



**Contra
Costa
County**

To: Board of Supervisors
From: David Twa, County Administrator
Date: July 9, 2019

Subject: DENY claims filed by AT&T Mobility, LLC, Pacific Bell, Sprint Telephony PCS, LP, AT&T Corp., T-Mobile West LLC and BNSF Railway

RECOMMENDATION(S):

DENY the claims filed by AT&T Mobility, LLC, Pacific Bell, Sprint Telephony PCS, LP, AT&T Corp., T-Mobile West LLC and BNSF Railway in the total amount of \$1,995,298.02, plus interest, in unitary property taxes paid for tax year 2014/15.

FISCAL IMPACT:

No fiscal impact.

BACKGROUND:

AT&T Mobility, LLC, Pacific Bell, Sprint Telephony PCS, LP, AT&T Corp., T-Mobile West LLC and BNSF Railway (collectively, "Claimants") have filed claims for refund of property taxes against the County and a number of other counties, essentially alleging that the statutory taxation formula violates the California Constitution.

The County received Claimants' claims for refund of taxes in December 2018. The claims are as follows: AT&T Mobility LLC (\$607,185), Pacific Bell (\$889,220), Sprint Telephony

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **07/09/2019** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

A YE: Candace Andersen, District II
Supervisor
Diane Burgis, District III
Supervisor
Karen Mitchoff, District IV
Supervisor
Federal D. Glover, District V
Supervisor

ABSENT: John Gioia, District I
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: July 9, 2019

David Twa, County Administrator and Clerk of the Board of Supervisors

By: Stacey M. Boyd, Deputy

Contact: Laura Strobel (925)
335-1091

cc:

PCS, LP (\$101,352.84), T-Mobile West LLC (\$126,766.18), AT&T Corp.

BACKGROUND: (CONT'D)

(\$23,055) and BNSF Railway (\$247,719.36) for a total amount of \$1,995,298.38. [The claims are provided in Attachments A-F.] The claims, in the collective amount of \$1,995,298.02, are only for tax year 2014/15, which is the earliest year that claimants may seek to recover property taxes. (Rev. & Tax. Code, § 5097(a)(2).) The counties are coordinating their responses and appear to be uniformly denying the claims.

In addition to filing claims with the counties, Claimants are seeking legislation that would change how the unitary tax rate is calculated. The legislation would reduce the unitary tax rate prospectively, meaning that adoption of the legislation would not result in a refund of taxes paid.

ANALYSIS

Under the California Constitution, certain property owned or used by telecommunication and railways companies, among others, is annually assessed by the State Board of Equalization ("BOE"). (Cal. Const., article XIII, § 19.) The amount of such "unitary property" assessments attributed to the County by the BOE are then taxed by the County in accordance with a statutory formula. (See Rev. & Tax. Code, § 100.)

The Auditor-Controller uses the amount of unitary property assessments annually provided by the BOE to calculate the amount of taxes to be levied on these properties in accordance with a formula mandated by state law (Rev. & Tax. Code, § 100). Based on this formula, the unitary tax rate for 2014/15 was 1.5032%. The Auditor-Controller has confirmed that it correctly calculated the rates pursuant to the State law, and the Office of the State Controller has deemed it correct.

Claimants argue that they are entitled to a partial refund of such taxes on the grounds that they were illegally levied because the formula used to calculate the rate is unconstitutional. However, the County is given no discretion on its calculation of the unitary tax rate; it is a mandated formula set by the State. Because of this, the Auditor-Controller has no power to declare it unenforceable "on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional." [Cal. Const., Art. III, § 3.5(a); see also *Boyer v. Ventura County* (2019) 33 Cal.App.5th 49.] For these reasons, the claims should be denied.

CONSEQUENCE OF NEGATIVE ACTION:

Failure to take the recommended action would result in the interest continuing to accrue on a potential court-ordered refund of property taxes.

ATTACHMENTS

Exhibit A - AT&T

Exhibit B - AT&T

Exhibit C - Sprint

Exhibit D - T-Mobile

Exhibit E - AT&T

Exhibit F - BNSF