Board Agenda Item 29

DATE: May 17, 2022

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel
                   Oscar J. Garcia, CPA, Auditor-Controller/Treasurer-Tax Collector

SUBJECT: Settlement Agreement with BNSF Railway Company to Resolve Property Tax
                   Refund Dispute

RECOMMENDED ACTION(S):

Approve and authorize Chairman to sign Settlement Agreement with BNSF Railway Company to pay a total of $132,564 in property tax refunds for fiscal years 2015-16 through 2018-19 in the form of credits against BNSF Railway Company property taxes in fiscal years 2022-23 through 2024-25.

Approval of the recommended Settlement Agreement will resolve a property tax dispute with BNSF Railway Company ("BNSF") regarding property taxes paid by BNSF in fiscal years 2015-16 through 2018-19. Under the recommended Settlement Agreement, the County would pay a total refund of $132,564.49 in the form of credits against BNSF's property taxes. Those credits are expected to be completed over the next three fiscal years. BNSF would waive statutory interest on the refund.

ALTERNATIVE ACTION(S):

There are no viable alternative actions. If your Board does not approve the recommended action, then BNSF is likely to commence property tax refund litigation against the County for the disputed amount, and binding federal case law is against the County.

FISCAL IMPACT:

Approval of the recommended Settlement Agreement will reduce the amount of property taxes collected from BNSF by the amount of $44,188.17 in each of the next three fiscal years.

DISCUSSION:

In 2019, BNSF filed a federal lawsuit against 15 counties, including the County of Fresno. The lawsuit alleged that the property tax rates applied to certain property of BNSF under State statute violate the federal Railroad Revitalization and Reform Act of 1976, also known as the "4-R Act." The 4-R Act prohibits discriminatory taxes on railroad property.

In 2020, the federal court issued a preliminary injunction in favor of BNSF. Since then, the Auditor-Controller/Treasurer-Tax Collector ("ACTTC") has been collecting property taxes from BNSF in compliance with that preliminary injunction. That means the ACTTC has been required to accept as full payment from BNSF an amount of property taxes that is less than the amount provided by State statute. Last year, the 9th Circuit Court of Appeals upheld the preliminary injunction in a published decision.

On April 21, 2022, the federal court entered a judgment against the counties that requires the counties to continue collecting property taxes from BNSF in compliance with the 4-R Act, the same as under the preliminary injunction. The ACTTC will comply with that judgment. Going forward, that means taxes collected from BNSF will be lower than what State statute provides.

Between 2019 and 2021, BNSF also filed a series of timely claims for property tax refunds for fiscal years 2015-16, 2016-17, 2017-18, and 2018-19, before the lawsuit was filed. The total amount claimed for all four years was $132,564.49. Like the lawsuit, those claims alleged that the property taxes levied against BNSF's property for those years violated the 4-R Act.

The recommended Settlement Agreement would require the County to pay a total refund of $132,564.49 in the form of credits against BNSF's property taxes over the next three fiscal years, from 2022-23 through 2024-25.

Ordinarily, State statute requires that property tax refund claims must be paid with interest at a rate of at least 3 percent. But under the recommended Settlement Agreement, BNSF has agreed to waive statutory interest.

If your Board approves the recommended Settlement Agreement, then it is expected that in each of the next three fiscal years, the ACTTC will apply a credit of $44,188.17 against BNSF's property taxes. The Auditor estimates that credit will reduce BNSF's total property tax bill by 10 to 15 percent for each of those years.

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Settlement Agreement with BNSF Railway Company

CAO ANALYST:

Ron Alexander