

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 2.10
(ID # 14281)

MEETING DATE:
Tuesday, February 02, 2021

FROM : AUDITOR CONTROLLER:

SUBJECT: AUDITOR-CONTROLLER: Authorization of denial of state assessed unitary property tax refund claims for Tax Year 2016-17, All Districts. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Authorize the denial of the State assessed unitary property tax refund claims for the return of 2016-17 taxes paid on State assessed bills for BNSF Railway Company, T-Mobile West, LLC, Sprint Telephony PCS, L.P., and Sprint Communications Company, L.P., pursuant to Revenue and Taxation Code Sections 100 and 5096 and authorize the Auditor-Controller to notify the Claimants of the Board's decision.

ACTION:Consent

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Hewitt and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez, and Hewitt
Nays: None
Absent: None
Date: February 2, 2021
xc: Auditor

Kecia R. Harper
Clerk of the Board

By: 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$0.00	\$0.00	\$0.00	\$0.00
NET COUNTY COST	\$0.00	\$0.00	\$0.00	\$0.00
SOURCE OF FUNDS:			Budget Adjustment:	No
			For Fiscal Year:	2020-21

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Auditor-Controller is required to calculate the tax rate necessary for the timely and accurate billing of property taxes in Riverside County. The California Constitution XIII, XIII A and various Revenue and Taxation Codes directs the counties on the property tax process, including State assessed unitary property. The Auditor-Controller's Office has received four property tax refund claims from unitary property owners for taxes paid in 2016-17. The property owners' claims state the unitary property tax rate is in excess of the rate allowed by the California Constitution, and they have requested a combined refund of \$944,455.52 plus interest.

The Auditor-Controller's Office has followed all the requirements of Revenue and Taxation Code Section 100 directing the establishment and calculation of the unitary tax rate for tax year 2016-17. The unitary tax rates have been audited by the State Controller's Office and deemed calculated in compliance with State law. The Auditor-Controller is requesting the Board's authorization to deny the claims.

The California Constitution and Revenue and Taxation Code legislate property tax. Under Article XIII, Section 1 (a) all property is taxable. Under Section 19 the State Board of Equalization is required to annually assess property owned or used by regulated railway, telegraph, or telephone companies. This property shall be subject to taxation to the same extent and in the same manner as other property. Article XIII A Section 1 (a) states 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. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties. Section 1 (b) states the limitation provided for subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any of the listed voter approved debt, such as school bonds. Revenue and Taxation Code Section 723 and 723.1 instructs the State Board of Equalization regarding valuing property and defines certain state assessed properties as "unitary property" and "non-unitary property". Revenue and Taxation Code Section 100 instructs the County how the values and revenues for unitary property shall be allocated. Section 100 (a) requires the County to establish one countywide tax rate area. The assessed

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

value of all unitary and operating non-unitary property shall be assigned to this tax rate area. No other property shall be assigned to this tax rate area. Section 100 (b) requires property assigned to the tax rate area created by subdivision (a) to be taxed for the counties ad valorem tax levies at a rate as prescribed by a set formula.

The claimants have challenged the State requirements and stated they are entitled to a refund of a portion of their respectively paid 2016-17 unitary taxes plus interest, on the grounds the taxes were erroneously or illegally collected, or illegally assessed or levied, and gave the following reasons:

- a. The property tax rate applied to compute claimants' property tax was in excess of the rate applied in the same year to the property in the county assessed by the assessor of Riverside county in violation of Article XIII, section 19 of the California Constitution and *ITT World Communications v. City and County of San Francisco*, 37 Cal. 3d 859 (1985).
- b. The property tax rate applied to compute the claimants' property taxes exceeded the rate allowed by Article XIII A, Section 1 of the California Constitution.

In consultation with County Counsel, the Auditor-Controller's Office has reviewed the claims and the audited County practices for unitary taxation. Riverside County follows the requirements of Revenue and Taxation Code Section 100 for the calculation of the unitary tax rate. Therefore, the Auditor-Controller has determined that no refund is allowable to the property owners and requests the Board instruct the Auditor-Controller's Office to deny the claims.

If a board of supervisors for a county does not render a decision in regard to a claim for refund within six months after receipt of such claims, a claimant may file a suit in court. Also, a claimant would have 6 months to file a suit in court from the date a denial decision is made by a board of supervisors. The claims from BNSF Railway Company, T-Mobile West, LLC, Sprint Telephony PCS, L.P. and Sprint Communications Company, L.P. were filed with the County on November 24, 2020, December 8, 2020, and December 14, 2020 respectively as further described in Attachment A. The County has six months after receipt to approve or deny the claims before the claimants may file suit in court. If the County does deny the claims, that starts a six-month statute of limitations in which a claimants' must bring suit.

Impact on Residents and Businesses

If refunds were allowable by law, the refunds would impact primarily school districts and water districts of Riverside County with voter approved debt obligations.

ATTACHMENT A:

Summary of Claims

ATTACHMENT B:

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

Claim for Refund – BNSF Railway Company

ATTACHMENT C:

Claim for Refund – T-Mobile West LLC

ATTACHMENT D:

Claims for Refund –Sprint Communications Company, L.P. & Sprint Telephony PCS, L.P.



Stephanie P., Principal Management Analyst 1/27/2021

Claim for Refund of Tax Payments

Assessee	Co.	Year	Claim	Date Received	
				By County	By Auditor Controller's Office
BNSF Railway Company	33-804	2016-17	\$ 197,461.58	11/24/2020	11/24/2020
T-Mobile West, LLC	33-748	2016-17	\$ 431,779.74	12/8/2020	12/8/2020
Sprint Telephony PCS, L.P.	33-720	2016-17	\$ 292,338.66	12/14/2020	12/14/2020
Sprint Communications company, L.P.	33-214	2016-17	\$ 22,875.54	12/14/2020	12/14/2020
			\$ 944,455.52		



**COUNTY OF RIVERSIDE
CLAIM FOR REFUND OF TAX PAYMENT(S)**

Reset Form

Claimant's Name: First: T-Mobile West LLC Last: _____
Mailing Address: 12920 SE 38th St. City: Bellevue
State: WA Zip: 98006 Contact No.: (425)383-5071

Assessor's Parcel Number: 748 T-Mobile
Property Address: Various-State Assessed City: _____ Zip: _____

In accordance with the provisions of Chapter 5, Article I, of the California Revenue and Taxation Code (commencing with Section 5096), I am (we are) herewith filing this claim with the Board of Supervisors of the County of Riverside, and ask that a refund of taxes and/or penalties be made for the following amounts:

Fiscal Year(s) Refund is Claimed	Date(s) Taxes Paid	Amount of Tax Claim	Amount of Penalty Claim	Total Amount
<u>2016</u>	<u>12/10/2016</u>	<u>\$215889.87</u>	<u>\$</u>	<u>\$</u>
<u>2016</u>	<u>04/10/2017</u>	<u>\$215889.87</u>	<u>\$</u>	<u>\$</u>
<u>20</u>		<u>\$</u>	<u>\$</u>	<u>\$</u>
<u>20</u>		<u>\$</u>	<u>\$</u>	<u>\$</u>
<u>20</u>		<u>\$</u>	<u>\$</u>	<u>\$</u>

I (we) claim that the whole assessment (part of the assessment) for the year(s) as shown is (are) void for the following reasons (use attachments if necessary):

See Attached

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; that the taxes and/or penalties sought to be refunded were paid within four years prior to the filing of this claim; that the amounts herein claimed are correct; and no part thereof has been refunded to the claimant or to any other person for claimant's benefit; and if acting on behalf of a legal entity, I am duly authorized to act on its behalf and that the title shown below is true and correct.

Date: 12/1/2020 Signature: Chris Miller Title: SVP, Tax

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ASSESSOR'S OFFICE/FINANCE DIVISION
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PLEASE NOTE: *This form is provided as a courtesy and does not constitute legal advice to claimants. Claimants are strongly advised to consult an attorney regarding their rights and obligations, particularly with regard to exhaustion of administrative remedies and the applicability of statutes of limitation on filing claims and lawsuits for refund of property taxes.*

THIS FORM MUST BE SIGNED AND RETURNED WITH PROOF OF TAX PAYMENT TO:

Riverside County Clerk of the Board of Supervisors

4080 Lemon Street, 1st Floor

Riverside, CA 92502

Phone (951) 955-1060

Fax (951) 955-1071

Internet: www.rivcocob.org

County Use Only

Print Form

Date Received: _____	Date Referred to County Counsel: _____
Signature: _____	Title: _____ Date: _____

CLAIM FOR REFUND OF PROPERTY TAXES

To: Board of Supervisors, County of Riverside, California.

The undersigned, as Senior Vice President, Taxation of T-Mobile West LLC, the claimant herein, hereby makes this claim for refund of property tax on behalf of the claimant pursuant to Revenue and Taxation Code section 5097 and demands that the Board of Supervisors make its order directing the controller of said County to refund to claimant the sum of \$431,779.74 in taxes levied for the fiscal year 2016-17. In support of said claim, the undersigned states:

1. Claimant is and at all times herein mentioned was T-Mobile West LLC, a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business located at 12920 SE 38th St. Bellevue, King County, Washington.
2. For fiscal year 2016-17, the California State Board of Equalization assessed the value of claimant's unitary and nonoperating California property pursuant to its authority under Article XIII, section 19 of the California Constitution and section 721 of the Revenue and Taxation Code. Pursuant to its authority under Revenue and Taxation Code section 756, the California Board of Equalization transmitted a roll showing claimant's unitary and nonoperating property in Riverside County. On the basis of said assessment and transmittal of said roll, taxes were levied on said property for said fiscal year in the sum of \$1,489,502.28 (Exhibit 1) and paid by claimant in full on or about November 18th, 2016 and April 13th, 2017 (Exhibit 2).
3. Claimant is entitled to a refund of a portion of said taxes in the amount of \$431,779.74 plus appropriate interest, on the grounds that said taxes were erroneously or illegally collected, or illegally assessed or levied, for the following reasons:
 - a. The property tax rate applied to compute claimant's property taxes was in excess of the rate applied in the same year to property in the county assessed by the assessor of Riverside

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County, in violation of Article XIII, section 19 of the California Constitution and *ITT World Communications v. City and County of San Francisco*, 37 Cal. 3d 859 (1985).

b. The property tax rate applied to compute claimant's property taxes exceeded the rate allowed by Article XIII A, section 1 of the California Constitution.

4. No refund of said taxes, or any part thereof, has been previously made.

I declare under penalty of perjury that the foregoing is true and correct, and that I am authorized by claimant to make this claim for refund.

Dated: Tuesday, December 1, 2020

Chris Miller

Signature

Christopher Miller, Senior Vice President, Taxation

Riverside Tax Collector – 2016 Tax Year 1st Half Payment:

Document		Edit	Goto	Extras	Environment	System	Help
Display Document: Line Item 001							
Additional Data							
Vendor	2000058676	RIVERSIDE COUNTY TREASURER				G/L Acc	44250010
Company Code	V040	PO BOX 12005					
	V040 TMO PCS Holdings LLC	RIVERSIDE				Doc. no.	1102562076
Line Item 1 / Invoice / 31							
Amount	744,751.14	USD					
Tax Code							
Additional Data							
Disc. base	744,751.14	USD	Disc. Amount	0.00	USD		
Payt Terms	00		Days/percent	0	0.000	\$ 0	0.000 \$ 0
Blne Date	11/17/2016		Fixed				
Pmnt Block			Invoice ref.		/		/ 0
Pmt Method	M	Pmt meth.supl.	TX	Payee			
Clearing	11/18/2016	/	1501774005				
Assignment	WIRE						
Text	CA - Los Angeles 1HP PPTX 2016					Long text	

Riverside Tax Collector – 2016 Tax Year 2nd Half Payment:

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Display Document: Line Item 001

Additional Data

Vendor RIVERSIDE COUNTY TREASURER G/L Acc
 Company Code PO BOX 12005
 V040 TMO PCS Holdings LLC RIVERSIDE Doc. no.

Line Item 1 / Invoice / 31

Amount USD
 Tax Code

Additional Data

Disc. base	<input type="text" value="744,751.14"/>	USD	Disc. Amount	<input type="text" value="0.00"/>	USD
Payt Terms	<input type="text" value="00"/>		Days/percent	<input type="text" value="0 0.000 % 0 0.000 % 0"/>	
Blne Date	<input type="text" value="04/04/2017"/>		Fixed	<input type="text"/>	
Pmnt Block	<input type="text"/>		Invoice ref.	<input type="text"/> / <input type="text"/> / <input type="text" value="0"/>	
Pmt Method	<input checked="" type="checkbox"/> Pmt meth.spl. <input type="checkbox"/> IX		Payee	<input type="text"/>	
Clearing	<input type="text" value="04/13/2017 / 1500624133"/>				
Assignment	<input type="text" value="WIRE"/>				
Text	<input type="text" value="CA - Los Angeles 2HP PPTX 2016"/>			<input type="button" value="Long text"/>	

F-Mobile®

F-Mobile USA, Inc.
2920 SE 38th St, Bellevue, WA 98006-1350

CERTIFIED MAIL



91 7199 9991 7038 9358 3932

neopost®
12/03/2020
US POSTAGE \$004.75

FIRST-CLASS MAIL



ZIP 98006
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AGGREGATION APPEALS DIVISION

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Riverside County
Clerk of the Board of Supervisors
4080 Lemon Street, 1st. Floor
Riverside, CA 92501



Claim for Refund of Tax Payments

Assessee	Co.	Year	Claim	Date Received	
				By County	By Auditor Controller's Office
BNSF Railway Company	33-804	2016-17	\$ 197,461.58	11/24/2020	11/24/2020
T-Mobile West, LLC	33-748	2016-17	\$ 431,779.74	12/8/2020	12/8/2020
Sprint Telephony PCS, L.P.	33-720	2016-17	\$ 292,338.66	12/14/2020	12/14/2020
Sprint Communications company, L.P.	33-214	2016-17	\$ 22,875.54	12/14/2020	12/14/2020
			\$ 944,455.52		





Alan M. Annis, Director of Taxes
BNSF Railway Company
P.O. Box 961089
Fort Worth, Texas 76161-0089

Tel: (817) 352-3418
Fax: (817) 593-6758
Email: alan.annis@bnsf.com

November 20, 2020

Via Certified Mail (9214 8901 9403 8325 9610 02)
Return Receipt Requested

RE: CLAIM FOR REFUND OF TAXES AND/OR PENALTIES PAID

Clerk of the Board of Supervisors
County of Riverside
P. O. Box 1147
Riverside, CA 92502-1147

To Whom It May Concern:

Attached is a Claim for Refund of Property Tax Payments in accordance with the provisions of Chapter 5, Article I, of the California Revenue and Taxation Code (commencing with Section 5096). I am (we are) herewith filing this claim with the Clerk of the Board of Supervisors of the County of Riverside and ask that a refund of taxes and/or penalties be made for the amounts in the attached Claim for Refund of Tax Payment(s).

Should you have any questions concerning this matter, please contact me directly at (817) 352-3418.

Sincerely,

Alan M. Annis
Director of Taxes

enclosure

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ASSESSMENT APPEALS DIVISION
CLERK OF BOARD OF SUPERVISORS
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2020-12-148411



**COUNTY OF RIVERSIDE
CLAIM FOR REFUND OF TAX PAYMENT(S)**

Reset Form

Claimant's Name: First: BNSF Railway Company Last: _____
Mailing Address: P. O. Box 961089 City: Fort Worth
State: Texas Zip: 76161-0089 Contact No.: ((817) 352-3418

Assessor's Parcel Number: 33-804 (Assessment Number) SBE (Bill Number)
Property Address: Unitary Property in SBE TRA 000-002 City: N/A Zip: N/A

In accordance with the provisions of Chapter 5, Article I, of the California Revenue and Taxation Code (commencing with Section 5096), I am (we are) herewith filing this claim with the Board of Supervisors of the County of Riverside, and ask that a refund of taxes and/or penalties be made for the following amounts:

Fiscal Year(s) Refund is Claimed	Date(s) Taxes Paid	Amount of Tax Claim	Amount of Penalty Claim	Total Amount
<u>20¹⁶</u>	<u>12/06/2016</u>	<u>\$ 98,730.79</u>	<u>\$</u>	<u>\$ 98,730.79</u>
<u>20¹⁶</u>	<u>04/03/2017</u>	<u>\$ 98,730.79</u>	<u>\$</u>	<u>\$ 98,730.79</u>
<u>20</u>		<u>\$</u>	<u>\$</u>	<u>\$</u>
<u>20</u>		<u>\$</u>	<u>\$</u>	<u>\$</u>
<u>20</u>		<u>\$</u>	<u>\$</u>	<u>\$</u>

I (we) claim that the whole assessment (part of the assessment) for the year(s) as shown is (are) void for the following reasons (use attachments if necessary):
See Attached Exhibit A.

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; that the taxes and/or penalties sought to be refunded were paid within four years prior to the filing of this claim; that the amounts herein claimed are correct; and no part thereof has been refunded to the claimant or to any other person for claimant's benefit; and if acting on behalf of a legal entity, I am duly authorized to act on its behalf and that the title shown below is true and correct.

Date: 11/20/2020 Signature: *Madeleine* Title: VP & General Tax Counsel

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ASSESSMENT APPEALS DIVISION
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PLEASE NOTE: *This form is provided as a courtesy and does not constitute legal advice to claimants. Claimants are strongly advised to consult an attorney regarding their rights and obligations, particularly with regard to exhaustion of administrative remedies and the applicability of statutes of limitation on filing claims and lawsuits for refund of property taxes.*

THIS FORM MUST BE SIGNED AND RETURNED WITH PROOF OF TAX PAYMENT TO:

Riverside County Clerk of the Board of Supervisors

4080 Lemon Street, 1st Floor

Riverside, CA 92502

Phone (951) 955-1060

Fax (951) 955-1071

Internet: www.rivcocob.org

County Use Only

Print Form

Date Received: _____	Date Referred to County Counsel: _____
Signature: _____	Title: _____ Date: _____

Exhibit A

BNSF Railway Company

Factual Reasons the Tax was Illegally Levied and Collected

The tax rates applied to the assessed value of BNSF Railway Company's ("BNSF") property exceed the tax rates applicable to other commercial and industrial property in the various taxing districts within this county. These excessive tax rates violate Section 306(1)(c) of the Railroad Revitalization and Regulatory Reform Act of 1976, codified at 49 U.S.C. Section 11501(b)(3), which prohibits state and local governments from levying or collecting any ad valorem property tax on railroad property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction. To the extent that the tax rates applied to the assessed values of BNSF's property exceed the tax rates as calculated pursuant to the decision of the Ninth Circuit Court of Appeals in *Trailer Train Company v. State Board of Equalization*, 697 F.2d 860 (9th Cir.), cert. denied, 464 U.S. 846 (1983), the levy and collection of the excessive taxes violated Section 306(1)(c). The United States District Court Northern District of California recently agreed with BNSF's position when United States District Judge Haywood S. Gilliam, Jr. granted BNSF Railway Company's Motion for Preliminary Injunction when he ordered that the Defendant counties "are hereby **ENJOINED** through the pendency of this litigation until entry of a final judgment from levying or collecting ad valorem property taxes from Plaintiff on its unitary property based on a tax rate higher than the annual average tax rate of general property taxation calculated and reported for each county by the California State Board of Equalization under Cal. Rev. & Tax Code Section 11403." A copy of Judge Gilliam, Jr.'s Order is attached.

Therefore, the excessive taxes were illegally levied and erroneously and illegally collected, entitling BNSF to a refund of the excessive taxes with interest, costs, and attorney's fees as allowed by law, pursuant to Cal. Rev. & Tax Code Section 5096 et seq. and any other applicable statute, rule, and regulation.

This refund claim is being filed with the Board of Supervisors and/or the Treasurer/Tax Collector. Please contact Alan Annis at (817) 352-3418 for any further information.

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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BNSF RAILWAY COMPANY,

Plaintiff,

v.

ALAMEDA COUNTY, et al.,

Defendants.

Case No. 19-cv-07230-HSG

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

Re: Dkt. No. 35

Pending before the Court is Plaintiff BNSF Railway Company's ("BNSF") motion for a preliminary injunction (Dkt. No. 35 ("Mot.")), for which briefing is complete. Dkt. Nos. 43 ("SD Opp."), 44 ("Counties' Opp."), 53 ("Reply"). BNSF requests a preliminary injunction against fifteen counties ("Defendants," or "Defendant Counties") under 49 U.S.C. § 11501(b)(3), which prohibits applying higher tax rates to railroad property. On March 12, 2020, the Court held a hearing on the motion. Dkt. No. 58. The Court **GRANTS** the motion for preliminary injunction.

I. BACKGROUND

A. The 4-R Act

The 4-R Act (now codified at 49 U.S.C. § 11501 ("Section 11501")) was passed in 1976 to "restore the financial stability of the railway system." *Burlington N. R.R. v. Oklahoma Tax Comm'n*, 481 U.S. 454, 457 (1987). This was, in part, because railroads "are easy prey for State and local tax assessors," as they are "nonvoting, often nonresident, targets for local taxation" that cannot easily remove themselves from the locality. *W. Air Lines, Inc. v. Board of Equalization of State of S.D.*, 480 U.S. 123, 131 (1987). Congress declared that state and local taxation schemes that discriminate against rail carriers "unreasonably burden and discriminate against interstate commerce." 49 U.S.C. § 11501(b). As relevant here, Section 11501(b)(3) bans discriminatory tax

1 rates, and provides that state and local governments may not “levy or collect an ad valorem tax on
2 rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and
3 industrial property in the same assessment jurisdiction.” *Id.*

4 **B. California Property Taxation**

5 California’s system of taxation is, in a word, complicated. California law imposes an ad
6 valorem (*i.e.*, value-based) property tax on all property in the State, unless exempt, in proportion
7 to its assessed value. Cal. Const. Art. XIII, § 1. Taxation is a three-step process. First, the value
8 of taxable property is assessed. Next, the applicable tax rate is computed, typically expressed as a
9 percentage of assessed value. Finally, the tax is levied and collected from the taxpayer.

10 Most property in California, including general “commercial and industrial property,” is
11 “locally assessed,” meaning that county assessors determine the assessed value of the property for
12 tax purposes. *See* Declaration of Alan M. Annis, Dkt. No. 35-1, (“Annis Decl.”) ¶ 7. California
13 classifies and taxes the bulk of property in the state as either “secured” or “unsecured.” *See id.* ¶
14 8. The “secured roll” consists of most state-assessed property and that portion of locally assessed
15 property for which the taxes are secured by a lien on real property of a value sufficient to pay the
16 taxes. *See* Cal. Rev. & Tax. Code § 109. The “unsecured roll” consists of all other property, such
17 as personal property and possessory interests in tax-exempt land. *Id.*

18 Every year, each Defendant County’s board of supervisors determines the tax rates to be
19 applied in the county for locally assessed property and for unitary property, applying different
20 statutory formulas. Cal. Rev. & Tax. Code § 2151. Defendants’ respective auditors apply these
21 applicable tax rates to the assessed value shown on the assessment rolls. Cal. Rev. & Tax. Code §
22 2152. Then, Defendants’ respective tax collectors collect the taxes on unitary property at the
23 unitary rate determined by each county. Cal. Rev. & Tax. Code §§ 2605, 2610.5. Locally
24 assessed property, including commercial and industrial property, is assigned to a particular “Tax
25 Rate Area” within each county, based on the property’s location. *See* Annis Decl. ¶ 11.

26 For property on the secured tax roll, the annual ad valorem tax rate for each Tax Rate Area
27 is established as (a) a 1% general tax levy, typically used to fund general government services,
28 plus (b) an amount necessary to produce sufficient revenues to pay the interest and principal on

1 any voter-approved bonded indebtedness issued by the county or by the local agencies, school
2 entities, and special districts serving that Tax Rate Area. Cal. Rev. & Tax. Code § 93 (“Section
3 93”), enacted per Cal. Const. Art. XIII A, § 1 (“Proposition 13”). This latter portion of the Section
4 93 tax rate above the 1% base levy is known as the “debt service component.” Under Proposition
5 13, real property must be valued at its 1975 fair market value (as shown on the 1975-76
6 assessment roll), or thereafter, the fair market value when purchased, newly constructed, or a
7 change of ownership has occurred after the 1975 assessment (i.e., the occurrence of an “assessable
8 event”). Cal. Const., art. XIII, § 2(a).

9 The debt service component is the sum of separately calculated rates for each local agency,
10 school entity or special district with outstanding debt. To calculate the elements of the debt
11 service component, the County first determines how much revenue it will need to make debt
12 service payments for the upcoming year for the voter-approved debt of the local agency, school
13 entity, or special district. *See* Cal. Gov. Code § 29100. Next, the County determines the portion
14 of assessed property values on the secured roll subject to the voter-approved debt issued by the
15 local agency, school entity or special district (i.e., the property located within the boundaries of
16 each local entity). *Id.* The County then calculates the percentage of those total property values
17 that will produce the necessary revenues to service the debt issued by that local entity, after
18 allowances for delinquencies and annual changes to the roll, among other factors. *Id.* The debt
19 service component in each Tax Rate Area is the sum of these calculated percentages for every
20 local agency, school entity or special district serving that Tax Rate Area. The debt service
21 component is combined with the 1% base levy to compute the total property tax rate in each Tax
22 Rate Area for property on the secured roll.

23 The property tax rate for property on the unsecured roll is the secured roll tax rate for that
24 Tax Rate Area for the previous year. Cal. Rev. & Tax. Code § 2905. This rule is consistent with
25 the separate requirement that unsecured taxes are due each year before the County calculates the
26 secured tax rate for that year. *See* Cal. Rev. & Tax. Code § 2922.

27 In contrast, the State Board assesses the value of certain utility and railroad property
28 (including Plaintiff’s property). Cal. Rev. & Tax. Code § 721. The State Board assesses

1 Plaintiff's property using the principle of unit valuation, under which all of a taxpayer's assets,
2 wherever located, are valued as a unit, and that unitary value is then allocated among particular
3 taxing jurisdictions. *See Annis Decl.* ¶ 6. State-assessed property that is valued under the
4 principle of unit valuation is also referred to as "unitary property." *See Cal. Rev. & Tax. Code* §§
5 723, 723.1. Unit taxation provides a way to value and tax property in businesses for which the
6 component parts of the business are valuable when considered as a whole, but worth less when
7 considered in isolation. *See ITT World Commc'ns, Inc. v. City & Cnty. of S.F.*, 37 Cal. 3d 859,
8 863 (Cal. 1985). For example, "ten miles of [railroad] track . . . 'would have a questionable value,
9 other than as scrap, without the benefit of the rest of the system as a whole.'" *Am. Airlines, Inc. v.*
10 *Cnty. of San Mateo*, 12 Cal. 4th 1110, 1126 (Cal. 1996) (internal citations and brackets omitted).

11 C. Taxation Applicable to Railways

12 Plaintiff's primary argument is that the tax rate applicable to its property is calculated
13 under a different formula than the Section 93 tax rate for locally-assessed commercial and
14 industrial property, resulting in a tax rate higher than the Section 93 tax rate. According to
15 Plaintiff, first, under Cal. Rev & Tax. Code § 100.11, the value attributable to the state-assessed
16 unitary property of a regulated railway company is generally allocated to a single countywide Tax
17 Rate Area in each county in which the property is located. The "unitary" tax rate to be applied to
18 these countywide tax rate areas is established in accordance with the formula in Cal. Rev. & Tax.
19 Code § 100(b)(2) ("Section 100"). Cal. Rev. & Tax. Code § 100.11(a)(2)(B).

20 Section 100 (like Section 93) includes the base 1% tax levy. However, the additional
21 unitary debt service component under Section 100 is calculated by taking the County's previous
22 year's unitary debt service rate and multiplying it by the percentage change between the two
23 preceding fiscal years in the County's ad valorem debt service levy for the secured roll (excluding
24 unitary and operating nonunitary debt service levies). *See Mot.* at 8. Plaintiff contends that this
25 formula has caused the Section 100 unitary tax rate to diverge from the Section 93 secured and
26 unsecured tax rates. In particular, when a County's debt service needs increase, the secured and
27 unsecured rates will not rise if property values also rise and keep pace with inflation. But under
28 those same circumstances, the Section 100 unitary debt service rate will increase because it

1 depends on the absolute dollar amount of debt service.

2 The State Board calculates and publishes the annual “average rate of general property
 3 taxation” in each California county. Annis Decl. ¶¶ 24–26, 32. The State Board computes this
 4 average tax rate by dividing (a) the sum of the total ad valorem property tax levies in each county
 5 for each year, by (b) the total assessed value of all property in that county for that same year. *See*
 6 Cal. Rev. & Tax. Code § 11403. For the 2019-20 tax year, using the methods described above,
 7 Plaintiff contends that the Defendant Counties have levied property taxes at the unitary rate
 8 applicable in their respective assessment jurisdictions. Below are the alleged differences between
 9 the unitary rate applied to Plaintiff’s property and the Section 11501 “benchmark rate”:

County	2019-20 Plaintiff Unitary Rate	2019-20 Section 11501 Benchmark Rate
Alameda	2.5187%	1.241%
Contra Costa	1.6865%	1.148%
Fresno	1.370408%	1.181%
Kern	1.611299%	1.24%
Kings	1.326084%	1.087%
Madera	1.203169%	1.089%
Merced	1.4109014%	1.088%
Orange	1.28173%	1.064%
Plumas	1.11652%	1.089%
Riverside	1.76133%	1.164%
San Bernardino	1.3645%	1.144%
San Diego	1.62331%	1.142%
San Joaquin	1.6922%	1.145%
Stanislaus	1.38011%	1.103%
Tulare	1.4002%	1.113%

24 *See* Annis Decl. ¶33.¹

25
 26 ¹ The average rate difference for the Defendant Counties for the 2019-2020 fiscal year is only
 27 0.38%, while the median difference is 0.29%. Differences in prior years are generally even
 28 smaller. *See* Narciso Decl., ¶ 10 & Ex. 7. With these smaller differences, Defendants are correct
 that it is all the more important for Plaintiff to meet its burden of demonstrating that it has
 identified the tax rate applicable to the proper comparison class. However, most Defendants admit
 in their Answer (ECF No. 52 ¶ 34)—and San Diego states that it lacks sufficient information to

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II. LEGAL STANDARD

The prohibition on tax rate discrimination is enforceable through an action for equitable relief in federal court. In enacting Section 11501, “Congress ... believed that a federal court remedy for carriers subject to discriminatory taxation was necessary because state courts were not providing them with a plain, speedy, and efficient remedy.” *Trailer Train Co. v. State Bd. Of Equalization*, 697 F.2d 860, 866 (9th Cir. 1983). Congress thus included in Section 11501 “a procedural component which authorizes victims of discrimination to seek injunctive relief in federal court.” *Id.* This provision specifically empowers federal courts to “grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate any acts in violation of [Section 11501],” notwithstanding 28 U.S.C. § 1341. *Id.* at 869 & n.16; *see* 49 U.S.C. § 11501(c).

Plaintiff contends that a preliminary injunction under Section 11501 is not governed by the traditional equitable criteria of likelihood of success, irreparable harm, balance of hardships, or public interest. *See* Mot. at 5 (citing *Trailer Train*, 697 F.2d at 869). Instead, because Section 11501 specifically contemplates interim equitable relief, a preliminary injunction must issue “[w]here the trial court finds reasonable cause to believe that a violation of Section [11501] has been, or is about to be, committed.” *Burlington N. R. Co. v. Dep’t. of Revenue of State of Wash.*, 934 F.2d 1064, 1074 (9th Cir. 1991); *BNSF Ry. v. Tenn. Dep’t of Revenue*, 800 F.3d 262, 268 (6th Cir. 2015) (“[A] railroad seeking injunctive relief under the 4-R Act need only demonstrate that there is ‘reasonable cause’ to believe a violation of the 4-R Act has occurred or is about to occur.”).

Defendants disagree, and contend that the Court should instead apply the traditional equitable criteria. Defendants believe that the Ninth Circuit’s decisions in *Burlington* and *Trailer Train* (as well as other circuit court decisions) misapplied—or failed to apply—the Supreme Court’s decision in *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982), and instead incorrectly applied the Tenth Circuit’s standard in *Atchison, T. & S.F. Railway Co. v. Lennen*, 640 F.2d 255,

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state (ECF No. 51 ¶ 10)—that the tax rates set forth in the chart are the tax rates levied on Plaintiff by the Defendant Counties, and the 2019-2020 tax rates the State Board calculates pursuant to Section 11403 of the Revenue and Taxation Code.

1 259-61 (10th Cir. 1981), the first instance in which the “reasonable cause” standard was applied to
 2 an alleged 4-R Act violation.

3 Notwithstanding any arguments Defendants may wish to preserve for potential *en banc*
 4 consideration on appeal, the Ninth Circuit has clearly decided this question. *See Burlington N.*,
 5 934 F.2d at 1074 (“Issuance of preliminary injunctive relief in Section [11501] cases is not
 6 governed by the traditional equitable criteria applicable in actions between private litigants”);
 7 *Trailer Train*, 697 F.2d at 869 (“The standard requirements for equitable relief need not be
 8 satisfied when an injunction is sought to prevent the violation of a federal statute which
 9 specifically provides for injunctive relief. . . . Section [11501] clearly falls within this exception
 10 because its subsection (c) specifically authorizes a district court to grant injunctive relief to
 11 prevent a violation of the statute.”). This Court is bound to apply that clear holding unless the
 12 “circuit authority is clearly irreconcilable with the reasoning or theory of intervening higher
 13 authority.” *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003). The Court finds that no
 14 intervening authority permits it to disregard the “reasonable cause” standard set out by the Ninth
 15 Circuit in *Burlington* and *Trailer Train*.² Accordingly, the Court applies that standard, and will
 16 issue a preliminary injunction if there is reasonable cause to believe that a violation of the 4-R Act
 17 has occurred, is occurring, or will occur.

18 III. ANALYSIS

19 A. Commercial and Industrial Property

20 The plain language of Section 11501(b)(3) prohibits levying “an ad valorem property tax
 21 on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and
 22 industrial property in the same assessment jurisdiction.” Section 11501(a)(2) defines “assessment
 23 jurisdiction” as “a geographical area in a State used in determining the assessed value of property
 24 for ad valorem taxation.” Section 11501(b)(3) recognizes that “tax-rate variation” is improper
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 27 ² Defendants assert that *Trailer Train* neither cites nor acknowledges the Supreme Court’s ruling
 28 in *Romero-Barcelo*, presumably (according to Defendants) because *Trailer Train* was argued and
 submitted on March 10, 1982, while *Romero-Barcelo* was not decided until April 27, 1982. *See*
Counties’ Opp. at 10 n. 3. However, *Trailer Train* was decided by the Ninth Circuit on January
 25, 1983, more than seven months after *Romero-Barcelo*.

1 taxation of railroad property. *Trailer Train*, 697 F.2d at 865–66. The relevant section states:

2 (b) The following acts unreasonably burden and discriminate against
3 interstate commerce, and a State, subdivision of a State, or authority
4 acting for a State or subdivision of a State may not do any of them: *
5 * * (3) Levy or collect an ad valorem property tax on rail
6 transportation property at a tax rate that exceeds the tax rate
7 applicable to **commercial and industrial property** in the same
8 **assessment jurisdiction**.

9 49 U.S.C. § 11501 (emphasis added). Defendants, as counties of California, are legal subdivisions
10 of the State of California, (Cal. Const. Art. XI, § 1), and thus are subject to Section 11501(b)(3).
11 And Plaintiff’s unitary property in California is “rail transportation property” within the meaning
12 of Section 11501(b)(3) and is, therefore, entitled to the protection of the statute. *See* Declaration
13 of Judy A. Cummings, Dkt. No. 35-2 ¶ 4.

14 The disputed element of Section 11501(b)(3) is the comparison to “the tax rate applicable
15 to commercial and industrial property.” *See* Mot. at 2. In order to prove a violation of Section
16 11501(b)(3), Plaintiff must demonstrate that Defendants are levying or collecting an ad valorem
17 property tax at a rate that exceeds the rate applicable to commercial and industrial property located
18 in the same assessment jurisdiction as Plaintiff’s property. 49 U.S.C. § 11501(b)(3).

19 The Ninth Circuit established the framework for that comparison in *Trailer Train*.
20 Plaintiffs there sued to enjoin the collection of a state tax on private railroad cars because the
21 applicable tax rate was higher than the rate for commercial and industrial property under the then-
22 adopted Proposition 13, such that the private railroad car tax “discriminated against owners of rail-
23 transportation property” in violation of Section 11501(b)(3). 697 F.2d at 864. After recognizing
24 the purpose of Section 11501 and affirming the district court’s authority to enjoin violations of the
25 statute, the Ninth Circuit turned to comparing the challenged tax rate to “the rate generally
26 applicable to commercial and industrial property.” *Id.* at 866-67.

27 The Ninth Circuit explained that this “task is complicated by the fact that,” due to
28 California’s unique classification system (dividing property into secured and unsecured, as
opposed to residential and commercial/industrial), “California has no specific tax rate for
commercial and industrial property.” *Id.* at 867. Because neither Section 11501, “nor its
legislative history provides guidance as to what should be done when a specific rate generally

1 applicable to commercial and industrial property is not readily apparent,” the Ninth Circuit
2 articulated a framework with two alternative approaches for identifying “the tax rate generally
3 applicable to commercial and industrial properties” specifically in California, and specifically
4 under Section 11501. *Id.*

5 The first approach in that framework is to determine “the tax rate applicable” to whichever
6 tax roll, either secured or unsecured, contains “the majority of [the] commercial and industrial
7 property.” *Id.* Determining which tax roll contains the majority of commercial and industrial
8 property is (often) straightforward. The secured roll in each county contains the vast majority
9 (consistently over 90%) of the assessed value and the taxes levied against all property in that
10 county, and the secured roll, according to Plaintiff, almost certainly contains the majority of
11 commercial and industrial property. *See Annis Decl.* ¶¶ 30–31.

12 However, the weakness of this approach is that “the tax rate applicable” to the property on
13 the secured roll cannot be determined. Plaintiff contends that the property on the secured roll is
14 spread among the hundreds or thousands of Tax Rate Areas in each Defendant County that each
15 have their own tax rates. *See id.* ¶¶ 15, 31. Thus, Plaintiff contends that there is no identifiable
16 “tax rate applicable” to property on the secured or unsecured roll of any of the Counties.

17 As a fallback, the Ninth Circuit in *Trailer Train* authorized a second approach. First, the
18 Court is to determine the average tax rate for all property in the relevant county. *See Trailer*
19 *Train*, 697 F.2d at 868 n.13 (“We thus, for reasons different from those articulated by the district
20 court, conclude that the average rate for all property should be used when the rate generally
21 applicable to commercial and industrial property cannot be determined.”).

22 Plaintiff alleges that identifying the “average rate for all property” is possible because the
23 State Board already calculates that rate—the annual “average tax rate of general property taxation”
24 in each county. *See Annis Decl.* ¶ 24. By statute, the State Board calculates this average tax rate
25 by dividing (a) the sum of all ad valorem property tax levies in a given county for a given year by
26 (b) the sum of the assessed values of all property in that county for that same year. Cal. Rev. &
27 Tax. Code § 11403. According to Plaintiff, the State Board-calculated rate for each county is the
28 maximum rate the Defendants can apply to railroad property, meaning that taxing railroad

1 property at rates that are higher than the Section 11501 “Benchmark Rate” is a violation of Section
2 11501(b)(3).³

3 Defendants counter that the relevant assessment jurisdiction is the area of the entire State
4 of California that contains the unitary property, and the tax rate applied to the railroad must be
5 compared to the tax rate applied to other commercial and industrial property that is assessed as
6 unitary property. Counties’ Opp. at 19. Defendants further contend that, under Article XIII,
7 Section 19 of the California Constitution, the assessment jurisdiction of the State includes the
8 following types of property: “(1) pipelines, flumes, canals, ditches, and aqueducts lying within 2
9 or more counties and (2) property, except franchises, owned or used by regulated railway,
10 telegraph, or telephone companies, car companies operating on railways in the State, and
11 companies transmitting or selling gas or electricity.” *Id.* at 20.

12 Defendants, in theory, are contending that Section 100 (applicable to Plaintiff) does not
13 differentiate in the way tax rates are applied among these commercial and industrial properties,
14 because these nonrailroad companies do not have a different rate than Plaintiff. Put differently, all
15 of the non-railroad commercial and industrial property that is assessed as “unitary property” for
16 purposes of local property taxation is taxed pursuant to Section 100.

17 The Court finds Defendants’ suggestion that it should compare Plaintiff’s tax rate to the
18 rates for a relatively narrow subset of other state-assessed utilities and other entities that pay the
19 same unitary tax rate inconsistent with the 4-R Act. Section 11501(b)(3) calls for a broader
20 comparison to the rate paid by “*commercial and industrial property* in the same assessment
21 jurisdiction,” where an “assessment jurisdiction” is “a geographical area *in a State.*” 49 U.S.C.
22 11501(a)(2) (emphasis added). The “commercial and industrial property in” the “geographical
23 area” of California clearly is not limited to state-assessed utilities or similar Section 19 property: it
24 embraces all commercial and industrial taxpayers in the state. For the same reasons that there are
25 not county-specific rates for commercial and industrial taxpayers in California, (Mot. 9-10, 14-15),
26 there are also no statewide rates.

27 _____
28 ³ Plaintiff contends they will pay, for the 2019-20 tax year, a total of more than \$3.2 million in
taxes prohibited by Section 11501. *See* Annis Decl. ¶ 35.

1 Railroads, like other utilities such as pipelines and telecommunications companies, are
2 “easy prey” in that they are “nonvoting, often nonresident” targets “who cannot easily remove
3 themselves from the locality.” *Western Air Lines, Inc. v. Board of Equal.*, 480 U.S. 123, 131
4 (1987) (quotation marks omitted). The solution, Congress recognized early on, was to link
5 railroads’ fate with a mass of other taxpayers by insisting that “[rail] carriers are accorded equal
6 tax treatment with other taxpayers.” S. Rep. No. 87-445 at 466 (1961). Significantly, before the
7 final version of Section 11501 was passed, a provision permitting comparisons solely against
8 public utilities was introduced and rejected. *See Atchison, Topeka & Santa Fe Ry. Co. v. Ariz.*,
9 559 F. Supp. 1237, 1244 (D. Ariz. 1983) (citing S. Rep. No. 92-1085 (1972)). The upshot is that
10 the comparison the Defendant Counties propose—between railroads and other state-assessed
11 taxpayers subject to the same tax laws—does not comport with the statute Congress enacted.

12 Defendants appear to recognize that *Trailer Train* poses a challenge for their argument.
13 They contend that the taxes at issue here are calculated at the local level and do not require use of
14 a statewide general property tax rate, whereas *Trailer Train* involved the applicability of the 4-R
15 Act to a statewide tax on plaintiffs’ private railroad cars, and the effort to identify a comparison
16 class for that statewide tax. 697 F.2d at 862.

17 But that is a distinction without a difference. The challenge in *Trailer Train*, as here, was
18 determining which group of commercial and industrial property to use as a comparison class,
19 given that commercial and industrial property appeared on both the secured and unsecured rolls.
20 The Ninth Circuit held first that “[t]he tax rate applicable to the roll that contained the majority of
21 the commercial and industrial property shall be deemed the rate generally applicable to
22 commercial and industrial property and will serve as the base rate for comparison against the
23 Companies’ \$10.68 rate.” *Id.* at 867. The Ninth Circuit further reasoned that “[i]f the
24 determination of which roll contained the majority of the state’s commercial and industrial
25 property in the 1978-79 fiscal year is not possible, the average tax rate for all property shall be
26 used as the basis for comparison.” *Id.*

27 Defendants characterize *Trailer Train* as hinging on its discussion of a uniform statewide
28 tax versus local taxation of unitary property. But this ignores the Ninth Circuit’s recognition that

1 there is no specific commercial and industrial rate for locally assessed property in California.
2 Defendants contention that *Trailer Train* predates the legislation subjecting railroad property to
3 unitary rates is irrelevant to the key question that *Trailer Train* resolves—how to determine the
4 appropriate comparison rate for locally-assessed property—and California law on that point
5 remains unchanged.

6 The Court finds that Defendants’ proposed comparison is untethered from the statutory
7 language and unsupported by Section 11501 jurisprudence. Indeed, under the Defendants’
8 approach—under which railroads are only compared to taxpayers that are taxed like railroads—
9 violations of Section 11501(b)(3) likely would be rare or nonexistent, and Congress would have
10 accomplished very little. The statute’s use of the term “assessment jurisdiction” demonstrates that
11 Congress was concerned with the basic principle that like property should be treated alike.
12 Because there is no specific commercial and industrial rate in the State of California, *Trailer Train*
13 authorized the use of either the rate for the secured roll or the average rate for all property.

14 Accordingly, under the *Trailer Train* framework, Plaintiff has established reasonable cause
15 that a violation of Section 11501(b)(3) has occurred or will occur if it is required to pay taxes at
16 the rate Defendants claim applies for the 2019-20 tax year.

17 **B. Discrimination and Justification**

18 Defendants make a secondary argument that Plaintiff (and the railroad industry) lobbied to
19 be taxed at the Section 100(b) rate that Plaintiff now alleges is unlawful. According to
20 Defendants, the railroad industry wanted its taxes to be calculated under Section 100(b) because
21 the railroads wanted to “reduce[] the administrative burden imposed on the Board of Equalization,
22 county auditors and treasurers, and the railroads.” *See* Declaration of Michael Narciso, Dkt. No.
23 44-4 Ex. 5 at pages 316-17 (ECF pagination).

24 Defendants cite to the railroad industry’s arguments in favor of the current law, specifically
25 the claim that “each year, the railroads, the State Board of Equalization (SBE) and individual
26 taxing jurisdictions must undertake a painstaking and time consuming process in which they are
27 forced to redraw hundreds of ‘tax maps’ and prepare a similar number of bills for each and every
28 tax rate area where there are railroad tracks. . . . This year, for instance, Union Pacific Railroad

1 and BNSF Railway Company received more than 2,400 tax rate area changes and 2,850 operating
2 tax bills from the tax districts.” *Id.* Defendants point out that this legislation, by allowing the
3 railroad to pay only on one tax rate area in each county, reduced the number of operating tax bills
4 from 2,850 to approximately 61. *Id.*

5 Defendants thus argue that any discriminatory outcome for Plaintiff was a direct result of
6 the railroad industry’s lobbying efforts regarding which tax rates would apply to its members in
7 California. Defendants use the legislative history to argue that Plaintiff should not be allowed to
8 reap the benefits of its lobbying efforts, then pounce only once it perceives an advantage in
9 invoking Section 11501. Defendants contend that Section 11501 is meant to address concerns
10 about the railroads’ political vulnerability and establishes a prohibition only as to *discriminatory*
11 state taxation of railroad property. Thus, Defendants conclude, because the railroads in California
12 wanted to be taxed pursuant to Section 100(b), and wanted to benefit themselves through reduced
13 administrative burdens provides, this provides sufficient justification for any alleged tax disparity.

14 Whatever equitable force Defendants’ argument might have in a vacuum, the Court finds it
15 to be inconsistent with the relevant language in the statute. Section 11501(b)(3) does not use the
16 word “discriminates.” Rather, subsection (b)(3) forbids “[l]evy[ing] or collect[ing] an ad valorem
17 property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to
18 commercial and industrial property in the same assessment jurisdiction.” 49 U.S.C. §
19 11501(b)(3). The statute does not require proof of discrimination, because Congress has already
20 declared in the preface of Section 11501(b) that the imposition of such an ad valorem property tax
21 rate disparity “unreasonably burden[s] and discriminate[s] against interstate commerce.” 49
22 U.S.C. § 11501(b).

23 In arguing to the contrary, Defendants cite the Supreme Court’s 2011 decision in *CSX*
24 *Transportation, Inc. v. Alabama Department of Revenue*, 562 U.S. 277 (2011) (“*CSX I*”), which
25 discussed the meaning of the word “discriminate” in Section 11501 and explained how a state
26 might engage in illegal discrimination under Section 11501(b)(4). The Court stated that if a state
27 charged “one group of taxpayers a 2% rate and another group a 4% rate,” the State would be
28 discriminating against the latter group, “assuming the groups are similarly situated and there is no

1 justification for the difference in treatment.” *CSX I*, 562 U.S. at 287.

2 Four years later, the Court found such justification for a difference in treatment in *Alabama*
3 *Department of Revenue v. CSX Transp., Inc.* (“*CSX II*”), 575 U.S. 21 (2015). At issue there was
4 whether the 4-R Act prohibited Alabama from imposing a 4% tax on the diesel fuel used by
5 railroads that it did not impose on the diesel fuel used by the railroads’ competitors, given that
6 Alabama also imposed comparable taxes on the competitors that it did not impose on railroads.
7 *Id.* at 24, 30. The Court concluded that the 4-R Act did not prohibit such differential treatment
8 because “an alternative, roughly equivalent tax is one possible justification that renders a tax
9 disparity nondiscriminatory.” *Id.* at 30-31.

10 The Court finds the *CSX* cases inapplicable. In both *CSX I* and *CSX II*, Section
11 11501(b)(3) was not at issue: the Court addressed Section (b)(4), which specifically prohibits a
12 state from imposition “another tax that *discriminates* against a rail carrier” See Section
13 11501(b)(4) (emphasis added). In *CSX I*, the “key question” was “whether a tax might be said to
14 ‘discriminate’ against a railroad under subsection (b)(4).” 562 U.S. at 286. The Court held that
15 subsection (b)(4) permits a justification defense because, as used in that subsection, the undefined
16 term “discriminates” means a failure to treat similarly situated taxpayers the same without
17 “justification for the difference in treatment.” *Id.* at 287. Then, in *CSX II*, the Court held that the
18 existence of an “alternative, roughly equivalent tax” (paid by the taxpayers to which the railroad is
19 compared) is a possible justification under subsection (b)(4). 575 U.S. at 30-31. These
20 discussions about when the catchall provision regarding “another tax that discriminates” might be
21 triggered do not shed light on the issue presented in this case, because the face of the statute
22 already reflects Congress’ determination that the acts set out in subsection (b)(3) amount to *per se*
23 discrimination against interstate commerce.

24 **IV. CONCLUSION**

25 Because Plaintiff has established reasonable cause that a violation of Section 11501(b)(3)
26 has occurred or will occur, the motion for a preliminary injunction is **GRANTED**.

27 Defendants Alameda County, Contra Costa County, Fresno County, Kern County, Kings
28 County, Madera County, Merced County, Orange County, Plumas County, Riverside County, San

United States District Court
Northern District of California

1 Bernardino County, San Diego County, San Joaquin County, Stanislaus County, and Tulare
2 County, California; their boards of supervisors, county auditors, tax collectors, agents, employees,
3 and all those acting in concert or participating with them who receive actual notice of this order
4 (the "Enjoined Parties") are hereby **ENJOINED** through the pendency of this litigation until entry
5 of a final judgment from levying or collecting ad valorem property taxes from Plaintiff on its
6 unitary property based on a tax rate higher than the annual average tax rate of general property
7 taxation calculated and reported for each county by the California State Board of Equalization
8 under Cal. Rev. & Tax Code §11403.


9 The Enjoined Parties are further enjoined through the pendency of this litigation until entry
10 of a final judgment from taking any action to impose any interest or penalties, from taking any
11 action to record or enforce a tax lien upon any property used or owned by Plaintiff, or from taking
12 any other action authorized by state law for delinquent or unpaid taxes under California law.

13 Plaintiff will be required to post a bond under Federal Rule of Civil Procedure 65(c). The
14 parties are directed to meet and confer and agree if possible by 5:00 p.m. Pacific Time on April 9,
15 2020 regarding the appropriate amount of the bond. *See* Opp. at 25 (seeking bond of "no less than
16 \$1.6 million in lost tax revenue"), Reply at 15 (acknowledging that Plaintiff will post a bond if
17 ordered, without indicating its view as to the appropriate amount of the bond). By that time, the
18 parties should either file an agreed-upon proposed bond order (which should be done if at all
19 possible), or separate proposed forms of order (understanding that the Court is going to require a
20 bond notwithstanding Plaintiff's argument that doing so is unnecessary).

21 Consistent with the discussion at the hearing, *see* Dkt. No. 61 at 41, the parties are also
22 directed to meet and confer and submit a joint proposal by April 15, 2020 regarding the proposed
23 timing of initial disclosures, discovery and other proceedings in light of this order.

24
25 **IT IS SO ORDERED.**

26 Dated: 4/8/2020

27 
28 HAYWOOD S. GILLIAM, JR.
United States District Judge

STATE BOARD OF EQUALIZATION ROLL FOR FISCAL YEAR 2016-2017 33 COUNTY OF RIVERSIDE
 B94 BNSF RAILWAY COMPANY
 TAX RATE AREA TOTALS BY ASSESSEE

PAGE 171

T.R.A.	RATE	LAND	IMPROVEMENT	PERSONAL PROPERTY	NET VALUATION	TANGIBLE TAX	SPECIAL ASSESSMENTS		TOTAL TAX
							LEVY	FIXED	
000-002	1.02649	18,542,058	15,396,357	8,052,933	41,969,348	682,627.26	4,026.16		686,653.42
004-005	1.11415	241,312			241,312	2,488.56	1.34		2,489.90
004-018	1.11415	74,487			74,487	829.88	2.04		831.94
004-058	1.11415	890,976			890,976	9,926.80	.78		9,927.58
005-009	1.06821	169,884			169,884	1,814.70	7.22		1,821.92
009-002	1.06821	52,490			52,490	560.70	7.22		567.92
009-135	1.06821	51,836			51,836	553.70			553.70
009-139	1.06821	55,757			55,757	595.60	.60		596.20
009-157	1.06821	10,454			10,454	111.66			111.66
009-097	1.11415	14,739			14,739	164.20			164.20
088-044	1.86204	341,015			341,015	5,745.78			5,745.78
GRAND TOTALS		20,445,008	15,396,357	8,052,933	46,072,298	1785,618.82	14,059.38		1789,668.20

**** 1ST INSTALLMENT \$354,834.10 2ND INSTALLMENT \$354,834.10 TOTAL TAXES \$709,668.20 ****

STATE BOARD OF EQUALIZATION ROLL FOR FISCAL YEAR 2016-2017 33 COUNTY OF RIVERSIDE
 004 BNSF RAILWAY COMPANY
 RECORD OF TAX STATUS

PAGE 192

T.R.A.	TOTAL TAX	FIRST INSTALLMENT	FIRST INSTALLMENT WITH PENALTY	SECOND INSTALLMENT	SECOND INSTALLMENT WITH PENALTY & COST
000-002	\$686,653.40	\$343,326.70	\$377,659.37	\$343,326.70	\$377,659.00
004-003	\$2,689.90	\$1,344.95	\$1,479.44	\$1,344.95	\$1,518.07
004-818	\$831.94	\$415.97	\$457.54	\$415.97	\$496.19
004-858	\$9,927.08	\$4,963.79	\$5,440.14	\$4,963.79	\$5,978.79
009-803	\$1,823.92	\$911.96	\$1,003.15	\$911.96	\$1,041.78
009-802	\$269.92	\$284.96	\$313.45	\$284.96	\$352.08
009-135	\$553.70	\$276.85	\$304.55	\$276.85	\$343.16
009-139	\$594.20	\$298.10	\$327.91	\$298.10	\$366.54
009-157	\$111.66	\$55.83	\$61.41	\$55.83	\$68.06
059-897	\$164.20	\$82.10	\$90.31	\$82.10	\$128.94
088-844	\$5,745.78	\$2,872.89	\$3,160.17	\$2,872.89	\$3,498.80
GRAND TOTALS	1789,668.20	8354,854.10	8390,317.44	8354,834.10	8390,742.39

UTILITY COMPANIES ARE BILLED BY TAX RATE AREA

THIS SUMMARY IS PROVIDED FOR YOUR CONVENIENCE

TAX RATES BY TAX RATE AREAS (2616-17)

PAGE 1

-----REVENUE DISTRICT-----			-----TAX RATE AREAS-----			
NUMBER	NAME	RATE	00-001	00-002	00-095	00-511
1-0001	SBE UNITARY	1.62649	X			
1-0002	SBE UNITARY RAILROAD	1.62649		X		
1-0095	SBE QUALIFIED ELECTRIC PROP	1.62649			X	
1-0511	SBE PIPELINE	.00000				X
TAX RATE AREA RATES			1.62649	1.62649	1.62649	.00000

TAX RATES BY TAX RATE AREAS (2014-17)

PAGE 14

NUMBER	REVENUE DISTRICT NAME	RATE	TAX RATE AREAS										
			04-000	04-001	04-002	04-003	04-004	04-005	04-007	04-008	04-010	04-011	
1-0000	GENERAL PURPOSE	1.00000	X	X	X	X	X	X	X	X	X	X	X
1-1001	GENERAL	.00000	X	X	X	X	X	X	X	X	X	X	X
2-2300	RDV CORONA DOWNTOWN AB1290	.00000		X									
2-2301	CITY OF CORONA	.00000	X	X	X	X	X	X	X	X	X	X	X
2-2302	RDV CORONA DOWNTOWN RENEWAL PROJ	.00000									X		
2-2304	RDV CORONA PROJ A	.00000			X								
2-2305	CORONA LTG MAINT 84-1	.00000	X	X	X	X	X	X	X	X	X	X	X
3-0501	ALYRD UNIFIED SCHOOL	.15303								X			X
3-1701	CORONA HORCO UNIFIED SCHOOL	.09416	X	X	X	X	X	X	X	X	X	X	X
3-9101	RIVERSIDE CITY COMMUNITY COLLEGE	.01649	X	X	X	X	X	X	X	X	X	X	X
3-9006	RIVERSIDE CO OFC OF EDUCATION	.00000	X	X	X	X	X	X	X	X	X	X	X
4-1351	FLOOD CONTROL ADMIN	.00000	X	X	X	X	X	X	X	X	X	X	X
4-1361	FLOOD CONTROL ZN 1	.00000					X			X			X
4-1362	FLOOD CONTROL ZN 2	.00000	X	X	X	X		X	X		X		
4-1381	FLOOD CONTROL ZN 1 DS	.00000					X			X			X
4-1852	CSA 152	.00000	X	X	X	X	X	X	X	X	X	X	X
4-4571	HM MOSQUITO & VECTOR CNTRL DIST	.00000	X	X	X	X	X	X	X	X	X	X	X
4-4671	HOME GARDENS SANITARY	.00000			X								
4-4673	HOME GARDENS SANITARY ANX	.00000											X
4-4913	HORCO COMMUNITY SRV DS	.00000							X				
4-5300	SD. CALIF. JT(19,30,33,36,37,54)	.00000	X	X	X	X	X	X	X	X	X	X	X
4-5351	HMD WEST 1302999	.00350	X	X	X	X	X	X	X	X	X	X	X
4-5701	WESTERN MUNICIPAL WATER	.00000	X	X	X	X	X	X	X	X	X	X	X
TAX RATE AREA RATES			1.11415	1.11415	1.11416	1.11416	1.11415	1.11415	1.11415	1.11415	1.17302	1.11415	1.17302
SPECIAL ASSESSMENTS													
28-4734	RIV CORONA RESOURCE CONSERVATION	.00000	X		X	X	X	X	X	X			X

TAX RATES BY TAX RATE AREAS (2016-17)

REVENUE DISTRICT NUMBER NAME RATE	TAX RATE AREAS									
	59-097	59-098	59-099	59-100	59-101	59-107	59-108	59-110	59-115	59-116
1-0000 GENERAL PURPOSE 1.00000	X	X	X	X	X	X	X	X	X	X
1-1001 GENERAL .00000	X	X	X	X	X	X	X	X	X	X
1-1121 CO FREE LIBRARY .00000	X	X	X	X	X	X	X	X	X	X
1-1123 CO STRUCTURE FIRE PROTECTION .00000	X	X	X	X	X	X	X	X	X	X
1-1149 RDV PROJ-ELCERRITO/TEMES AB1290 .00000							X		X	X
3-1701 CORONA NDRCO UNIFIED SCHOOL .09414	X	X	X	X	X	X	X	X	X	X
3-9101 RIVERSIDE CITY COMMUNITY COLLEGE .01649	X	X	X	X	X	X	X	X	X	X
3-9896 RIVERSIDE CO OFC OF EDUCATION .00000	X	X	X	X	X	X	X	X	X	X
4-1030 CO WASTE RESOURCE NGHT DIST .00000	X	X	X	X	X	X	X	X	X	X
4-1110 RIV CO REGIONAL PARK & OPEN SP .00000	X	X	X	X	X	X	X	X	X	X
4-1351 FLOOD CONTROL ADMIN .00000	X	X	X	X	X	X	X	X	X	X
4-1362 FLOOD CONTROL ZN 2 .00000	X	X	X	X	X	X	X	X	X	X
4-1852 CSA 152 .00000	X	X	X	X	X	X	X	X	X	X
4-4151 JURUPA COMMUNITY SERVICES .00000								X		
4-5571 NW MOSQUITO & VECTOR CNTL DIST .00000	X	X	X	X	X		X	X	X	X
4-6421 JURUPA AREA REC & PK .00000								X		
4-5300 SO. CALIF. JI(19,30,33,36,37,06) .00000	X		X	X	X	X	X	X	X	X
4-5351 WND WEST 1302999 .00358	X		X	X	X	X	X	X	X	X
4-5701 WESTERN MUNICIPAL WATER .00000	X			X			X	X	X	X
4-5711 WWD 1ST FR .00000			X		X					
4-5717 WWD 7TH FR .00000						X				
4-5752 WWD IMP DIST 2 .00000						X				
4-5791 WWD IMP DIST U-1 .00000					X	X				
TAX RATE AREA RATES	1.11415	1.11065	1.11415	1.11415	1.11415	1.11415	1.11415	1.11415	1.11415	1.11415
SPECIAL ASSESSMENTS										
28-4734 RIV CORONA RESOURCE CONSERVATION .00000	X	X	X	X	X	X	X		X	X
28-4740 INLAND EMPIRE JT(33,36)RES .00000								X		
28-5263 TEMESCAL VALLEY .00000							X			X

Amount: \$354,834.10 Sequence Number: 4292535850
 Account: 3359002196 Capture Date: 12/19/2016
 Bank Number: 06111278 Check Number: 15325998

Proc.12/15/2016 Rec.12/15/2016 019418 2



BNSF Railway Company
 P.O. BOX 961284
 FORT WORTH, TX
 76161-0284

3BE # 804
PRD # 556

64-1278
 611 DA

12/06/2016 0015325998

Pay THREE HUNDRED FIFTY-FOUR THOUSAND EIGHT HUNDRED THIRTY-FOUR USD AND
 10 CENTS

\$354,834.10

Pay to the COUNTY OF RIVERSIDE
 Order of RIVERSIDE COUNTY TAX COLLECTOR
 PO BOX 12005
 RIVERSIDE CA 92502-2205
 USA

Paul B...

Authorized Signature
 Bank of America

⑈0015325998⑈ ⑆061112788⑆3359002196⑈

Proc.12/15/2016 Rec.12/15/2016 019418 2

07832380

A
 DEPOSITORY BANK ENDORSEMENT
 NO NOT WRITE / SIGN / STAMP BELOW THIS LINE
 A
 X
 ENDORSE CHECK HERE

Electronic Endorsements:

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
12/19/2016	004292535850	11300016	Pay Bank	N		
12/16/2016	000000013750674	122000496	Undetermined	N		MUFG UNION BANK, NA
12/15/2016	000007546000020	122000496	Rtn Loc/BOPD	Y		MUFG UNION BANK, NA

Amount: \$354,834.10 Sequence Number: 5292434799
 Account: 3359002196 Capture Date: 04/13/2017
 Bank Number: 06111278 Check Number: 15340616

Proc.04/11/2017 Rec.04/11/2017 010474 2



BNSF Railway Company
 P.O. BOX 961284
 FORT WORTH, TX
 76161-0284

64-1278
 611 GA

04/03/2017 0015340616

Pay THREE HUNDRED FIFTY-FOUR THOUSAND EIGHT HUNDRED THIRTY-FOUR USD AND 10 CENTS

\$354,834.10

Pay to the Order of COUNTY OF RIVERSIDE
 RIVERSIDE COUNTY TAX COLLECTOR
 PO BOX 12005
 RIVERSIDE CA 92502-2205
 USA

Paul [Signature]
 Authorized Signature
 Bank of America

⑈0015340616⑈ ⑆061112788⑆3359002196⑈

Proc.04/11/2017 Rec.04/11/2017 010474 2

Proc.04/11/2017 Rec.04/11/2017 010474 2

07795911

DO NOT WRITE / SIGN / STAMP BELOW THIS LINE

DEPOSITARY BANK ENDORSEMENT

X

ENDORSE CHECK HERE

Electronic Endorsements:

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
04/11/2017	000001379000020	122000496	Rtn Loc/BOFD	Y		MUFG UNION BANK, NA
04/13/2017	005292434799	11300016	Pay Bank	N		
04/12/2017	000000013750440	122000496	Undetermined	N		MUFG UNION BANK, NA

Memorandum

To: Honorable Fiona Ma, CPA, Chairwoman
Honorable Diane L. Harkey, Vice Chair
Honorable George Runner, First District
Honorable Jerome E. Horton, Third District
Honorable Betty T. Yee, State Controller

Date: June 24, 2016

From: Mark Durham, Manager
Research and Statistics Section

Subject: **PRIVATE RAILROAD CAR TAX RATE
JULY 2016 – BOARD MEETING**

The attached table shows the 2015-16 average tax rate applicable to 2016-17 private railroad car tax assessments. The average rate of taxation throughout the state for 2015-16 was 1.140 percent, as computed under the provisions of Section 11403 of the Revenue and Taxation Code.

The report on computation of the tax rate indicates a rate for the 2016-17 private railroad car tax of 1.140 percent.


MD:cb;jm

Attachment

cc: (All with attachment)
Mr. Randy Ferris
Mr. Dean Kinnee
Ms. Joann Richmond
Ms. Michele Pielsticker
Mr. Ken Thompson

Recommendation by:

Approved:



Mark Durham, Manager
Research and Statistics Section



David J. Gau
Executive Director

**COMPUTATION OF THE TAX RATE APPLICABLE TO
2016-17 PRIVATE RAILROAD CAR TAX ASSESSMENTS**
(Assessed Values and Levies in Thousands of Dollars)

Counties	Net Taxable Assessed Value	Total Levies	Non-total Property Levies ¹	Levies on Total Property	Average Tax Rate
Alameda	\$ 238,859,169	\$ 2,888,730	\$ -	\$ 2,888,730	1.209 %
Alpine	709,185	7,093	-	7,093	1.000
Amador	4,683,638	47,648	-	47,648	1.017
Butte	20,105,297	213,591	162	213,429	1.062
Calaveras	6,259,441	69,449	-	69,449	1.110
Colusa	3,645,867	38,083	-	38,083	1.045
Contra Costa	174,286,919	2,002,200	767	2,001,433	1.148
Del Norte	1,724,753	18,173	-	18,173	1.054
El Dorado	28,226,975	300,921	496	300,425	1.064
Fresno	70,375,189	818,349	-	818,349	1.163
Glenn	2,925,706	30,948	-	30,948	1.058
Humboldt	12,306,039	134,441	-	134,441	1.092
Imperial	11,251,806	130,328	-	130,328	1.158
Inyo	4,117,440	43,887	-	43,887	1.066
Kern	84,832,197	997,394	-	997,394	1.176
Kings	9,851,230	106,957	-	106,957	1.086
Lake	6,754,145	73,310	-	73,310	1.085
Lassen	2,143,391	22,055	-	22,055	1.029
Los Angeles	1,276,104,762	14,852,452	3,709	14,848,742	1.164
Madera	12,989,436	141,959	-	141,959	1.093
Marin	66,732,347	750,500	-	750,500	1.125
Mariposa	2,127,413	21,379	-	21,379	1.005
Mendocino	10,732,651	120,085	-	120,085	1.119
Merced	20,827,126	229,127	-	229,127	1.100
Modoc	922,771	9,228	-	9,228	1.000
Mono	5,625,343	64,401	-	64,401	1.145
Monterey	57,408,576	631,909	-	631,909	1.101
Napa	32,797,827	358,909	412	358,497	1.093
Nevada	16,846,029	178,516	-	178,516	1.060
Orange	501,814,599	5,351,465	32,142	5,319,323	1.060
Placer	64,683,205	703,567	-	703,567	1.088
Plumas	3,847,117	39,801	-	39,801	1.035
Riverside	240,726,816	2,798,457	16,054	2,782,403	1.156
Sacramento	134,574,598	1,515,136	-	1,515,136	1.126
San Benito	6,849,582	80,972	-	80,972	1.182
San Bernardino	192,115,709	2,218,286	-	2,218,286	1.155
San Diego	439,116,960	4,997,534	-	4,997,534	1.138
San Francisco	194,392,572	2,299,552	-	2,299,552	1.183
San Joaquin	64,089,425	731,059	-	731,059	1.141
San Luis Obispo	48,081,075	518,690	-	518,690	1.079
San Mateo	179,189,674	1,999,835	-	1,999,835	1.116
Santa Barbara	72,467,183	771,998	-	771,998	1.065
Santa Clara	389,776,314	4,690,700	21,908	4,668,792	1.198
Santa Cruz	38,931,104	429,432	-	429,432	1.103
Shasta	16,194,259	176,971	1,767	175,204	1.082
Sierra	527,294	5,273	-	5,273	1.000
Siskiyou	4,498,928	47,555	-	47,555	1.057
Solano	46,014,715	539,845	-	539,845	1.173
Sonoma	77,499,404	879,042	122	878,920	1.134
Stanislaus	41,833,348	459,859	-	459,859	1.099
Sutter	8,690,147	94,679	-	94,679	1.090
Tehama	4,950,192	50,490	-	50,490	1.020
Trinity	1,425,145	14,460	-	14,460	1.015
Tulare	31,421,066	348,149	70	348,079	1.108
Tuolumne	6,576,051	70,467	-	70,467	1.072
Ventura	119,408,264	1,303,965	104	1,303,861	1.092
Yolo	23,811,042	255,538	-	255,538	1.073
Yuba	4,860,918	54,356	-	54,356	1.118
TOTAL	\$ 5,144,539,385	\$ 58,749,155	\$ 77,713	\$ 58,671,442	1.140 %

1. Non-total property levies are special district voter-approved tax levies that can include special taxes on intangibles, aircraft, baled cotton, special assessments, or any other property which is subject to a uniform statewide tax rate.

BNSF Railway
2301 Lou Menk Drive
Alan Annis
Fort Worth Texas 76131

USPS CERTIFIED MAIL



9214 8901 9403 8325 9610 02

RIVERSIDE COUNTY CLERK OF THE BOARD OF SUPERVISORS
PO BOX 1147
RIVERSIDE CA 92502-1147



Return Reference#:
Username: Alan Annis
Custom 1:
Custom 2:
Custom 3:
Custom 4:
Custom 5:

Postage: \$8.0500

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ASSESSMENT APPEALS DIVISION
CLERK/BOARD OF SUPERVISORS
2020 NOV 24 AM 10:14