



Contra Costa County

To: Board of Supervisors
From: David Twa, County Administrator
Date: May 12, 2020

Subject: Deny claim filed by BNSF Railway Company

RECOMMENDATION(S):

DENY the claim filed by BNSF Railway Company, in the total amount of \$303,306.12, plus interest, in unitary property taxes paid for tax year 2015/16.

FISCAL IMPACT:

No fiscal impact.

BACKGROUND:

BNSF Railway Company ("Claimant") has filed claims for refund of property taxes for tax year 2015/2016 against the County and a number of other counties, essentially alleging that a statutory formula used to calculate its property tax rate violates federal statute and the California Constitution. Its claim for refund of property taxes against the County for tax year 2015/2016 is in the amount of \$303,306.12. [The claim is provided in Attachment A.] Claimant previously sought a refund of property taxes for tax year 2014/2015 on the same grounds, which the County denied in July 2019. The counties are coordinating their responses to this new set of claims and appear to be uniformly denying the claims.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **05/12/2020** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V 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: May 12, 2020

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

By: Stephanie Mello, Deputy

Contact: Rebecca Hooley,
(925) 335-1800

In

BACKGROUND: (CONT'D)

November 2019, BNSF also filed a lawsuit against the County and fourteen other counties in federal court, BNSF Railway Company v. Alameda County, et al., U.S. Dist. N.D. Cal., Case No. 19-cv-07230, contesting its property tax rate for 2014/2015 through 2019/2020 on the same grounds. Through that lawsuit, BNSF is seeking injunctive relief, among other remedies, to prevent having to pay the second installment of property taxes for tax year 2019/2020. Its motion for a preliminary injunction will be heard by the court on March 13, 2020.

ANALYSIS:

Under the California Constitution, certain property owned or used by railway 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 are allocated to each county by the BOE. (See Rev. & Tax. Code, §§ 100, 100.11.)

The Auditor-Controller for the County uses the amount of unitary property assessments annually provided by the BOE to calculate the amount of taxes to be levied on these unitary properties in accordance with a formula mandated by state law (Rev. & Tax. Code, §§ 100, 100.11.) Based on this formula, the unitary tax rate for 2015/16 was 1.5859%. The Auditor-Controller has confirmed that the rate was correctly calculated pursuant to the State law, and the Office of the State Controller has deemed it correct.

Claimant argues that it is entitled to a partial refund of such taxes on the grounds that the taxes were illegally levied because the formula used to calculate the rate is unconstitutional and violates federal statute. 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.] Nor does the Auditor-Controller have authority to determine whether the tax rate violates federal law. [See McHugh v. Santa Monica Rent Control Bd. (1989) 49 Cal.3d 348, 356 ("[A]gencies not vested by the Constitution with judicial powers may not exercise such powers.").] For these reasons, the claim 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

BNSF Claim for Refund