

# REPORT

To the Honorable Mayor and City Council  
From the City Attorney

February 22, 2010

## Subject

Payment of City Taxes Prior to Seeking Judicial Relief

## Recommendation

Introduce and then Adopt ordinance to add Article IX to Chapter 32 of the Municipal Code to require that a tax first be paid before litigation regarding its validity can be commenced.

## Background

California Constitution Article XIII, Section 32 prohibits a taxpayer from seeking judicial relief with respect to a tax until that tax is paid. The purpose of the Constitutional provision is (1) to prevent a taxpayer from holding government hostage by not paying and then negotiating a lower amount because government is cash strapped and (2) to assure that government can predict revenues without first having to engage in what could be protracted litigation.

California courts have long held that the Constitutional provision requiring “pay first, then litigate” applied to both the State and local entities. In a recent City of Anaheim case, however, in which Priceline, a large internet reseller of hotel rooms, argued that the City’s \$21 million transient occupancy tax was invalid as applied to Priceline, the Court of Appeal held that the Constitutional provision applied only to the State. Anaheim did not have a local “pay first, then litigate” provision and has been involved in lengthy litigation without having received the tax monies from Priceline.

Adoption of a “pay first, then litigate” ordinance by Redwood City will continue in effect what has been the law for many years prior to the Anaheim case and will best assure the City that it will timely receive tax revenues.

## Alternative

The City Council may decide not to adopt the ordinance.

## Conclusion

Introduce and Adopt proposed ordinance.



Roy C. Abrams  
Interim City Attorney



Brian Ponty  
Finance Director



Peter Ingram  
City Manager

## Attachment

ORDINANCE NO. \_\_\_\_\_

**ORDINANCE ADDING ARTICLE IX TO CHAPTER 32 OF THE REDWOOD CITY MUNICIPAL CODE TO CLARIFY THE REQUIREMENT THAT A TAX FIRST MUST BE PAID BEFORE FILING FOR A REFUND OR JUDICIAL RELIEF**

**WHEREAS**, California Constitution Article XIII, Section 32 requires that a taxpayer must first pay a tax before seeking a refund or judicial relief; and

**WHEREAS**, the courts have consistently held that this “pay first, litigate later” rule was applicable to both the State and local entities; and

**WHEREAS**, in a recent California Court of Appeal case it was held that Article XIII, Section 32 applies to the State but not to local entities; and

**WHEREAS**, adoption of a clear “pay first, litigate later” rule in the City’s best interests;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDWOOD CITY ORDAIN AS FOLLOWS:**

**SECTION 1.** Article IX is added to Chapter 32 to read as follows:

**ARTICLE IX. TAXES PAID PRIOR TO SEEKING REFUND OR JUDICIAL RELIEF**

**Section 32.1 PAYMENT OF TAXES PRIOR TO REFUND OR JUDICIAL RELIEF.**

No legal or equitable process shall be issued in any proceeding in any court against the City or any officer to prevent or enjoin the collection of any tax. After payment of a tax claimed to be illegal, not due and/or owing, and/or incorrectly calculated, an action may be maintained to recover the tax paid, provided that prior to any judicial action all administrative remedies shall be exhausted.

**SECTION 2.** This ordinance shall be effective thirty (30) days from the date of its adoption.

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