discriminatory system of school funding.

For the foregoing reasons, the organizations listed below strongly oppose SB 1021.

California Taxpayers Association  
Air Logistics Corporation  
Apartment Association, California Southern Cities  
Apartment Association of Greater Los Angeles  
Associated General Contractors of California  
Building Owners and Managers Association of California  
California Apartment Association  
California Association of Realtors  
California Attractions and Parks Association  
California Bankers Association  
California Building Industry Association  
California Business Properties Association  
California Chamber of Commerce  
California Grocers Association

Members, Senate Governance and Finance Committee

April 1, 2014

Page 5

California Healthcare Institute  
California Hotel & Lodging Association  
California Independent Petroleum Association  
California Manufacturers & Technology Association  
California Mortgage Bankers Association  
California Railroad Industry  
California Restaurant Association  
California Retailers Association  
California Tank Lines, Inc.  
Chemical Transfer Company, Inc.  
Council on State Taxation  
East Bay Rental Housing Association  
Family Business Association  
Family Winemakers of California  
Howard Jarvis Taxpayers Association  
International Council of Shopping Centers  
NAIOP of California, the Commercial Real Estate Development Association  
National Association of Real Estate Investment Trusts  
National Federation of Independent Businesses  
NorCal Rental Property Association  
Orange County Business Council  
Orange County Taxpayers Association  
Santa Barbara Rental Property Association  
Silicon Valley Leadership Group  
Superior Tank Wash, Inc.  
TechAmerica  
Tenet Health Care Corporation  
West Coast Leasing, LLC  
West Coast Lumber & Building Material Association

cc: The Honorable Lois Wolk, California State Senate