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MEMORANDUM

MEMO DATE: September 30, 2011

AGENDA DATE: October 5, 2011

TO: LANE COUNTY BOARD OF COMMISSIONERS

FROM: Anette Spickard, Assessor

AGENDA TITLE: **IN THE MATTER OF RESCINDING ORDER 10-10-27-1 AND
AUTHORIZING CANCELLATION OF THE COMCAST TAX APPEAL
RESERVE ACCOUNT**

I. MOTION

MOVE APPROVAL OF ORDER NO. 11-10-5-1, IN THE MATTER OF RESCINDING ORDER 10-10-27-1 AND AUTHORIZING CANCELLATION OF THE COMCAST TAX APPEAL RESERVE ACCOUNT

II. AGENDA ITEM SUMMARY

By cancelling the reserve, these funds will be returned to the unsegregated tax account for use in issuing a deferred billing credit refund to Comcast which is allowed under the new 2011 Oregon Law known as HB2569. In taking this action, the positive impact to the tax districts will be to eliminate the ongoing accrual of 12% interest should the State not prevail in the Comcast appeal which is now moving forward to the Oregon Supreme Court.

III. BACKGROUND/IMPLICATION OF ACTION

A. Board Action and Other History

Comcast filed a large-value property tax appeal for the 2009/10 tax year that is now proceeding to the Oregon Supreme Court. In October 2010 the board passed order 10-10-27-1 and set aside a portion of Comcast's 2010 tax payment in a reserve account in the event that Comcast prevailed over the state Department of Revenue on its property tax appeal and a large refund was to be issued.

Under a new 2011 Oregon law (HB 2569), the County now has a better tool to manage the disputed taxes while the appeal is in process – the “deferred billing credit”. This is preferable to the reserve account because it prevents further accrual of interest on the tax refund should the taxpayer prevail. HB 2569 became effective on September 29, 2011 and the county assessor intends to implement it in October, 2011 with respect to the Comcast appeal. It is at the assessor's discretion to apply this law to cases involving large value appeals that meet certain state criteria; it is not a mandatory action to be used in every appeal.

In 2009, the Department of Revenue determined that Comcast Corporation met the definition of a communication company under the state's central assessment statutes and

transferred those accounts from local assessors to the state. DOR began valuing Comcast Corporation for property tax purposes under those statutes in the 2009-10 tax year. Placing Comcast under the central assessment statutes allowed the state to increase the taxable value of the corporation from approximately \$224 million statewide to more than \$1 billion. Comcast has appealed that designation. The appeal affects 10 counties; Lane, Multnomah, Benton, Clackamas, Columbia, Linn, Marion, Polk, Washington and Yamhill.

The case went to trial in the Oregon Tax Court and at the end of August, 2011 Judge Breithaupt ruled in favor of Comcast and against the Department of Revenue. On September 26, 2011 the state appealed the case on to the Oregon Supreme Court. In light of the ongoing appeal and the new law available to mitigate the 12% interest risk to all of the tax districts, it is appropriate to cancel the refund reserve account and utilize the new law for this case.

As of the writing of this memo Multnomah, Clackamas, Washington and Marion counties are all proceeding in the same manner. The assessors will use the new law to defer billing for a portion of Comcast's 2011 taxes as well. If the appeal is not completed by October 2012, the assessors will again consider issuing a deferred billing credit for Comcast.

B. Policy Issues

The board can choose to keep the refund reserve account in place for Comcast for their 2010 tax amount, however the 12% interest will continue to accrue against those funds and there is no investment vehicle at this time that can generate enough interest to make that portion of the payment and it is unknown when this case will finally be resolved.

Once the appeal is completed if any amount is owed by Comcast it will be billed and payable within 45 days without delinquent interest. If a refund beyond the amount already credited under this new law is owed to Comcast that will be processed as soon as practicable with interest attributable to the portion that was already paid.

C. Board Goals

D. Financial and/or Resource Considerations

The amount of disputed value in this case just for Lane County alone is over \$100 million for each tax year at question (2009, 2010 and now 2011). The disputed value exceeds one-fourth of one percent of the total assessed value of all property within Lane County. The amount of tax at risk for refund due to this litigation is approximately \$1.56 million from 2009 and \$1.66 million from 2010. Approximately \$32,000 in interest is accruing each month.

Since the new law is effective on September 29, 2011 it makes sense to cancel the reserve account and issue the deferred billing credit refund to Comcast by October 15, 2011 in order to stop the interest accrual on the 2009 and 2010 tax years. (Interest is calculated as of the 15th of each month.)

E. Analysis

F. Alternatives/Options

#1 – Authorize the county treasurer to cancel the refund reserve account by October 15, 2011 and return the funds along with any interest earnings from that account to the unsegregated tax account to be used to issue a deferred billing credit to Comcast.

#2 – Do not cancel the refund reserve account and allow the accrual of the 12% interest to continue on the 2009 and 2010 tax amounts under dispute until final resolution of the case at which time any refund owed will be processed along with the interest.

G. Recommendation

The county assessor recommends option 1.

IV. TIMING/IMPLEMENTATION

Upon board approval the finance director will implement the board's order and the county assessor will issue the deferred billing credit for the 2009 and 2010 tax years for Comcast.

VI. ATTACHMENTS

Board Resolution and Order

IN THE BOARD OF COUNTY COMMISSIONERS OF Lane County, OREGON

ORDER NO.

11-10-5-1

IN THE MATTER OF RESCINDING ORDER 10-10-27-1 AND AUTHORIZING CANCELLATION OF THE COMCAST TAX APPEAL RESERVE ACCOUNT

THIS MATTER having come before the Board of County Commissioners after notification to the assessor by the Oregon Department of Revenue that the state has appealed the Oregon Tax Court ruling in the Comcast property tax case to the Oregon Supreme Court, and

WHEREAS, the county previously established a refund reserve account under ORS 311.814 for this appeal by Order 10-10-27-1, and

WHEREAS, Chapter 112, 2011 Oregon Laws (HB 2569), relating to property tax appeals, provides a new means for addressing the circumstances surrounding large-value property tax appeals that is beneficial both to taxpayers and to local governments. The new law, which took effect on September 29, 2011, allows for deferred payment of taxes attributable to disputed value which allows taxpayers to retain their money during the pendency of the appeal and protects local governments from the accrual of substantial interest debt associated with large property tax refunds, and

WHEREAS, the County's application of the authority granted in HB 2569 to the property tax appeal filed by Comcast as well as cancellation of the reserve account established by Order 10-10-27-1 is appropriate under the circumstances,

IT IS HEREBY ORDERED that the county treasurer is authorized to cancel the reserve account established by Order 10-10-27-1 and return all funds from the cancelled reserve account to the unsegregated tax collections account, for use in the assessor's implementation of Chapter 112, 2011 Oregon Laws (HB2569), and

IT IS HEREBY ORDERED that the county assessor is authorized to issue a deferred billing credit to Comcast for the 2009 and 2010 tax years in the amount of \$3,226,000.

Signed this ____ day of October, 2011

APPROVED AS TO FORM

Date 9-30-11 lane county


OFFICE OF LEGAL COUNSEL

Faye Stewart, Chair
Lane County Board of Commissioners

IN THE MATTER OF RESCINDING ORDER 10-10-27-1 AND AUTHORIZING CANCELLATION OF THE COMCAST TAX APPEAL RESERVE ACCOUNT