



Contra
Costa
County

To: Board of Supervisors
From: David Twa, County Administrator
Date: May 26, 2020

Subject: DENY the claims filed by Pacific Bell, AT&T Mobility, LLC, AT&T Corp. and T-Mobile West LLC

RECOMMENDATION(S):

DENY the claims filed by Pacific Bell, AT&T Mobility, LLC, AT&T Corp. and T-Mobile West LLC, in the total amount of \$2,269,763.77, plus interest, in unitary property taxes paid for tax year 2015/16.

FISCAL IMPACT:

No fiscal impact.

BACKGROUND:

Pacific Bell, AT&T Corp., AT&T Mobility, LLC, and T-Mobile West LLC (collectively, "Claimants") have filed claims for refund of property taxes against the County and a number of other counties, essentially alleging that a statutory formula used to calculate their property tax rate violates the California Constitution.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **05/26/2020** ☒ 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 26, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Rebecca Hooley (925)
335-1800

BACKGROUND: (CONT'D)

The County received Claimants' claims for refund of taxes in November 2019. The claims are as follows: Pacific Bell (\$1,146,139), AT&T Mobility LLC (\$916,945), AT&T Corp. (\$29,745) and T-Mobile West LLC (\$176,934.77). [The claims are provided in Attachments A-D.] The claims, in the collective amount of \$2,269,763.77, are only for tax year 2015/2016, 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.

ANALYSIS:

Under the California Constitution, certain property owned or used by telecommunication 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 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.

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 (Pacific Bell)

Exhibit B (AT&T Mobility LLC)

Exhibit C (AT&T Corp)

Exhibit D (T-Mobile West LLC)