



Contra
Costa
County

To: Board of Supervisors
From: Monica Nino, County Administrator
Date: September 20, 2022

Subject: Deny claims filed for unitary property taxes paid for tax year 2017/18

RECOMMENDATION(S):

DENY the claims filed by T-Mobile West LLC, Sprint Telephony PCS, LP, Sprint Communications Company, LP, SFPP, L.P., and Lumen Technologies (formerly Level 3 Communications, LLC) in the total amount of \$696,332.28, plus interest, in unitary property taxes paid for tax year 2017/18.

FISCAL IMPACT:

No fiscal impact.

BACKGROUND:

T-Mobile West LLC, Sprint Telephony PCS, LP, Sprint Communications Company, SFPP, L.P., and Lumen Technologies, Inc. (collectively, "Claimants") have filed claims for refund of property taxes against the County and a number of other counties, essentially alleging that the statutory formula used to calculate their property tax rate violates the California Constitution.

In November 2021, the County received the following claims for refund of taxes: T-Mobile

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **09/20/2022** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

ABSENT: Diane Burgis, District III 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: September 20, 2022

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

Contact: Rebecca Hooley, County
Counsel (925) 655-2200

By: Stacey M. Boyd, Deputy

West LLC (\$223,797.36), Sprint Telephony PCS, LP (\$140,725.74), and Sprint Communications Company (\$7,112.72). In April 2022, the County received the following claims for refund of taxes: SFFP, L.P. (\$293,867.56) and Lumen Technologies, Inc. (\$30,828.90). (The claims are provided in Attachments A-E.) The claims, in the collective amount of \$696,332.28, are only for tax year 2017/2018, which is the earliest year that claimants may seek to recover property taxes. (Rev. & Tax. Code, § 5097(a)(2).)

BACKGROUND: (CONT'D)

Some of these claimants have submitted refund claims for prior years based on the same allegation, which the County has denied. Other counties that have received refund claims from these claimants appear to have uniformly denied the claims. Litigation is currently in progress in Riverside County and Santa Clara County to determine whether the statutory tax rate imposed on property owned by these entities violates the California Constitution.

ANALYSIS:

Under the California Constitution, certain property owned or used by utilities and telecommunication companies, among others, is annually assessed by the State Board of Equalization ("BOE"). (Cal. Const., art. 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 2017/18 was 1.5948%. 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 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 interest continuing to accrue on a potential court-ordered refund of property taxes.

ATTACHMENTS

Attachment A - Kinder Morgan SFPP Claim

Attachment B - Lumen Techs Claim

Attachment C - Sprint Comms Claim

Attachment D - Sprint Telephony Claim

Attachment E - T-Mobile Claim