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May 28, 2020

Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Agenda: June 9, 2020 (Legistar # 20-0686)

Re: *Denial of Claim For Refund of Property Taxes*
Claimant: T-Mobile West LLC

Honorable Chair and Members of the Board of Supervisors:

On December 2, 2019, T-Mobile West LLC (“T-Mobile”) submitted a claim for a partial refund of unitary taxes paid for tax years 2015-16 pursuant to Revenue & Taxation Code section 5097. Specifically, T-Mobile claims that the tax rate the County applied to compute their unitary taxes violates two sections of the California Constitution. T-Mobile is requesting a refund of \$8,864.76. It is recommended that your Board deny this claim.

Background: Denial of T-Mobile’s Prior Tax Refund Claim

Your Board may recall that T-Mobile, along with three other phone companies, filed an almost identical tax refund claim in 2018. That claim was presented to your Board for consideration in May of 2019. As set forth in the Board letter submitted under Legistar Item 19-0823, the County Counsel’s Office and the Auditor’s Office determined that the County properly applied the unitary tax rate and that the taxes were valid under State law. Your Board unanimously denied the 2018 claims on May 21, 2019. The phone companies have attempted and failed to obtain legislative changes to the tax rate laws and there has been no subsequent judicial case law on this subject. Therefore, it is recommended that T-Mobile’s present claim be denied on the same legal grounds that led your Board to deny the previous claims.

Summary of Legal Analysis


To briefly summarize our prior Board Letter, the applicable tax rates set by California State law require the phone companies to pay for debt service (such as school bonds) in all of the tax rate areas served. This requires the companies to pay a much larger portion of debt service than the average tax payer. The phone companies are arguing that the current system of tax rates is unconstitutional.

Current state law and historical case law does not support the phone companies' constitutional arguments. Therefore if the County were to grant a *retroactive* refund of prior payments, such action could have a significant and negative impact on County resources. Based on the fact that the prior tax payments have already been distributed to the various special districts and taxing entities, it would be extremely difficult for the County to recover these costs. In addition, the County would be at substantial risk of being sued by any number of districts and taxing entities for failing to follow current State law and failing to apply proscribed tax rates.

As set forth in the summary above, the County properly calculated the unitary tax rate as required pursuant to State law and the taxes at issue are valid. IT IS THEREFORE RECOMMENDED that your Board deny this claim filed on December 2, 2019, by T-Mobile West LLC.

Very truly yours,

DAVID A. LIVINGSTON
County Counsel

By 
Sharon Carey-Stronck
Deputy County Counsel

Encl: T-Mobile West LLC Tax Refund Claim Submitted December 2, 2019