



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Auditor-Controller
Department No.: 061
For Agenda Of: April 12, 2011
Placement: Administrative
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Robert Geis, CPA
Director(s) Ext 2100
Contact Info: Ed Price, CPA
Ext 2181

A handwritten signature in dark ink, appearing to read "R. Geis", is written over the printed name of Robert Geis.

SUBJECT: Impoundment of Various Taxing Entities' 2010-11 Property Tax Revenue

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- a. Approve and authorize the Auditor-Controller to impound \$1,088,540 of 2010-11 current year taxes from various entities' property tax revenues as noted on the attached Schedule A to mitigate potential losses from large assessment appeals filed by taxpayers; and
- b. Determine that the decision to approve and authorize the impoundment is not a project under the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(3) and 15378(b)(4) of the CEQA Guidelines, because it is a government fiscal activity which does not involve any commitment to any specific project which may result in a potentially significant physical effect on the environment.

Summary Text:

California Government Code § 26906.1 authorizes the Auditor-Controller, with the approval of the Board of Supervisors, to impound disputed revenues of any tax upon secured or unsecured property levied and collected by the county for the county or any revenue district when a claim or action is filed for the return of the revenues. The significant Assessment Appeals cases described under the Background section below are being recommended for impounding of taxes. This action does not require the Board to conclude that refunds are reasonably likely in whole or in part.

The impounded tax revenues will be held in an interest bearing fund and will be released when the assessment appeals actions are considered final.

By separate correspondence we will inform all impacted entities.

Background:

The significant Assessment Appeals cases described below are being recommended for impounding of taxes:

Oil and Energy

Breitbart Energy, one of the county's largest taxpayers, is a petroleum and gas company and has filed significant assessment appeals disputing escaped tax assessments for fiscal year 2009-10 and regular taxes for 2010-11.

Based on the appeals filed, the amount of tax revenues disputed are \$1,443,109 for fiscal year 2009-10 and \$1,506,917 for fiscal year 2010-11. While we feel it is unlikely that the entire amounts for both years in dispute would be required to be refunded to the taxpayer, we do feel it would be prudent to set aside via this impound a portion of these revenues.

The taxpayer has applied and been granted under California Revenue & Taxation Code § 4837.5 to pay over a four year period the 2009-10 escaped assessment taxes along with required interest. As taxes collected on these payment plans are normally apportioned to taxing entities once the last payment has been received at the end of the four year period there is no need to impound the first installment of the 2009-10 escaped assessment taxes at this time.

For the fiscal year 2010-11 regular taxes, we feel impoundment of 50% of the disputed amount is warranted. Attached is a Schedule A which identifies by taxing entity each taxing entity's share of the impoundment.

Mobile Home Parks

The Rancho Goleta – Silver Sands case involves assessment appeals by two separate mobile home parks which are being adjudicated together on the same assessment issues. This case has been in progress for several years and while the tax disputed for each individual tax year contested is not significant, in the aggregate the amount of tax being disputed is now considerable. Summerland by the Sea is a separate case which has not gone to hearing yet. It will most likely be continued until after the Court of Appeal issues a decision on Rancho Goleta - Silver Sands. Below is a table listing the disputed taxes by taxpayer.

<u>Taxpayer</u>	<u>Number of Tax Years Contested</u>	<u>Amount of Tax Contested</u>	<u>Current Year Taxes to be Impounded</u>
Rancho Goleta	9	\$1,142,807	\$127,544
Silver Sands	9	494,136	57,036
Summerland by the Sea	4	109,319	27,755
		<u>\$1,746,262</u>	<u>\$212,335</u>

For the fiscal year 2010-11 regular taxes, we feel impoundment of 100% of the disputed amount is warranted. Going forward and until settled, we will suggest that 100% of future year taxes also be impounded until the total impoundment equates to approximately 50% of the total taxes contested for all years. Attached is Schedule A which identifies by taxing entity each taxing entity's share of this year's current tax impoundment.

Fractional Ownership of Aircraft

These are four separate assessment appeal cases involving the taxation of fractionally owned aircraft operated by Net Jets, Bombardier, Flight Options, and Citation Shares. All four cases were consolidated for purposes of trial in Orange County Superior Court. The appeal of the trial court decision will be heard by the Second District Court of Appeal. These four aircraft companies have challenged the constitutionality of a new law which impacts how fractionally owned aircraft are assessed statewide. The case has been in progress for several years and while the tax disputed for each individual tax year contested is not significant, in the aggregate the amount of tax being disputed is becoming sizable. Below is a table listing the disputed taxes being contested by taxpayer.

<u>Taxpayer</u>	<u>Number of Tax Years Contested</u>	<u>Amount of Tax Contested</u>	<u>Current Year Taxes to be Impounded</u>
Net Jets	3	\$419,730	62,713
Bombardier	3	255,297	42,108
Flight Options	3	173,815	9,802
Citation Shares	3	74,047	8,123
		<u>\$922,889</u>	<u>\$122,746</u>

For the fiscal year 2010-11 regular taxes, we feel impoundment of 100% of the disputed tax amount is warranted. Going forward and until settled, we will suggest that 100% of future year taxes also be impounded until the total impoundment equates to approximately 50% of the total taxes contested for all years.

Attached is Schedule A which identifies by taxing entity each taxing entity's share of the impoundment. Schedule B delineates the impacts of these assessment appeals by affected taxing entity.

Fiscal and Facilities Impacts:

Budgeted: No

Fiscal Analysis:

Schedule A attached delineates the impacts to the affected taxing entities for the proposed 2010-11 impounds. Schedule B shows by affected taxing entity the amounts of taxes disputed by these appeals. This would represent the worst case scenario where the entire appeal amounts are won by the appellant for all years appealed.

Attachments:

Schedule A – Proposed 2010-11 Impounds by Taxing Entity and Assessment Appeal

Schedule B – Impacts by Taxing Entity of Significant Disputed Taxes Being Appealed by Taxpayer

Authored by:

Ed Price, Property Tax Division Chief