

City saving for taxpayer refund

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East Palo Alto has \$450,000 saved in a special account that will help to refund taxpayers if it loses a class action lawsuit over the city's utility tax, city Finance Director Sandy Salerno said.

The lawsuit filed Thursday in San Mateo County Superior Court by community activist Dennis Scherzer is demanding the city stop collecting the utility tax because it was only approved by City Council.

The California Supreme Court has ruled that local taxes must receive voter approval.

The tax is an additional surcharge placed on residents' telephone, gas, electricity and water bills. The utility tax, passed by City Council in 1987, accounts for about \$900,000 of the city's \$13.2 million annual operating budget.

The lawsuit is also calling for the

Payback scenario unclear if it loses suit

city to refund residents the tax money.

But even if East Palo Alto is forced to pay back a 5 percent utility tax, it would only have to refund one-year's worth — about \$1 million — based on the tax's statute of limitations.

Contrary to what City Manager Monika Hudson told the Daily News Thursday, the city has opened up an escrow account where money from the tax is being funneled and where it will sit for a year while the city waits for clarification about the high court's ruling, Salerno said. The account contains \$450,000.

Hudson on Thursday denied the city was putting the tax revenues into a separate account.

She also said that Scherzer can ask for a refund on his own, but that he can't sue to force the city to repay all other taxpayers.

City Attorney Michael Lawson agreed, saying as part of the statute of limitations agreement, Scherzer could only file a claim for a tax refund for himself and not for all the taxpayers of East Palo Alto.

If other residents wanted a utility tax refund, they would have to file a separate claim, Lawson said.

In a precedent-setting case, the state Supreme Court ruled June 4 that the city of La Habra's utility tax was in violation of Proposition 62, which requires that all local taxes must be passed by voters.

La Habra City Council had approved the tax in 1992 without putting it before the voters.

Lawson said other cities are in the process of trying to get the Supreme Court to reverse its decision for taxes, like East Palo Alto's, that were in effect prior to the June ruling.