



Agenda Submittal

Agenda #: 22 **Status:** Regular Calendar
Type: Report **Department:** County Counsel
File #: 19-368 **Contact:** Dan Wolk, 784-6150
Agenda date: 5/14/2019 **Final action:** 5/14/2019
Title: Consider denying the Claims for Refund of Taxes of AT&T Mobility, LLC, Pacific Bell, Sprint Telephony PCS, LP, and T-Mobile West LLC, in the total amount of \$349,436.83, plus interest, in unitary property taxes
Governing body: Board of Supervisors
District: All
Attachments: 1. A - AT&T Mobility Claim, 2. B - Pacific Bell Claim, 3. C - Sprint Telephony Claim, 4. D - T-Mobile West Claim, 5. E - Unitary Debt Service Tax Rate, 6. Minute Order

Date	Ver.	Action By	Action	Result
5/14/2019	1	Board of Supervisors	Approved	

Published Notice Required? Yes ☐ No ☒
Public Hearing Required? Yes ☐ No ☒

DEPARTMENTAL RECOMMENDATION:

It is recommended that the Board deny the claims for refund of unitary property taxes of AT&T Mobility, LLC, Pacific Bell, Sprint Telephony PCS, LP, and T-Mobile West LLC ("Claimants") in the amount of \$349,436.83, plus interest, on state-assessed property located in Solano County that is either owned or used by Claimants.

SUMMARY:

Under Article XIII, Section 19 of the California Constitution, certain property owned or used by telecommunication companies are annually assessed by the State Board of Equalization ("BOE"). The amount of such "unitary property" assessments attributed to the County by the BOE are then taxed by the County in accordance with a formula mandated by State law (Revenue and Taxation Code § 100). The tax revenue is then distributed by the Auditor-Controller to all taxing entities in the county, including cities, special districts, and the County itself, with the County receiving 31% percent of the unitary tax revenue.

The Claimants have filed claims for refund of property taxes against the County and a number of other counties, essentially alleging that the formula in Revenue and Taxation Code § 100 violates both Article XIII, Section 19, and Article XIII A, Section 1 (Prop. 13), of the California Constitution. The claims are only for tax year 2014/15 and in the amount of \$349,436.83, plus interest, which is the furthest back the Claimants may go under Revenue and Taxation Code § 5097(a)(2). The counties are coordinating their responses and are uniformly denying the claims.

FINANCIAL IMPACT:

There is no financial impact to the County for denying the claims. The costs associated with preparing the agenda item are nominal and absorbed by the department's FY2018/19 Adopted Budget.

DISCUSSION:

On November 26 and December 12, 2018, the County received four claims for refund of taxes from Claimants for tax year 2014/15. The claims are as follows: AT&T Mobility LLC (\$53,691), Pacific Bell (\$224,921.83), Sprint Telephony PCS, LP (\$34,838), and T-Mobile West LLC (\$35,986), for a total amount of \$349,436.83. [The claims are provided in Attachments A-D.]

The taxes at issue are for “unitary property.” Under Article XIII, Section 19 of the California Constitution, certain property owned or used by telecommunication companies are annually assessed by the State Board of Equalization (“BOE”). The unitary property values are assigned to one countywide tax rate area [TRA] - TRA 000-001 - with no other property assigned to that TRA.

The unitary tax rate, in turn, is calculated annually by the Auditor-Controller in accordance with a formula mandated by State law (Revenue and Taxation Code § 100). The rate is the sum of the 1% ad valorem tax rate and a “unitary debt service 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 2014/15 is provided in Attachment E.

Based on this formula, the unitary tax rate for 2014/15 was 1.4342% and for 2018/19 was 1.5786%. The Auditor-Controller confirmed that it correctly calculated the rates pursuant to the State law. [See Attachment E.]

Claimants argue that they are entitled to a partial refund of such taxes on the grounds that they were “erroneously or illegally collected, or illegally assessed or levied” for two reasons: (1) the unitary tax rate applied violates “Article XIII, section 19 of the California Constitution and *ITT World Communications v. City and County of San Francisco*, 37 Cal.3d 859 (1985)”; and (2) the unitary tax rate applied “exceeded the rate allowed by Article XIII A, section 1 of the California Constitution [Prop. 13].”

As to the first argument, the *ITT World Communications* case did not address the constitutionality of Revenue & Taxation Code § 100, nor was the issue of the tax rate counties apply to unitary property directly presented to the Court. The case focused on the valuation of such property, with the Court holding that Prop. 13 does not apply “to the unit taxation of public utility property.” [*ITT World Communications, supra*, at p.862.] There is, however, language in the case that might prove helpful to the Claimants in future litigation, which is likely why they cite that case in their claims - a prerequisite to raising the issue in litigation.

As to the argument under Prop. 13, Claimants are essentially charging that the 1.4342% is in excess of 1% and therefore in violation of Article XIII A, Section 1(a), which states in pertinent part: “The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property.” However, the California Supreme Court - ironically in the very *ITT World Communications* case they cite - has made clear that “[A]rticle XIII A applies only to *locally* assessed property and not to public utility property, which is state-assessed.” [*ITT World Communications, supra*, at p.866.]

At the end of the day, 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, we recommend that the Board join with the nearly two-dozen other counties and reject the claims.

ALTERNATIVES:

The Board may choose to grant the refund claims and authorize the Auditor-Controller to pay the refunds. However, this would be in direct contravention of State law and would put the County out of step with the other counties rejecting the claims. Moreover, if the Board grants refunds, the amount of \$349,436.83, plus interest, would be drawn by the Auditor-Controller proportionally from the funds of all taxing entities in the county, including the County itself, 90 days after the refunds are granted. For the County, this would result in the loss of approximately \$107,013.

OTHER AGENCY INVOLVEMENT:

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

CAO RECOMMENDATION:

APPROVE DEPARTMENTAL RECOMMENDATION