



Contra
Costa
County

To: Board of Supervisors
From: Monica Nino, County Administrator
Date: March 2, 2021

Subject: Deny Claim filed by BNSF Railway Company

RECOMMENDATION(S):

DENY the claim filed by BNSF Railway Company, in the total amount of \$288,448.14, plus interest, in unitary property taxes paid for tax year 2016/17.

FISCAL IMPACT:

No fiscal impact.

BACKGROUND:

BNSF Railway Company ("Claimant") has filed a claim for refund of property taxes for tax year 2016/2017 against the County and a number of other counties, essentially alleging that a statutory formula used to calculate its property tax rate violates federal law and the California Constitution. Its claim for refund of property taxes against the County for tax year 2016/2017 is in the amount of \$288,448.14. [The claim is provided in Attachment A.] Claimant previously sought a refund of property taxes for tax years 2014/2015 and 2015/2016 on the same grounds, which the County denied. Other counties appear to be denying the claims for tax year 2016/2017.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **03/02/2021** ☒ 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: March 2, 2021

Monica Nino, County Administrator and Clerk of the Board of Supervisors

By: Stacey M. Boyd, Deputy

Contact: Rebecca Hooley (925)
655-2254

In November 2019, BNSF also filed a lawsuit

BACKGROUND: (CONT'D)

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 seeks injunctive and other equitable relief to prohibit the counties from levying and collecting taxes on its railway property at a rate that is higher than the average countywide tax rate, on the ground that this practice violates federal law.

BNSF filed a motion for a preliminary injunction to enjoin defendant counties from collecting taxes on BNSF's railway property based on a tax rate that is higher than the average countywide tax rate for 2019/2020 and each subsequent year for the pendency of the litigation. Following a hearing, the court granted BNSF's motion by an order dated April 8, 2020. The counties appealed the district court's order to the Court of Appeals for the Ninth Circuit. The case has been fully briefed for hearing.

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 2016/17 was 1.5959%. 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).]

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

