

There is no financial impact to the County for rejecting the claims. The costs associated with preparing this agenda item are nominal and absorbed by the departments FY 2019/20 Adopted Budget.

DISCUSSION:

On November 21, December 2, and December 10, 2019, the County received five claims for refund of taxes from Claimants for tax year 2015/16. The claims are as follows: AT&T Communications (\$10,005), AT&T Mobility LLC (\$71,142), Pacific Bell (\$255,988), Sprint Telephony PCS, LP (\$34,836.41), and T-Mobile West LLC (\$43,926.05), for a total amount of \$415,897.46. [The claims are provided in Exhibit A.]

The claims for refund are for taxes on “unitary property.” Under Article XIII, Section 19 of the California Constitution, certain property owned or used by telecommunication companies are annually assessed by the BOE.

The unitary tax rate is calculated annually by the local county, which in Solano County is done by the Auditor-Controller, in accordance with a formula mandated by state law. (Rev. and Tax. Code § 100.) The rate is the sum of the 1% ad valorem tax rate and a “unitary debt service tax rate” component, which is determined by taking the unitary debt service rate for the previous year and adjusting the rate by the percentage change between the two preceding fiscal years in the County’s ad valorem debt service levy for the secured roll (not including unitary and operating nonunitary debt service). (Rev. & Tax. Code § 100(b)(2).) The calculation for tax year 2015/16 is provided in Exhibit B.

Based on this formula, the unitary tax rate for 2015/16 was 1.471400%. For comparison, tax year 2019/20’s unitary tax rate is 1.702700%. The Auditor-Controller confirmed that it correctly calculated the rates pursuant to the state law. [See Exhibit B.]

Claimants argue that they are entitled to a partial refund of such taxes on the grounds that they violate the California Constitution, namely Prop. 13. Regardless of the merits of their arguments, 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).]

In 2019, the Board rejected essentially identical claims for tax year 2014/15 on the same basis. Subsequently, the Claimants agreed to enter into a tolling agreement with the County (and several other counties) in order to postpone any lawsuit through June 30, 2020.

For this reason, we recommend that the Board reject the claims.

ALTERNATIVES:

The Board may grant the refund claims and authorize the Auditor-Controller to pay the refunds. However, this would be in direct contravention of state law as well as with previous Board action on the 2014/15 tax year claims and would put the County out of step with other counties rejecting the claims. Moreover, if the Board grants refunds, the amount of \$415,897.46, plus interest, would be drawn by the Auditor-Controller proportionally from the funds of all taxing entities in the county who participate in the distribution of the voter debt portion, 90 days after the refunds are granted.

OTHER AGENCY INVOLVEMENT:

The Auditor-Controller assisted in preparing this item and endorses our recommendation.

CAO RECOMMENDATION:

APPROVE DEPARTMENTAL RECOMMENDATION