



Agenda Submittal

Agenda #: 37 **Status:** Regular Calendar
Type: Miscellaneous **Department:** County Counsel
File #: 20-298 **Contact:** Daniel Wolk, 784-6150
Agenda date: 4/28/2020 **Final action:**
Title: Consider Denying the Claims for Refund of Taxes of AT&T Communications, AT&T Mobility, LLC, Pacific Bell, Sprint Telephony PCS, LP, and T-Mobile West LLC, in the total amount of \$415,897.46, plus interest, in unitary taxes
Governing body: Board of Supervisors
District: All
Attachments: 1. A - Claims for Refund of Taxes, 2. B - Telecom Unitary Rate Calculation, 3. Minute Order

Date	Ver.	Action By	Action	Result
4/28/2020	1	Board of Supervisors		

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

DEPARTMENTAL RECOMMENDATION:

It is recommended that the Board consider denying the claims for refund of unitary property taxes of AT&T Communications, AT&T Mobility, LLC, Pacific Bell, Sprint Telephony PCS, LP, and T-Mobile West LLC ("Claimants") in the amount of \$415,897.46, plus interest, on state-assessed property located in Solano County that is either owned or used by Claimants.

SUMMARY:

Under state law, 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 that is collected locally 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 30% percent of the unitary tax revenue.

In 2018, the Claimants (with the exception of AT&T Communications) filed claims for refund of property taxes against the County and several other counties, alleging that the formula the California Constitution. The claims filed in 2018 were for tax year 2014/15, which was the furthest back the Claimants could go under Revenue and Taxation Code § 5097(a)(2) (4 years). On May 14, 2019, the Board rejected those claims and the County subsequently entered into a tolling agreement to postpone any lawsuit through June 30, 2020, to allow for the Claimants to pursue a legislative "fix" as well as the litigation of a "test case" in Riverside County.

The same entities filed new refund claims in 2019 for tax year 2015/16 in the amount of \$415,897.46. The claims are essentially identical to the claims from 2018, with an additional claimant (AT&T Communications). Under the law, the County has no discretion regarding the calculation of the tax, as it is a state-mandated formula.

FINANCIAL IMPACT:

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