

CLAIM

BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY

BOARD ACTION: January 7, 2020

NOTICE TO CLAIMANT

Claim Against the County, or District Governed by)
 the Board of Supervisors, Routing Endorsements,)
 and Board Action. All Section references are to)
 California Government Codes.)

The copy of this document mailed to you is your notice of the
 action taken on your claim by the Board of Supervisors
 (Paragraph IV, below) given Pursuant to Government Code
 Sections 913, 915.2, 915.4. Please note all "Warnings".

AMOUNT: \$303,306.12

CLAIMANT: BNSF Railway Company

ATTORNEY: Alan Annis

ADDRESS: PO Box 960189

Fort Worth, TX 76161-0089

BY DELIVERY TO COB ON: 12/03/19

BY MAIL TO COB POSTMARKED: 11/22/19

I. FROM: Clerk of the Board of Supervisors

TO: County Counsel

Attached is a copy of the above-noted Claim.

DAVID TWA, Clerk

Dated: 12/03/19

By: Deputy



II. FROM: County Counsel

TO: Clerk of the Board of Supervisors

This claim complies substantially with Sections 910 and 910.2.

This claim FAILS to comply substantially with Sections 910 and 910.2, and we are so
notifying claimant. The Board cannot act for 15 days (Section 910.8).Claim is not timely filed. The Clerk should return the claim on the ground that it was filed late and
send warning of claimant's right to apply for leave to present a late claim (Section 911.3).

Other:

Dated: _____ By: _____, Deputy County Counsel

III. FROM: Clerk of the Board

TO: County Counsel (1)

County Administrator (2)

Claim was returned as untimely with notice to claimant (Section 911.3).

IV. BOARD ORDER By unanimous vote of the Supervisors present:

This claim is rejected in full.

Other:

I certify that this is a true and correct copy of the Board's Order entered in its minutes for this date.

Dated: _____ DAVID TWA, Clerk, By _____ Deputy Clerk

WARNING (Gov. Code section 913)

Subject to certain exceptions, you have only six (6) months from the date of this notice was personally
 delivered or deposited in the mail to file a court action on this claim. See Government Code Section
 945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you
 desire to consult with an attorney, you should do so immediately.

*For Additional Warning See Reverse Side of This Notice.

AFFIDAVIT OF MAILING

I declare under penalty of perjury that I am now, and at all times herein mentioned, have been a citizen
 of the United States, over age 18; and that today I deposited in the United States Postal Service in
 Martinez, California, postage fully prepaid a certified copy of this Board Order and Notice to Claimant,
 addressed to the claimant or claimant's attorney as shown above.

Dated: _____ DAVID TWA, Clerk, By _____ Deputy Clerk

This warning does not apply to claims which are not subject to the California Tort Claims Act, such as actions in inverse condemnation, actions for specific relief such as mandamus or injunction, or Federal Civil Rights claims. The above list is not exhaustive and legal consultation is essential to understand all the separate limitation periods that may apply. The limitations period within which suit must be filed may be shorter or longer depending on the nature of the claim. Consult the specific statutes and cases applicable to your particular claim. The County of Contra Costa does not waive any of its rights under California Tort Claims Act nor does it waive its rights under the statutes of limitations applicable to actions not subject to the California Tort Claims Act.



Alan M. Annis, Director of Taxes
BNSF Railway Company
P.O. Box 961089
Fort Worth, Texas 76161-0089
Tel: (817) 352-3418
Fax: (817) 593-6758
Email: alan.annis@bnsf.com

November 22, 2019

Via Certified Mail (9214 8901 9403 8399 5612 83)
Return Receipt Requested

RE: CLAIM FOR REFUND OF TAXES AND/OR PENALTIES PAID

Clerk of the Board of Supervisors
County of Contra Costa
651 Pine Street
1st Floor, Room 106
Martinez, CA 94553-1229

To Whom It May Concern:

Attached is a Claim for Refund of Property Tax Payments in accordance with the provisions of Chapter 5, Article I, of the California Revenue and Taxation Code (commencing with Section 5096). I am (we are) herewith filing this claim with the Board of Supervisors of the County of Contra Costa and ask that a refund of taxes and/or penalties be made for the amounts in the attached Claim for Refund of Tax Payment(s).

Should you have any questions concerning this matter, please contact me directly at (817) 352-3418.

Sincerely,

A handwritten signature in blue ink that reads "Alan M. Annis".

Alan M. Annis
Director of Taxes

enclosure

COUNTY OF CONTRA COSTA
CLAIM FOR REFUND OF TAX PAYMENT(S)

Claimant's Name: First: BNSF Railway Company Last: _____
Mailing Address: P. O. Box 961089 City: Fort Worth
State: Texas Zip: 76161-0089 Contact No.: (817) 352-3418

Account Number: 804
Property Address: Unitary Property in SBE TRA 000-002 City: N/A Zip: N/A

In accordance with the provisions of Chapter 5, Article I, of the California Revenue and Taxation Code (commencing with Section 5096), I am (we are) herewith filing this claim with the Board of Supervisors of the County of Riverside, and ask that a refund of taxes and/or penalties be made for the following amounts:

| Fiscal Year(s) Refund is Claimed | Date(s) Taxes Paid | Amount of Tax Claim | Amount of Penalty Claim | Total Amount |
|--|----------------------------|------------------------|----------------------------|--------------|
| 2015-16 | 12/04/2015 & 04/01/2016 | \$303,306.12 | | \$303,306.12 |
| | | | | |
| | | | | |

I (we) claim that the whole assessment (part of the assessment) for the year(s) as shown is (are) void for the following reasons (use attachments if necessary):
See Attached Exhibit A.

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; that the taxes and/or penalties sought to be refunded were paid within four years prior to the filing of this claim; that the amounts herein claimed are correct; and no part thereof has been refunded to the claimant or to any other person for claimant's benefit; and if acting on behalf of a legal entity, I am duly authorized to act on behalf and that the title shown below is true and correct.

Date: Nov. 21, 2019 Signature:  Title: VP & General Tax Counsel

Exhibit A

BNSF Railway Company

Factual Reasons the Tax was Illegally Levied and Collected

The tax rates applied to the assessed value of BNSF Railway Company's ("BNSF") property exceed the tax rates applicable to other commercial and industrial property in the various taxing districts within this county. These excessive tax rates violate Section 306(1)(c) of the Railroad Revitalization and Regulatory Reform Act of 1976, codified at 49 U.S.C. Section 11501(b)(3), which prohibits state and local governments from levying or collecting any ad valorem property tax on railroad property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction. To the extent that the tax rates applied to the assessed values of BNSF's property exceed the tax rates as calculated pursuant to the decision of the Ninth Circuit Court of Appeals in *Trailer Train Company v. State Board of Equalization*, 697 F.2d 860 (9th Cir.), cert. denied, 464 U.S. 846 (1983), the levy and collection of the excessive taxes violated Section 306(1)(c).

For similar reasons, the tax rate also violates California law, including but not limited to Article XIII, Section 19 of the California Constitution. This provision requires that railway property such as BNSF's property "be subject to taxation to the same extent and in the same manner as other property." Art XXIII, Section 19. In other words, pursuant to the California Supreme Court's decision in *ITT World Communications, Inc. v. City and County of San Francisco*, 37 Cal.3d 859, 870 (Cal. 1985), Article XIII, Section 19 of the California Constitution requires that BNSF's property must be levied on at the same rate as locally assessed property.

Therefore, the excessive taxes were illegally levied and erroneously and illegally collected, entitling BNSF to a refund of the excessive taxes with interest, costs, and attorney's fees as allowed by law, pursuant to Cal. Rev. & Tax Code Section 5096 et seq. and any other applicable statute, rule, and regulation.

This refund claim is being filed with the Board of Supervisors and/or the Treasurer/Tax Collector. Please contact Alan Annis at (817) 352-3418 for any further information.



CONTRA COSTA COUNTY
RUSSELL V. WATTS, TREASURER-TAX COLLECTOR
RAILROAD PROPERTIES
FISCAL YEAR JULY 1, 2015 TO JUNE 30, 2016

ASSESSED TO:

BNSF Railway Company
c/o Burlington Northern Santa Fe
P. O. Box 981089
Fort Worth, TX 76161-0089

Tax Dept.

NOTICE DATE: October 06, 2015

ACCOUNT NUMBER: **804**

| VALUATION | | | |
|-------------------------|----------------|-------------------|----------------------|
| Land | Improvements | Personal Property | Total Assessed Value |
| \$31,097,852 | \$25,818,678 | \$13,472,451 | \$70,388,981 |
| Assessed Value Tax Rate | Total Tax Due | First Installment | Second Installment |
| 1.5859% | \$1,116,298.84 | \$558,149.42 | \$558,149.42 |

This is your notice for RAILROAD PROPERTY TAX in Contra Costa County for the fiscal year 2015-2016, as reported by the State Board of Equalization. Pursuant to Section 2503.2 of the Revenue & Taxation Code, all taxpayers making single or aggregate tax payment(s) of FIFTY THOUSAND DOLLARS (\$50,000) or more are required to send payments via electronic funds transfer (EFT) or by wire. If you have any questions, call (925) 957-2828 between 9:00 a.m. and 4:00 p.m. or write to: CCC Tax Collector, ATTN: Danielle Goodbar, 625 Court Street Rm. 100, Martinez, CA 94553-1231.

(KEEP THE TOP PORTION FOR YOUR RECORDS)

| | | |
|--|---|---|
| ACCOUNT NUMBER: 804 | FISCAL YEAR: 2015 - 2016 | ISSUE DATE: OCTOBER 06, 2015 |
| MAKE CHECK PAYABLE TO: CONTRA COSTA COUNTY TAX COLLECTOR P. O. BOX 631 MARTINEZ, CA 94553-0063 | RAILROAD PROPERTIES TAX BILL (THIS STUB MUST ACCOMPANY PAYMENT) 2ND INSTALLMENT | DUE BY \$558,149.42 FEB. 1, 2016 DELINQUENT AFTER 5:00 P.M. \$613,984.36 APR. 10, 2016 (INCLUDES 10% PENALTY + \$20 COST) TO PAY FULL TAX \$1,116,298.84 BY DEC. 10, 2015 |
| BNSF Railway Company | | |

| | | |
|--|---|---|
| ACCOUNT NUMBER: 804 | FISCAL YEAR: 2015 - 2016 | ISSUE DATE: OCTOBER 06, 2015 |
| MAKE CHECK PAYABLE TO: CONTRA COSTA COUNTY TAX COLLECTOR P. O. BOX 631 MARTINEZ, CA 94553-0063 | RAILROAD PROPERTIES TAX BILL (THIS STUB MUST ACCOMPANY PAYMENT) 1ST INSTALLMENT | DUE BY \$558,149.42 NOV. 1, 2015 DELINQUENT AFTER 5:00 P.M. \$613,964.36 DEC. 10, 2015 (INCLUDES 10% PENALTY) TO ENSURE PROPER POSTING & CREDIT OF PAYMENT, PLEASE SEND BACK COUPONS ALONG WITH YOUR PAYMENTS. |
| BNSF Railway Company | | |

Amount: \$617,680.70 Sequence Number: 8192581833
 Account: 3359002196 Capture Date: 12/09/2015
 Bank Number: 06111278 Check Number: 15275019

THE ORIGINAL HAS A REFLECTIVE WATERMARK BACK. HOLD AT AN ANGLE TO VIEW. THE FACE OF THIS DOCUMENT HAS A MULTICOLORED BACKGROUND ON WHITE PAPER.

BNSF
RAILWAY

BNSF Railway Company
P.O. BOX 961284
FORT WORTH, TX
76161-0284

12/04/2015 0015275019

Pay SIX HUNDRED SEVENTEEN THOUSAND SIX HUNDRED EIGHTY USD AND 70 CENTS \$617,680.70

Pay to the Order of CONTRA COSTA COUNTY TREASURER - TAX COLLECTOR
CONTRA COSTA COUNTY
PO BOX 631
MARTINEZ CA 94553-0063
USA

Paul B...
Authorized Signature
Bank of America

⑈0015275019⑈ ⑆061112788⑆3359002196⑈

00000329 00000002.TIF 12/8/2015 FDO >4945085850< TAX COLL

12/08/2015 00000329 18

07720012

ENDORSE CHECK HERE
X
DO NOT WRITE / SIGN / STAMP BELOW THIS LINE
DEPOSITORY BANK ENDORSEMENT

Electronic Endorsements:

| Date | Sequence | Bank # | Endrs Type | TRN | RRC | Bank Name |
|------------|-----------------|----------|--------------|-----|-----|-------------------|
| 12/09/2015 | 008192581833 | 11300016 | Pay Bank | N | | |
| 12/08/2015 | 000000383583081 | 91000019 | Rtn Loc/BOFD | Y | | WELLS FARGO BK NA |

Amount: \$617,680.70 Sequence Number: 9092138924
Account: 3359002196 Capture Date: 04/06/2016
Bank Number: 06111278 Check Number: 15292675

THE ORIGINAL HAS A REFLECTIVE WATERMARK BACK. HOLD AT AN ANGLE TO VIEW THE FACE OF THIS DOCUMENT HAS A MULTICOLORED BACKGROUND ON WHITE PAPER.

BNSF
RAILWAY

BNSF Railway Company
P.O. BOX 961284
FORT WORTH, TX
76161-0284

64-1278
811 GA

04/01/2016 0015292675

Pay SIX HUNDRED SEVENTEEN THOUSAND SIX HUNDRED EIGHTY USD AND 70 CENTS \$617,680.70

Pay to the
Order of CONTRA COSTA COUNTY TREASURER - TAX COLLECTOR
CONTRA COSTA COUNTY
PO BOX 631
MARTINEZ CA 94553-0083
USA

Paul B...
Authorized Signature
Bank of America

⑈0015292675⑈ ⑆061112788⑆3359002196⑈

00000278 00000002.TIF 4/5/2016 FDO >4945085850< TAX COLL

04/05/2016 00000278 13

07797613

ENDORSE CHECK HERE
X
DO NOT WRITE / SIGN / STAMP BELOW THIS LINE.
DEPOSITORY BANK ENDORSEMENT

Electronic Endorsements:

| Date | Sequence | Bank # | Endrs Type | TRN | RRC | Bank Name |
|------------|-----------------|-----------|--------------|-----|-----|-------------------|
| 04/05/2016 | 000000288386090 | 122105278 | Rtn Loc/BOFD | Y | | WELLS FARGO BK NA |
| 04/06/2016 | 009092138924 | 11300016 | Pay Bank | N | | |

CERTIFIED MAIL

BNSF Railway
2301 Lou Menk Drive
Alan Annis
Fort Worth Texas 76131

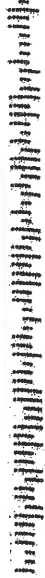
USPS CERTIFIED MAIL



9214 8901 9403 8399 5612 83

CLERK OF THE BOARD OF SUPERVISORS
CONTRA COSTA COUNTY
651 PINE ST RM 106
MARTINEZ CA 94553-1229

94553-1229 0001



neopost[®] FIRST-CLASS MAIL
11/22/2019
US POSTAGE \$005.75⁰



ZIP 76131
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