



**Contra
Costa
County**

To: Board of Supervisors
From: Mary Ann Mason, County Counsel
Date: October 11, 2022

Subject: Tolling Agreement with Union Pacific Railroad Co. Regarding its Property Tax Refund Claim

RECOMMENDATION(S):

APPROVE and AUTHORIZE County Counsel, or designee, to enter into a tolling agreement with Union Pacific Railroad Company related to its claim for refund of property taxes for tax years 2018/19 through 2021/22.

FISCAL IMPACT:

No negative fiscal impact.

BACKGROUND:

On or about April 27, 2022, Union Pacific Railroad Company ("Union Pacific") submitted to a claim for refund of property taxes pursuant to Revenue and Taxation Code section 5097 ("Claim for Refund"). Through the Claim for Refund, Union Pacific contests the statutory tax rate applied to its railway property for each tax year since 2018/2019. On this basis, Union Pacific requests that the Board of Supervisors direct the Auditor-Controller to refund the sum of \$488,326.67, plus appropriate interest, in property taxes levied for the fiscal years 2018/19 through 2021/22.

On June 7, 2022, the Board of Supervisors denied as untimely any claims Union Pacific was

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **10/11/2022** ☒ 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: October 11, 2022

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

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

By: Antonia Welty, Deputy

asserting through the Claim for Refund based on tort or contract law. However, the Board has not yet taken action on Union Pacific's tax-related claims asserted in the Claim for Refund.

Union Pacific bases its Claim for Refund on the holding of

BACKGROUND: (CONT'D)

BNSF Railway Co. v. County of Alameda (9th Cir. Aug. 5, 2021) 7 F.4th 874, which found that federal law prohibits imposition of the statutory unitary tax rate on BNSF's railroad property to the extent that it exceeds the average countywide tax rate. Because Union Pacific's railroad property was taxed at the statutory unitary tax rate for 2018/19 through 2021/22, Union Pacific claims that it is entitled to a refund to the extent the taxes it paid exceeded the amount it would have paid in taxes if the average countywide tax rate had been used. While *BNSF Railway Co.* remains good law, the decision concerned taxes paid by BNSF and it did not invalidate the statutory unitary tax rate.

To resolve whether the statutory unitary tax rate may be applied to Union Pacific's railway properties, Union Pacific plans on commencing an action in the United States District Court for the Northern District of California ("Federal Action") by the end of November 2022. To provide the parties with sufficient time to resolve whether the statutory unitary tax rate may be applied to Union Pacific's railway properties, Union Pacific has proposed that the parties enter into a tolling agreement. Under the terms of the proposed tolling agreement, (1) Contra Costa will not deny the Claim for Refund until 30 days after judgment in a Federal Action becomes final, or the tolling agreement is cancelled with 30-days prior written notice by one of the parties; (2) the parties agree to waive and agree not raise an argument based on the tolling period or take any legal action related to the Claim for Refund during the tolling period; and (3) Union Pacific waives any claim for the recovery of prejudgment interest from the date Union Pacific filed the Claim for Refund, including but not limited to interest under Revenue and Taxation Code section 5151.

CONSEQUENCE OF NEGATIVE ACTION:

Failure to take this action may result in the County paying interest on the Claim for Refund from the time the Claim for Refund was filed through the tolling period.