The Future of Tax Policy: A Public Finance Framework for the Age of AI.

Summary

- AI threatens traditional tax bases by reducing demand for human labor.
- The main burden of taxation will have to shift away from labor.
- Smart AI taxation requires distinguishing final services from productive capital investments.
- In the longer term, it may become desirable to tax the resource accumulation of AGI systems.

As artificial intelligence transforms our economy, policymakers worldwide are grappling with how to adapt our systems of taxation and public finance for an automated future. Common proposals—which we explore in more detail below—range from taxing robots and computing power to levying fees on AI-generated tokens and digital services. Yet without a coherent framework for evaluating these options, we risk implementing policies that could hinder innovation and undermine competitiveness while failing to address the fundamental fiscal challenges ahead.

Our recent research provides a framework for addressing these challenges by examining how taxation systems should evolve as AI transforms production and employment. We find that timing is key: Certain reforms make sense now, as AI is starting to displace labor, that would complement innovation and economic growth, while others could undermine efficiency and would be counterproductive until AI systems become far more autonomous. Understanding this distinction is crucial for policymakers seeking to manage the economic transition and maintain fiscal sustainability while fostering the innovation that will drive future prosperity.

Continue reading.

The Brookings Institution

by Anton Korinek and Lee M. Lockwood

January 8, 2026

U.S. Treasury Releases New Markets Tax Credit Qualified Equity Investment Issuance Report.

View the Treasury Report.

[Chicago's New Social Media Amusement Tax: Reed Smith]

Key takeaway

- The City of Chicago's new Social Media Amusement Tax raises several questions regarding its implementation. Key uncertainties include how social media providers will distinguish "Chicago consumers" from temporary visitors, the definition of "amusement," and the scope of the exemption for a "bona fide news website." The SMAT also is subject to challenge as a discriminatory tax on electronic commerce that violates the Internet Tax Freedom Act. These and other ambiguities suggest the SMAT is likely to face legal challenges.

The City of Chicago has enacted a new Social Media Amusement Tax (SMAT), codified in Chapter 4-156, Article VIII of the Municipal Code of Chicago. This client alert outlines the key provisions and definitions of this new tax.

Key Provisions

- **Effective dates and scope**: Applies beginning January 1, 2026 to for profit "social media businesses" that collect consumer data from more than 100,000 Chicago consumers in a calendar year.
- **Tax rate and computation**: $0.50 for each Chicago consumer above 100,000, calculated monthly; each month is a separate reporting period.
- **Filing and payment**: Monthly payments are due by the 15th of the following month, with an annual return due each August. The first payments, covering the month of January 2026, will be due February 16, 2026, because February 15 falls on a Sunday. The first return, covering January 1–June 30, 2026, is due August 17, 2026, because August 15 falls on a Saturday.

Key Definitions

- "Amusement" means engagement with media content delivered through the use of social media for the substantial purpose of entertainment and enjoyment.
- "Social media" broadly covers websites/apps/platforms enabling users to view/share/engage with images, video, and audio (including AI and live streams). "Social media" does not include any bona fide news website, application, or platform.
- "Consumer data" includes any information that can identify or be linked to a consumer (beyond basic contact details).
- "Chicago consumer" focuses on Chicago residents using social media in the City via an account whose data is collected. There is a rebuttable presumption that a consumer with a Chicago home or mailing address or with an internet protocol (IP) address is a Chicago consumer.

Exclusions and Grouping

- For purposes of the SMAT, a social media business does not include an internet search provider, internet service provider, email service, certain streaming service where the content is not user-generated, ad network solely delivering commercial content, telecommunication carrier, cloud computing service, and or news gathering organization. Controlled groups under IRC §1563(a) are treated as a single entity.

Reed Smith LLP – David P. Dorner and Michela V. Petrosino

January 5 2026

[District Court Affirms Judgment in Favor of Kansas City Park Tax.]

Rodrock Homes of Johnson Cnty LLC v. City of Olathe

Summary by Tax Analysts

In Rodrock Homes of Johnson County LLC v. City of Olathe, Judge John W. Broomes of the U.S. District Court for the District of Kansas affirmed the previous judgment finding that the home development company failed to present any evidence that supported its claim that there was a clear error or injustice in the judgment.

[Continue reading.]

JAN. 5, 2026

[IRS PLR: Nonprofit's Income Was From Government Function]

SUMMARY BY TAX ANALYSTS

The IRS ruled that a nonprofit corporation's income is excludable from gross income under section 115(1) because it is derived from the exercise of an essential governmental function and the income accrues to a state or political subdivision of a state.

[Continue reading.]

12/30/2025

TAX - OHIO

[State ex rel . Martens v. Findlay]

Supreme Court of Ohio - December 18, 2025 - N.E.3d - 2025 WL 3672217 - 2025-Ohio-5589

Taxpayer brought mandamus action against city and municipal employees, alleging that city failed to comply with municipal income tax statutes and seeking to prohibit city from commencing tax collection efforts against taxpayer and all other delinquent municipal taxpayers.

The Third District Court of Appeals granted city's motion to dismiss. Taxpayer appealed.

The Supreme Court held that taxpayer did not have standing to bring mandamus action to prevent city from commencing tax collection efforts against taxpayer and other delinquent taxpayers.

Taxpayer did not have standing to bring mandamus action against city and municipal employees to prevent city from commencing tax collection efforts against taxpayer and other delinquent taxpayers; taxpayer did not set forth any facts showing that he himself was party to any tax-collection lawsuit filed by city that was pending when he initiated instant mandamus action, he did not set forth any facts showing that he personally suffered or was threatened with any direct and concrete injury, and, thus, he did not show that he would have been directly benefited or injured by judgment in instant case.

TAX - CALIFORNIA

Howard Jarvis Taxpayers Association v. Coachella Valley Water District

Court of Appeal, Fourth District, Division 2, California - November 26, 2025 - Cal.Rptr.3d - 2025 WL 3295747

Taxpayers' association filed combined petition for writ of mandate and reverse validation actions against water district challenging the constitutionality of groundwater replenishment charges that water district imposed indirectly on its domestic customers.

The Superior Court sustained a demurrer. Association appealed. The Court of Appeal affirmed in part and reversed in part. Thereafter, the Superior Court determined that the replenishment charges were unconstitutional taxes, after which the Superior Court entered a remedies order. Water district appealed, association cross-appealed, and appeals were consolidated.

The Court of Appeal held that:

- Domestic customers sustained economic injury, as required for association's standing as customers' representative;
- Replenishment charges were unconstitutional "taxes" without voter approval;
- Pleadings and government claims sufficiently informed water district that all three of its areas of benefit were subject of challenge;
- No prejudicial error resulted from grant of injunctive relief requiring water district to comply with constitutional amendment defining "tax";
- Replenishment charges were "assessments" subject to validation statutes; and
- Statute of limitations imposed by validation statutes were not equitably tolled by water district's purported fraud.

TAX - CALIFORNIA

Morgan v. Ygrene Energy Fund, Inc.

Supreme Court of California - December 4, 2025 - P.3d - 2025 WL 3483108

Homeowners over age of 65, who had entered into Property Assessed Clean Energy (PACE) loans to finance energy and water conservation improvements to their properties, brought actions against private companies that made loans, were assigned rights to payment, or administered PACE programs for municipalities, alleging violations of Unfair Competition Law (UCL), and they sought property tax refunds, injunction against future tax assessments, and removal of tax liens.

The Superior Court sustained demurrers without leave to amend and dismissed action. Homeowners appealed, and appeals were consolidated. The Court of Appeal affirmed. Review was granted.

The Supreme Court, Kruger held that:

- Homeowners were required to follow exclusive Revenue and Tax Code's tax refund procedures for challenging taxes when seeking to invalidate underlying obligation to pay PACE assessments;
- Homeowners were not required to follow statutory tax relief procedures in order to pursue other,

- nontax-related, remedies concerning administration of PACE loans;
- Homeowners were not required to comply with requirements for seeking assessment reduction to challenge underlying obligation to pay PACE assessments;
- Challenges to PACE assessments were subject to refund procedures contained in Revenue and Taxation Code for ad valorem taxes; and
- Trial court had to consider whether homeowners should be granted leave to amend.

Homeowners over age of 65, who had entered into Property Assessed Clean Energy (PACE) loans to finance energy and water conservation improvements to their properties, were required to follow exclusive Revenue and Tax Code's tax refund procedures for challenging taxes when directly or indirectly seeking to invalidate underlying obligation to pay PACE assessments, i.e., they should have started by paying PACE assessments and then seek administrative tax relief from local tax authorities, rather than filing suit in court against private companies that made loans, were assigned rights to payment, or administered PACE programs for municipalities; although homeowners' claims for relief did not, in terms, explicitly ask for injunction against any collection of assessments, their central claims for relief effectively sought to invalidate PACE assessments and prevent their future collection outside of statutory tax relief process.

The Quicker Picker Upper – Private Business Use Absorbed by Qualified Equity: Squire Patton Boggs

Tax lawyers love when tax-exempt bond-financed projects owned by governmental entities[1] ("TEB Projects") are also financed with qualified equity. Why you ask? Because it makes their job easier. Since you are likely interested in making your tax lawyer's life more pleasant, keep reading, as this blog post explains what qualified equity in a TEB Project is and why it is beneficial.

What is qualified equity? Qualified equity is basically any funds that go into a TEB Project that are not from tax-advantaged bonds (the "Bonds") – so it covers cash on hand, financing from a taxable line of credit,[2] donations, etc. Another less obvious source of qualified equity is capitalized interest (from a federal income tax standpoint)[3] paid on the Bonds from sources other than Bond proceeds.

Continue reading.

By Cynthia Mog on December 1, 2025

The Public Finance Tax Blog

Squire Patton Boggs

IRS PLR: Set-Aside of Public High School Construction Funds Approved

The IRS approved a private foundation's request to set aside funds that will be used to construct a public high school in a distressed community.

Read IRS LTR 202549022.

TAX - NEW YORK

First United Methodist Church in Flushing v. Assessor, Town of Callicoon

Court of Appeals of New York - November 24, 2025 - N.E.3d - 2025 WL 3259878 - 2025 N.Y. Slip Op. 06526

Church commenced article 7 proceedings against town's property tax assessor and board of assessment review challenging town's denial of religious use tax exemption for parcel of land it owned in rural zoning district.

The Supreme Court granted church's petitions, and defendants appealed. The Supreme Court, Appellate Division, affirmed. Leave to appeal was granted.

The Court of Appeals held that record supported trial court's finding that town failed to discharge its burden to prove zoning violation sufficient to defeat church's entitlement to exemption.

Record supported trial court's finding that town failed to discharge its burden to prove zoning violation sufficient to defeat church's entitlement to religious use tax exemption for either of tax years in question, in light of evidence that, although church may have purchased property in rural zoning district with intention of using it as "retreat," its actual use of property was to clear approximately one acre of parcel and, on that cleared area, grow vegetables for charitable distribution to low-income residents.

GFOA Member Alert: IRS Unveils "No Tax on Overtime" Guidance

The Internal Revenue Service (IRS) published guidance for employees to deduct qualified overtime compensation from federally taxable income, also known as "no tax on tips," beginning in 2025. This new, temporary deduction will have significant implications for government finance officers as governmental entities are one of our nation's largest employers and adhere to a combination of federal, state and local regulations on overtime pay.

Read more.

Mich. Justices To Weigh Burden Of Proof In Hangar Tax Fight.

The Michigan Supreme Court agreed to weigh a city's appeal of a decision that said the municipality had the burden of proof to show that a company's hangar leased from a regional airport authority was subject to tax.

The state's justices issued an order Friday granting oral arguments on Traverse City's appeal application, instructing the parties to file supplemental briefs addressing whether the city has the burden to prove that its lessee-user tax applied to Bodeco LLC for 2021 and subsequent years. The state Court of Appeals held in a published decision remanding the case that the Michigan Tax Tribunal incorrectly said it was incumbent on Bodeco to show that it was exempt from the city's tax.

Judge Christopher P. Yates said in the appellate court's March opinion that while Michigan precedent says taxpayers have the burden of proof to show that an exemption statute applies to their situations, “there is a paucity of authority allocating the burden of proof for establishing that tax-imposing statutes apply.”

Continue reading.

law360.com

By Paul Williams ·

2025-11-24

Mich. High Court Won't Rethink Rejecting 'Rain Tax' Case.

The Michigan Supreme Court declined for a second time to review a pair of challenges to Detroit’s stormwater fees, allowing to stand lower court opinions that said the fees were not taxes subject to constitutional limits.

In orders issued Friday, Michigan’s highest court said it would not reconsider its decision of Sept. 19, when it declined to review the challenges to the Detroit fees for the first time and rejected a challenge to similar fees imposed by Ann Arbor.

In a motion for reconsideration Sept. 26, the Detroit Alliance Against the Rain Tax asked the court to rethink turning away its challenge to the fees, which the group alleged are unconstitutional. A group of property owners behind the other Detroit challenge, led by city resident Nicola Binns, also asked the court to reconsider.

Continue reading.

law360.com

By Maria Koklanaris

2025-11-24

Delaware’s Supreme Court Affirms Decision Denying New Castle County Property Owners’ Challenge to Split-Rate 2025-26 Residential and Non-Residential Property Taxes: Richards, Layton & Finger

On November 12, 2025, the Supreme Court of the State of Delaware affirmed the Court of Chancery’s decision in *Newark Property Association, et al. v. State of Delaware, et al.*, 2025 WL 3041907 (Del. Ch. Oct. 30, 2025), in which the Court of Chancery held that House Bill 242 (“HB242”), which permits school property tax rates to temporarily be reset and differentiated between residential and non-residential properties, does not violate the United States Constitution, the Delaware Constitution, or Delaware statutes.

The Plaintiffs appealed the Court of Chancery’s decision, arguing that the Delaware Constitution’s Uniformity Clause prohibits the state from charging different property tax rates between residential and non-residential properties, and arguing further that the reclassification of certain properties (from residential to non-residential) for tax purposes to correct classification errors violates HB242's provision regarding revenue neutrality. Both arguments failed.

Now that the Court of Chancery's ruling has been affirmed, New Castle County property owners should still expect to see supplemental tax bills based on the bifurcated rates and any property reclassifications soon. The extended deadline for payment of New Castle County property tax bills is currently November 30, 2025; however, there is legislation pending that would further extend the deadline to December 31, 2025, if signed by Governor Matthew Meyer.

November 17, 2025

IRS Releases Complete Revision of IRM 3.12.26, Tax Exempt Bond Error Resolution Procedures

View the Revised 3.12.26 Tax Exempt Bond Error Resolution Procedures.

TAX - SOUTH CAROLINA

Thompson v. Killian

Supreme Court of South Carolina - November 5, 2025 - S.E.2d - 2025 WL 3085990

Residents filed suit, individually and as a class, against county administrator, county treasurer, county council, county, city, city council, and city manager, seeking declaratory and monetary relief for city's and county's imposition of road maintenance fees.

The Court of Common Pleas granted defendants' motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim, and subsequently granted in part and denied in part county defendants' motion to alter or amend the dismissal order. Residents appealed, and subsequently requested certification of appeal to the Supreme Court, which was granted.

The Supreme Court held that:

- County's and city's road maintenance fees did not fall within Revenue Procedures Act's (RPA) definition of "taxes;"
- RPA's class-action prohibition bars class actions against political subdivisions only in disputes concerning value-based property taxes;
- Treasurer was not subject to suit under statutory provision imposing liability on public officers for improperly-charged fees;
- Quasi-contract equitable claims do not fall under South Carolina Tort Claims Act's (SCTCA) exception to sovereign immunity for contract-based claims; and
- Stipulated dismissal of residents' state due-process challenge to fees was law of the case.

County and city road maintenance fees did not fall within Revenue Procedures Act's (RPA) definition of "taxes," and thus RPA did not deprive trial court of subject matter jurisdiction over residents' individual and putative class action seeking to challenge county's and city's impositions of such fees, even though residents challenged fees as unlawful taxes; fees were not established under "Taxation" statutory title, but rather under statutory titles that allowed local governments, i.e. counties and cities, to impose and collect service or user fees, and General Assembly had not granted Department of Revenue authority to collect road maintenance fees.

NASBO: Disaster-Related Tax Extensions Can Pose Challenges for States

Read the NASBO report.

National Association of State Budget Officers

By Brian Sigritz

Amid Data Center Boom, Public Utilities Push for More Flexibility with IRS Bond Rules.

Public power utilities are pushing for regulatory and legislative changes to allow them to float more tax-exempt bonds to finance the energy-hungry data center boom even as the utilities, and their bondholders, face risks from the large and growing capital plans required to keep pace with the boom.

The industry for years has lobbied Congress and the Treasury Department to make the changes, which would loosen terms on private use rules for tax-exempt financing. The issue now has taken on more urgency amid a data center boom that promises to transform the U.S. energy landscape. The Trump administration has prioritized building out artificial intelligence infrastructure as part of "America's AI Action Plan" and the Department of Energy has launched the "Speed to Power" initiative to "accelerate the speed of large-scale grid infrastructure project development for both transmission and generation."

"Data centers have huge electricity demands and they want it yesterday," said John Godfrey, senior government relations director at American Public Power Association, which represents public power utilities. "We've gotten instructions from the top that we need to accommodate those needs, and we want to, but we need to get unnecessary hurdles out of the way."

Under current IRS private use rules for tax-exempt bonds, public power utilities are restricted to three-year contracts with non-government customers, and less than 10% of a bond issue, or $15 million, that would go to a private use.

Eliminating the three-year contract restriction alone would "unlock billions in grid upgrades, strengthen America's economy, and ensure public power communities aren't left to shoulder the costs alone," the Large Public Power Council said in a July blog post.

Godfrey says industry advocates are talking with the Treasury Department and congressional tax writers and staffers to promote the changes. The hope is that the current AI race will provide a "fresh look at a longstanding problem," he said.

There is no sign the proliferation of data centers, which already numbered 5,426 as of March, according to Statista, is slowing. Investment in electricity infrastructure by electric utilities is projected to be $1.4 trillion from 2025 to 2030, according to Morningstar (MORN). That's double the amount invested in the prior 10 years.

The growth is reflected in the spike of public power municipal bond issuance since 2023 after years of relatively flat issuance. Electric power issuance rose 48% in the first half of 2025, totaling $15.2 billion in the first six months, the fastest-growing sector in the municipal bond market. New-money issuance for the first half was up 104.1%.

In 2024, public power bond issuance totaled $26.8 billion. That's up from a 10-year annual average of $14 billion, Nuveen noted in an April piece on data centers.

"It's pretty shocking if you look at the numbers," Godfrey said. "It's a dramatic increase."

That issuance would be higher if the industry wins its proposed changes to the private use test.

The scale and cost of the projects, the tech companies' need for speed, and the lag between a commitment to build and actual construction pose risks to utility credits, the ratepayers and investors that buy the debt, experts said.

Some utilities are being asked to plan for projects that will never get built. Other projects may not materialize after bonds have been sold. Rising electricity bills are increasingly sparking political pushback, as are the water requirements for what Moody's, in a March report, called among the most "resource-intensive facilities in modern infrastructure."

Public utilities are "exploring and implementing strategies to help mitigate the risks" associated with the data center boom, said Patricia Taylor, APPA's director of policy and research. "The scale of the data centers, the speed, the operating profiles – those are some of the big challenges," she said.

Some utilities, facing a huge number of interconnection requests, are asking tech companies to pay a fee to discourage companies from clogging the queue with speculative projects. Some are imposing specific rates for data centers or other large-load customers. Others are entering into power purchase agreements for new plants to hedge potential risks.

"We're identifying these risks but also we're seeing the opportunities," Taylor said. "They're bringing load and revenue to the communities but we want to make sure they're not negatively impacting the communities."

In a report released Wednesday titled "AI is racing ahead and energy infrastructure needs to catch up," Tom Kozlik, head of public policy and municipal strategy at Hilltop Securities, said the tech companies driving the boom should shoulder the financial burden and risks.

"It's important that there is coordination between the public and private side and that the public side isn't ask or isn't forced to take on more risk than what they should especially during these individual massive projects," Kozlik told The Bond Buyer.

The stakes are high, Kozlik said in the report, saying the country's economy and security depends on a developing a powerful AI sector. Modernizing the outdated IRS rules to allow for more tax-exempt financing would help break the "energy bottleneck" that is endangering the country's AI sector, Kozlik said.

"Financing matters," he said. "Modernizing those rules and protecting the municipal-bond tax exemption is not optional. It's critical."

By Caitlin Devitt

BY SourceMedia | MUNICIPAL | 11/07/25 01:34 PM EST

CDFA Intro Tax Increment Finance Course.

November 18-19, 2025 | 12:00 PM – 5:00 PM Eastern

The Intro Tax Increment Finance Course offers an in-depth look at the guiding principles and appropriate application of TIF. Topics discussed include the basics of TIF, negotiating and structuring TIF deals, understanding various financing structures, and combining TIF with different capital sources. Several case study examples from active TIF deals will be presented with explanations for how the community was proactively engaged in the process.

The Intro Tax Increment Finance Course is designed to bring TIF deal-making and best practices into focus and support the entire TIF community including economic developers, public agencies, bond issuers, legal professionals, developers, financial advisors, and other stakeholders.

This course qualifies for the CDFA Training Institute's Development Finance Certified Professional (DFCP) Program. Join us online, and start down the road to personal and professional advancement today.

Click here to learn more and to register.

CDFA Advanced Tax Increment Finance Course.

November 20, 2025 | 11:00 AM – 5:00 PM Eastern

The Advanced Tax Increment Finance Course builds upon curriculum from the Intro Tax Increment Finance Course by focusing more concretely on structuring the deal and developing short- and long-term policies. Attendees will also learn about performance monitoring, feasibility analysis, and using TIF in conjunction with other development finance tools.

This course qualifies for the CDFA Training Institute's Development Finance Certified Professional (DFCP) Program. Join us online, and start down the road to personal and professional advancement today.

Click here to learn more and to register.

TAX - LOUISIANA

Belaire Development & Construction, LLC v. Succession of Shelton

Supreme Court of Louisiana - October 24, 2025 - So.3d - 2025 WL 2990280 - 2025-00151 (La. 10/24/25)

Tax-sale purchaser brought quiet-title action against succession of prior owners of parcel of real property, seeking to be declared owner of a 99% interest in property.

Succession's executrix filed a reconventional demand and petition to annul tax sale, adding third-party defendants including city that had obtained for a period a 1% interest in parcel through a series of tax sales, alleging that the tax sales were null and void because executrix did not receive proper pre- and post-sale notice and not all co-owners of parcel were provided requisite notice.

The District Court sustained tax-sale purchaser's and city's peremptory exception of prescription as to executrix's reconventional demand and later granted purchaser's quiet-title petition. On executrix's appeal, the Court of Appeal reversed and remanded. Certiorari was granted.

The Supreme Court held that:

- Tax sale could not be attacked as absolute nullity for failure to provide succession's executrix with statutorily required pre-tax sale notice;
- Reconventional demand was not prescribed on its face, and thus, tax-sale purchaser and city bore burden of proving that executrix's nullity action was prescribed; and
- Executrix was not "duly notified" of tax sale, and thus, redemption nullity action filed within six months of notice was not prescribed.

Succession's executrix was not "duly notified" of tax sale of succession's property to tax-sale purchaser by notice sent via ordinary mail by purchaser, and thus, executrix's redemption nullity action filed within six months of notice was not prescribed, in purchaser's quiet-title action seeking to be declared owner of 99% interest in property; notice failed to meet statutory and due process requirements by failing to inform executrix of correct time period within which she had to challenge tax sale, and fewer than five years had elapsed since filing of tax sale certificate.

Industry Looks Boldly Toward the Future as Low Income Housing Tax Credit Bond Financing Threshold Requirements are Halved

For years, housing advocates have sought tweaks to the Low Income Housing Tax Credit program that intend to bolster the number of affordable units produced each year.

Recently, those advocates succeeded in their efforts, as two essential changes were codified as part of the sprawling One Big Beautiful Bill Act (H.R. 1), signed into law early last month.

The first is important, and increases the annual amount of nine percent credits by 12 percent (indexed for inflation moving forward).

Continue reading.

taxcreditadvisor.com

By Abram Mamet

August 18, 2025

TAX - PENNSYLVANIA

National Hockey League Players Association v. City of Pittsburgh

Supreme Court of Pennsylvania - September 25, 2025 - A.3d - 2025 WL 2745552

Professional athletes and players' associations filed action against city, alleging its facility tax, which imposed a 3% tax on income derived by nonresidents' use of city's publicly funded stadiums and arenas, while imposing 1% tax on income derived by residents' use of such facilities, and seeking injunction to prevent city from imposing and collecting tax.

The Court of Common Pleas held the tax violated the Uniformity Clause of the State Constitution and issued the requested injunction. City appealed, and the Commonwealth Court affirmed. City petitioned for allowance of appeal, which was granted.

The Supreme Court held that facilities tax violated the Uniformity Clause of the state constitution.

City facility tax, which imposed a 3% tax on income derived by nonresidents' use of city's publicly funded stadiums and arenas, while imposing 1% tax on income derived by residents' use of such facilities, violated the Uniformity Clause, even if total tax burden on residents, who were subject to 2% school district tax, and nonresidents, who were not subject to the school district tax was equal.

There's No Good Way to Pay for Property Tax Repeal.

Key Findings

- Property taxes currently generate 70 percent of all local tax revenue, some or all of which would have to be replaced with other taxes under property tax repeal.
- Replacing the property tax with newly granted local taxing authority is exceedingly difficult, because local sales and income tax bases vary widely across jurisdictions; there may, for instance, be no feasible sales tax rate by which an agricultural county or bedroom community could replace its property tax revenue.
- Backfilling forgone local property tax revenue through new state taxes is difficult because it dramatically shifts overall tax burdens, undermines local accountability, and cannot easily adjust for changing population mixes.
- All revenue alternatives are less conducive to economic growth than the existing property tax regime, but some transfer regimes are sharply degrowth.
- Taxpayers should have the opportunity to evaluate plans for replacing property tax revenue, not just promises of repeal without trade-offs.

Continue reading.

Tax Foundation

By: Jared Walczak

October 7, 2025

After OBBBA, What's Next for Clean Energy Tax Credits? Here are Some

Considerations - Novogradac

The only constant is change. It's inevitable.

Policy and legislation changes shaping the current energy landscape will require renewables to adapt. The increasing need for new generation after decades of relatively flat demand growth will also drive changes. The ability of renewable energy stakeholders to provide more timely and cost-effective solutions will keep clean power in the mix, albeit at a slower pace of uptake, at least in the immediate future.

At the same time, the climate will continue to be an existential issue and the United States needs steady jobs and resilient sources of clean energy. We will inevitably have the opportunity to change, reinvent or resurrect tax credits and other public incentives for renewable energy solutions. How should we use lessons learned from both the Inflation Reduction Act (IRA) of 2022 and the One Big Beautiful Bill Act experiences to inform future strategy?

We offer a few thoughts and considerations:

Consider Partnering with Other Energy Markets (e.g., Oil and Gas) to Protect the Concept of Public Support for Public Goods, Including Reliable Energy

An effective partnership with oil and gas players would enable renewables to be viewed as complementary to baseload technologies and an important part of economic and energy security. It would also undercut the argument that renewables are too mature to warrant continued support. If the fossil industry receives financial support, renewables should too. Given that many "big oil" players are already invested in renewable companies, this may be a real possibility.

Consider the Rate at Which Tax Credits are Still Effective But are More Manageable for Budget and Messaging

Tax credits had a much more robust impact in the context of a 35% corporate tax rate. With the current corporate rate at 21% and many corporations unwilling to go lower than an effective tax rate of 15%, the demand for tax credits is not unlimited.

Constrained access to tax investors may be more acutely felt in middle-market deals. The added value and volume of tax investing after the IRA was and is highly concentrated in storage systems, very large installations and manufacturing plants.

Further, the credit adders increase the difficulty of finding budget "pay-fors" at the federal level and may increase unwanted political attention. The domestic content adder seems redundant in the face of FEOC requirements, and it is unclear that any of the "community" adders had the desired impact on communities, in large part due to the time needed to develop sites to the federal requirement and limited bandwidth at the IRS to review applications.

We suggest a smaller credit is more sustainable in the long run. A flat rate of approximately 25% may be a good compromise. It is more in line with other community development credits and would reduce the 10-year outlay for budget discussions while still promoting renewable uptake.

Broaden the Focus for Incentives and Support to More Than Tax Credits

Federal tax credits are but one of the incentives needed to move the market. State-based and regional programs have had great success. Renewable portfolio standards, community solar access, net metering and storage incentive programs are good examples.

The ability to transmit and deliver power is critical to all generating sources. The grid desperately needs investment to address access and reliability. Regional system operators and the Federal Energy Regulatory Commission should be targets of collective lobbying to encourage progress.

The federal, state and local requirements for construction permitting, interconnection and environmental reviews should be streamlined. Recent changes to the National Environmental Policy Act rules may help. An expansion of the Public Utility Regulatory Policies Act rules around priority dispatch to encompass installations larger than 5 MW would give some comfort to investors that small and medium deals have sales options for their power into the future.

The renewable community should support state and public utility programs that allow for net metering, protect renewable dispatch, guarantee access to transmission and delivery, and give benefits to low-income households.
In addition, a simplification of the federal accounting treatment for partnership investments would ease a barrier to entry for investors and developers alike. The recent introduction of proportional amortization was intended to help, but arguably made the rules more complex.

Review Experience with Various Tax Investing Structures

The current policy allows a range of investments to monetize renewable credits. This flexibility has proven useful for projects of varying sizes and market segments, each with distinct financing needs. We think the range of options should remain.

The options vary in terms of timing, return and complexity. At one end of the spectrum are sale-leasebacks, wherein the investor buys the entire project for a defined period. Then there are partnerships where ownership is shared and benefits are allocated on a negotiated split and for a defined period of time. The proportional amortization (PAM) option for partnership accounting became possible due to Financial Accounting Standards Board changes. PAM essentially allows the investor to buy into the value of tax credits and depreciation, but not cash, and can be rigid to implement. Finally, the transfer option is a straightforward purchase of the credits only–no cash or depreciation. As you progress through these options, the Generally Accepted Accounting Principles accounting gets simpler and returns decline.

Market reactions over the past two years show that simplicity sells, especially at scale. Large investors looking to offset large tax positions trend almost exclusively to transfers, irrespective of lower returns. Investors looking for a more engaged option with higher returns may still invest in individual projects and portfolios of commercial and industrial and community solar through the sale-leaseback or partnership structures. The hybrid or T-flip structure allows for short-term equity (i.e., less than 10 years) to invest and then sell some or all the credits and depreciation. But the hybrid still ultimately relies on investors with tax appetite and may require a complex set of documents.

In summary: To achieve progress on practical, sustainable and effective public incentives for renewable energy, it’s essential to find the right balance of messaging, simplicity, coverage and return potential within an “all-of-the-above” power market.

There are certainly additional strategies and actions worth considering. We encourage all stakeholders to look forward to the future development of the energy market.

Novogradac

Published by Karin Berry and Paul Holshouser on Thursday, October 2, 2025

Karin Berry is the managing director of NT Solar and Paul Holshouser is the director of solar transactions for NT Solar. NT Solar is a division of the National Trust Community Investment Corporation, a tax credit service provider for with corporate investors in renewable energy investment tax credit, historic tax credit, and new markets tax credit transactions.

The AI Revolution in Property Tax Assessment.

Accurately assessing property values is essential for ensuring that localities have the revenue to support public services like schools, roads, and law enforcement. However, traditional assessment methods face a litany of problems. Valuations can often be inconsistent and municipalities are typically understaffed and resource-constrained.

While there has been a lot of attention on generative AI systems like ChatGPT, predictive AI models trained on property characteristics, sales data, and market trends are increasingly being adopted to address the core challenges of traditional property tax assessment methods.

As home sale data and tax assessments have become easily accessible, researchers have found systematic regressivity in property tax assessment in the past decade. Lower-value properties are typically over-assessed, while higher-value homes are under-assessed. A 2022 report from the Philadelphia Fed, for example, found that "owners of inexpensive houses pay almost 50% higher effective tax rates than owners of expensive houses." Research on Atlanta's property taxes, enabled by modeling from Center for Municipal Finance at the University of Chicago, found that 69 percent of the lowest-value properties in Atlanta are over-assessed, while 32 percent of the highest-value homes are under-assessed.

Continue reading.

The American Enterprise Institute

By Will Rinehart

September 29, 2025

TAX - CALIFORNIA

Olympic and Georgia Partners, LLC v. County of Los Angeles

Supreme Court of California - August 28, 2025 - P.3d - 2025 WL 2473858 - 2025 Daily Journal D.A.R. 8392

Taxpayer, which was a hotel owner, sought review of property-tax assessment, which stemmed from dispute as to whether calculation of hotel's value should have excluded the subsidy that city paid to hotel owner, the one-time payment of "key money," which effectively was the equivalent of a price discount, that hotel owner received from companies that it hired to manage the hotel, and intangible "hotel enterprise" assets of goodwill, the workforce, and restaurant operations.

After a bench trial, the Superior Court, Los Angeles County, determined that the county's assessment appeals board was right to include the subsidy and the "key money" payment in its valuation, and remanded the issue of the "hotel enterprise" assets. Taxpayer and county appealed.

The Court of Appeal affirmed in part, reversed in part, and remanded. Parties again appealed.

The Supreme Court held that:

- Nightly "occupancy tax" city agreed to assign to original hotel developer as incentive to construct hotel represented revenue from use of hotel itself and, thus, tax payments were properly included when determining hotel's assessed value for tax purposes;
- One-time "key money" payment that hotel's management company paid to original hotel developer in exchange for right to manage hotel and brand it as a company-related property for a 50-year period represented revenue from use of hotel itself and, thus, tax payments were properly included in income stream analysis when determining hotel's assessed value for tax purposes; and
- County assessor's failure to adequately address hotel owner's evidence as to valuation of "enterprise assets" derived from its management agreement with hotel management company required remand to county's assessment appeals board for further proceedings regarding valuation of those "enterprise assets."

Nightly "occupancy tax" city agreed to assign to original hotel developer as incentive to construct hotel represented revenue from use of hotel itself, rather than revenue attributable to intangible assets resulting from hotel's enterprise activity, and, thus, tax payments were properly included when determining hotel's assessed value for tax purposes; hotel was developed pursuant to government-facilitated contractual rights, under parties' occupancy tax agreement, that enabled property to generate more revenue than it otherwise would have, rights were integral to economic viability of project and provided means by which properties were put to beneficial use, and tax payments were related not just to development of hotel but to its continued operation in way that was beneficial to city.

Nightly "occupancy tax" city agreed to assign to original hotel developer as incentive to construct hotel represented revenue from use of hotel itself, rather than revenue attributable to intangible assets resulting from hotel's enterprise activity, and, thus, tax payments were properly included when determining hotel's assessed value for tax purposes, despite contention that parties' occupancy tax agreement could not be meaningfully distinguished from nonmarket lease that was matter of owner's enterprise activity, and excludible from hotel's assessed value; there was distinction between owner negotiating lease on existing property, which was essentially a form of enterprise activity, and government-facilitated agreement that allowed property to generate elevated level of revenue as means of financing otherwise uneconomical, publicly beneficial project.

Nightly "occupancy tax" city agreed to assign to original hotel developer as incentive to construct hotel represented revenue from use of hotel itself, rather than revenue attributable to intangible assets resulting from hotel's enterprise activity, and, thus, tax payments were properly included when determining hotel's assessed value for tax purposes, despite contention that tax should not be treated as income because underlying hotel development agreement made clear it could be transferred independent of hotel and did not run with land; assessor's duty in valuing hotel under income method was to calculate total earnings that could be derived from use of property, and whether hotel owner could theoretically choose to transfer some portion of those earnings to another entity did not alter the fact that the earnings were generated from use of property itself.

Nightly "occupancy tax" city agreed to assign to original hotel developer as incentive to construct hotel represented revenue from use of hotel itself, rather than revenue attributable to intangible assets resulting from hotel's enterprise activity, and, thus, tax payments were properly included when determining hotel's assessed value for tax purposes, despite contention that parties' occupancy tax agreement was intended to finance of portion of construction costs of hotel; purpose of agreement did not dictate whether revenue generated from agreement could be considering in assessing value of hotel, and whether parties could have structured agreement differently did not alter fact that agreement they did make enabled property to be put to beneficial use as hotel, by allowing owner to generate additional revenue each time a customer rented a room.

One-time “key money” payment that hotel’s management company paid to original hotel developer in exchange for right to manage hotel and brand it as a company-related property for a 50-year period represented revenue from use of hotel itself, rather than revenue attributable to intangible assets resulting from hotel’s enterprise activity, and, thus, tax payments were properly included in income stream analysis when determining hotel’s assessed value for tax purposes; money paid by company to developer was closer in nature to a commercial lease between a landlord and tenant, as it was offered to secure tangible rights in property that company then used to conduct commercial activities that generated income of their own, and brand property with its corporate logo.

One-time “key money” payment that hotel’s management company paid to original hotel developer in exchange for right to manage hotel and brand it as a company-related property for a 50-year period represented revenue from use of hotel itself, rather than revenue attributable to intangible assets resulting from hotel’s enterprise activity, and, thus, tax payments were properly included in income stream analysis when determining hotel’s assessed value for tax purposes, despite contention that prospective buyer would never increase hotel’s purchase price to reflect payment that future operations would never produce; payment represented fair market rate an owner of type of hotel would expect to receive in exchange for right to occupy and manage the property, and whatever restrictions parties might have entered into regarding payment were not material to determining hotel’s unencumbered fair market value.

County assessor’s failure to adequately address hotel owner’s evidence as to valuation of “enterprise assets” derived from its management agreement with hotel management company, including customer goodwill, value of hotel’s food and beverage operations and an assembled, stable workforce, required remand to county’s assessment appeals board for further proceedings regarding valuation of those “enterprise assets”; while particular method of valuation identified in academic article might be appropriate to account for such intangible “enterprise assets” provided under agreement, since owner identified and valued nontaxable “enterprise assets,” assessor had to provide evidence the value of those assets did not exceed the management fees.

California Supreme Court Issues Significant Opinion Concerning the Assessment of Intangible Assets in Property Taxation: Greenberg Traurig

On August 28, 2025, the California Supreme Court issued a significant, yet divided, opinion concerning the treatment of intangible assets in property taxation: *Olympic & Georgia Partners, LLC v. County of Los Angeles* (2025) – P.3d –, 2025 WL 2473858. Justice Groban authored the majority opinion. The divided Court also issued two separate dissents, authored by Justice Liu and Justice Kruger, respectively.

The case concerned the property tax assessment of the JW Marriott and Ritz Carlton Hotel in downtown Los Angeles. Three assets were in dispute. First, a subsidy that the City of Los Angeles paid to the hotel owner to incentivize construction, valued at approximately $80 million and referred to in the case as the “occupancy tax payment.” Second, a one-time payment of $36 million that the hotel manager paid to the owner to secure the right to manage the hotel, referred to in the hotel industry and in the case as “key money.” Third, a collection of business assets that included the hotel’s flag and franchise, food and beverage operations, and assembled workforce, collectively valued at $34 million and referred to in the case as the “hotel enterprise assets.”

The City of Los Angeles had decided decades ago that it needed a headquarters hotel adjacent to its unprofitable convention center to support conventions, revitalize downtown Los Angeles, and draw tourists and businesses to the City. The City concluded that a hotel in this specific location would be publicly beneficial but privately uneconomic: that it would yield extensive municipal benefits, but that no private developer would go it alone because the cost would outweigh the private payoff. So, the City solicited a developer, Plaintiff Olympic and Georgia Partners, LLC (Olympic), to develop the hotel, and it incentivized the business enterprise by investing the amount paid in transient occupancy taxes to the City by hotel guests in a unique arrangement. This public private partnership was the first of its kind in the City and realized the City’s goals with success.

Continue reading.

Greenberg Traurig – Colin W. Fraser, Bradley R. Marsh and Cris K. O’Neall

September 19 2025

The Profound Implications of Opportunity Zones 2.0.

Updates enacted by Congress will make this successful program for low-income communities even more attractive to investors, particularly for housing. But there are plenty of ways to take advantage of the current program.

The “opportunity zones” (OZs) program has entered a defining moment. As part of the July 4th tax package, Congress transformed what was once considered a temporary experiment into a permanent fixture of the federal tax code. OZs are no longer a niche policy tool or a partisan flashpoint — they’re an institutionalized asset class with a proven track record of catalyzing long-term capital into low-income communities to spur economic development and job growth.

For communities, policymakers and investors alike, the implications are profound. The next 18 months represent a generational window: Investors who move now can take advantage of a broader map, favorable asset pricing and the clarity of established rules. Meanwhile, OZ 2.0 sets the stage for deeper transparency, broader geographical reach and stronger incentives for community-aligned investing, particularly when it comes to housing.

Since their inception in 2017, opportunity zones have contributed to the creation of more than 300,000 housing units in designated communities — making OZs one of the most significant drivers of housing production over the past decade. Perhaps most importantly, OZ investments have been long-term by design, unlocking capital that stays in communities for 10 years or more. This extended timeline enables deeper, more sustained transformation, from revitalized housing to broadband infrastructure to community-centered businesses.

Continue reading.

governing.com

OPINION | September 17, 2025 • Steve Glickman

TAXPAYER STANDING - MINNESOTA

Huizenga v. Independent School District No. 11

United States Court of Appeals, Eighth Circuit - August 11, 2025 - F.4th - 2025 WL 2302432

Taxpayers brought § 1983 action against school district and teachers' union, alleging that political advocacy by teachers while on paid leave, under provision of collective-bargaining agreement (CBA) allowing paid leave for the conduct of union business, violated taxpayers' free-speech rights under the First Amendment and the Minnesota Constitution, and violated the Minnesota Public Employee Labor Relations Act.

The United States District Court for the District of Minnesota dismissed claims for lack of Article III standing and declined to exercise supplemental jurisdiction over state-law claims. Taxpayers appealed. The United States Court of Appeals for the Eighth Circuit vacated and remanded. On remand, the United States District Court for the District of Minnesota granted defendants' summary judgment motion, and denied taxpayers' cross-motion for summary judgment as moot. Taxpayers appealed.

The Court of Appeals held that:

- Two taxpayers belonged to a particular taxpayer base of district residents with a special interest in the funds allocated to the school district;
- Taxpayer who had left the taxpayer base by moving outside of school district after filing complaint could not show a likelihood of future injury necessary to establish municipal taxpayer standing;
- Union leave policy caused a direct expenditure of school district funds, giving school district residents a direct interest as taxpayers;
- Taxpayers had municipal taxpayer standing; and
- Taxpayers satisfied the "fairly traceable" element for municipal taxpayer standing.

Municipal taxpayers of school district belonged to a particular taxpayer base of district residents with a special interest in the funds allocated to the school district, as would support finding that taxpayers had municipal taxpayer standing to bring § 1983 action against school district and teachers' union, alleging that political advocacy by teachers while on paid leave, under provision of collective-bargaining agreement (CBA) allowing paid leave for the conduct of union business, violated taxpayers' free-speech rights under the First Amendment, among other claims.

Teachers' union leave policy caused a direct expenditure of school district funds, giving residents a direct interest as taxpayers, so that residents met the injury-in-fact requirement for Article III municipal taxpayer standing to bring § 1983 action against school district and teachers' union, alleging that political advocacy by teachers while on paid leave, under provision of collective-bargaining agreement (CBA) allowing paid leave for the conduct of union business, violated taxpayers' free-speech rights under the First Amendment, among other claims.

Taxpayers had a direct pecuniary injury sufficient to establish municipal taxpayer standing to bring § 1983 action against school district and teachers' union, alleging First Amendment violation, among other claims, because their taxes directly supported the activities complained of relating to union leave agreement, pursuant to which school district made non-ordinary expenditures when it paid substitute teachers while full-time teachers took paid union leave to engage in political and campaign advocacy, thereby forcing municipal taxpayers to subsidize union's political speech in violation of taxpayers' First Amendment rights, even though union reimbursed cost of substitute teachers.

Taxpayers satisfied the “fairly traceable” element for municipal taxpayer standing to bring § 1983 action against school district and teachers’ union, alleging that political advocacy by teachers while on paid leave, under provision of collective-bargaining agreement (CBA) allowing paid leave for conduct of union business, violated taxpayers’ free-speech rights under the First Amendment, among other claims, by establishing that teachers’ salaries were paid from the school district’s General Fund, notwithstanding fact that General Fund intermingled state, federal, and local funds.

Puerto Rico Nears Deadline on Opportunity Zone Changes.

The recently enacted One Big Beautiful Bill Act has permanently extended the federal Opportunity Zone program, adding reforms meant to modernize the initiative, expand community impact and reshape investment strategy — particularly in Puerto Rico.

The law makes the program a permanent part of the U.S. tax code and requires new compliance, reporting and impact measures. It also mandates a nationwide redesignation of eligible census tracts by mid-2026. Without those changes, investments made after Dec. 31, 2026, would have lost eligibility for key tax benefits.

The program, originally created as a short-term tax deferral mechanism, is shifting to a permanent framework. The law preserves the 10-year capital gains exclusion for investments held through Qualified Opportunity Funds but phases out older incentives.

Continue reading.

newsismybusiness.com

by Maria Miranda

September 9, 2025

Puerto Rico Unlocks $1.4B in Opportunity Zone Projects.

Puerto Rico’s Economic Development and Commerce secretary, Sebastián Negrón-Reichard, said Thursday that the agency is unblocking $1.4 billion in eligible investments and more than 2,000 jobs tied to Opportunity Zone projects across 13 municipalities in Puerto Rico.

As News is my Business reported earlier this week, Puerto Rico is approaching a key deadline to redesignate eligible census tracts, a process that will reduce the coverage area from 98% of the island to 25% by the end of 2026.

Speaking at his weekly briefing at the La Fortaleza executive mansion, Negrón-Reichard said that while 38 projects had already secured decrees under the Puerto Rico Economic Development and Opportunity Zones Act of 2019, most had been limited to a basic 5% tax credit. Only three projects had advanced to receive the additional credits available by law.

Continue reading.

newsismybusiness.com

Maria Miranda September 11, 2025

What Makes DC’s Bridge District a Model OZ Project?

Washington DC’s Bridge District is quickly emerging as one of the nation’s most ambitious Opportunity Zone projects, transforming vacant land into a thriving new neighborhood. With thousands of multifamily units, new retail, and vital community amenities, the Bridge District is showing how OZ capital can deliver long-term, transformative impact in one of the most underserved parts of the nation’s capital.

Jeff Tompkins of Altes Capital and Sohael Chowfla of Redbrick LMD join the show to discuss the outlook for Opportunity Zones 2.0, the unique supply-and-demand dynamics of Washington DC’s multifamily housing market, and how Redbrick is using OZ equity to deliver the Bridge District as a model for sustainable, community-driven development.

Listen to podcast.

opportunityzones.com

by Jimmy Atkinson

September 10, 2025

OBBBA Makes OZ Incentive Permanent, With Some Significant Changes.

When President Donald Trump signed the One Big Beautiful Bill Act (OBBBA) into law July 4, it included permanence and modernization of the opportunity zones (OZ) incentive. While much of the OZ incentive is unchanged, there are key modifications.

Road to Permanence

The original OZ incentive was enacted in 2017 as part of the Tax Cuts and Jobs Act (TCJA) and was scheduled to sunset for capital gains realized after Dec. 31, 2026. Many other provisions of the TCJA were scheduled to expire at the end of 2025, so it was widely expected that major tax legislation would be introduced to address the expiring business and individual tax provisions.

OZ Working Group Recommendations

In anticipation of this expected legislative activity, the Novogradac Opportunity Zones Working Group (OZWG) began work in 2022 to compile an in-depth list of recommendations to enhance and modernize the OZ incentive. These consensus recommendations were shared with numerous OZ stakeholders, the Trump administration’s transition team, the Senate Finance Committee and key members of the Senate and House, including Sen. Tim Scott, R-South Carolina. The OZ incentive was originally introduced in the Senate by Sen. Scott, who has consistently been the biggest proponent of the incentive and spearheaded the inclusion of the OZ 2.0 in the OBBBA. We were pleased to learn that several of the OZWG’s key recommendations were ultimately included in the

OBBBA.

Continue reading.

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Published by Jason Watkins, CPA on Monday, September 8, 2025

September 2025

TAX - CALIFORNIA

Sceper v. County of Trinity

Court of Appeal, Third District, California - August 8, 2025 - Cal.Rptr.3d - 113 Cal.App.5th 548 - 2025 WL 2267738 - 2025 Daily Journal D.A.R. 7534

After passage of proposition expanding ability of certain taxpayers to transfer base year property values between counties, taxpayer brought action against county, alleging breach of contract and fraud in the inducement in connection with decision of county tax assessor to decline to adjust base year value of property that taxpayer had purchased in one county to base year value of property that taxpayer had purchased in another county for real property tax purposes, notwithstanding settlement agreement between taxpayer and county Board of Supervisors providing that county would allow transfer if it later adopted ordinance or if any change in law required county to accept transfers, and fact that new enactment was a qualifying change in the law under the settlement agreement.

After bench trial, the Superior Court found county in breach of settlement agreement and ordered county to specifically perform agreement and pay taxpayer damages. County appealed.

The Court of Appeal held that:

- Settlement agreement was void and unenforceable, but
- County was not entitled to prevailing-party attorney fees.

County Board of Supervisors lacked authority to grant agreed-upon relief in settlement agreement between taxpayer and Board related to exercise of judgment as to value of property for real property tax purposes by agreeing to transfer of base year values inter-county upon change in law allowing such transfers in certain circumstances, and thus settlement agreement was void and unenforceable; transfer of base year values was a duty assigned to county tax assessor, and Board’s supervisory authority over tax assessor did not permit Board to control how tax assessor performed any duties of office of tax assessor.

County was not entitled to prevailing-party attorney fees associated with successful defense on appeal of taxpayer’s action alleging breach of contract and fraud in the inducement in connection with settlement agreement by county Board of Supervisors to transfer property base year values inter-county upon change in law allowing such transfers in certain circumstances, although costs were typically awarded to the prevailing party on appeal.

TAX - NEBRASKA

State ex rel. Douglas County School District No. 66 v. Ewing

Supreme Court of Nebraska - August 22, 2025 - N.W.3d - 319 Neb. 663 - 2025 WL 2423559

County school district brought action against county treasurer for a writ of mandamus directing treasurer to correct erroneous distributions of payments in lieu of taxes (PILOT) funds that resulted in school district being underpaid.

The District Court issued the writ, but later vacated it after city school district, which had been overpaid, moved to intervene. School district renewed its motion for a writ of mandamus. The District Court denied school district’s motion, granted treasurer’s motion to enforce settlement agreement that was intended to rectify underpayments, and then dismissed the case. School district appealed, and city school district’s motion to intervene was granted.

The Supreme Court held that:

- Constitutional and statutory provisions created a ministerial duty to properly distribute PILOT funds;
- Initial writ specifying when, where, how, and in what amounts reimbursements were to be made exceeded treasurer’s ministerial duty;
- Renewed motion for writ of mandamus was not foreclosed by settlement agreement;
- Renewed motion for writ of mandamus was not foreclosed by its substance;
- Intervenor city school district was judicially estopped from arguing that other adequate relief was available; and
- School district had no other plain and adequate remedies available.

County treasurer’s obligation under relevant constitutional and statutory provisions to properly distribute payments in lieu of taxes (PILOT) funds to school districts was a “ministerial” duty enforceable by writ of mandamus, in county school district’s suit seeking treasurer’s corrections of erroneous distributions that resulted in its underpayment by millions of dollars; both provisions plainly and clearly required treasurer to collect and distribute PILOT funds, and they provided an exact and detailed formula to be followed in calculating amount of such distributions, leaving no room for discretion in the process.

2025 Affordable Housing Tax Changes: Understanding LIHTC, Bonds, OZ and 45L Deadlines

With the passage of the One Big Beautiful Bill Act (OBBBA) on July 4, 2025, Congress enacted the most significant expansion of housing incentives in more than two decades. For developers, investors and capital providers, this means new tools, more flexibility and a broader opportunity set.

At the heart of the legislation are updates to the Low-Income Housing Tax Credit (LIHTC) program, alongside permanent extensions to the Opportunity Zone (OZ) and New Markets Tax Credit (NMTC) incentives. Analysts estimate these changes could support the creation of up to 1.2 million additional affordable housing units over the next decade. According to Novogradac, the LIHTC enhancements alone could finance 1.22 million new affordable rental homes between 2026 and 2035.

Opportunity doesn’t always mean simplicity, though. These changes introduce new tools, but also new complexities.

Continue reading.

northmarq.com

September 1, 2025

Novogradac: A Deeper Dive into Opportunity Zones 2.0

The One Big Beautiful Bill Act (OBBBA), signed into law July 4, made the opportunity zone (OZ) incentive a permanent part of the Internal Revenue Code. In this episode of the Tax Credit Tuesday podcast, Michael Novogradac, CPA, and Novogradac partner Jason Watkins, CPA, review the changes to OZs instituted by the OBBBA. They explore the Opportunity Zones (OZ) 2.0 Mapping Tool, which Novogradac launched Aug. 19. Novogradac and Watkins also discuss the emphasis on investing in rural areas for the next set of OZs, nominations which begin July 1, 2026. Finally, the pair the new reporting requirements for OZs and the upcoming “dead zone” for investments, which is projected by some to occur next year.

Watch video.

Published by Michael J. Novogradac, CPA on Aug. 26, 2025, 12:15 p.m.

Beverly Hills Resort Wins Tax Status to Set Up Muni Bond Sale.

Takeaways by Bloomberg AI

- The City Council voted 4-0 to support the creation of a community facilities district to raise as much as $550 million through the municipal bond market for an ultra-luxury resort in Beverly Hills.
- Vice Mayor John Mirisch said “this result truly is the definition of win-win” after the city council extracted concessions from developer Cain International valued at $140 million.
- The proposed community facilities district would levy a new tax on properties within the designated improvement areas to pay for improvements, including streets, parks, and other public infrastructure for the One Beverly Hills development.

Continue reading.

Bloomberg Markets

By John Gittelsohn and Maxwell Adler

August 20, 2025

California, Other States Begin to Implement New 25% Test for 4% LIHTC and Bond Developments

State housing agencies have begun the work of implementing federal legislation signed July 4, which–among other things–lowers the minimum eligibility requirement for 4% federal low-income housing tax credits (LIHTCs) from 50% to 25% thereby expanding the volume cap of tax-exempt bonds.

This blog post focuses on regulations adopted Aug. 5 by the California Tax Credit Allocation Committee (CTCAC) and the California Debt Limit Allocation Committee (CDLAC) and the impact they will have. At the time of this writing, Georgia and Wisconsin have also issued revised guidance related to this change.

Background

The One Big Beautiful Bill Act was signed into law July 4, 2025. Among many other things, the bill permanently lowers the private activity bond (PAB) financing threshold from 50% to 25% of land and building costs for properties placed in service after Dec. 31, 2025, as long as at least 5% of the aggregate land and building costs are financed with PABs issued after Dec. 31, 2025. This change expands the volume cap of tax-exempt bonds.

[Continue reading.](#)

novogradac.com

Published by Thomas Stagg, CPA on Monday, August 25, 2025 – 8:17AM

TAX - CALIFORNIA

[Sceper v. County of Trinity](#)

Court of Appeal, Third District, California - August 8, 2025 - Cal.Rptr.3d - 2025 WL 2267738

After passage of proposition expanding ability of certain taxpayers to transfer base year property values between counties, taxpayer brought action against county, alleging breach of contract and fraud in the inducement in connection with decision of county tax assessor to decline to adjust base year value of property that taxpayer had purchased in one county to base year value of property that taxpayer had purchased in another county for real property tax purposes, notwithstanding settlement agreement between taxpayer and county Board of Supervisors providing that county would allow transfer if it later adopted ordinance or if any change in law required county to accept transfers, and fact that new enactment was a qualifying change in the law under the settlement agreement.

After bench trial, the Superior Court found county in breach of settlement agreement and ordered county to specifically perform agreement and pay taxpayer damages. County appealed.

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County Board of Supervisors lacked authority to grant agreed-upon relief in settlement agreement between taxpayer and Board related to exercise of judgment as to value of property for real property tax purposes by agreeing to transfer of base year values inter-county upon change in law allowing such transfers in certain circumstances, and thus settlement agreement was void and unenforceable; transfer of base year values was a duty assigned to county tax assessor, and Board's supervisory authority over tax assessor did not permit Board to control how tax assessor performed any duties of office of tax assessor.

Treasury Department Sets Limits on Remaining Wind and Solar Tax Credits.

The Treasury Department issued guidance Friday that narrows which wind and solar energy projects can receive the remaining tax credits that were largely eliminated under the Republicans' "big, beautiful bill."

The legislation passed by Republicans last month axes the credits for projects that don't begin producing electricity by 2028.

However, it contains an exemption for projects that begin construction over the next year. Under the law, those projects would remain eligible for the subsidies even if they don't produce electricity under the specified time frame.

Continue reading.

The Hill

by Rachel Frazin – 08/15/25 5:05 PM ET

AMT: One Big Beautiful Opportunity in the Municipal Bond Market

A primary risk that may have once deterred investors from these instruments has significantly diminished.

For many investors, the phrase "alternative minimum tax" tends to raise eyebrows or trigger confusion, if not concern. However, within the municipal bond market, AMT-designated bonds are quietly offering one of the most attractive opportunities in today's investment-grade sector. And thanks to recent tax legislation, a primary risk that may have once deterred investors from these instruments has, in our opinion, significantly diminished.

Understanding AMT and Its Impact on Bonds

The individual alternative minimum tax is part of a parallel tax system that requires some taxpayers to calculate their tax liability twice—once using the standard rules and again using AMT rules. The AMT calculation includes certain deductions and additional adjustments. Taxpayers must pay the higher liability from the two calculations.

Some municipal bonds—generally those issued in sectors where private entities may benefit, such as airports or solid waste facilities—are designated as AMT. Although interest from these bonds is technically tax-exempt, it may be included in an investor's AMT calculation, reducing the overall tax advantage. AMT bonds are generally issued at higher yields than comparable non-AMT bonds to offset this risk.

[Continue reading.](#)

wealthmanagement.com

by Peter Aloisi

August 12, 2025

TAX - VERMONT
[Salisbury AD 1, LLC v. Town of Salisbury](#)
Supreme Court of Vermont - August 8, 2025 - A.3d - 2025 WL 2264355 - 2025 VT 43

Taxpayer that owned anaerobic digester facility appealed town's decision denying taxpayer's request for reconsideration of town's denial of taxpayer's untimely appeal of town listeners' decision denying taxpayer's grievance appeal of town's tax assessment.

The Superior Court denied town's motion for summary judgment, granted taxpayer's motion for summary judgment, and issued order granting mandamus relief. Town appealed.

The Supreme Court held that town's notice was sufficient to satisfy taxpayer's procedural due process rights.

Town provided taxpayer that owned anaerobic digester facility with actual notice of town listers' decision denying taxpayer's grievance appeal of town's tax assessment for certain tax year, and thus town's notice was sufficient to satisfy taxpayer's procedural due process rights, even though town did not mail notice of the decision to both taxpayer and its counsel; town mailed the decision directly to taxpayer at its address of record via certified mail with receipt requested and heard nothing back indicating that anything had gone awry, and received confirmation that taxpayer had received notice of the decision.

[Congress Has Increased the Tax on College and University Endowments: How Should We Think about This Policy Change?](#)

The reconciliation bill passed by the House of Representatives in May 2025 includes a significant increase to the current tax on the incomes from the endowments of private nonprofit colleges and universities. This brief examines the logic behind the long-standing exemption from taxation for educational institutions and other nonprofit charitable organizations, as well as the role of endowments, as context for evaluating this policy change and related proposals.

Why This Matters

The income tax system has always included a tax exemption for charitable institutions, the definition of which clearly includes colleges and universities. A significant tax on income from endowments and other financial assets limits the ability of affected colleges and universities to carry out their missions, which include educating undergraduate and graduate students, performing research, and engaging in other activities benefiting their communities. It is unlikely that the revenues from such a tax will be directed toward any related goals. And it is easy to view excluding selected colleges and universities from receiving the long-standing exemption from taxation for charitable institutions as an arbitrary strategy inconsistent with sound public policy.

What We Found

Nonprofit colleges and universities clearly meet the criteria for tax exemption.

- Concerns about the disproportionate share of students from affluent families at elite colleges and universities are valid but not disqualifying for exemption from taxation.
- The restrictions on political activity by tax-exempt organizations do not extend to the viewpoints or ideologies of the organizations or their members.
- Colleges and universities are fundamentally different from private foundations, so it is logical for their tax treatment to be different.
- The tax exemption is generally viewed as a “tax expenditure,” which has the same effect on the federal budget as a direct subsidy, but it might also be thought of as a separation between the government and charitable organizations, as is the case for churches.
- Unlike the 21 percent tax on corporate profits, the endowment tax does not subtract costs of production from income before calculating taxes due.

Endowments allow colleges and universities to support their missions far into the future, not just to fund current activities. They supplement other revenue sources and protect against an uncertain future.

- There is no clear optimal size for an endowment.
- Endowment per student is a better metric than total endowment size for comparing wealth across institutions, but it is far from a perfect indicator.
- The new tax on investment income will affect fewer institutions than the 1.4 percent tax imposed in 2017 because of the exclusion of small colleges. Neither policy generates significant federal revenue.
- The goal of taxing endowments might be to change institutional behaviors or, like the new tax and the one it replaces, simply to transfer funds from colleges and universities to the federal government.

If the motivation for taxing the endowment income of wealthy colleges and universities is to provide incentives for these institutions to enroll more low-income students, other policy approaches directly related to this goal are likely to be more effective. The government could provide support for college preparation among disadvantaged youth and increase grant aid for low- and moderate-income students. If the concern is the inequality in resources across postsecondary institutions, direct subsidies to the underresourced institutions and their students are more likely to improve educational opportunities.

Download Report.

Tax Policy Center

by Sandy Baum

August 13, 2025

Can PILOT Programs Plug Holes in Municipal Budgets?

Some American cities turn to "payments in lieu of taxes" programs to fill budget gaps. The jury's still out on how effective they are.

Should municipalities ask nonprofits to pay fees for the land they use?

It's a provocative question that, for years, has evoked strong responses for and against the idea. As many American cities grapple with declining property tax revenue in the wake of COVID-19 and the rapid adoption of remote work, the topic has received renewed interest.

One way municipalities may seek to add more dollars to their coffers is through "payments in lieu of taxes" programs, or PILOTs. These are agreements that require individual nonprofits to pay set amounts to their local municipality. The idea is to offset the cost of services that a nonprofit receives from the city, such as garbage removal or policing.

Continue reading.

cfo.com

by Dan Niepow

Published Aug. 8, 2025

Orrick: To Infinity and Beyond! A New Tax-Exempt Bond to Finance Spaceports

The One Big Beautiful Bill Act, signed into law on July 4, authorizes tax-exempt bond financing for spaceports, treating them similarly to bonds issued by public authorities for airport improvements.

This new category of bond financing offers numerous benefits for private entities and corporations, as well as space agencies involved in space exploration and related activities.

- **Lower Cost of Capital.** Spaceports can utilize tax-exempt private activity bonds ("PABs") for spaceport development, lowering financing costs.
- **Encouraging Private Investment.** This new bond provision aims to shift the funding burden away from taxpayers by leveraging public-private partnerships for spaceport construction, expansion, and related improvements.
- **No Volume Cap.** Unlike many other types of PABs, bonds issued for spaceports are not subject to volume cap, meaning that there is no statutory limit on the amount of bonds that may be issued.

Under this new provision, a "spaceport" is defined as any facility (including fixed assets and related equipment) located at or in close proximity to a launch site or reentry site used for the following:

- Manufacturing, assembling or repairing spacecraft, space cargo, other facilities described below, or any component of the foregoing,
- Flight control operations,
- Providing launch services and reentry services, or
- Transferring crew, spacecraft participants, or space cargo to or from spacecraft.

Similar to airport improvements financed with PABs, spaceport bonds would be issued by authorized governmental issuers to finance spaceports. Pursuant to the governmental ownership requirements applicable to this category of PABs, the financed spaceport assets must be owned by a State or local government unit, but could be leased to a private entity/operator, where such lease payments (and possibly other amounts) would pay debt service on the bonds.

The statute contains numerous defined terms which are beyond the scope of this summary, however, some of the more critical defined terms are set forth below:

- **Launch Site:** The location on Earth from which a launch takes place and the necessary facilities at that location.
- **Launch:** To place or attempt to place a launch vehicle or reentry vehicle, along with any payload or human being from Earth, into a suborbital trajectory, Earth orbit in outer space, or otherwise in outer space, including activities involved in the preparation of a launch vehicle or payload launch.
- **Reentry Site:** The location on Earth to which a reentry vehicle is intended to return.
- **Reentry Vehicle:** A vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from Earth orbit or outer space to Earth, substantially intact.

Importantly, given the federal government's interaction with respect to space operations and space flight, the legislation makes helpful accommodations regarding federal use and payments which would otherwise create tax concerns for the bonds.

As a general matter, tax-exempt bonds may not be directly or indirectly guaranteed by the federal government. The statute provides that a spaceport bond will not be treated as federally guaranteed because of the payment of rent, user fees, or other charges by the United States (or agency thereof) in exchange for the use of the spaceport.

For example, assume an authorized issuer issues bonds to finance a spaceport to be leased to Space Co. The bonds are secured and paid with Space Co. lease payments. Space Co. has long-term contracts with NASA and other federal agencies for use of the spaceport, including services provided by Space Co. for satellite operations. The lease payments made by Space Co., which will include payments made by federal agencies, will not cause the bonds to be federally guaranteed.

Effective Date: Bonds may be issued to finance spaceports on or after July 5, 2025.

Orrick, Herrington & Sutcliffe LLP

August.06.2025

Taxable Local-Government Bonds Shine in Middling Muni Market.

Takeaways

- Taxable state and local-government debt has returned 4.7% this year, according to data compiled by Bloomberg.
- The strong showing for taxable munis is driven by a sharp falloff in terms of how much of the market they make up, said Cooper Howard, a strategist at Charles Schwab.
- “Supply has been muted for taxable munis,” said Gabe Diederich, senior portfolio manager at Baird Funds.

The bright spot in a lackluster year for municipal-bond returns is debt subject to federal income taxes, as a dearth of new sales in the sector fuels gains.

Taxable state and local-government debt has returned 4.7% this year, the best performance on a year-to-date basis since 2020, according to data compiled by Bloomberg. That's beating the 0.1% gain for tax-exempt debt broadly, and a 1.4% decline in an index of high-yield securities.

Continue reading.

Bloomberg Markets

By Shruti Singh

August 8, 2025

One Big Act: Tax-Exempt Bonds Avoid Annihilation - Squire Patton Boggs

On July 4, 2025, the president signed into law the so-called "One Big Beautiful Bill Act" (the "OBBBA"). While technically no longer a bill and its beauty is in the eye of the beholder, the OBBBA certainly is big. Even before the almost-1,000-page OBBBA took shape, the public finance community was on alert about lawmakers entertaining possibly peeling away or even eliminating the tax exemption of interest on municipal bonds in an effort to pay for the extension of the 2017 Tax Cuts and Jobs Act (the "TCJA"). Understandably so, because in 2017, to help offset the costs of the TCJA, lawmakers proposed eliminating tax exemption for qualified private activity bonds entirely and ultimately ended up scrapping tax-exempt advance refundings. Fortunately, tax-advantaged bonds survived the OBBBA intact and, in fact, have expanded in areas[1].

Space: The Latest Frontier

The OBBBA expands the airport category of exempt facility bonds under Section 142 of the Code to include spaceports[2]. A spaceport is defined as "any facility located at or in close proximity to a launch site or reentry site used for (A) manufacturing, assembling, or repairing spacecraft, space cargo, other facilities described in this paragraph, or any component of the foregoing, (B) flight control operations, (C) providing launch services and reentry services, or (D) transferring crew, spaceflight participants, or space cargo to or from spacecraft." Space cargo includes "satellites, scientific experiments, other property transported into space, and any other type of payload, whether or not such property returns from space." Spacecraft means "a launch vehicle or reentry vehicle[3]." Other terms take their meaning from existing definitions in Title 51 of the U.S. Code concerning "National and Commercial Space Programs" which was enacted in 2010. Section 142 will generally treat spaceports like airports with a few notable exceptions:

Continue reading.

The Public Finance Tax Blog

By Robert Radigan on July 14, 2025

Squire Patton Boggs

TAX - IDAHO

[East Side Highway District v. Kootenai County]

Supreme Court of Idaho, Boise, May 2025 Term - July 9, 2025 - P.3d - 2025 WL 1888413

Several local taxing districts and cities within county brought separate actions against county and county treasurer, as ex officio tax collector, seeking declaratory judgments that county is required to distribute proportionate share of late charges and interest collected on delinquent property taxes to taxing districts, and seeking writs of mandamus requiring treasurer to do so.

Cases were consolidated. The First Judicial District Court granted taxing districts' motions for summary judgment and for judgment on the pleadings, denied county's motion for judgment on the pleadings, and thereafter denied county's motion for reconsideration, and awarded attorney fees to taxing districts as prevailing parties. County appealed.

The Supreme Court held that:

- Plain statutory language indicated that the amount paid, whether in part or in full, to redeem a property in delinquency includes more than just the past-due property taxes;
- Statutes unambiguously provided that late charges and interest associated with delinquent property taxes were required to be apportioned to taxing districts;
- Trial court was not required to find that county acted without a reasonable basis in law or fact before awarding prevailing-party attorney fees and costs to taxing districts; and
- Taxing districts were entitled to costs and attorney fees as prevailing parties on appeal.

TAX - NEBRASKA

[Johnson v. City of Omaha]

Supreme Court of Nebraska - July 11, 2025 - N.W.3d - 319 Neb. 402 - 2025 WL 1909587

Resident taxpayer brought action against city and city's new residential solid waste collection contractor that was subsidiary of successful bidder in the competitive bidding process, seeking a declaration that the contract was an illegal expenditure of public funds and violated the Integrated Solid Waste Management Act (ISWMA).

The District Court denied taxpayer's motion to amend complaint, granted summary judgment for city and contractor, and overruled taxpayer's cross-motion for partial summary judgment as moot. Taxpayer appealed.

The Supreme Court held that:

- Taxpayer had taxpayer standing;
- Denial of motion to amend to add new legal theory on eve of summary judgment hearing was within trial court's discretion;
- Successful bidder's post-opening bid clarification about its yard waste sticker fee did not materially vary from original bid;
- City did not act with bad faith and favoritism in bidding process by seeking a post-opening bid clarification; and
- Yard waste sticker fee was not subject to voter approval requirement in ISWMA.

Final Reconciliation Bill Permanently Expands LIHTC, NMTC and OZ Incentive; but Does Not Include HTC Provisions.

The House passed July 3 the final version of the fiscal year 2025 reconciliation bill, formerly known as the One Big Beautiful Bill Act, following Senate passage July 1. The bill includes some changes to the Senate Finance Committee (SFC) and initial House-passed versions. The bill now goes to the president, who is expected to sign it into law.

The following is an overview of the final reconciliation bill provisions affecting housing and community development tax incentives. A forthcoming blog post will describe the final bill's energy tax provisions.

Permanent LIHTC Expansions

The final reconciliation bill kept the LIHTC provisions of the SFC version reconciliation bill intact, namely:

1. ***Permanent 25% Test.*** The final reconciliation bill permanently lowers the private activity bond (PAB) financing threshold from 50% to 25% of land and building costs for properties placed in service after Dec. 31, 2025, as long as at least 5% of the aggregate land and building costs are financed with PABs issued after Dec. 31, 2025. It also should be noted that acquisition and rehabilitation property can separately qualify so that the rehabilitation portion placed in service in 2026 or later could qualify for the 25% test even for property acquired in 2025.
2. ***Permanent 12% Increase***. The final reconciliation bill permanently increases 9% allocations for the LIHTC by 12% starting in 2026. (The House-passed reconciliation bill would have increased the LIHTC by 12.5% for four years.)

Continue reading.

Published by Peter Lawrence on Thursday, July 3, 2025 – 11:29AM

Novogradac

Taxing the Crisis: Can Municipal Tax Hikes Mitigate Bondholder Risks in Stressed Districts?

The fiscal health of U.S. municipalities hangs in a precarious balance, with states like Illinois, cities like Chicago, and California's major urban centers grappling with deficits, pension obligations, and climate-driven costs. As these regions turn to tax hikes to stabilize budgets, bondholders face a critical question: Can these measures effectively mitigate risk, or do they merely mask deeper systemic vulnerabilities?

The Fiscal Abyss

Illinois leads the parade of distressed states, projecting a **$3 billion shortfall** in fiscal year 2026 amid rising pension liabilities and stagnant revenues. Chicago's FY 2025 budget is **$1 billion out of balance**—over 5% of its revenue—driven by unfunded retiree healthcare costs and dwindling federal aid. Meanwhile, California's San Francisco faces an **$876 million deficit**, while Los Angeles and

Oakland grapple with similar shortfalls. These gaps are exacerbated by climate-related expenses: Houston's $100 million drainage mandate and Cape Cod's wastewater upgrades highlight how environmental costs are now a fixed fiscal burden.

Tax Increases as a Band-Aid or Lifeline?

To close gaps, stressed issuers are leveraging tax policy:

- **Illinois** raised gas taxes to $0.483/gallon, imposed a $1/cigarette pack surcharge, and expanded sales taxes to online services.
- **Chicago** is considering a $0.50/bet fee on sports gambling and exploring higher property taxes on vacation rentals.
- **California** is debating a $2.7 billion sales tax expansion on services, while Seattle's payroll tax on high earners funds affordable housing.

Continue reading.

aiinvest.com

by Cyrus Cole

Monday, Jul 7, 2025 8:53 am ET

The Affordable Housing Easter Egg in Trump's 'Beautiful' Bill.

Incentive to Build

President Donald Trump's "One Big Beautiful Bill" is known mainly for what it cuts: taxes, Medicaid coverage and food assistance among other things. But tucked inside the almost-900-page legislative text are a few lines that represent the biggest increase in incentives to build affordable housing in a generation.

That has both real estate developers and housing advocates cheering.

The revamp of three tax-based community development programs is expected to boost construction of new apartment buildings and renovation of older ones. Housing analysts saying they could spark the building of as many as 1.2 million more affordable units over the next 10 years than they would have without the changes.

Continue reading.

Bloomberg

By Emily Flitter

July 10, 2025

What City Leaders Need to Know About the Senate's Budget Reconciliation Bill.

The Senate's version of the "One Big, Beautiful Bill" has arrived, with major implications for local governments. While it mirrors several provisions in the House-passed bill (H.R. 1), it also includes key differences, particularly around Medicaid. The path to passage in the Senate is not straightforward, with negotiations still ongoing on Medicaid, clean energy tax credits and public lands. As the House and Senate move toward negotiations on a final package, local leaders should understand how the Senate's proposal could shape city budgets, services and infrastructure planning.

Key Takeaways

- Significantly, key outreach from local leaders across the country ensured that the tax-exemption on municipal bonds remains preserved in both the House and Senate bills, for now.
- As it pertains to Medicaid, there is a divide between Republicans who have voiced concerns about the Senate Finance Committee's steep proposed cuts and those who are urging even deeper cuts. While a new fund is expected to be inserted to help rural hospitals, it remains unclear if this will be enough to garner the necessary votes.
- While the Direct Pay provision supporting local government clean energy projects remains intact, the tax credits are proposed to be phased out considerably sooner than the current timeline; other changes are likely to make the tax credits usable for local governments.
- The Senate parliamentarian has ruled against the inclusion of many of the proposed changes to the SNAP and Medicaid programs, as well as provisions related to grant programs and public lands.
- The final text that will be voted on by the Senate is still a work in progress, and the chamber is running up against its self-imposed deadline of having the bill clear the floor by July 4.

Continue reading.

National League of Cities

by Dante Moreno, Stephanie Martinez-Ruckman & Carolyn Berndt

June 26, 2025

The One Big Beautiful Bill Act: A Comprehensive Holland & Knight Analysis

View the Holland & Knight Analysis.

Holland & Knight LLP

USA July 3 2025

Mintz Reconciliation Update: Latest Developments for Tax-Exempt Bonds & Public Finance and What to Expect Next

Tax-exempt municipal bonds avoided a potential worst-case scenario of elimination in the House-passed budget reconciliation bill — the One Big Beautiful Bill Act. The recently released tax language from the Senate Finance Committee for its version of the Act also preserves access to tax-exempt bonds, which are a critical tool for infrastructure development in communities across the nation.

Read on to learn more about efforts to preserve access to this critical financing tool, how Congress has shown support for tax-exempt municipal bonds, and what to expect as the reconciliation bill moves forward.

First, a quick rewind to set the stage.

To discuss recent developments for tax-exempt bonds in the budget reconciliation bill, we need to first briefly look back to 2017 when the Republican-controlled US House of Representatives approved a budget reconciliation bill that eliminated tax-exempt private activity bonds used for various purposes, including projects for affordable housing projects, airports, water and sewage facilities, solid waste disposal facilities, certain manufacturing facilities, and qualified 501(c)(3) tax-exempt organizations like colleges and hospitals.

Continue reading.

by R. Neal Martin & Matthew Page

June 24, 2025

Mintz – ML Strategies

TAX - MARYLAND

Frederick v. Baltimore City Board of Election

Supreme Court of Maryland - July 1, 2025 - A.3d - 2025 WL 1802937

Plaintiffs brought action challenging city board of elections' decision rejecting proposed charter amendment petition seeking to impose cap on Baltimore City's real property tax rate that incrementally decreased over seven years.

City and city board intervened. The Circuit Court entered summary judgment in defendants' favor, and plaintiffs appealed.

The Supreme Court held that proposed charter amendment seeking to impose cap on Baltimore City's real property tax rate was not proper charter material.

Final Tax Bill Preserves Tax-Exempt Bonds and Expands Affordable Housing and Public Finance Provisions: Taft Stettinius & Hollister

On July 3, 2025, the U.S. House of Representatives voted on final passage of H.R.1, an omnibus budget reconciliation tax and spending package referred to as the "One Big Beautiful Bill Act." The bill, which passed on a vote of 218-214, now heads to President Trump's desk for final signature, which is expected to take place on July 4, 2025. The Senate narrowly passed its version of the tax bill just two days prior, on July 1, 2025, which was voted on by the House in lieu of taking the bill to a conference committee. The Senate made a number of changes to the bill previously approved by the House on May 22, 2025.

The municipal market can be encouraged that the final bill preserves the federal tax exemption for municipal bonds. In fact, the final bill includes a number of expansions of interest to the public finance community. We will continue to provide updates as these provisions are implemented. For now, some key takeaways:

- **Municipal Bonds – Tax Exemption Preserved**: Although the House Budget Committee initially identified the elimination of the tax-exemption as a potential revenue source, both the Senate and House versions preserve federal tax exemption for all municipal bonds, including both governmental purpose and qualified private activity bonds
- **9% Low-Income Housing Tax Credit – Increased Annual Allocations**: The final tax bill provides for a 12% increase in the amount of low-income housing tax credits (LIHTC) that states can allocate from the state credit ceiling (commonly referred to as 9% credits) in a given year. The final tax bill includes a permanent increase, beginning in calendar year 2026.
- **4% Low-Income Housing Tax Credit – 25% Test**: The final tax bill reduces the threshold required for 4% LIHTC buildings financed with private activity bond volume cap limited tax-exempt bonds from 50% to 25% of aggregate basis. The reduced threshold would apply to buildings placed in service after December 31, 2025, so long as at least 5% of the aggregate basis of the building and land is financed with bonds issued after December 31, 2025. The final tax bill makes this a permanent reduction to the aggregate basis test
- **New Markets Tax Credit – Extension**: The New Markets Tax Credit, which would otherwise have sunset this year, will now become a permanent credit.
- **Opportunity Zones – Renewed**: The final tax bill makes permanent the Opportunity Zone tax incentive
- **Energy Incentives – Rollback**: The final tax bill terminates a large number of clean and renewable energy incentives authorized by the Inflation Reduction Act of 2022, though on different timetables.
- N**ew Category of Exempt Facility Bonds – Spaceports**: The final tax bill creates a new category of exempt facility bonds under Section 142(a). "Spaceports," which include certain facilities at or near launch sites or reentry sites, will now be treated like airports.
- **Qualified Small Issue Bonds – Change to Calculation of Expenditures**: The final tax bill modifies the calculation of research and development expenditures for purposes of qualified small issue bonds.

Taft Stettinius & Hollister LLP – William Vietti, Rachel Lochner, Cory G. Kalanick and T. Parker Schenken

July 3 2025

Congress Passes One Big Beautiful Bill Act With Impacts on Housing: McGuireWoods

On July 3, 2025, the U.S. House of Representatives passed the Senate's version of the One Big, Beautiful Bill Act, which contains provisions impacting the low-income housing tax credit (LIHTC), opportunity zones (OZs) and homeownership incentives. The bill permanently increases the LIHTC's state allocation to 12% and lowers the bond-financing threshold to 25% beginning in 2026. These are provisions from the Affordable Housing Credit Improvement Act, which some analysts believe could add around one million affordable units to the severely limited supply of housing in the United States.

The reconciliation bill also establishes a permanent policy for OZs that creates a recurring 10-year designation period beginning in 2026. The updated bill passed by the House and Senate also repeals contiguous-tract rules for low-income areas and replaces them with standards for each designated OZ. Among other key changes to OZs, Congress eliminated the December 2026 sunset date for deferring capital gains, allowing investors to defer gains for up to five years or until the investment is sold.

For homeownership incentives, the reconciliation plan temporarily increases the state and local tax deduction to $40,000, with a phase-out for individuals earning over $500,000 per year. The One Big Beautiful Bill Act also permanently extends the deduction on mortgage interest that was established in the Tax Cuts and Jobs Act. This provision allows homeowners to deduct interest on the first $750,000 of mortgage debt and restores their ability to deduct mortgage interest premiums.

by Jeremy L. Green, Gregory A. Riegle, and Scott E. Adams

Insight | July 3, 2025

McGuireWoods LLP

Senate-Passed Bill Does Not Change Ability to Claim Energy Tax Credits Through Elective Payment

The One Big Beautiful Bill Act of 2025 (H.R. 1) passed by the U.S. Senate on July 1 will not change the ability to claim energy tax credits through elective payment and also leaves intact the tax exclusion for municipal bonds.

The American Public Power Association on July 1 noted that the Senate Finance Committee draft of the tax title would have repealed the statutory exception to the domestic content requirements for elective payment. However, the provision was dropped due to the vocal advocacy from APPA members in coordination with allied stakeholders.

The bill also leaves intact the tax exclusion for municipal bonds, again thanks to the work of public power utilities and allied stakeholders, APPA said.

The House Committee on Rules met on Tuesday to consider the rules under which the House will debate H.R. 1.

If passed by the House, President Trump has said he will sign the bill into law.

Senate-Passed Bill Continues Aggressive Phaseout of ITC, PTC for Wind and Solar Projects

The Senate-passed bill continues the aggressive phaseout of the investment tax credit (ITC) and production tax credits (PTC) for wind and solar projects but does provide some relief (compared to an initial version of the bill) to projects currently under development.

As passed by the Senate, the ITC and PTC for wind and solar projects would be unavailable for a project placed in service after 2027.

However, this new deadline would only apply to projects the construction of which begins more than 12 months after the date of enactment. The original version of the Senate bill would have imposed the new 2027 placed in service deadline on any project construction of which began after the date of enactment.

The Senate also dropped a proposed federal excise tax on wind and solar projects.

The bill would also delay the effect of foreign entity of concern (FEOC) provisions – including restrictions on ownership and “material assistance.”

The material assistance provisions are most likely to be relevant to public power utilities seeking to claim energy tax credits, but the ownership provisions could also be.

Specifically, there is a provision that would deny energy tax credits to a taxpayer with more than 15 percent of its debt held by a specified foreign entity.

APPA said that it has heard conflicting guidance as to how readily an issuer can determine the owners of its debt, but the real issue may be in proving that bond holders are not specified foreign entities.

APPA was unable to obtain a clarification in the bill that public offerings are excluded from the FEOC debt test. If enacted, it will seek regulatory guidance doing so.

Pay-as-You Go Sequestration

Of concern to public power is how the bill will be scored for Statutory Pay-As-You-Go Act (PAYGO) purposes, APPA said.

Under PAYGO, tax cuts and spending increases which are not offset by tax increases or spending cuts must be offset with across-the-board spending cuts (sequestration) that would begin in the January of the year following enactment.

This would affect federal payments for direct payment bonds and energy tax credit elective payments.

Under normal PAYGO scorekeeping conventions, the roughly $3.4 trillion in deficits caused by H.R. 1 would effectively require the elimination of such payments through 2034. Congress could later pass legislation to waive PAYGO as it has in the past.

However, early in the Senate’s debate of H.R.1, Republicans successfully defended a ruling of the parliamentarian authorizing the use of a “current policy” baseline instead of a “current law” baseline.

APPA said that it is too early to say how this will play out, but noted that if H.R. 1 is enacted, it is possible this could help avoid PAYGO sequestration.

publicpower.org

by Paul Ciampoli

July 1, 2025

[SALT Cap Deal: A Crossroads for Real Estate and Municipal Bonds]

The Republican SALT (State and Local Tax) deduction cap deal, now in its final legislative phase, presents a pivotal moment for investors in real estate and municipal bonds. With the House pushing to raise the deduction cap to $40,000—a temporary five-year increase—and the Senate resisting any change, the outcome will reshape fiscal incentives in high-tax states, alter housing demand dynamics, and test the financial stability of local governments. This article examines the implications for investors and offers strategies to navigate the uncertainty.

The SALT Cap's Impact on Real Estate Markets

The SALT deduction has long influenced where affluent taxpayers choose to live. Before the 2017 tax reforms, homeowners in high-tax states like New York, New Jersey, and California could fully deduct state and local taxes, including property taxes. The $10,000 cap imposed in 2017 reduced this benefit, dampening demand for high-end housing in these states. For example, , as buyers in high-income brackets sought more SALT-friendly states like Texas or Florida.

If the Senate's current stance prevails, maintaining the $10,000 cap, this trend would likely continue. However, a House compromise—raising the cap to $40,000—could reverse it. Wealthy buyers in high-tax states would regain a financial incentive to purchase expensive homes, boosting demand in affluent neighborhoods. illustrates how tax policies have skewed migration patterns.

Continue reading.

AInvest.com

by Edwin Foster

Friday, Jun 27, 2025

TAX - NEW HAMPSHIRE

[Rand v. State]

Supreme Court of New Hampshire June 10, 2025 - A.3d - 2025 N.H. 27 - 2025 WL 1634480

Property owners brought action against state, seeking permanent injunction requiring state to discontinue public education funding scheme, and alleging that state violated state constitution through practice of permitting property-wealthy towns to retain funds raised by Statewide Education Property Tax (SWEPT) beyond those necessary to pay for cost of adequacy of education and by setting negative local education tax rates in unincorporated places.

The Superior Court granted property owners' motion for partial summary judgment, denied state's and intervenor's cross-motions for summary judgment, and enjoined state from permitting communities to retain excess SWEPT funds or offset SWEPT rate via negative local tax rates. State and intervenor appealed.

The Supreme Court held that:

- Tax was administered in a manner that was equal in valuation and uniform in rate throughout state;

- Legislature did not intend to exempt unincorporated places from SWEPT;
- Department of revenue administration's (DRA) practice of setting negative local education tax rates in unincorporated places violated legislature's constitutional power and authority to impose proportional and reasonable tax; and
- Determination that state violated legislature's constitutional power and authority to impose proportional and reasonable tax warranted vacatur of trial court's injunction remedy.

By its plain language, statute imposing education tax on property across the state, directing how Statewide Education Property Tax (SWEPT) revenue was required to be spent, and requiring each municipality's selectmen or assessors to assess SWEPT revenue and pay it to the municipality for school districts' use, administered tax in a manner that was equal in valuation and uniform in rate throughout state, which, standing alone, did not implicate legislature's constitutional power and authority to impose proportional and reasonable tax, notwithstanding any theoretical indirect effects of scheme on municipalities; fact that scheme permitted a locality to spend SWEPT funds beyond what was needed to fund cost of providing opportunity for an adequate education in that locality had no effect on uniform SWEPT rate assessed to each taxpayer across the state.

Legislature did not intend to exempt unincorporated places from Statewide Education Property Tax (SWEPT) given that, to maintain harmony with statute providing for calculation of education grant funds that were issued to municipalities, and which contemplated unincorporated places being subject to SWEPT, unincorporated places were encompassed within term municipality found in statute imposing education tax on property, which required commissioner of department of revenue administration (DRA) to calculate the portion of education tax to be raised by a municipality, based on its tax base and to issue a warrant to selectmen or assessors of each municipality directing them to assess such sum and pay it to the municipality for school districts' use.

Department of revenue administration's (DRA) practice of setting negative local education tax rates in unincorporated places that nearly or completely offset Statewide Education Property Tax (SWEPT) rate in unincorporated places was administered in a manner that was not equal in valuation or uniform in rate throughout the state, and therefore violated legislature's constitutional power and authority to impose proportional and reasonable tax.

Determination that state violated legislature's constitutional power and authority to impose proportional and reasonable tax by administering Statewide Education Property Tax (SWEPT) in a manner that was not equal in valuation or uniform in rate throughout the state through department of revenue administration's (DRA) practice of setting negative local education tax rates in unincorporated places warranted vacatur of trial court's injunction remedy of enjoining the state from permitting communities to offset the equalized SWEPT rate via negative local tax rates.

TAX - GEORGIA

Atlanta Restaurant Partners, LLC v. Clayton County

Court of Appeals of Georgia - June 10, 2025 - S.E.2d - 2025 WL 1637362

Taxpayer that operated food concessions at airport brought action against county and city, among other parties, seeking refund of real property ad valorem taxes assessed and collected on airport concession agreement, alleging spaces were nontaxable usufructs.

School district filed motion to intervene, which the trial court granted. City issued a tax refund to taxpayer and city and taxpayer submitted a proposed consent order to trial court dismissing city from the action, which the trial court signed. The trial court later granted school district's motion for partial dismissal of taxpayer's claims. Following dismissal order, and prior to court-ordered mediation, county refunded the remaining tax amounts at issue to taxpayer. Taxpayer appealed grant of school district's motions.

The Court of Appeals held that:

- Taxes were illegally collected from taxpayer;
- Taxes were required to be refunded to taxpayer regardless if the taxes were remitted to school district;
- School district was not entitled to intervene as of right; and
- Trial court's error in granting school district's motion to intervene as of right warranted reversal of grant of motion for partial dismissal.

Airport retail spaces were usufructs and not subject to ad valorem real estate taxes, and thus ad valorem taxes that city and county had assessed and collected from taxpayer in connection with taxpayer's food and beverage concession operations at airport pursuant to airport concession agreement between taxpayer and city were illegally collected from taxpayer, for purposes of determining whether taxpayer was entitled to refund of such taxes paid by taxpayer.

Ad valorem real estate taxes that city and county illegally assessed and collected from taxpayer that operated food concessions at airport pursuant to airport concession agreement between taxpayer and city were required to be refunded to taxpayer from funds of county, municipality, county board of education, state, or any other entity to which the taxes were originally paid, regardless whether the taxes were remitted to school district; legislature did not carve out an exception for illegally collected taxes that a county remitted to a board of education.

School district did not have a property interest in real property ad valorem taxes, which were illegally assessed and collected by city and county on airport concession agreement, and which therefore were required to be returned to taxpayer, and therefore school district was not entitled to intervene as of right in taxpayer's action against city and county, among other parties, seeking refund of such taxes paid by taxpayer, so that trial court abused its discretion by allowing school district to intervene as a matter of right, even if school district had an interest in the amount of money it received from county for its budget.

Trial court's error in granting school district's motion to intervene as of right in action brought by taxpayer that operated food concessions at airport against city and county, among other parties, seeking refund of real property ad valorem taxes which city and county had illegally assessed and collected on airport concession agreement between city and taxpayer warranted reversal of trial court's grant of school district's motion for partial dismissal and remand to trial court.

Kutak Rock: Senate Finance Releases Tax Reform Legislation

On the Hill

Last night, the Senate Finance Committee released its long-awaited version of the tax portion of the "One Big Beautiful Bill," offering a counterpoint to the House version passed last month. Critically, like the House bill, the current draft of the Senate Finance text does not include any language limiting the tax-exemption for municipal bonds. While retaining much of the structural framework of the House bill, the draft introduces several material changes, particularly around revenue offsets and social spending reductions.

As released by the Senate Finance Committee, the current draft:

- Preserves the House changes to the 50% test for LIHTC deals, lowering the test to 25%, but makes the change permanent instead of sunsetting in 2029.
- Provides a 12% allocation increase for 9% LIHTC transactions, instead of the 12.5% the House bill included, but makes the change permanent unlike the House version.
- Does not include the designation of Indian areas and rural areas as "Difficult Development Areas" and also excludes the 30% boost in basis that the House provided.
- Adds the permanent extension of the New Markets Tax Credit program.
- Permanently extends the increased individual AMT exemption amounts and reverts phase-out thresholds to 2018 levels ($500,000/individual; $1,000,000/joint), indexed to inflation thereafter.
- Builds on original Opportunity Zone framework, making the policy permanent with rolling, ten-year designations beginning January 1, 2027 while tightening the income requirements for designation as a "low-income community" and adding a new category for rural areas.
- Lowers the "endowment tax" increases on private colleges and universities as compared to the House version (topping out at 8% instead of 21%), while still maintaining a tiered structure.
- Reverts the SALT cap back to what current law permits ($10,000), with a placeholder indicating the topic is still being heavily negotiated.
- Raises the debt ceiling by $5 trillion, as compared to the $4 trillion increase the House proposed.

What This Means for Tax-Exempt Bond Issuers

Like the House version, the Senate bill leaves the tax exemption for interest on tax-exempt municipal bonds, including qualified private activity bonds, untouched. The Senate bill goes further than the House in making the changes to the 50% test for 4% LIHTC deals permanent, which could free up volume cap for issuers and provide an easier path to satisfying the good costs/bad costs analysis. In fact, by making the LIHTC changes permanent, the Senate is signaling strong support for financing tools that encourage investment in affordable housing, one of which is private activity bonds.

What's Next

With the release of the Finance portion of the bill, all ten committees of jurisdiction have now released their pieces of the legislation. Members and staff have been meeting on a daily or near-daily basis and holding multiple in-the-weeds briefings on the content and on the schedule during the last week. One of the key themes when comparing the House version to the Senate version is that the Senate clearly prioritized permanence. In several instances, the Senate legislation might slightly pare back a benefit but provide the benefit permanently instead of phasing it out, no doubt setting up an interesting discussion with their counterparts in the House as they negotiate behind the scenes.

While the situation is fluid, Senate leadership has indicated an aggressive timeline. Current reports indicate they are targeting a floor vote of their version of the "One Big Beautiful Bill" by the end of next week, with the ultimate goal of delivering legislation to the President before the July 4 recess. Majority Leader Thune has even threatened to keep the Senate in session if passage is not achieved before the July 4th holiday – perhaps providing some strong motivation for members to move quickly in their negotiations. If the Senate's changes are sufficiently narrow or pre-negotiated with the House, it is possible the House could vote on the Senate version and avoid a Conference Committee, expediating the enactment.

As always, we will continue to monitor legislative developments and provide timely updates as the process unfolds.

Publications – Client Alert | June 17, 2025

NH Supreme Court Rules Wealthy Municipalities Can Keep Excess Education Property Tax.

Steven Rand and other property owners, represented by attorneys Andru Volinsky, John Tobin and Natalie Laflamme, brought suit, charging that retaining the excess SWEPT and setting negative tax rates, reduced the effective rate of the tax, contrary to the constitutional requirement that state taxes be uniform in rate throughout the state.Mastering Financial Literacy Strategies For Budgeting Investing And Borrowing In Business Finance Education

In November 2023, Superior Court Judge David Ruoff ruled for the plaintiffs, holding that retaining the excess funds lowered the effective rate of the tax, which serves to measure the legitimacy of a tax. Both the state and Coalition Communities, a confederation of affluent municipalities, appealed Ruoff's order.

The court held with the state and Coalition Communities that the retention of excess SWEPT represents "a paradigmatic legislative spending directive that, standing alone, does not implicate Part II, Article 5," the tax provision of the state Constitution. Applying SWEPT funds beyond what is required to meet the cost of an adequate education, they wrote, "has no effect on the uniform SWEPT rate assessed to each taxpayer across the state." Likewise, "there is no evidence in the record that these effective rates are actually paid by taxpayers."

Continue reading.

New Hampshire Business Review

by Michael Kitch

June 10, 2025

What Trump's New Tax Bill Could Mean for Municipal Bonds - YouTube

JPMorgan raised its forecast for municipal bond sales in 2025 to $560 billion as US lawmakers deliberate over President Trump's "big, beautiful" tax and spending bill in the Senate.

Goldman Sachs Asset Management co-head of municipal fixed income Sylvia Yeh weighs in on what policy changes to the US tax code could mean for municipal bond investors, as well as valuation catalysts in comparison to Treasury yields (^TYX, ^TNX, ^FVX).

Goldman Sachs manages several municipal bond ETFs (GMUB, GCAL, GMNY, GUMI).

Watch video.

Yahoo Finance

Jun 10, 2025

A Town's Single Largest Taxpayer Is Also Its Biggest Headache.

An empty shell for years, the mall in Lanesborough, Mass., shows how difficult it is to redevelop malls in smaller towns.

In its heyday, the Berkshire Mall was the place to go in Lanesborough, Mass., drawing huge crowds of enthusiastic shoppers and producing plenty of tax dollars for the small town.

"There were times you could not find a parking place in this mall — inside, it was packed," said Timothy Sorrell, a town selectman and former police chief in rural Lanesborough, which has a population of about 3,000. For teenagers in particular, it was the place to hang out.

"It was to the point where if we had to throw a kid out of the mall, it was like we were taking away Christmas," Mr. Sorrell said. "They would actually cry. It was almost the end of the world for them."

Continue reading.

The New York Times

By Jim Zarroli

June 15, 2025

TAX - OHIO

State ex rel. New Carlisle v. Clark County Board of Elections

Supreme Court of Ohio - March 11, 2025 - 178 Ohio St.3d 289 - 258 N.E.3d 361 - 2025-Ohio-814

Relator, a city, filed mandamus action against county board of elections and its director, seeking an order requiring board to place city's proposed income tax levy on primary and special election ballot.

The Supreme Court held that:

- City lacked adequate remedy in ordinary course of law absent writ of mandamus ordering board to place city's proposed levy on ballot;
- Provision governing the levying of municipal income tax in excess of one percent only required municipality to timely file with board its resolution directing board to conduct election on specified date, as well as "copy of the ordinance" the city's electors would be voting on; and
- Board of elections "clearly disregarded applicable law" by improperly requiring city to pass ordinance before submitting it to voters and, thus, city was entitled to writ of mandamus ordering board to place proposed levy on ballot.

City lacked "adequate remedy" in ordinary course of law absent writ of mandamus ordering county board of elections to place city's proposed income tax levy on primary and special election ballot, where election was less than two months away at time of decision.

Statutory provision governing the levying of municipal income tax in excess of one percent does not require municipality to file with board a “copy of the ordinance” that city had already enacted and wanted to present to municipality’s electors for passage but, rather, only requires municipality to timely file with board its resolution directing board to conduct election on specified date, as well as “copy of the ordinance” the city’s electors would be voting on.

Statutory provision governing the levying of municipal income tax in excess of one percent required municipality to timely file with board its resolution directing board to conduct election on specified date, as well as “copy of the ordinance” the city’s electors would be voting on, despite contention that it was possible for both city council and city’s voters to “pass” the ordinance; under provision, ordinance to levy excess municipal income tax could not be effective unless it was first approved by voters.

Statutory provision governing the levying of municipal income tax in excess of one percent required municipality to timely file with board its resolution directing board to conduct election on specified date, as well as “copy of the ordinance” the city’s electors would be voting on, despite contention that provision called for “a copy of the ordinance,” not a copy of the “proposed ordinance,” to be filed with board; ordinance the municipality had to submit to board with resolution under provision was necessarily a “proposed ordinance,” because ordinance could not be passed without voter approval, such that absence of word “proposed” to describe ordinance referred to in provision was immaterial.

County board of elections “clearly disregarded applicable law,” when it refused to place city’s proposed income tax levy on primary and special election ballot, by improperly requiring city to pass ordinance before submitting it to voters and, thus, city was entitled to writ of mandamus ordering board to place levy on ballot; governing statutory provision only required city to timely file with board a resolution directing board to conduct election on specified date, as well as copy of ordinance the city’s electors would be voting on.

TAX - PENNSYLVANIA

[CCP Berks, LLC v. Berks County Board of Assessment Appeals]

Commonwealth Court of Pennsylvania - April 1, 2025 - A.3d - 2025 WL 969825

Property owner appealed decisions by county board of assessment appeals affirming valuation of five parcels of real property for property tax purposes, and school district intervened.

After owner sold property to purchaser, who joined appeals and then resold property to third party, the Court of Common Pleas consolidated appeals, and denied school district’s motion to strike discontinuance filed by owner and purchaser. School district appealed.

The Commonwealth Court held that:

- District was not required to file own tax assessment appeal in same proceeding as owner and purchaser’s appeal in order to challenge discontinuance;
- Trial court could consider prejudice to district caused by discontinuance using rule of civil procedure as guidance; and
- Allowing unilateral discontinuance would deprive district of statutory appeal right.

School district, which intervened in its capacity as taxing district, was not required to file its own appeal in the same proceeding as former property owners’ appeal in order to move to strike owners’ praecipes to discontinue appeal challenging prior years' tax assessments; the school district retained an interest notwithstanding the filing of the discontinuance by former property owners, and school district was entitled to protect that interest by proceeding to a hearing, regardless of whether former owners continued to participate.

Orrick: Increasing Frequency of Incorrect IRS Notices to Tax-Exempt Bond Issuers Raises Concerns

In recent months, issuers of tax-exempt bonds have been facing an unexpected challenge: incorrect notices from the Internal Revenue Service (IRS) claiming that their Forms 8038 are being filed without the required signature. This issue, which has persisted for several months, appears to be escalating in frequency, causing confusion and concern among bond issuers and their legal advisors.

Issuers of tax-exempt bonds must file a version of Form 8038 with the IRS after every tax-exempt bond issue. The form is required to be filed to establish the tax-exempt status of the bonds. The erroneous notices suggest that the form was submitted without a signature, a critical error that could jeopardize the bond's tax status and result in substantial fines for late filing.

These notices have caused additional confusion and frustration among issuers and their bond counsel, as they often refer to time periods that cannot be matched to any specific return. Moreover, many issuers have filed multiple Form 8038s around the time indicated on the notice, yet the IRS fails to specify which form the notice pertains to. Generally, issuers and bond counsel have been able to confirm that all filed forms submitted around that time period were indeed signed when submitted, indicating a systemic error on the part of the IRS.

Efforts to resolve the issue have proven challenging. Issuers and bond counsel have attempted to contact the IRS using the customer service number provided on the notices but have found little success resolving their issue. When multiple forms were filed in the same period, customer service agents have been largely unable to assist and are unable to identify the specific Form 8038 for which the notice was generated.

The increasing frequency of these erroneous notices has raised concerns about the IRS's processing systems and the potential impact on issuers' operations. For many, the notices have resulted in additional administrative burdens, requiring them to verify their submissions and, in some cases, resubmit forms to ensure compliance.

Orrick has been in communication with IRS personnel regarding these incorrect notices. During phone conversations, IRS representatives acknowledged awareness of the issue but indicated that there is currently no estimate for when it will be resolved and requested the patience of the bond community while its works towards a resolution.

In the meantime, issuers who receive an IRS notice stating that their Form 8038 or Form 8038-G was received without a signature should send the notice to their bond or tax counsel for assistance responding to the notice (or not).

May.27.2025

Orrick, Herrington & Sutcliffe LLP.

[Tourism and Tax Revenues: An Overlooked Link to Municipal Bonds.]

International travel plays a key role in the stability of the municipal bond market. Explore how a slowdown in tourism can impact revenue bonds, local budgets, and investor sentiment.

As investors in the municipal bond space, we spend much of our time tracking rate movements, credit trends and fiscal policy. But one external force that could quietly reshape state and local government finances, and in turn, the municipal bond market, is a slowdown in international tourism to the United States. For many municipalities, foreign visitors represent a critical stream of tax revenue. When that revenue disappears or declines meaningfully, the impact can cascade from local budgets to bond markets, particularly for investors exposed to certain kinds of revenue-backed debt.

Why International Tourism Trends Matter for the Municipal Bond Market

International travelers aren't just sightseeing, they're spending. And that spending translates into real dollars for states and cities through sales taxes, hotel and occupancy taxes, and transportation-related levies. Places like Florida, New York, Nevada, and California depend heavily on this activity to fund essential services.

In Florida, for example, state sales tax collections topped $36 billion in fiscal year 2023, equal to more than 70% of the state's general revenue according to the Florida Department of Revenue. Similarly, hotel taxes are a core revenue source in cities like Las Vegas and New Orleans — revenue that declines in lockstep with falling occupancy rates. Add to this the transportation-related taxes from rental cars and ride-hailing services in tourist-heavy metros like San Francisco or Los Angeles, and you begin to see just how embedded tourism is in municipal fiscal health.

Continue reading.

vaneck.com

by Michael Cohick
Director of Product Management

June 02, 2025

[Kutak Rock: Tax Reform Passes Ways and Means Test]

On the Hill

Around 8:00 a.m. (ET) this morning, the House Ways and Means Committee voted to approve its tax reform legislation. While there were spirited discussions on several issues during the almost 17-hour session, the tax-exempt status of bonds did not come up. All proposed amendments were rejected in favor of maintaining the language as initially released on Monday.

The legislation as just passed by Ways and Means:

- Provides a 12.5% allocation increase for 9% LIHTC transactions for 2026-2029
- Lowers the bond financing requirement from 50% to 25% for 4% LIHTC deals for 2026-2029

- Designates Indian areas and rural areas as “Difficult Development Areas” and adds 30% boost in basis for 2026-2029
- Permanently extends increased individual alternative minimum tax exemption amounts and phase-out thresholds
- Permits the full expensing for domestic manufacturing structures during year placed in service
- Renews, extends and modifies eligibility for another round of Opportunity Zones
- Allows the Treasury Secretary to suspend the tax-exempt status of any organization that the Department of Treasury determines has provided more than a minor amount of support to a listed terrorist organization

What This Means for Tax-Exempt Bond Issuers

Continue reading.

Kutak Rock LLP

May 14, 2025

SALT Cap Hike Risks Denting Muni Appeal in New York, California.

A long-awaited House bill could dull the allure of municipal bonds in some states by tripling the federal deduction limit to $30,000, even as the legislation looks to keep the securities tax exempt.

Filers are currently limited to deducting no more than $10,000 of their state and local taxes (SALT) on their federal tax forms. That has helped buoy demand for tax-exempt debt sold in higher-tax states such as California, New York and New Jersey. Lifting the cap to $30,000 would make such debt less appealing to investors, potentially weighing on prices for bonds sold in those states, wrote Abby Urtz, head of product strategies and economics at FHN Financial, in a report Tuesday.

“Any increase in the SALT cap would be positive for credit quality in high tax areas but negative for spreads in these places as it would create less incentive to shelter income from taxes,” Urtz wrote.

States and cities sell tax-exempt bonds to pay for infrastructure upgrades on roads and bridges, school buildings, water and sewer systems, hospitals and mass transit. When investor demand for the debt declines, yields on the securities rise, increasing borrowing costs for public-works projects.

The House Ways and Means Committee released the tax bill on Monday. It allows the deduction for individuals making less than $200,000 and households earning less than $400,000. President Donald Trump in 2017 placed the $10,000 cap on the deduction, with that limit set to expire next year. Federal lawmakers are seeking to approve the bill sometime this year.

Raising the limit can benefit states. A higher limit helps states by giving their residents tools to ease their federal tax burden, said Matt Fabian, partner at Municipal Market Analytics.

“The SALT deduction is really about giving states operating flexibility,” Fabian said. “It’s giving the states a first crack at taxing their residents’ incomes.”

States are bracing for potential cuts in federal spending. The tax bill proposes states taking on more of the cost for the Supplemental Nutrition Assistance Program, known as food stamps. Republican lawmakers are also seeking to reduce Medicaid spending.

The deduction helps strengthen states' credit quality and a higher cap could help states if the federal government pulls back on aide and grant funding.

"With all of the credit pressures coming for states, any little bit of additional operating flexibility allowing them to raise taxes a bit more or to relieve the economic burden from their current tax rates is all good," Fabian said.

Bloomberg Markets

By Michelle Kaske

May 13, 2025

[Tax-Exemption on Muni Bonds 'Untouched' in House Tax-Cut Plan.]

Public finance lobbyists and bankers breathed a sigh of relief as the key federal subsidy underpinning municipal bonds appeared unscathed in a bill House tax writers released Monday.

The tax package released by the House Ways and Means Committee doesn't include material changes to tax-exempt municipal bond financing. Most muni bonds pay interest that's exempt from federal tax. Bankers and borrowers have warned for months that the tax break was at risk as lawmakers look for ways to raise revenue to offset the cost of extending President Donald Trump's 2017 tax cuts.

"We are thrilled the House Committee on Ways and Means recognizes the importance of the tax-exemption and left the critical infrastructure financing tool untouched in its initial tax draft," Brett Bolton, a spokesperson for the Bond Dealers of America, which represents securities dealers and banks, said in an emailed statement.

Still, he added that lawmakers have "plenty of sticky and expensive issues to work through in the coming weeks, so now is not the time to take the foot off the gas."

The industry has been lobbying for months to safeguard the exemption. They have been spooked since the start of the year when a menu of potential spending cuts listed ending the tax-exempt status on municipal bonds as one of the options to raise revenue.

Plus, at least one adviser to Trump has spoken out against the exemption while the president himself has threatened to strip Harvard University's tax-exempt status.

"It appears the exemption lives to fight another day and most likely make it to another election season where we may go through this exercise I fear, once again," said Eric Kazatsky, municipal strategist for Bloomberg Intelligence.

Bloomberg Markets + Politics

By Shruti Singh and Amanda Albright

May 12, 2025

[NYT: Republican Agenda Hits Familiar Obstacle: State and Local Taxes]

A small group of Republicans is threatening to torpedo President Trump's agenda over the state and local tax deduction, long a headache for both parties.

It was perhaps inevitable that the Republican effort to pass a vast fiscal package this year would, at some point, get caught up in the thicket of the state and local tax deduction.

After all, the deduction, often called SALT, has long had the potential to cause a political standoff. Many G.O.P. lawmakers abhor it and, in 2017, imposed a $10,000 limit on the amount of state and local taxes Americans can write off on their federal returns. But to pass a tax bill this year, the party will need the support of a motivated clutch of Republicans who have made lifting that cap the animating promise of their political careers.

Those lawmakers, who represent high-tax states like New York and New Jersey where the deduction is cherished, say they are willing to tank the package over the issue. Representative Nick LaLota, Republican of New York, can already visualize voting against the bill.

Continue reading.

The New York Times

By Andrew Duehren
Reporting from Capitol Hill

May 9, 2025

[I.R.S. Revenue Procedure 2025-18: Average Area Purchase Prices - Kutak Rock]

On April 16, 2025, the IRS published Rev. Proc. 2025-18, which sets out the new (2025) average area purchase prices for mortgage revenue bonds and mortgage credit certificates (from those purchase prices an issuer then calculates the average area or targeted area purchase price limits, using the 90% or 110% factors). Below is a copy of the IRS Release, with a link to the Rev. Proc. itself which has all the new purchase price limits.

We have developed a short summary of the Rev. Proc. available here.

The Rev. Proc. is the same basic Rev. Proc. used by the IRS in previous years, although obviously with up-to-date numbers and different effective and transition dates.

Kutak Rock LLP

Client Alert | April 17, 2025

Last Week's Big Beautiful Budget Framework: A Potential Lifeline for the Tax-Exemption

Continued Advocacy Needed: There is no time to relax. To maintain improvements to U.S. infrastructure, advocacy and educational efforts in support of the tax-exemption must persist without slowing down. Although the threat has dropped, it will continue until Dec. 31, 2025. Additionally, future deficit reduction talks could pose an even stronger threat to the municipal bond tax-exemption after 2025.

Reduced Threat to the Tax-Exemption: The risk of eliminating the municipal bond tax-exemption has significantly decreased to around 10% for state and local governments if lawmakers target only $1.5 trillion in spending cuts, though the threat to private activity bonds remains high at 50% or greater.

Continue reading.

advisorhub.com

by Tom Kozlik, HilltopSecurities

April 17, 2025

Former Banker in Congress Sticks Up for Muni-Bond Tax Break.

A group of Republicans is standing up for the municipal tax-exemption, threatening a possible revenue raiser for their party's marquee tax bill this year.

In a letter addressed to Chairman Jason Smith of the Ways and Means Committee, seven GOP lawmakers on the Financial Services Committee lauded municipal bonds as a "critical tool that has underpinned American infrastructure and community development for over a century." They warned about the fallout if the exemption were to go away.

"We caution against any measures that could have unintended consequences on the municipal bond market for thousands of local governments and the constituents they serve," wrote US Representative French Hill, who serves as chairman of the House Financial Services Committee, in the letter dated April 11. "Preserving access to tax-exempt financing is especially critical for smaller and rural issuers, who often lack alternative pathways to affordable capital."

Continue reading.

Bloomberg Markets

By Arvelisse Bonilla Ramos, Zach C Cohen, and Amanda Albright

April 15, 2025

WSJ: Muni Tax Break Garners Key Support

Good news for state and local government bondholders: key House Republicans don't want to mess with the muni market.

The $4 trillion market finances local infrastructure like high schools, roads and sewers. Narrowing the tax break on muni bond interest was one way Congress in 2017 considered paying for the original round of Trump tax cuts.

While that plan got scrapped, some investors and local budget officials had worried that current negotiations to extend the cuts—as part of President Trump's "big, beautiful bill"—would pick it up again.

But in a letter Friday to Chairman Jason Smith of the powerful Ways and Means Committee, Financial Services Committee chairman French Hill cautioned against "any effort to eliminate or significantly curtail" muni bonds' tax-exemption. Reps Bill Huizenga, Andy Barr, Ann Wagner, Frank Lucas, Daniel Meuser and Mike Flood also signed the letter.

The Wall Street Journal

By Heather Gillers

TAX LIENS - CONNECTICUT

Cazenovia Creek Funding I, LLC v. White Eagle Society of Brotherly Help, Inc.

Supreme Court of Connecticut - April 15, 2025 - A.3d - 2025 WL 1085249

Holder of municipal tax liens, which were originally assigned to holder's predecessor in interest by city collector of revenue, brought foreclosure action against owner of real property.

The Superior Court granted holder's motion for summary judgment as to liability. Another holder was substituted as plaintiff, and subsequent holder was later substituted as plaintiff. The Superior Court rendered a judgment of foreclosure by sale, and owner appealed. The Appellate Court affirmed, and owner filed petition for certification of appeal. The Supreme Court granted petition.

The Supreme Court held that:

- Substitute lienholder met prima facie burden of establishing ability to foreclose on liens;
- Language in city council meeting agendas and minutes did not preclude assignment of tax liens for two years' grand lists;
- Liens for two years prior to fiscal year referenced in city council's meeting agendas and minutes could be encompassed in that specific fiscal year;
- City council was not required to authorize predecessor's subsequent assignment of lien to substitute lienholder;
- Supreme Court could not determine whether trial court ruled in favor of substitute lienholder as to three of six special defenses asserted by property owner; and
- Any claims related to procedural irregularities in proceedings were deemed waived by property owner.

Substitute holder of municipal tax liens met its prima facie burden of establishing its ability to foreclose on the liens, where holder submitted certification documents including certified copies of certificates of continuing tax liens for taxes due on property relating to grand lists for two years.

Language contained in city council meeting agendas and minutes, which referenced assignment of tax liens for specific fiscal year, did not preclude assignment of tax liens for prior and subsequent years' grand lists, as required for substitute holder of municipal tax liens to have ability to foreclose on liens; city council was not required to specifically enumerate grant list year as opposed to fiscal year, governing statute section did not use terms "fiscal year" or "grand list," and although meeting agendas and minutes referenced "fiscal year," actual resolutions approved by council did not contain "fiscal year" language, instead providing for assignment of all tax liens by tax collector to secure unpaid property taxes.

Tax liens for two years prior to specific fiscal year referenced in city council's meeting agendas and minutes could be encompassed in that specific fiscal year, as required for substitute holder of municipal tax liens to have assignment of and ability to foreclose on liens; taxes assessed in connection with grand list for two years before specified fiscal year would not have been overdue until specified fiscal year, and assignment of tax liens from grand lists for two years prior to specified fiscal year were approved within two years of those grant list years.

City council was not required to authorize predecessor's subsequent assignment of municipal tax lien to substitute holder of lien, as would render subsequent assignment invalid, where assignments at issue were executed approximately six to seven years before legislature amended governing statute section to add requirement of prior written consent of subsequent assignment by city council.

Supreme Court could not determine whether trial court ruled in favor of substitute holder of municipal tax liens, in rendering judgment of foreclosure on liens by sale of real property, regarding three of special defenses asserted by owner of foreclosed property in response to holder's complaint, where trial court granted holder's motion for summary judgment as to liability, as well as on three special defenses raising question of whether holder had authority to bring tax foreclosure action, and trial court at least implicitly appeared to have considered and ruled on remaining special defenses related to liability, but there was no written memorandum of decision from trial court, given that no trial was held after summary judgment motion, and there was no clear articulation of the record.

Any claims related to procedural irregularities in proceedings wherein substitute holder of municipal tax liens obtained judgment of foreclosure by sale were waived by owner of real property subject to that foreclosure, where owner had responded to the complaint and asserted six special defenses, to which holder never replied and was never required to reply by the trial court, the trial court noted in granting holder summary judgment as to liability that three of those special defenses relating to liability would be subject of a trial, but no trial followed motion for summary judgment, and owner never objected to procedural irregularities.

TAX - LOUISIANA

University of New Orleans Research and Technology Foundation, Inc. v. White

Court of Appeal of Louisiana, Fourth Circuit - March 6, 2025 - So.3d - 2025 WL 719913 - 2024-0472 (La.App. 4 Cir. 3/6/25)

Parish tax assessor and city finance director appealed decision of the state Board of Tax Appeals, which found that taxpayer's four buildings located in research and technology park near state university were exempt from ad valorem taxes or property taxes under state constitution.

The Court of Appeal held that:

- Taxpayer was entitled to exemption from ad valorem or property taxes under state constitution;
- Taxpayer's activities, not its tenants' activities, were required to be examined to determine if taxpayer complied with statutory directives regarding dedication of property to a legislatively recognized public purpose and public use; and
- Taxpayer's president and chief executive officer's testimony was not inadmissible hearsay.

Taxpayer's four buildings located in research and technology park near state university were statutorily dedicated to a legislatively recognized public purpose and public use, and thus were exempt from ad valorem or property taxes under state constitution; under statute defining public purpose and public use of research and technology parks, legislature provided non-profit corporations, like taxpayer, with special powers necessary to accomplish that public purpose, as long as taxpayer used powers to accomplish that purpose, it was engaged in a public use for purposes of the tax exemption, and legislature gave taxpayer and university the discretion to forge connections between tenants and university in a way that best accomplished the public purpose of the park.

Taxpayer's activities at its four buildings located in research and technology park near state university, not its tenants' activities, were required to be examined to determine if taxpayer complied with statutory directives regarding dedication of property to the legislatively recognized public purpose and public use of research and technology parks, as required for taxpayer's buildings to be exempt from ad valorem or property taxes under state constitution; taxpayer's president and chief executive officer testified how taxpayer and university screened tenants to assure that they would be in harmony with taxpayer's legislative mission and how taxpayer monitored their activities to bring about as much collaboration with university as possible, and that testimony was uncontradicted.

Taxpayer's president and chief executive officer's testimony regarding activities and statements of tenants of taxpayer's four properties located in research and technology park near state university was not inadmissible hearsay with respect to taxpayer's entitlement to exemption from ad valorem or property taxes under state constitution, where president's testimony was based on her own personal knowledge or taxpayer's records.

NASBO: Governors Recommend a Wide Variety of Tax Changes for Fiscal 2026

View the NASBO article.

TAX - MICHIGAN

Sixarp, LLC v. Township of Byron

Supreme Court of Michigan - March 26, 2025 - N.W.3d - 2025 WL 921773

Taxpayer, a packaging company, sought judicial review of order of Michigan Tax Tribunal (MTT), granting township's motion for summary disposition based on lack of subject-matter jurisdiction, and denying taxpayer's due process claim relating to alleged failure of township's assessor to notify taxpayer about taxpayer's appeal rights and to provide an adequate explanation for denial of taxpayer's application for eligible manufacturing personal property (EMPP) exemption in connection with personal property taxes for some of taxpayer's manufacturing equipment.

The Court of Appeals reversed and remanded. Township moved for leave to appeal to the Michigan Supreme Court, which was granted.

The Supreme Court held that:

- Taxpayer did not satisfy statutory requirements for MTT to exercise jurisdiction; overruling *Parkview Mem. Ass'n v Livonia*, 183 Mich App 116, 454 N.W.2d 169;
- Tax assessor's notice sufficiently stated reason for denial of exemption;
  Denial notice sufficiently advised taxpayer that denial was required to be appealed to Board of Review to preserve rights to appeal to MTT;
- Township's assessor provided statutorily-accurate information to taxpayer's agents to file written letter appeal; and
- Fact that taxpayer was not advised of requirement to file a combined document with appeal either in denial notice or by tax assessor did not deprive taxpayer of due process.

Township's assessor denied application for eligible manufacturing personal property (EMPP) exemption in connection with personal property taxes for some of taxpayer's manufacturing equipment before Board of Review met, and taxpayer failed to file an appeal of denial with Board, and thus taxpayer did not satisfy statutory requirements for Michigan Tax Tribunal (MTT) to exercise jurisdiction over taxpayer's claims related to denial, so that taxpayer was required to demonstrate that MTT deprived taxpayer of right to due process to invoke Supreme Court's judicial power to waive the jurisdictional requirements; MTT had no equitable power to waive or otherwise disregard a statutory requirement or filing deadline, and thus had no authority to grant taxpayer's exemption request; overruling *Parkview Mem. Ass'n v Livonia*, 183 Mich App 116, 454 N.W.2d 169. U.S. Const. Amend. 14; Mich. Const. art. 1, § 17; Mich. Comp. Laws Ann. §§ 205.735a(3), 211.9m(2)(c) (2017), 211.9m(3) (2017), 211.9n(2)(c) (2017), 211.9n(3) (2017).

Kutak Rock: Capitol Connection Preserving Tax-Exempt Bonds

It is no surprise that 2025 is a big year for tax reform. Many of the provisions in the Tax Cuts and Job Act (TCJA) are expiring, and negotiations are already under way for how to extend them. Once again, tax-exempt bonds may be in jeopardy.

With this focus on tax reform and its important implications for you, Kutak Rock is dedicated to keeping you informed and actively engaging on this issue.

We'd like to introduce you to Capitol Connection – our platform for connecting our clients and community to the rapidly changing discussions in Washington, D.C. and, most immediately, how tax reform could impact the tax-exempt bond industry.

What You Need to Know

The Senate spent Friday evening debating its revised budget framework. As passed on Saturday, it moves the Senate away from the two-bill strategy toward a one-bill strategy–the approach preferred by the House. We anticipate considerable debate this week as the House picks up where the Senate left off. Bottom line: the timeline for tax reform appears to be accelerating.

At Kutak Rock

While specific pay-fors of tax reform have yet been identified in detail, private activity bonds could be at risk, as they were in 2017, and tax-exempt municipal bonds are not immune from threat either. We know tax-exempt bonds are vital to your business, and if they are restricted or eliminated, the impact could be monumental. That's why it's more important than ever to closely monitor what is happening and proactively advocate for the preservation of tax-exempt municipal and private activity bonds during this year's tax-reform season.

Kutak Rock Advocacy

To lead this charge, Kutak Rock has engaged an outside lobbying firm to help advocate for these financing tools and closely monitor the day-to-day tax policy discussions. The lobbying firm has a track record of success impacting legislation, advancing policy positions, building relationships with federal stakeholders, and navigating the government budget process. Often, they are in the room while decisions are being made. Through this partnership, you can expect us to communicate regularly about what's happening on Capitol Hill and provide information on tax reform negotiations as they happen.

Advocacy is the cornerstone of progress. At some point we may reach out with a call to action. By sharing your voice and lived experience, you can help policymakers understand the real-life impact of their decisions on the vital services, support and infrastructure that their constituents rely on.

We look forward to working with you in the coming months as we focus on these advocacy efforts. If you have questions or are interested in learning more about our advocacy efforts, please reach out to your Kutak Rock attorney or a member of Kutak Rock's Tax Reform Advocacy Group at taxreform@kutakrock.com. You may also visit us at www.kutakrock.com.

Publications – Client Alert | April 7, 2025

Muni Bankers Look to Woo Treasury, Trump Team to Keep Tax Break.

A group of public finance bankers, who have so far largely focused their attention on Congress, are now reaching out to the Trump administration to make their case for keeping state and local government debt tax free.

The Bond Dealers of America plans to meet next month with the Treasury Department's public finance unit and is working to set up sessions with other Trump administration officials, according to Brett Bolton, a spokesperson for the Washington-based lobbying group representing securities dealers and banks.

Local governments, bankers and investors have been on alert since the federal tax break landed on a list of items up for the chopping block as Republicans seek ways to raise money to extend President Donald Trump's 2017 tax cuts. Congressional GOP who returned to Washington Monday will be negotiating a tax bill package this week to deliver those reductions. The muni tax exemption — seen as the underpinning of the public finance market — is among the top 30 federal tax expenditures, according to the Bipartisan Policy Center.

Continue reading.

Bloomberg Markets

By Shruti Singh

March 25, 2025

[Paying for Trump's Tax Cut With Bigger Potholes.]

Scrapping an exemption for municipal bonds to fund the president's agenda would amount to an effective increase in local levies for many.

Much of politics boils down to a fight over who pays for what. One live, if under the radar, debate about the looming Republican tax bill and municipal bonds certainly fits that description. But it also goes way beyond, encompassing the physical fabric of daily life and the financial fabric of local democracy.

Muni bonds, a $4.1 trillion market, are the lifeblood of state and local spending, as well as quasi-public entities such as non-profit hospitals and charter schools. Interest paid on these bonds has been tax exempt forever — as have attempts to overturn that. Now a combination of the explosion in federal debt since 2008 plus Republicans' search for offsets to extend the 2017 tax cuts present a potentially powerful catalyst.

A leaked GOP menu of potential tax-cut 'pay-fors' projected that ending the muni exemption would save $250 billion over 10 years. Stephen Moore, an economic whisperer to President Donald Trump, recently re-floated the idea of closing this "loophole." Meanwhile, Scott Greenberg, tax counsel to the House Ways and Means Committee, is a former think-tanker who happened to write a prominent anti-muni-exemption paper in 2016. "The threat is real," says Matt Fabian, partner at Municipal Market Analytics Inc., a research firm.

Continue reading.

Bloomberg Opinion

By Liam Denning

Liam Denning is a Bloomberg Opinion columnist covering energy. A former banker, he edited the Wall Street Journal's Heard on the Street column and wrote the Financial Times's Lex column.

March 28, 2025

Muni Market's Moment of Truth: Tax-Exemption in Question

The tax-exemption status of municipal bonds faces growing uncertainty as policymakers consider major tax changes. While risks loom, attractive yields offer strategic opportunities for investors.

Fixed income markets are no fan of indecision or uncertainty. And here we are, mid-March, mired in a sea of uncertainty. Specifically, in the view of municipal investors, there are more reasons for concern now than in any other major market sector. The existential threat to the future of tax-exempt finance has heightened this uncertainty, making municipal bonds a focal point for policymakers and investors alike.

The Future of the Tax-Exemption Unanswered
Municipal investors are watching closely as discussions unfold in Washington, where both the House and Senate finance committees are weighing significant changes that could reshape tax-exempt finance. Some of the key questions on the table include:

- Will the benefit of the federal exemption be capped at 28% or eliminated entirely?
- Will the potential cap apply to all outstanding bonds or only those issued after a certain date?
- Could tax exemption for municipal bonds be legislated out of existence altogether?

Continue reading.

vaneck.com

March 25, 2025

What are the Odds that FanDuelDraftKingsBet365 Can Save Tax-Exempt Bonds? - Squire Patton Boggs

A document leaked earlier this year and attributed to the House Ways and Means Committee included the repeal of tax-exempt bonds[1] as a source of revenue to help defray the cost of extending the provisions of the Tax Cuts and Jobs Act that otherwise will expire at the end of 2025. Apoplexy ensued.

This consternation is fueled by the notion that Congress has the untrammeled authority to prevent states, and the political subdivisions thereof, from issuing obligations the interest on which is excluded from gross income for federal income tax purposes. This notion appears to ignore a line of precedent that culminated in making Bet365, DraftKings, FanDuel, et al. indistinguishably omnipresent.

Curious? Read on after the break.

Continue reading.

The Public Finance Tax Blog

By Michael Cullers on March 27, 2025

Squire Patton Boggs

How Do States Tax Exempt-Interest Dividends?

Exempt-interest dividends, often paid by municipal bond funds, are generally free from federal taxes. However, they may still be taxed at the state level. How states tax exempt-interest dividends depends on factors like the investor’s residency and where the bonds were issued. Some states exclude dividends from in-state municipal bonds while taxing those from out-of-state issuers. Others tax all exempt-interest dividends regardless of origin.

What Are Exempt-Interest Dividends?

Exempt-interest dividends are distributions from mutual funds that invest in municipal bonds issued by state and local governments to finance public projects. These dividends represent the tax-free interest earned by the fund on its bond holdings, which passes to investors. Unlike traditional dividends from stocks or taxable bond funds, exempt-interest dividends do not stem from corporate earnings but rather from government-issued debt instruments.

Continue reading.

SmartAsset Team

Wed, March 26, 2025

Is the Exemption for Interest on Municipal Bonds on Congress' Chopping Block?

The new administration and Congress are working towards an extension of the 2017 Tax Cuts and Jobs Act (TCJA), the bulk of which expires at the end of 2025. In late February, the House passed a spending bill (H. Con. Res. 119-4) to enable the extension, provided that Congress also identifies $2 trillion in spending reductions. Cutting that much spending will be a challenge.

Another way to offset the cost of extending the TCJA is through the closure of tax "loopholes." One such loophole under discussion is the exemption of interest on qualified state and local bonds from federal income taxation. The House Ways and Means Committee estimated that the elimination of the exemption will raise up to $250 billion in additional income tax revenue over the upcoming 10 years.

The elimination of the exemption must be carefully considered because, according to the Public Finance Network (PFN), state and local governments are responsible for 90 percent of all public infrastructure spending and over 80 percent of that spending is financed with tax-exempt bonds. Non-profit organizations and multi-family housing providers also rely on tax-exempt bond financing to finance the construction and renovation of facilities such as hospitals, schools, and affordable housing developments.

Continue reading.

by Arthur Anderson

March 26, 2025

Spilman Thomas & Battle, PLLC

APPA Updates Tax Advocacy Materials, Launches Webpage Focused on

Municipal Bonds.

APPA Updates Tax Advocacy Materials, Launches Webpage Focused on Municipal Bonds

The American Public Power Association has launched a municipal bond advocacy page that includes a summary of its key messages on the issue, links to related news, and links to supporting documents.

The webpage includes:

- APPA's municipal bond issue brief;
- Analysis by the Government Finance Officers Association on the margin between taxable and tax-exempt debt; and
- A Public Finance Network primer on tax-exempt financing.

The page will soon be amended to add access to a University of Chicago report providing data on outstanding municipal bond issuances for every state and every congressional district.

The webpage can be found here.

APPA said it continues to work with stakeholders on tax-exempt financing and elective payment of energy tax credits.

It is encouraging its member utilities to proactively engage with congressional offices to advocate for the continued use of tax-exempt financing and elective payment of energy tax credits.

With respect to elective pay, APPA has begun circulating on Capitol Hill a "one-pager."

The document includes a talking point style one-pager, a graphic showing the difference for project ownership and financing of an elective pay project and a power purchase agreement; and a list of public laws and introduced legislation demonstrating the history of Republican and Democratic support for credit monetization.

American Public Power Association

by Paul Ciampoli

March 19, 2025

Trump Adviser Calls to End Muni Tax Break in Threat to Market.

Stephen Moore, an informal economic adviser to President Donald Trump, floated eliminating the federal tax subsidy for municipal bonds, a concerning sign for the market where states and cities raise debt.

Local governments, as well as bankers and investors, have been worried that the key feature of the public finance market could be at risk as Republicans search for ways to raise money to extend 2017 tax cuts. Muni bonds pay interest that's exempt from federal taxes, costing the government roughly $40 billion each year. The subsidy is one of the top federal tax expenditures, according to the Bipartisan Policy Center.

“It’s in play,” Moore said in an interview. “This is a big tax bill, and there need to be offsets.”

He said eliminating the subsidy aligns with Republican efforts to “broaden” the tax base and is more “politically plausible” than in prior years because it would directly impact wealthy investors.

Continue reading.

Bloomberg Markets

By Zach C Cohen and Amanda Albright

March 21, 2025

TAX - ILLINOIS
Village of Arlington Heights v. City of Rolling Meadows
Supreme Court of Illinois - March 20, 2025 - N.E.3d - 2025 IL 130461 - 2025 WL 865177

Village brought action against neighboring city to recover sales tax revenues generated by business located within village that had been misallocated to city.

The Circuit Court granted city’s motion to dismiss for lack of subject-matter jurisdiction.

Village appealed. The Appellate Court reversed. City filed petition for leave to appeal to Supreme Court, which was granted.

The Supreme Court held that circuit court lacked subject-matter jurisdiction over action, overruling *Village of Itasca v. Village of Lisle*, 352 Ill.App.3d 847, 288 Ill.Dec. 35, 817 N.E.2d 160.

Circuit court lacked subject-matter jurisdiction over action brought against neighboring city by village seeking to recover sales tax revenues generated by business located within village that had been misallocated to city; statutory framework provided Department of Revenue (DOR) exclusive jurisdiction to determine sales tax misallocation disputes; overruling *Village of Itasca v. Village of Lisle*, 352 Ill.App.3d 847, 288 Ill.Dec. 35, 817 N.E.2d 160. 20 Ill. Comp. Stat. Ann. 2505/2505-25; 30 Ill. Comp. Stat. Ann. 105/6z-18; 35 Ill. Comp. Stat. Ann. 120/3, 120/4, 120/8.

Barron's: Munis’ Tax-Exempt Status Could Be at Risk. What It Means for Investors

Heads up, municipal bond investors: Amid all the Trump 2.0 policy proposals, there is one you should be aware of: The potential for munis to lose their tax-exempt status. “Eliminate Exclusion of Interest on State and Local Bonds” is listed on page 9 of a 50-page House Budget Committee document prepared in January that lists some 200 ways the government could raise extra funds to offset the impact of extending the 2017 Trump tax cuts.

That doesn’t mean it’s going to happen, or is even likely, but uncertainty around the budget process has been enough to dent the muni market and worry investors, as well as state and local government officials who rely on the bonds to fund their infrastructure projects.

“The muni market abhors uncertainty,” says Dan Close, head of municipals at Nuveen. Excess supply has been an issue, but tax policy uncertainty has played a part, he says.

Muni fund managers say members of Congress understand the value of the tax exemption when it comes to funding projects in their districts, making removal of the exemption unlikely. While the House budget document estimates that eliminating the exemption would add $250 billion to federal coffers over 10 years, the Public Finance Network says it would cost cities and states $824 billion in higher borrowing costs. Those costs would be passed onto households as a $6,555 tax increase over the next decade, the network projects.

Yet sometimes bad policy moves get through Congress, says Craig Brandon, who co-heads the muni investment team at Morgan Stanley Investment Management. “Budgets happen in the middle of the night, when no one has slept and they’ve been drinking coffee for 24 hours,” he says. “Things you normally wouldn’t do can happen just because you need to get a budget deal done.”

Given that, it’s worth considering some scenarios for how changes to the muni exemption could impact investors.

If a change were retroactive so it applied to existing bonds—considered highly unlikely—muni yields would jump to near taxable peers, says Jason Appleson head of PGIM Fixed Income’s municipal bond team. There’s now about a 1.25-percentage-point spread between taxable munis and tax-free munis, which, assuming a 10-year duration, means a theoretical 12.5% decline in value for the tax-free munis, since bond prices move inversely to yields. “A full repeal would destroy a lot of household wealth,” he says.

It’s more likely—though still considered quite unlikely—that tax-exempt status would be grandfathered in for existing munis. In that case, scarcity value could lead to a rise in demand, but legacy tax-free muni yields wouldn’t have much room to fall, says Wesly Pate, senior portfolio manager at Income Research + Management. Most yields are already at a level where only individuals in the highest tax brackets derive an after-tax return benefit.

“There’s a floor on how low muni yields could go,” says Pate. “Investors probably shouldn’t expect a meaningful rally in the muni market if that was to occur.”

There is a scenario where a limited repeal of tax exemption could lead to gains for holders of some grandfathered tax-free munis—in the hospital and higher-education sectors, for example. Those bonds have already taken a hit and could benefit from scarcity value, says Nuveen’s Close. Overall, he says, the threat to the muni exemption “doesn’t materially change how one ought to be investing in municipals, but everyone is taking it very seriously.”

Barron’s

By Amey Stone

March 21, 2025

Write to Amey Stone at amey.stone@barrons.com

[The Possible Repeal of the Tax Exemption of Municipal Bond Interest.]

You may have heard recently about proposals for Congress to remove the exclusion from gross income of interest on state and local bonds, usually referred to as "repealing the tax exemption on municipal bonds." This issue arose as a result of the leaking of a 51-page list of items to increase revenue or reduce expenses of the federal government being considered by the House Ways and Means Committee.

Various projections have been offered as to the effect on the federal budget and issuers of municipal bonds. The House Ways and Means Committee estimates the elimination of the tax exemption would generate $250 billion in revenue for the federal government over ten years. Some analysis has concluded that this would translate to an estimated $824 billion increase in borrowing costs for municipal bond issuers over the same period and create significant disruption in the municipal bond market. We at Bricker Graydon thought it might be helpful for us to take stock of where things stand currently.

About the only thing anyone knows for sure right now is that no legislation to repeal the tax exemption has been introduced in either the U.S. House of Representatives or the Senate. The absence of legislation does not mean that there is no threat. It just means that the nature of the threat is unknown. Many questions exist, a partial listing of which could include:

Continue reading.

by William Conard II & Price Finley

March 12, 2025

Bricker Graydon LLP

If Congress Makes Muni Bonds Taxable, What Could Happen To States And Cities?

House Budget Committee Republicans have identified eliminating the federal tax exclusion for interest earned on municipal bonds, or "Muni" bonds, as a large potential revenue raiser as Congress considers whether to extend expiring provisions of the 2017 Tax Cuts and Jobs Act (TCJA). By one estimate, this could raise $250 billion over ten years.

State and local governments rely on Muni bonds to finance long-term capital investments such as transportation infrastructure and public buildings. The municipal bond market is huge: By the end of 2024, its total valuation was estimated at $4.2 trillion, with new issuances of over $500 billion that year.

What might be the consequences of ending tax exemption for Muni bonds for state and local governments and their residents?

How might the Muni bond market change?

Continue reading.

Tax Policy Center

by Thomas Brosy

March 13, 2025

TAX - MINNESOTA

[County of Hennepin v. Hollydale Land LLC]

Supreme Court of Minnesota - February 26, 2025 - N.W.3d - 2025 WL 610641

Landowner brought petition challenging county's assessment of seven years of deferred property taxes resulting from landowner's sale of golf course previously taxed under Minnesota Open Space Property Tax Law, which allowed for reduced taxes on qualifying recreational land.

The Tax Court denied county's motion to dismiss for failure to timely file tax appeal. County then petitioned for writ of certiorari.

The Supreme Court held that:

- Tax Court's interlocutory order denying county's motion to dismiss did not constitute "final order" conferring Supreme Court with jurisdiction to grant certiorari review of Tax Court's order, and
- Exercise of its discretionary authority was not warranted to review Tax Court's denial of county's motion to dismiss.

Tax Court's interlocutory order denying county's motion to dismiss, for failure to timely file tax appeal, a landowner's petition challenging county's assessment of seven years of deferred property taxes, due to landowner's sale of golf course previously taxed under Minnesota Open Space Property Tax Law, did not constitute "final order" conferring Supreme Court with jurisdiction to grant certiorari review of Tax Court's order.

Exercise of Supreme Court's discretionary authority was not warranted to review Tax Court's denial of county's motion to dismiss, for failure to timely file tax appeal, landowner's petition challenging county's assessment of seven years of deferred property taxes, due to landowner's sale of golf course previously taxed under Minnesota Open Space Property Tax Law; interests of judicial economy favored allowing the Tax Court to resolve merits of petition to avoid piecemeal litigation, and allowing Tax Court proceedings to continue would not impair any party's legal rights.

TAX - OHIO

[State ex rel. New Carlisle v. Clark County Board of Elections]

Supreme Court of Ohio - March 11, 2025 - N.E.3d - 2025 WL 758638 - 2025-Ohio-814

Relator, a city, filed mandamus action against county board of elections and its director, seeking an order requiring board to place city's proposed income tax levy on primary and special election ballot.

The Supreme Court held that:

- City lacked adequate remedy in ordinary course of law absent writ of mandamus ordering board to place city's proposed levy on ballot;
- Provision governing the levying of municipal income tax in excess of one percent only required municipality to timely file with board its resolution directing board to conduct election on specified date, as well as "copy of the ordinance" the city's electors would be voting on; and

- Board of elections “clearly disregarded applicable law” by improperly requiring city to pass ordinance before submitting it to voters and, thus, city was entitled to writ of mandamus ordering board to place proposed levy on ballot.

Fitch: Potential Medicaid Cuts Could Threaten Not-for-Profit Hospital Margins

Fitch Ratings-Chicago/Austin/New York-04 March 2025: Major cuts to Medicaid would negatively affect U.S. not-for-profit (NFP) hospital operating margins and revenues, Fitch Ratings says. Slower revenue growth or a revenue decline leading to sustained cash flow reduction could pressure ratings and potentially the sector outlook.

The House’s recently passed budget proposal calls for $1.5 trillion-$3.0 trillion in spending cuts over the next decade. It includes a directive to the Energy and Commerce Committee to reduce spending by $880 billion over the next 10 years. The Senate will likely propose changes to the House plan, which would require another vote on a final budget resolution before work on budget details can commence.

Although the House plan does not mention specific programs, Medicaid and Medicare are the largest under the Energy and Commerce Committee’s purview. Achieving the budget cuts would be difficult without changing Medicaid eligibility or Medicaid funding. It is uncertain what Medicaid changes, if any, will be in the final budget bill and how they would affect funding and enrollment. Approximately one in five Americans are covered by Medicaid.

A decrease in Medicaid reimbursement and/or an increase in uninsured care would hinder hospitals’ nascent financial recovery from weak sector-wide post-pandemic performance due to higher labor costs and elevated inflation. Median operating margins, which are lower than pre-pandemic levels, are improving along with revenue growth due to increased patient volumes. However, lower revenues and higher unreimbursed expenses from more self-pay patients could reverse recent improvements. This is particularly true for hospitals with a higher share of Medicaid patients, which inherently have thinner margins.

NFP hospitals have limited ability to cut services, given operating constraints such as the obligation to serve all needing medical care. They also cannot pass through costs, as reimbursement rates are contracted with public and private insurance providers for set timeframes. Government reimbursement through Medicare and Medicaid programs are generally set annually by the Centers for Medicare & Medicaid Services without negotiation.

Payor mix is an important component in our assessment of a hospital or healthcare system’s revenue defensibility, a key driver of ratings under our Not-for-Profit Hospitals and Health Systems Ratings Criteria. Greater exposure to self-pay and Medicaid reimbursement reduces a hospital provider’s capacity to recover its operating costs from other payor sources. Safety-net hospitals, with combined self-pay and Medicaid payers of more than 30% of gross revenues, have ‘very weak’ revenue defensibility. Providers with 25%-30% exposure have ‘weak’ revenue defensibility assessments.

The effects of any Medicaid cuts on NFP hospitals would depend somewhat on state Medicaid policies and other healthcare options. The Federal Medical Assistance Percentage (FMAP), the percentage of a state’s Medicaid spending matched by the federal government, is generally tied to each state’s wealth levels. A federal statute sets a FMAP floor of 50% for states with the highest per-capita income and a ceiling of 83%. The FMAP’s significance depends on each state’s total budget size and Medicaid spending, which vary based on factors like enrollee levels, composition, and reimbursement rates.

States may choose to allocate more of their own resources to Medicaid funding to mitigate the effects of federal cuts, or reduce benefits, eligibility, or provider payment rates. California, New York, Texas, Pennsylvania and Ohio, the states with the largest populations, receive the most federal Medicaid funding, according to KFF.

WSJ: The SALT Deduction Cap Is Due to Expire. How Taxpayers Can Prepare for What's Next.

Whether the deduction limit is raised, eliminated or extended, there are steps taxpayers can take to minimize their tax burden

As Congress debates tax policy this year, the state and local tax-deduction cap is in the crosshairs.

The SALT deduction cap is set to expire at year's end, along with a host of other tax-policy changes enacted as part of the Tax Cuts and Jobs Act of 2017. Currently, households that itemize may deduct up to $10,000 of property, sales or income taxes paid to state and local governments.

Before 2017, there was no limit to how much in state and local taxes taxpayers could deduct from their federally taxable income. This limit hit high-income people who live in states with high state and local tax rates, such as New York, California and Connecticut. To partially offset capping the state and local tax deduction, Congress doubled the standard deduction (currently $29,200 for married filing jointly)—causing many people who previously itemized and took the SALT deduction to use the elevated standard deduction.

President Trump on the campaign trail called for restoring the tax break. And several lawmakers on both sides of the aisle, primarily from high-tax states where residents are affected by the deduction cap, have proposed modifications, including doubling the current cap, increasing it to $20,000 for married filing jointly, or eliminating it.

It isn't clear how the SALT deduction cap will play out this year, but one of three scenarios will occur: it's modified, allowed to expire, or is made permanent. Whatever happens, here is how financial professionals say taxpayers can prepare.

1. The cap is modified

A modified cap may be the likeliest outcome, financial pros say, but how much it is adjusted matters.

For taxpayers in the highest tax bracket—currently 37%—who itemize their deductions, the SALT cap of $10,000 means a decrease of $3,700 on a tax bill. Some lawmakers suggest doubling the deduction to $20,000. That would decrease the taxpayer's bill by $7,400, says Jason Katz, wealth adviser and certified public accountant at Bartlett Wealth Management in Cincinnati.

While not insignificant, a $3,700 or $7,400 tax break may not make much of a difference for high-income earners. If the cap is lifted to $100,000 for single filers, which is one proposal, the tax cut is $37,000, or $33,300 more compared with current law, Katz says; the same proposal would increase the cap to $200,000 for married couples filing jointly, doubling the tax cut to $74,000. A higher cap could allow more people to itemize and make a bigger difference for high-income earners.

Once policy is made final, this may be the year that people who use tax preparers to file their annual taxes should schedule a fourth-quarter meeting to review how the new laws will affect them. If the policy is settled early enough, there are opportunities to maximize deductions by making moves such as postponing income or expenses for the following year, says Miklos Ringbauer, founder of MiklosCPA, in Southern California.

It's also a chance to do tax planning around major life events such as getting married, moving, or retiring now or in the next few years. Tax preparers can run scenarios that show different tax implications of these events and offer guidance to potentially reduce tax burdens.

2. The cap expires

If the SALT cap expires, state and local income taxes would be fully deductible again on Internal Revenue Service form Schedule A, where taxpayers itemize deductions.

Kat Grier, wealth adviser and CPA at Merit Financial Advisors in Atlanta, says taxpayers should watch the policy effective date, since state, local and property taxes are deducted in the year paid, which may differ from the year when they were assessed.

If policy reverts to pre-2017 levels on Jan. 1, 2026, for example, taxpayers should defer paying as much of their state income taxes as possible until January, says Bill Smith, national director of tax technical services at CBIZ's national tax office, in Washington, D.C. Taxpayers who opt for this strategy should keep in mind that there may be a penalty for underpayment of the 2025 state estimated tax payments; however, if the cap is eliminated, the penalty may be offset by a larger federal deduction in 2026.

Grier added that, if possible, people who directly pay their property taxes to their municipality instead of their mortgage company should also defer until January to capture the deduction. If the law is made to be retroactive to December, deferring payments won't matter, she adds.

Grier warns that eliminating the SALT cap won't be all good news if the income threshold for the alternative minimum tax—which was designed to reduce a taxpayer's ability to avoid taxes by using deductions or other tax benefits—reverts to previous levels. The current AMT income threshold is about $1.15 million for a married couple filing jointly, but pre-2017 the income threshold was $160,900. If the AMT income threshold reverts to previous levels, high-income taxpayers may see little benefit from SALT deductions.

3. The cap is made permanent

For formally employed, high-income people paid through a W-2 tax form who take the standard deduction, there are a few strategic ways to get over the threshold to start itemizing, Grier says. A common tactic is for taxpayers to increase their charitable deductions so that the combined deductions of mortgage interest, and state income and real-estate taxes gets them over the minimum to itemize.

A less common strategy is to look at unreimbursed medical and dental expenses to get over the threshold. If those unreimbursed costs are greater than 7.5% of a taxpayer's adjusted gross income, these can be deducted for taxpayers who itemize.

Business owners who are treated as partnerships for federal tax purposes, or are S corporations, may be able to use a pass-through entity, known as a PTET, to get a tax deduction, says Ringbauer. More than 30 states allow these tax elections, and they have state-specific rules.

Pass-through entities, which began as a workaround to the SALT cap, allow businesses the option to pay the state income tax on behalf of the business's owners and it is applied against the business's income and it becomes a business deductible expense. The taxpayer then can recognize the tax payment/credit on a state personal income tax return, which bypasses the Schedule A tax payments/SALT limitation calculation. States usually credit the owner's share of the tax paid by the business, giving the owners a way to deduct their state income taxes without the SALT cap restriction.

This deduction is only on income related to the profits from the business itself, so if a married couple has both W-2 income and flow-through business income on their state tax return, they can deduct only the business income on their state returns, Grier says. Setting up a PTET is complex, so it is best done by a tax professional.

The Wall Street Journal

By Debbie Carlson

March 4, 2025 10:00 am ET

Debbie Carlson is a writer in Chicago. She can be reached at reports@wsj.com.

AASHTO Supports Municipal Bonds, Raising PAB Cap.

The American Association of State Highway and Transportation Officials recently joined with the American Road and Transportation Builders Association in support of efforts to protect and preserve tax-exempt municipal bonds, as well as hike the volume cap on Private Activity Bonds or PABs – used by state departments of transportation to finance Public-Private Partnership or P3 projects.

AASHTO noted that PABs are a special class of tax-exempt bond that benefits private or non-governmental borrowers – bonds that can be issued by states, local governments, or housing authorities.

In a joint letter with ARTBA sent to Congressional leadership, AASHTO said the cap on PABs for qualified highway or surface freight transfer facilities should increase from the current $30 billion to $45 billion.

"PABs are a key financing tool to support private sector participation and investment in critical transportation infrastructure projects nationwide," AASHTO and ARTBA noted in their letter. "P3s can help leverage federal and state funding by attracting private equity and debt, while encouraging efficiency and innovation in project design and delivery."

The two organizations noted that providing private sector infrastructure developers and operators with access to tax exempt debt lowers the cost of capital for these large and expensive projects, enhancing their investment prospects.

PABs "remain a vital tool for infrastructure financing that supports every aspect of daily life and are critical in building and maintaining a strong economy for every citizen and business in the country," AASHTO and ARTBA noted.

March 7, 2025

City Council Eyes 'Micro-TIF' Program for Individual Residential Properties.

Qualifying projects would be in areas of town under ‘blighted and substandard’ designation

After decades of approving tax-increment financing assistance for a variety of larger projects, the Hastings City Council now appears ready to extend TIF to everyday taxpayers making material improvements to their own residential properties.

Gathered Monday for their second regular February meeting at the Hastings Municipal Airport Terminal, Mayor Jay Beckby and council members directed staff members to draft a proposed resolution making “micro-TIF” financing available to qualifying property owners in redevelopment areas across the city.

According to the parameters suggested by staff, the micro-TIF assistance would be available to owners of residential property only, at least in the beginning.

Continue reading.

Andy Raun araun@hastingstribune.com

Feb 24, 2025 Updated Feb 25, 2025

Florida’s DeSantis Pushes Unusual Plan to Abolish Property Taxes.

Florida has no income tax, and now Governor Ron DeSantis is pushing a plan to eliminate the state’s property levies as well.

On Thursday, DeSantis again raised the idea of abolishing property taxes or rolling them back significantly, saying that Florida residents need relief — a message he has repeated in recent weeks.

“Property tax says that you never really own your property, because you have to pay rent to the government,” DeSantis said at a press conference, criticizing local governments for swelling their coffers with revenue from the state’s booming real estate market.

Continue reading.

Bloomberg Politics

By Anna J Kaiser

February 27, 2025

House GOP Ways and Means Member Aims to Protect Muni Tax Break.

- **Congressman Yakym supports reviving muni advance refundings**
- **But private-activity muni bonds likely to get a look, he says**

A Republican member of the House Ways and Means Committee said he's working to keep the federal tax exemption for municipal bonds intact as the chamber reconciles its budget framework with the Senate.

"We have to protect the tax exemption for our municipal bondholders full stop," Congressman Rudy Yakym, a Republican from Indiana, who also heads the House Municipal Finance Caucus, said in a telephone interview on Thursday. "The thing that we have to protect most is the municipal-bond status for cities and towns across the country."

Last month, a menu of spending cuts that circulated among House Republicans listed ending the tax-exempt status on municipal bonds as one of the options to extend certain tax cuts when they expire. That prompted municipal issuers and bankers to lobby lawmakers to keep the exemption that underpins the $500 billion-a-year debt market.

While many in the industry are worried about the pullback of the exemption, it hasn't been a discussion point on the Ways and Means Committee, which has jurisdiction over the federal tax code, Yakym said.

"It is being hotly debated but the hot debate is taking place — from my observation, my vantage point — outside the halls of Congress as opposed to inside," Yakym said. "As we look at the menu of options that are available to us, my goal in the committee is to ensure that municipal tax-bond exemption removal is not on that menu for discussion."

Yakym, who previously served on the Indiana Finance Authority, a conduit for municipal issuers to sell bonds, said he's seen firsthand the positive impact of the muni tax-exemption. It provides municipal borrowers, particularly the smallest towns, access to low-cost capital that they may not have otherwise to fix roads or sewer systems, he said.

Roughly $11 billion in municipal bonds are currently outstanding in Yakym's district, which includes South Bend. Without tax exemption, the cost of that debt could be at least $150 million higher a year, he said, based on estimates.

A niche within the broader municipal industry called "private activity bonds" may be subject to some scrutiny in terms of cost and impact, he said. Such debt can be issued by public agencies on behalf of colleges, hospitals, airports, affordable housing developers, and other entities.

Along with Representative David Kustoff, a Republican from Tennessee, Yakym is also advocating to revive a debt-refinancing tactic that allows state and local government borrowers to sell tax-exempt muni bonds for so-called advance refundings. This provision was eliminated as part of the 2017 tax cuts.

The congressmen are now seeking co-sponsors for legislation introduced earlier this month, with the hopes of including the measure in budget reconciliation.

"We want to provide the opportunity for these municipalities to do advance refunding and to be able to refinance their debt successfully as interest rates continue to fall," Yakym said.

Bloomberg Politics

By Shruti Singh

February 27, 2025

[S&P U.S. Not-For-Profit Sector 2025 Outlook: Credit Quality Continues To Show Resiliency Despite Uncertainty]

Sector View: Stable

- Credit quality for S&P Global Ratings rated U.S. not-for-profit entities remains stable owing to the continued operational recovery and growing financial resource strength across the sector.
- Consistent donor gifts and robust market returns in recent years have boosted endowments and investment pools, affording institutions greater flexibility to address current and future operating and strategic needs.
- Senior leadership teams have proven capable of effectively adapting to changing market demand for cultural and membership organizations.
- Despite cooling inflation from 12 months ago, most institutions face upward expense pressure partially due to continued labor market strength.

Continue reading.

24 Feb, 2025

[Squire Patton Boggs: IRS Releases Latest Management Contract Private Letter Ruling]

On February 7, 2025, the IRS released Private Letter Ruling No. 202506001 in which it concluded that a management contract providing an incentive fee equal to a percentage of gross revenues of a managed hotel and contingent on two metrics, one of which is a variant of net profits, did not constitute the sharing of net profits and so did not result in private business use.

Under the terms of the management contract at issue, the service provider receives a "base fee" and an "incentive fee" each equal to a percentage of gross revenues of the managed facility. This arrangement is not particularly notable. What is notable is that the incentive fee is triggered only if two conditions are met: (1) if revenue per room exceeds an industry average, and more interestingly, (2) if the annual excess of gross receipts over operating expenses of the hotel meets a specified percentage. In concluding that the incentive fee does not constitute sharing of net profits under the facts and circumstances, the IRS reasoned that any increases or decreases in net profits do not result in proportional increases or decreases in the incentive fee. The incentive fee (if there is one) is fixed and predetermined. The IRS also noted that the timing of the payment of the incentive fee does not take into account net profits in that it is paid annually from a regularly funded operating account. Finally, the IRS noted that the incentive fee is "further distanced from net profits" due to the existence of the second metric which is not based on net profits.

Private Letter Ruling 202506001 is reminiscent of Private Letter Ruling 201145005 which also considered a management contract with an incentive fee contingent on a variant of net profits. The IRS determined there that that management contract was outside the safe harbor of Revenue Procedure 1997-13 but that its incentive fee did not represent a sharing of net profits.

By Robert Radigan on February 18, 2025

The Public Finance Tax Blog

Squire Patton Boggs

Posted in Management contracts/Rev. Proc. 97-13/Rev. Proc. 2016-44/Rev. Proc. 2017-13, Private Business Use

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Fitch Ratings Updates Rating Criteria for U.S. Not-For-Profit Life Plan Communities.

Fitch Ratings-New York-21 February 2025: Fitch Ratings has updated its rating criteria for U.S. not-for-profit life plan communities (LPCs), replacing the previous version of criteria from Aug.19, 2024.

The most notable changes include a clarification that Fitch comments on asymmetric risk factors only when they are present and a more precise explanation of the use of peer comparison as a tool to determine notch-specific rating outcome, which is a concept that was adopted from the recently revised U.S. Public Sector, Revenue-Supported Entities Rating Criteria (Revenue Master, pub. Jan. 10, 2025).

These revisions do not materially alter Fitch's approach to rating LPCs from the previous version. As such, Fitch expects no impact to existing LPC ratings.

Ending Muni Tax Break 'Would Be a Killer,' NYC MTA Official Says.

- **NYC's transit system relies on tax-exempt debt for upgrades**
- **MTA would need to cut borrowing by $3 billion absent exemption**

One of the biggest issuers in the municipal-bond market is warning it may need to scale back its borrowing plans if federal lawmakers eliminate the tax-exemption on municipal debt.

The Metropolitan Transportation Authority, which runs New York City's transit system, anticipates selling $13 billion of debt to help support its 2025—2029 capital plan. But the MTA would need to lower that amount to about $10 billion if the agency were forced to sell taxable bonds rather than tax-exempt, according to Kevin Willens, the agency's chief financial officer.

"There's been discussion of eliminating tax exemption for public sector infrastructure projects, which would be a killer to our ability to raise capital," Willens said Monday during the MTA's finance committee meeting.

The MTA had $47.3 billion of outstanding debt as of Feb. 12, according to agency data. Its system of subway, bus and commuter rail lines relies on the municipal-bond market to keep its infrastructure in a state of good repair and to also rehabilitate a more than 100-year-old system that gets pummeled by extreme weather events.

"Unless we got additional revenue, we'd have to borrow less because debt service cost for every dollar borrowed would be higher," Willens said in an interview after Monday's committee meeting.

Tax-exempt debt helps finance public works projects throughout the US. Federal lawmakers are working on potential tax reform legislation that may limit the use of such borrowings or even eliminate it completely. Ending the tax benefit on municipal debt would cost states and local governments about $824 billion over a decade, according to a [report](#) by Public Finance Network, a collection of industry groups.

Bloomberg Markets

By Michelle Kaske

February 24, 2025

[US Lawmakers Seek to Revive Early Refinancing for State, Local Governments.](#)

- **Advanced refunding was cut as part of GOP's 2017 tax overhaul**
- **Bill comes as tax-exempt status of munis comes under threat**

A group of House lawmakers is seeking to revive a debt refinancing tactic for US state and local governments.

[Legislation](#) that would restore borrowers' ability to sell tax-exempt muni bonds for so-called advance refundings were introduced Wednesday by a bipartisan group including Representative David Kustoff, a Republican from Tennessee, according to a press release from his office. The federal subsidy offered on the refinancing tool, which allowed governments to refinance debt that can't yet be called back from investors, was eliminated as part of the GOP's 2017 tax overhaul.

"This bill will give state and local governments a critical financing tool to stimulate economic development, create jobs, and save taxpayer dollars," Kustoff said in a statement.

The four lawmakers who introduced the bill are members of the House Ways & Means Committee, which writes tax policy.

The move comes as the public finance market braces for potential further changes to the tax-exempt status on municipal bonds as part of Republicans' effort to extend tax cuts when they expire this year. Past efforts to bring back the federal subsidy for advance-refunding bonds haven't gone very far.

"We are viewing introduction of this legislation at such a critical time as a big win for protection of the tax-exemption as it highlights the importance to committee leadership and will show the depth of support for munis on the Republican side of the aisle in Ways and Means," said Brett Bolton, vice president of federal legislative and regulatory policy for the Bond Dealers of America, a Washington-based lobbying group representing securities dealers and banks.

Municipalities can still sell taxable bonds to refinance tax-exempt bonds, but that's unfavorable to borrowers.

"Right now, states and local governments are facing higher borrowing costs because they can't advance refund bonds to take advantage of lower interest rates," said Representative Jimmy Panetta, a Democrat from California who co-sponsors the proposed legislation, in a statement.

Bloomberg Markets

By Amanda Albright and Shruti Singh

February 13, 2025

[APPA Applauds Introduction of Bipartisan Legislation to Reinstate Tax-Exempt Advance Refunding Bonds.]

The American Public Power Association on Feb. 13 said it applauds the bipartisan introduction of H.R. 1255, the Investing Our Communities Act of 2025, legislation to reinstate the ability to issue tax-exempt advance refunding bonds.

"This legislation will reduce costs and increase flexibility in financing the investments that keep the lights on in our communities," said APPA President & CEO Scott Corwin. "This is an important improvement to an already potent tool: the tax-exempt municipal bond. Bonds finance more than three-quarters of the nation's core infrastructure. They reduce costs for borrowers and are an incredibly valuable investment for millions of Americans, many of whom are fixed-income seniors."

The bill is cosponsored by Rep. David Kustoff (R-TN), Rudy Yakym (R-IN), Gwen Moore (D-MI), and Jimmy Panetta (D-CA), all members of the House Committee on Ways & Means.

APPA is encouraging its members to contact their congressional offices in support of H.R. 1255 – to support the bill, but also to make the underlying case in support of tax-exempt financing.

American Public Power Association

by Paul Ciampoli

February 13, 2025

[Summary of Tax Proposals in Leaked Document Detailing Policy Proposals: Proskauer Rose]

I. Introduction

On January 17, 2025, news sources reported that Republican members of Congress circulated a detailed list of legislative policy options, including tax proposals. This blog post summarizes some of the tax proposals and corresponding revenue estimates mentioned in the list.

II. Individuals

(a) SALT Reform Options

The $10,000 cap on the deductibility of state and local tax ("SALT") from federal taxable income for most non-corporate taxpayers is set to expire at the end of the year. The list includes several alternative proposals for SALT deductibility going forward.

- Repeal SALT Deduction: The SALT deduction would be repealed for individual and business tax filers. This would raise $1 trillion over ten years, as compared to extending the current TCJA deduction cap.
- Make $10,000 SALT Cap Permanent but Double for Married Couples: The current TCJA deduction

cap for individual and business tax filers would remain, but the cap would be raised for married couples to $20,000 at an estimated cost of $100-200 billion over 10 years, as compared to extending the current TCJA deduction cap.
- $15,000/$30,000 SALT Cap: The current SALT deduction cap would be increased to $15,000 for individual taxpayers and $30,000 for married couples, with an estimated cost of $500 billion over 10 years, as compared to extending the current TCJA deduction cap.
- Eliminate Income/Sales Tax Deduction Portion of SALT: Only property taxes would be eligible for the SALT deduction, and the deduction would not be capped. This proposal would cost $300 billion over 10 years, as compared to extending the current TCJA deduction cap.
- Eliminate Business SALT Deduction: This policy option would eliminate the SALT deduction for business filers only, while maintaining the TCJA deduction cap for individuals. It would raise $310 billion over 10 years.

Continue reading.

Proskauer Rose – Robert A. Friedman, Rita N. Halabi, Martin T Hamilton, Christine Harlow, Malcolm Hochenberg, Mary McNicholas, David S. Miller and Amanda H Nussbaum

February 12 2025

Bankers Flood DC to Protect Tax-Free Debt for States and Cities.

- **Proposal to end tax break is unnerving public finance market**
- **Some are concerned the lobbying efforts will fall short**

Public finance bankers are descending on Capitol Hill Thursday to defend an existential part of the municipal bond market — keeping state and local debt tax free.

A group of underwriters are warning of the real-world consequences if the federal subsidy underpinning the $500 billion-a-year-debt market is eliminated. Last month, a lengthy menu of spending cuts circulated among House Republicans listed ending munis' tax-exempt status as a way to help pay for extending President Donald Trump's 2017 tax cuts.

It's hard to ascertain just how likely this is to get through Congress — all the chatter in Washington right now is about Elon Musk's rapid push to gut government spending — but even a remote possibility is enough to cause alarm among muni bankers and borrowers. Without the exemption, which allows wealthy investors to collect tax-free interest income on muni bonds, the market would almost certainly shrink. Investors would demand higher interest rates to offset the new taxes, forcing some of the riskier borrowers out of the market in the process.

Continue reading.

Bloomberg Markets

By Amanda Albright and Shruti Singh

February 6, 2025

TAX - MICHIGAN

[Heos v. City of East Lansing]

Supreme Court of Michigan - February 3, 2025 - N.W.3d - 2025 WL 377503

Electricity consumer filed class action complaint against city alleging, among other things, that new 5% “franchise fee” charged to in-city consumers by utility provider and remitted to city was unlawful tax that violated Headlee Amendment of state constitution, which required voter approval for new taxes.

The Circuit Court granted summary disposition for consumer on Headlee Amendment claim. The Court of Appeals reversed and remanded. Consumer applied for leave to appeal in Supreme Court.

The Supreme Court held that:

- Franchise fee was “tax” requiring voter approval pursuant to Headlee Amendment, and
- Consumer was “taxpayer,” rather than simply member of public.

New franchise fee charged to in-city electric consumers by utility provider and remitted to city was used for general revenue-raising purpose, as factor weighing in favor of determination that franchise fee was “tax” requiring voter approval pursuant to Headlee Amendment of state constitution; revenue from franchise fee did not correspond with consumer-specific benefits that city provided relating to provider’s supply of electrical services, city provided no benefit specific to consumers in exchange for payment of franchise fee, and revenue collected from franchise fee was placed into city’s general fund and could be used for any purpose that city deemed appropriate.

New franchise fee charged to in-city electric consumers by utility provider and remitted to city was not proportional to costs city incurred for granting provider right to provide electrical services, as factor weighing in favor of determination that franchise fee was “tax” requiring voter approval pursuant to Headlee Amendment of state constitution; franchise fee did not fund and was not collected for purpose of providing electrical services, but revenues from franchise fee were instead put into city’s general fund and spent for variety of purposes unrelated to provision of any benefit specific to consumers.

New franchise fee charged to in-city electric consumers by utility provider and remitted to city was not voluntary, as factor weighing in favor of determination that franchise fee was “tax” requiring voter approval pursuant to Headlee Amendment of state constitution; consumers’ electricity could be shut off for failure to pay franchise fee, and provider was only provider that covered portions of city so consumers did not have alternative option.

Electricity consumer was “taxpayer,” rather than simply member of public, and thus Headlee Amendment claim accrued, and one-year limitations period began to run, when franchise fee was due, rather than when franchise fee was enacted, with respect to consumer’s claim that new franchise fee charged to in-city electric consumers by utility provider and remitted to city was unlawful tax that violated Headlee Amendment of state constitution; consumers bore legal incidence and obligation to pay franchise fee because their electricity could be shut off for failure to pay and they had no alternative providers, and city required provider’s consumers to pay franchise fee to provider, which was required by contract to collect and remit such taxes to city.

TAX - CALIFORNIA

Howard Jarvis Taxpayers Association v. Coachella Valley Water District

Court of Appeal, Fourth District, Division 2, California - January 31, 2025 - Cal.Rptr.3d - 2025 WL 353700

Taxpayer association filed second amended petition and putative class action complaint against water district, alleging charge that district assessed for non-agricultural water violated state and federal Constitutions, and seeking declaratory judgment, writ directing district to stop enforcement of charge structure and refund of all amounts collected.

The Superior Court issued first order finding charge violated provision of state Constitution limiting types of local property taxes that were allowed. Thereafter, the Superior Court issued second order awarding damages of approximately $17.5 million per parties' agreement, and issued third order dismissing putative class without prejudice. District appealed.

The Court of Appeal held that:

- Customers sustained economic injury, as required for standing of association as customers' representative;
- District failed to demonstrate that charge did not exceed proportional cost of providing non-agricultural customers water, thus, constitutional provision excluding proportional fees from definition of tax did not apply;
- Constitutional provision excluding from definition of tax charges imposed for government service provided directly to payor that did not exceed costs did not apply to charge;
- Water charge was not excluded from definition of tax on basis charge was used to pay some expense of providing water;
- Provision of the Health and Safety Code permitting actions against city or county did not apply, thus, association's claims were governed by the Government Claims Act;
- Customers were entitled to refund of payments made pursuant to charge; and
- Injunction requiring district to comply with state Constitution's provision defining types of property taxes allowed and excluded was overbroad.

TAX - CALIFORNIA

Alameda County Taxpayers' Association v. County of Alameda

Court of Appeal, First District, Division 5, California - January 31, 2025 - Cal.Rptr.3d - 2025 WL 354424

County taxpayers' association and individual and retail taxpayers brought action against county, raising challenges to validity of sales tax adopted by county voters pursuant to ballot measure.

The Superior Court sustained demurrers without leave to amend as to all challenges to tax and issued judgment. Taxpayers' association and taxpayers appealed.

The Court of Appeal held that:

- Court would grant request for judicial notice as to reporter's transcript of hearing and deny it as to video recording and transcript of meeting;
- Measure was not special tax;

- Association and taxpayers failed to demonstrate trial court abused discretion in denying them leave to amend complaint;
- Association and taxpayers failed to demonstrate ballot materials profoundly misled electorate;
- Measure did not raise aggregate sales tax above statutory limit, even if exemption did not apply to measure; and
- Bills that enacted sales tax cap exemptions were not unconstitutional special legislation.

Your Role in Protecting Tax-Exempt Bonds During Legislative Changes: Ballard Spahr

Summary

President Trump has indicated that one of his key economic priorities is to extend the expiring provisions of the Tax Cuts and Jobs Act (TCJA). However, Congress still needs to resolve disagreements on the cost and funding of extending these provisions, with legislators looking at a variety of federal tax law provisions not historically under consideration, including tax-exempt bonds. To emphasize the importance of tax-exempt bonds as a critical financing tool for municipalities and other beneficiaries, individuals can contact their senators and representatives or submit projects to the Government Finance Officers Association (GFOA) Built by Bonds database, highlighting their positive benefits for their area of the country.

The Upshot

- Advocate with your federal legislators.
- Submit your project to GFOA's Built by Bonds Database: GFOA Built by Bonds Submission Form.
- An online resource from the University of Chicago provides useful information for each U.S. congressional district about state and local government units that use municipal bonds, including the types and volume of infrastructure investments financed.

Continue reading.

by Benjamin Johnson, Marybeth Orsini, Andrew Wang

February 4, 2025

Ballard Spahr LLP

Debate Heats Up Around Munis Tax Exempt Status.

The Republican Party is considering repealing the tax-exempt status of municipal bonds.

A memorandum circulated by the US House of Representatives Budget Committee and diffused on the 17 January 2025 includes proposals that could impact municipal bond markets.

One proposal under consideration, according to Politico, who has seen the memorandum, is the elimination of tax-exempt bonds. This measure aims to generate additional federal revenue to offset the costs associated with extending provisions of the 2017 Tax Cuts and Jobs Act (TCJA). The estimated cost of extending the TCJA is around US$4 trillion, prompting lawmakers to explore various revenue-raising strategies. Eliminating the tax exemption for municipal bonds could potentially raise approximately US$360 billion over a decade.

Private Activity Bonds (PAB), which allow tax-exempt municipal bonds to be issued on behalf of a government for projects built and paid for by private developers, are also under scrutiny. GOP's tax plan proposes the elimination of all PABs, a move that has surprised many in the infrastructure finance community. This proposal could significantly impact the financing of various projects, including those related to healthcare, education, and infrastructure development.

According to the Government Finance Officers Association (GFOA), the proposed elimination of tax-exempt bonds and PABs could have far-reaching implications. In a letter sent to the House of Representatives Budget Committee on the 21 January, the GFOA states that the proposals could have negative effects. The letter said: "Elimination of the tax-exemption would correspondingly raise borrowing costs US$823.92 billion, a cost that would be passed onto American residents and amount to a US$6554.67 tax and rate increase for each American household over the next decade". Without munis' and PABs' tax-exempt status, the GFOA posits first that state and local governments may face higher borrowing costs, potentially leading to reduced investment in public infrastructure. Second, Nonprofit hospitals and educational institutions, which frequently utilise PABs for financing, could experience financial strain, affecting their operations and expansion plans. Finally, according to the GFOA, Investors may reassess their portfolios, potentially reducing demand for municipal bonds, which could lead to higher yields and increased costs for issuers.

Industry groups, such as the Bond Dealers of America (BDA), are actively engaging with lawmakers to advocate for the preservation of tax-exempt bonds. In a press release and template diffused to their members for them to forward to their representatives, they emphasise the critical role these financial instruments play in funding essential public services and infrastructure projects. The BDA template said," We call on you to protect the tax exception for municipal bonds and private activity bonds, both driving forces in addressing our nation's infrastructure deficit."

fi-desk.com

By Etienne Mercuriali -January 30, 2025

TAX - CONNECTICUT

7 Germantown Road, LLC v. City of Danbury

Supreme Court of Connecticut - January 28, 2025 - A.3d - 2025 WL 309848

Seven taxpayers filed six separate tax appeals from city's board of assessment appeals, challenging assessment of their respective real properties' values at over $1,000,000 each.

After trial court granted each taxpayer's motion to extend time for filing independent appraisal but taxpayers failed to file appraisals by extended deadlines, city moved to dismiss each case for lack of statutory standing.

The Superior Court granted city's motions to dismiss in five of the six cases, but denied motion in sixth case on basis that motion to dismiss referred to incorrect plaintiff. City filed corrected motion to dismiss sixth case. Taxpayers in five dismissed actions filed appraisals and moved to open judgments of dismissal and for reargument. The Superior Court granted taxpayers' motions and denied city's corrected motion to dismiss. City applied for certifications to file public interest appeal, and applications were granted.

The Supreme Court held that:

- Taxpayers' filing of replacement actions did not moot city's appeal from orders reopening judgments of dismissal;
- Taxpayers' failure to file appraisals with court within statutory deadline did not divest taxpayers of statutory standing to bring tax appeals; and
- Taxpayers' failure to file appraisals with court within statutory deadline did not divest court of subject matter jurisdiction.

Taxpayers' filing of six replacement actions in superior court challenging city's tax assessments of their real properties, after superior court, in each taxpayer's previously-filed tax appeal, had granted city's motion to dismiss for lack of statutory standing due to taxpayers' failure to file independent appraisals with court but had already granted each taxpayer's motion to reopen judgment of dismissal, did not moot city's appeal from grant of each motion to reopen; resolution of city's appeal could result in practical relief to city, given that each taxpayer's first-filed tax appeal was again pending, and statute that taxpayers invoked as basis to file replacement appeals did not reflect legislative intent to permit two simultaneous tax appeals with respect to a single assessment.

Nothing in the language of the statutory amendment allowing the filing of replacement tax appeals by certain taxpayers whose tax appeals were "dismissed" due to a failure to file an independent appraisal with the superior court suggests that the legislature intended to abrogate or modify the common-law "prior pending action" doctrine and permit a party that had a pending tax appeal in the superior court to file a second tax appeal in the superior court, resulting in concurrent litigation with respect to the same exact tax assessment.

Statute requiring taxpayer, in tax appeal concerning real property assessed at $1,000,000 or more, to file independent appraisal with superior court "not later than one hundred twenty days after" commencing tax appeal did not implicate statutory standing, and thus, taxpayer's failure to timely file appraisal did not deprive taxpayer of statutory standing to pursue tax appeal, as would have deprived court of subject matter jurisdiction over tax appeal; deadline provision of statute did not say anything about who may set judicial machinery in motion, as opposed to preceding provision of tax-appeal statute, which gave statutory standing to tax payer as "[a] person…claiming to be aggrieved by the action of the board of tax review or the board of assessment appeals."

Under statute providing that taxpayer, in tax appeal concerning real property assessed at $1,000,000 or more, "shall file" independent appraisal with superior court "not later than one hundred twenty days after" commencing such tax appeal, that "court may extend the one-hundre--twenty-day period for good cause," and that if "appraisal is not timely filed, the court may dismiss the application" did not divest superior court of subject matter jurisdiction over taxpayer's tax appeal after taxpayer failed to file appraisal with court within extended deadline; filing of appraisal was not condition precedent to commencement of tax appeal, and statute used permissive "may" to address extending appraisal deadline or dismissing appeal, indicating deadline was flexible and non-jurisdictional.

The deadline for a taxpayer to file an appraisal with the superior court, under the statute providing that a taxpayer in a tax appeal concerning real property assessed at $1,000,000 or more "shall file" an independent appraisal with the court "not later than one hundred twenty days after" commencing such an appeal, that the "court may extend the one-hundred-twenty-day period for good cause," and that if the "appraisal is not timely filed, the court may dismiss" the appeal, is not a subject-matte--jurisdictional requirement.

Under the statute providing that a taxpayer in a tax appeal concerning real property assessed at

$1,000,000 or more “shall file” an independent appraisal with the court “not later than one hundred twenty days after” commencing such an appeal, that the “court may extend the one-hundred-twenty-day period for good cause,” and that if the “appraisal is not timely filed, the court may dismiss” the appeal, the court has discretion to extend the deadline for filing the appraisal, provided there is good cause after the filing deadline has lapsed.

The statutory requirement for a taxpayer in a tax appeal concerning real property assessed at $1,000,000 or more to file an independent appraisal with the superior court “not later than one hundred twenty days after” commencing such an appeal, subject to extension by the court for good cause, is not a condition precedent to the commencement of a tax appeal, but rather, is a mandatory requirement that arises after the commencement of a tax appeal.

This Quiet, Tax-Free Haven Is Bracing for Change: Bloomberg Podcast

Everyone loves tax-free municipal bonds. But the return of Donald Trump means that status could now be at risk.

Municipal bonds are the foundation of how American cities and states operate. And a big reason investors love “munis” is their tax-free status. But if you think that makes muni exchange-traded funds sound boring, think again.

On this episode of Trillions, Eric Balchunas and Joel Weber speak with Eric Kazatsky, head of municipal strategy at Bloomberg Intelligence and co-host of the podcast Masters of the Muniverse. They discuss the storied history of munis, how they figure into portfolios—and how that favored tax-free status could be at risk in President Donald Trump’s second term.

Listen to the podcast.

Bloomberg Business

By Joel Weber and Eric Balchunas

January 30, 2025

TAX - ALABAMA

Russell County v. City of Phenix City

Supreme Court of Alabama - January 10, 2025 - So.3d - 2025 WL 63884

City and town commenced action against county and various county officials, seeking percentage of county’s share of proceeds of state excise tax levied on gasoline and other motor fuels.

County filed counterclaim seeking judgment declaring that city was not entitled to percentage of county’s share of proceeds of excise tax. Parties moved for summary judgment. The Circuit Court entered summary judgment in favor of city and town. County parties appealed.

The Supreme Court held that Alabama Terminal Excise Tax Act (ATETA) did not repeal local law directing county to appropriate and set aside 10% of county’s share of state gasoline excise tax revenue to be distributed to incorporated municipalities.

Local law directing county to appropriate and set aside 10% of county's share of state gasoline excise tax revenue to be distributed to incorporated municipalities in county was a general-reference statute and was thus not rendered void by its reference to statute repealed by enactment of Alabama Terminal Excise Tax Act (ATETA), where local law generally incorporated Alabama's gasoline excise tax, including taxes levied by ATETA, and ATETA itself recognized that local law remained in force and governed distribution of proceeds of gasoline excise taxes levied by ATETA.

Alabama Terminal Excise Tax Act (ATETA) was a continuation of prior, repealed act referenced in local law directing county to appropriate and set aside 10% of county's share of state gasoline excise tax revenue to be distributed to incorporated municipalities, and thus local law was not rendered void by its inclusion of repealed act; differences between distribution schemes in ATETA and repealed act were inconsequential.

Even though Alabama Terminal Excise Tax Act (ATETA) was a comprehensive revision of Alabama's gasoline-excise-tax scheme, that fact did not mean that it was so comprehensive as to repeal, by implication, local law directing county to appropriate and set aside 10% of county's share of state gasoline excise tax revenue to be distributed to incorporated municipalities; rather, ATETA itself contemplated local variation regarding distribution of proceeds of gasoline excise taxes.

TAX - NEW JERSEY

[257-261 20th Avenue, Realty, LLC v. Roberto]

Supreme Court of New Jersey - January 9, 2025 - A.3d - 2025 WL 52059

Purchaser of tax sale certificates brought foreclosure action against owner of mixed residential and commercial use property.

After entry of default judgment for purchaser, the Superior Court granted owner's motion to vacate default judgment and, after redemption, dismissed the action with prejudice. Purchaser appealed. The Superior Court, Appellate Division, affirmed. Purchaser petitioned for certification of appeal, which was granted.

The Supreme Court held that:

- Owner's motion to vacate was timely;
- Purchaser's appeal of trial court's vacatur of final judgment of foreclosure rendered foreclosure action pending and not final; and
- Prior version of TSL violated the Takings Clause of the Fifth Amendment.

Motion to vacate filed within two months of default judgment of foreclosure against owner of mixed residential and commercial use property was timely under Tax Sale Law (TSL) imposing a three-month time limit to reopen a final judgment, and under rule requiring that motions for relief from a final judgment or order be made not more than one year after the judgment.

Appeal of state trial court's vacatur of final judgment of foreclosure by purchaser of tax sale certificates against owner of mixed residential and commercial use property rendered case pending and not final so that, pursuant to the Supremacy Clause, intervening United States Supreme Court precedent, holding that a homeowner faced with forfeiture of surplus equity in her home under Minnesota's tax foreclosure law had plausibly alleged a taking in violation of the Fifth Amendment, applied to purchaser's pending appeal in state court, and therefore New Jersey Supreme Court was required to assess parties' arguments and determine whether the taking of owner's property under

Tax Sale Law (TSL) was without just compensation contrary to the Fifth Amendment.

To the extent that prior version of Tax Sale Law (TSL) allowed lienholders to retain surplus equity in property that exceeded the amount of tax sales certificates purchased at public auction along with interest and related costs, TSL violated the Takings Clause of the Fifth Amendment.

Final Reissuance Regulations Released (Finally): Squire Patton Boggs

On December 30, 2024, the IRS and Treasury Department released final regulations regarding the reissuance analysis of tax-exempt bonds which finalize proposed regulations issued in 2018 (with some technical corrections). The final regulations are significant in that, firstly, they are intended to coordinate prior guidance in Notices 88-130 and 2008-41 regarding qualified tender bonds with Treasury Regulations § 1.1001-3 to determine when a tax-exempt bond is retired; and secondly, Notice 88-130 first promised these final regulations in July 1988—over 36 years ago (when hairstyles and tender bonds needed regulating). The final regulations amend § 1.1001-3 to incorporate and reference newly added § 1.150-3 which provides three general rules for when a tax-exempt bond is retired:

(1) a significant modification occurs under § 1.1001-3,

(2) the issuer or its agent acquires the bond in a manner that extinguishes the bond, or

(3) the bond is otherwise redeemed.

Continue reading.

By Robert Radigan on January 10, 2025

The Public Finance Tax Blog

Squire Patton Boggs

TAX - PENNSYLVANIA

In re Prospect Crozer LLC

Supreme Court of Pennsylvania - December 17, 2024 - A.3d - 2024 WL 5132101

Taxpayer that owned 34 separate parcels of real estate appealed $80 million assessed value of parcels as excessive. The city board of revision of taxes denied appeal. Taxpayer appealed to trial court, and school district intervened.

Following de novo hearing, the Court of Common Pleas concluded that total fair market value of parcels was $74 million.

Taxpayer appealed and filed application to vacate due to structural error. The Commonwealth Court vacated and remanded. District’s petition for allowance of appeal was granted.

The Supreme Court on issues of first impression, held that:

- Constitutional prohibition against holding incompatible office applied to senior judge who was assigned temporarily to tax assessment matter;
- Commonwealth Court had authority to decide whether violation of prohibition occurred, and to provide remedy to taxpayer;
- Position on city board of revision of taxes qualified as position of profit with municipal corporation or political subdivision, within meaning of prohibition;
- City fit definition of either “municipal corporation” or “political subdivision” under prohibition;
- Member of city board of revision of taxes had position with municipal corporation or political subdivision, within meaning of prohibition;
- Acceptance of compensated position with city board of revision of taxes while serving as senior judge assigned temporarily to tax assessment matter violated prohibition; and
- Orders entered in violation of prohibition were subject to waiver rules.

Constitutional prohibition against holding incompatible office applied to temporary senior judge who was assigned to tax assessment matter.

Commonwealth Court had authority to decide whether violation of prohibition against judges holding office or position of profit while holding judicial office occurred, and to provide remedy to taxpayer who challenged orders entered by judge while operating under conflict of duties created by incompatible offices.

Constitutional prohibition against holding incompatible office applied to temporary senior judge who was assigned to tax assessment matter.

The Commonwealth Court has jurisdiction to review a civil appeal from the Court of Common Pleas arising in a municipal tax assessment matter.

Commonwealth Court had authority to decide whether violation of prohibition against judges holding office or position of profit while holding judicial office occurred, and to provide remedy to taxpayer who challenged orders entered by judge while operating under conflict of duties created by incompatible offices.

Position on city board of revision of taxes qualified as position of profit with municipal corporation or political subdivision, within meaning of Constitutional prohibition against holding incompatible office while holding judicial office, since board member received annual salary of $70,000.

City fit definition of either “municipal corporation” or “political subdivision” under Constitutional prohibition against judges holding office or position of profit while holding judicial office.

In Pennsylvania, violations of incompatible office prohibitions of Constitution do not result in the automatic ouster of judge from either office, and no forced resignation or ouster can be recognized without the challenged officer being a party to the proceeding challenging the office holder’s ability to hold an office; the purpose of challenging a person’s ability to hold an office is to prevent the continued exercise of authority unlawfully asserted, not to correct what has already been done under the authority.

In Pennsylvania, violations of incompatible office prohibitions of Constitution do not result in the automatic ouster of judge from either office, and no forced resignation or ouster can be recognized without the challenged officer being a party to the proceeding challenging the office holder’s ability to hold an office; the purpose of challenging a person’s ability to hold an office is to prevent the continued exercise of authority unlawfully asserted, not to correct what has already been done under the authority.

Remand to trial court for hearing to determine facts surrounding alleged violation of Constitutional prohibition against holding incompatible office and due diligence of party challenging orders entered would have been reasonable, in civil property tax appeal if only relevant issue presented was effect of violation on orders entered in trial court, and offending judge no longer held judicial office and challenge to final orders was made after appeal was filed.

Supreme Court in considering waiver on appeal from property tax assessment was bound on appeal by evidentiary determination by Commonwealth Court that taxpayer exercised due diligence in filing its application to vacate orders entered in violation of Constitutional prohibition against holding incompatible office, over school district's argument that taxpayer knew that senior judge who was assigned temporarily to tax assessment matter accepted position with city board of revision of taxes, but waited eight months to file its application to vacate, after orders against its position were entered.

Vacating orders entered by senior judge who was assigned temporarily to tax assessment matter while operating under conflict of duties created by incompatible offices, and remand with instructions for new judge to decide tax appeal case based on record developed before prior judge, with proviso that new judge may supplement, but not supplant, existing record, was appropriate, where taxpayer did not argue that new trial was warranted even though, arguably, evidentiary proceedings took place after conflict arose from being compensated for his position on city board of revision of taxes.

TAX - CALIFORNIA

Hovannisian v. City of Fresno

Court of Appeal, Fifth District, California - December 23, 2024 - Cal.Rptr.3d - 2024 WL 5204605

Purchasers at tax sale brought action against city, county, and tax collector, seeking to quiet title to properties and challenging validity of special assessments for nuisance abatement costs and unpaid penalties recorded as liens by city against properties prior to tax sale.

The Superior Court, Fresno County sustained three separate demurrers, granting leave to amend after first two and denying it after the third. Purchasers appealed.

The Court of Appeal held that:

- Purchasers were required to pay assessments and then seek refund in order to raise legal issues related to validity of special assessments, and
- Quiet title suit was barred because purchasers had adequate remedy at law.

Special assessments for nuisance abatement costs and unpaid penalties on properties purchased at tax sale, pursuant to which city recorded liens against the properties, were encompassed by tax statute prohibiting use of legal processes including injunction or declaratory relief to prevent the collection of property taxes, and thus, purchasers were required to pay tax bills and then seek refund in order to raise any legal issues related to the validity of the special assessments, where assessments were being collected at same time and in same manner as county taxes.

Purchasers at tax sale who sought only equitable relief in form of a declaration that city had no interest in their properties and the special assessment liens should be canceled had adequate remedy at law for special assessments by way of an action for a tax refund, and thus, their quiet title action was barred; tax law provided for refunds of improperly paid taxes, and that is what purchasers claimed had happened, that is, that they were being asked to pay special assessments that were illegally imposed on them because those assessments should have been eliminated by tax sale.

TAX - TEXAS

Herrera v. Mata

Supreme Court of Texas - December 6, 2024 - S.W.3d - 2024 WL 4996713 - 68 Tex. Sup. Ct. J. 121

Homeowners brought action against irrigation district officials for declaratory and injunctive relief, alleging ultra vires acts under Tax Code for refusing to remove from tax rolls disputed charges over 20 years old that district had characterized as “delinquent taxes.”

The 92nd District Court granted officials’ jurisdictional plea and denied homeowners’ discovery requests. Homeowners appealed. The Corpus Christi – Edinburg Court of Appeals affirmed. Homeowners petitioned Supreme Court for review, which was granted.

The Supreme Court held that officials’ alleged refusal to remove from tax rolls disputed charges over 20 years old that they had characterized as “delinquent taxes” supported homeowners’ claim alleging officials engaged in ultra vires acts under Tax Code.

Irrigation district officials’ alleged refusal to remove from tax rolls disputed charges over 20 years old that they had characterized as “delinquent taxes” supported homeowners’ claim alleging officials engaged in ultra vires acts under Tax Code; homeowners received delinquent tax statements from district, statements were sent more than 20 years after original tax amounts were due, and district had no pending delinquent tax litigation against any of homeowners.

Irrigation district officials’ alleged refusal to remove from tax rolls disputed charges over 20 years old that they had characterized as “delinquent taxes” supported homeowners’ claim alleging officials engaged in ultra vires acts under Tax Code which did not implicate district’s governmental immunity, despite contention that charges were not taxes but were, instead, Water Code assessments with no governing limitations period; although district had authority to levy Water Code assessment in some instances, that did not negate district’s concurrent power to levy taxes on same properties.

TAX - OHIO

State ex rel. Rittman v. Spitler

Supreme Court of Ohio - December 5, 2024 - N.E.3d - 2024 WL 4982524 - 2024-Ohio-5668

City sought a writ of prohibition against Common Pleas Court judge that sought to bar judge from exercising jurisdiction over putative class action lawsuit, vacate or stay all orders issued in case, and stay all discovery and other proceedings in case.

Plaintiffs in underlying putative class action lawsuit were allowed to intervene in action.

The Supreme Court held that Common Pleas Court judge had jurisdiction and authority over purported class action lawsuit.

Common Pleas Court judge had jurisdiction and authority over purported class action lawsuit that sought to have the 1.5% income tax that was imposed after 2007 declared illegal and to recover funds that were collected through that illegal tax, and thus city was not entitled to writ of prohibition barring judge from exercising jurisdiction over lawsuit, where statute provided “Courts of common pleas may enjoin the illegal levy or collection of taxes and assessments and entertain actions to recover them when collected.”

Trump’s Tax Policy Could Reduce Munis’ Appeal. Here Are the Hot Spots.

The president-elect campaigned on extending his 2017 tax cuts, which could affect muni tax advantages. But areas like the alternative minimum tax could also suffer. Why the details matter.

Changing tax policy is on the agenda of the incoming Trump administration, and that makes municipal bond investors nervous. Indeed, steady-eddie munis dipped immediately after the election as the prospect that Trump tax cuts from 2017 will be extended—and possibly new cuts added—made muni tax advantages less attractive.

“If it had been a blue wave, munis would have gotten a bid,” says Jeff Timlin, portfolio manager for tax-exempt fixed-income strategies at Sage Advisory in Austin, Texas.

Now it has been about a month since the election and muni bonds have regained a spring in their step. The $41 billion iShares National Muni Bond exchange-traded fund, the largest muni index fund, gained a percentage point in November and is up 2.7% year to date. It yields 3.4%, which translates into nearly 6% for high earners.

Munis offer “good, risk-adjusted return,” says Paul Karger, who runs TwinFocus Capital Partners, a Boston wealth management firm. That said, he recommends investors stick with shorter maturities to avoid interest-rate risk, and remain mindful of credit risk. “Municipal securities will still provide significant tax benefits for the right investors, even if the Trump administration generally lowers taxes,” he says.

Muni portfolio managers are keeping close watch on proposed Trump tax policies. There are several that, if enacted, could reduce demand for munis, although the impact isn’t likely to be dramatic.

For example, the alternative-minimum tax is in play. Most high earners were exempted from having to pay the higher AMT rate as a result of changes passed as part of Trump’s 2017 package of tax cuts. Those provisions are set to expire at the end of next year. The higher AMT exemption is likely to get extended, but may be part of budget negotiations since lowering it would raise lots of federal revenue. That would hurt munis that are subject to the AMT, says Timlin. “The devil is in the details. We have to pay attention.”

Another example: Trump has proposed lowering the corporate income-tax rate, now at 21%, to 15%, which would make munis’ tax-exempt yields less attractive for insurance companies and banks, says Lyle Fitterer, who co-leads the municipal sector at Baird Asset Management.

About 25% of munis are held by insurers or banks that pay corporate tax rates, says Fitterer. “They won’t be sellers, but won’t buy more. On the margin it could have an impact.”

Investors are also focusing on changes to state and local tax deductions, known as SALT. The deduction is now capped at $10,000 a year, but it could rise to $20,000 or $40,000. It also could be a bargaining chip for other tax cuts, and remain the same. “You just don’t know,” says Fitterer, who says a higher cap could lower demand for state munis in high-tax states. “The SALT cap may come down to an 11th hour negotiation,” he says.

Most threatening would be a proposal to limit the tax-free nature of munis, which has been floated as a way to raise income. If that were to occur, existing munis would likely be grandfathered in, but that wouldn’t raise much revenue, says Fitterer. It is generally considered unlikely, but could resurface as a proposal.

Karger’s best guess is that changes to the tax code won’t have a major impact on muni demand. “It will be hard to pass tax savings without tax-generating provisions somewhere else,” which means a continuing need for tax-free income for investors in higher tax brackets, he says.

And munis look attractive against Treasuries as worries about the federal deficit grow. Some state budgets are adjusting to the loss of Covid funding, but most are in good shape, says Timlin. His firm’s research shows that since 2012, municipal debt has grown 2.3%, corporate debt 60%, and federal debt 130%. “As concerns about debt levels grow, that looks more like a plus.”

Barron’s

By Amey Stone

Dec. 5, 2024

TAX - MARYLAND

Matter of Comptroller of Maryland

Appellate Court of Maryland - November 22, 2024 - A.3d - 2024 WL 4866525

Public utility petitioned for review of Tax Court’s denial of claim for refund of sales and use taxes.

The Circuit Court affirmed. The Court of Special Appeals reversed and remanded with instructions to remand to Tax Court.

The Tax Court rejected Comptroller’s argument that refund claim was time barred and granted refund. Comptroller sought review. The Circuit Court reversed on issue of timeliness, reduced refund award, and otherwise affirmed. Utility appealed, and Comptroller filed cross-appeal.

The Appellate Court held that:

- 30-day time limit for submitting refund request of sales and use tax after mailing of notice of assessment was exception to four-year limitations period for refund claims;
- Expert opinions supported Tax Court’s decision that utility was entitled to sales and use tax exemption; and
- Utility was entitled to interest on refund.

Thirty-day time limit for submitting sales and use tax refund request after mailing of notice of assessment was exception to four-year limitations period for refund claims, and, thus, public utility timely filed refund request, even though it was filed one week before mailing of assessment notice;

utility attached request to redetermination petition, filed within the 30-day period.

Expert opinions that public utility's conductor equipment, substation equipment, and transformer equipment were used predominantly for stepping up voltage when electricity entered utility's transmission and distribution system and for reducing voltage for use by customers supported Tax Court's decision that utility was entitled to sales and use tax exemption; experts' concession that the equipment served a dual purpose and that delivery of electricity to the customers was a primary purpose of the equipment did not detract from experts' opinions that stepping up and stepping down of the voltage was necessary and integral to carry out that purpose and would, in fact, be impossible without it.

Public utility's overpayment of sales and use tax for conductor equipment, substation equipment, and transformer equipment for stepping up voltage when electricity entered utility's transmission and distribution system and for reducing voltage for use by customers was based upon a policy of state and attributable to state regardless of whether utility's accounting system irregularities also contributed to the overpayment, and, thus, utility was entitled to interest on refund.

TAX - FLORIDA

City of Gulf Breeze v. Brown

Supreme Court of Florida - November 27, 2024 - So.3d - 2024 WL 4899705

In first case, county property appraiser sought review of decision by county adjustment board granting city ad valorem tax exemption for year for golf course property owned by city and operated by privately owned golf course management company.

In second case, city brought action against appraiser challenging appraiser's denial of city's application for ad valorem tax exemption for the next year.

After the two cases were consolidated, the Circuit Court granted city's motion for summary judgment. Appraiser appealed. The First District Court of Appeal reversed and remanded, and certified a question of whether management agreement defeated city's ad valorem tax exemption.

The Supreme Court held that golf course property was used exclusively by the city, as required to be exempt from ad valorem tax.

City-owned golf course property was "used exclusively by" the city, as required to be exempt from ad valorem tax under the constitutional provision exempting from taxation all property owned by a municipality and used exclusively by it, even though city had entered into agreement by which privately-owned golf course management company was compensated to operate property based on formula tied to difference between revenue and expenses rather than by fixed fee; structure of compensation provided to management company did not supply basis in itself for treating agreement like a lease, and city ultimately retained control of its property and management company's operations through terms of the agreement as well as through direct oversight by city's director of parks and recreation.

Colleges' Bond Tax Break at Risk From GOP Goal to Punish Schools.

- **Private colleges viewed as ‘more vulnerable’ sector: Barclays**
- **Nonprofit education exemption costs about $3 billion annually**

A Republican sweep in November’s US election threatens a niche tax break that helps American colleges to upgrade dorms and academic buildings on their campuses for cheap.

There are more than 1,700 private, nonprofit colleges and universities in the US which can sell tax-free bonds for infrastructure projects, providing a lower cost of debt than a traditional loan. After the GOP took the US House, Senate and White House, colleges’ tax-exempt benefit is at risk as lawmakers look for ways to offset the cost of extending tax cuts, according to muni analysts.

“The private higher-education sector is probably one of the more vulnerable muni sectors,” as policymakers will likely have it in their sights, said Mikhail Foux, a strategist at Barclays Plc, in a November research note.

Continue reading.

Bloomberg Markets

By Amanda Albright and Nic Querolo

November 25, 2024

Will a “Red Wave” Affect Municipal Bonds’ Tax-Exempt Status? - AllianceBernstein

Wholesale elimination of tax exemption isn’t likely, but certain types of muni bonds could be targets.

With the Tax Cuts and Jobs Act (TCJA) of 2017 slated to expire at year-end 2025, we expect tax policy to be high on Republicans’ legislative agenda. But an extension or expansion of TCJA’s provisions could grow the federal budget deficit—unless lawmakers can find revenue offsets. As in the past, this could put a target on municipal bonds’ federal income tax exemption.

Tax-exempt municipal bonds are critical to America’s infrastructure and to a functioning US economy. Muni bonds’ tax exemption dates back to the earliest federal income tax in 1913 and has been a pillar of state and local project funding ever since. According to the National League of Cities, municipal bonds are a $4 trillion market and have financed approximately 75% of US infrastructure—with hospitals, schools, airports, water and sewer systems, public power facilities and toll roads among the many beneficiaries.

In our view, eliminating or limiting the exemption could hurt economic growth and throttle infrastructure investment nationwide. Both sides of the aisle seem to acknowledge America’s need to improve and rebuild its infrastructure, which makes preserving tax exemption so important.

Ultimately, we believe tax exemption will be mostly preserved, given that its elimination would save Washington only about $40 billion in revenue annually, according to the Congressional Joint Committee on Taxation. That’s a fraction of the $6.5 trillion federal budget. Considering approximately $500 billion in tax-exempt bonds were issued in 2024 alone, we think eliminating tax exemption would throw infrastructure financing and the economic freedom of local communities into disarray—with little help to the national deficit.

Wholesale Elimination Would Erase Vital Infrastructure Investment

We've observed three major benefits to the US economy from the tax exemption on municipal interest income:

Increased infrastructure spending, thanks to lower borrowing costs that boost demand for public projects. Many improvements in airports, schools, hospitals and other public facilities are financed through tax-exempt debt.

Lower prices and reduced local and state tax burdens. Cheaper access to capital allows municipal entities to charge their constituents less in the form of lower tolls, airport fees, taxes and rates for water, waste management and power. Based on recently observed trades, the interest rate for tax-exempt munis was about 1.5% lower than for comparable taxable bonds. That's the equivalent of $1.5 million less in annual interest on a $100 million bond. This would all but evaporate, with state and local taxpayers paying more for infrastructure improvements or seeing fewer of them altogether.

Increased autonomy and policy freedom for state and local governments. Tax exemption allows communities to chart their own paths, as they're not overly dependent on Washington for infrastructure dollars. Moreover, direct funding from the federal government strikes us as impossibly unwieldy, given the muni market's 50,000 issuers. It would certainly be less efficient than the current system, which encourages local capital allocation and sharper attention to smaller projects easily overlooked.

Removing the tax exemption on municipal bonds would, in our view, substantially reduce municipal bonds' investor base. With fewer investors seeking to invest in state and local infrastructure projects, local governments would need to rely more on states for financing, and states would need to rely more on the federal government.

Thus, the benefits we've cited—increased infrastructure spending, lower costs for constituents, and greater autonomy for state and local governments—would be substantially reduced. This would disproportionately affect rural areas, as smaller municipalities would likely struggle more to find capital for their projects.

Infrastructure Funding Alternatives Are Limited

The American Society of Civil Engineers estimates an existing underfunded infrastructure gap of more than $2 trillion, with 43% of US roads in disrepair and water-treatment plants losing six billion gallons daily to the environment. Outside of tax-exempt issuance, the primary public alternative for bridging this gap would be direct federal or state funding.

Other approaches to infrastructure financing include private investment and direct government subsidies. Certain public-private partnerships (PPPs), for example, use tax-exempt bonds to offset a project's other debt interest. Besides lower costs for end users, such as for a toll road, PPPs can encourage more corporate investment in infrastructure. We favor such partnerships, especially as an alternative to taxable debt.

Direct government subsidies are another approach to state and local funding, with Build America Bonds (BABs) as a prime example. Introduced during the 2008 financial crisis, BABs were intended to help municipalities finance capital spending during economic rough patches, but their interest isn't tax exempt. Instead, the federal government subsidizes bondholders a portion of their earned interest—35% originally. But the BAB subsidy level isn't guaranteed and has shrunk significantly, along with the bond's popularity.

One Potential Tax-Exemption Target: Private Activity Bonds

Considering how much is at stake in practically every constituency, legislators may prefer to just chip away at the exemption, targeting certain types of municipal bonds rather than the entire market. We saw this in the "red wave" of 2017, when Congress discussed many potential targets but settled on nixing the tax exemption on new pre-refunded bonds. This time around, we think the scope could similarly focus on private activity and not-for-profit tax-exempt muni bonds.

Most private activity bonds (PABs) finance projects that benefit the public, but they also involve a private entity. PABs play an important role in the US economy by helping to finance airports, shipping ports, roads and energy infrastructure, while benefiting everyone who uses such infrastructure.

PAB interest is also exempt from federal income tax, although individuals subject to the alternative minimum tax (AMT) generally do pay taxes on it.*

PABs have historically helped rebuild from tragedies. For example, Midwestern Disaster Area Bonds helped states recover from 2008's widespread storms and tornadoes, the Gulf Opportunity Zone Act of 2005 helped rebuild after Hurricane Katrina, and Liberty Bonds were used to help New York City recover from the September 11 terrorist attacks.

Another Potential Target: Not-for-Profit Tax-Exempt Bonds

Another critical supplier of infrastructure investment comes from not-for-profit, 501(c)(3) entities that assist Americans in multiple ways. The tax exemption on these bonds has encouraged steady investment in their efforts.

Not-for-profit issuers include nearly two-thirds of all US hospitals, charter schools in lower-income and middle-class communities, and senior living facilities that house hundreds of thousands of seniors.

Both PABs and not-for-profit munis help bring public and private entities together to grow the economy. Accordingly, we think there's a stronger argument to expand their use to enhance growth than to reduce infrastructure spending by eliminating their tax exemption.

In our view, tax exemption is much too important to lose. While imperfect, its lasting benefits outweigh the near-term loss in revenues, given how much US infrastructure is financed by muni debt. We think a wholesale elimination is unlikely and that any targeted elimination would affect future issues only, as was the case for pre-refunded bonds in 2017. Meanwhile, tax exemption is alive and well, though we think muni investors should stay tuned in to the conversation as lawmakers ponder its future.

*About 60% of airport and 40% of shipping port PABs are subject to AMT, representing more than $200 billion in outstanding municipal bond debt.

AllianceBerstein

.
Matthew Norton| Chief Investment Officer—Municipal Bonds

Daryl Clements| Municipal Bond Portfolio Manager—Municipal Fixed Income

Nov 26, 2024

TAX - ILLINOIS

First American Bank v. Poplar Creek, LLC

Appellate Court of Illinois, First District, Sixth Division - June 21, 2024 - N.E.3d - 2024 IL App (1st) 230551 - 2024 WL 3076910 - 114 UCC Rep.Serv.2d 299

After mortgage lender reached settlement with one of mortgagor's guarantors, remaining guarantors filed petition for order releasing them from judgment, contending that judgment against mortgagor was satisfied when mortgagor assigned to lender a security interest in mortgagor's tax increment financing (TIF) note.

The Circuit Court denied the petition. Guarantors appealed.

The Appellate Court held that:

- Language of pledge and security agreement memorializing assignment of security interest in note exempted lender from having to sell note;
- Article 9 of Uniform Commercial Code (UCC) did not obligate lender to sell note;
- Lender's decision to retain note and apply interest payments to debt was commercially reasonable under Article 9;
- Lender's retention of note did not create rebuttable presumption that its value was equal to lender's judgment;
- Principles of equity did not require treating lender's retention of note as resulting in satisfaction of judgment; and
- Merger doctrine did not preclude trial court's reliance on language of guaranties to determine whether lender had discretion in deciding how to allocate payments.

The Hidden Costs of Property Tax Escrow Delays.

Delays in property tax payments—whether due to inefficiency, operational shortcomings, or misaligned priorities—can create financial headaches for homeowners and disrupt the revenue flow for municipalities that depend on these funds to provide essential services.

In recent years, as property values have soared, property taxes have risen in tandem, leading to increased homeowner frustration nationwide. This dissatisfaction reached a peak on Election Day this year, where voters in eight states passed initiatives aimed at providing property tax relief.

From Georgia's cap on tax assessments to Florida's inflation-tied exemptions, homeowners are pushing for limits on taxes that reflect unprecedented increases in home values. However, amidst this property tax "revolt," there's another growing issue that garners less attention but has equally significant consequences: the impact of delayed property tax payments in mortgage servicing, often caused by working with the wrong tax escrow payment processor.

When mortgage lenders handle property taxes on behalf of homeowners, they typically set up escrow accounts to collect monthly payments, then remit the taxes to local governments in one lump sum. In theory, this process benefits both homeowners and tax offices by ensuring timely payments.

Continue reading.

American City & County

by Niko Spyridonos

November 22, 2024

Election Impact: Will Municipal Bonds Lose Their Tax-Exempt Status?

U.S. election cycles are often fraught with volatility and big changes. Nearly every sector and industry is affected in one way or another. Under that framework, investors are forced to grapple with the potential of policy changes, and what they may mean for their portfolio. And for one area of the fixed-income market, the changes could be big.

One clear advantage of municipal bonds could be on the chopping block.

As the incoming Trump administration looks to raise revenues to offset other ambitious tax plans, municipal bonds' key tax-exempt status could change, which warrants caution from investors.

TCJA Expansion & Potential Deficits

The 2017 Tax Cuts and Jobs Act (TCJA) was the largest tax code overhaul in over three decades and created massive changes for individual and business taxpayers.

Continue reading.

dividend.com

by Aaron Levitt

November 26, 2024

Trump Victory Threatens Key Muni Tax Break in Hunt for Revenue.

- **Muni bonds pay interest to investors exempt from income taxes**
- **Eliminating the tax break seen as option to pay for tax cuts**

The tax break offered to municipal bond investors is coming under threat as Republicans are closer to taking control of both the White House and Congress.

President-elect Donald Trump has promised to further cut corporate taxes and even eliminating the federal income tax. If he goes through with those plans, lawmakers will need to find additional revenue to offset the cuts' trillion-dollar price tag. The muni tax-exemption — estimated to cost the US government less than $40 billion each year — has long been seen as a possible source of funding.

"The likelihood that the tax exemption is materially altered remains low, but the risk is probably at as high a level as it has been in the recent past given the size of projected deficits," said Adam Stern, co-head of research at Breckinridge Capital Advisors.

With the Tax Cuts and Jobs Act of 2017 set to expire at the end of next year, Republicans will "decide how much they want to spend to extend, expand or make the TCJA permanent," Andrew Silverman, an analyst at Bloomberg Intelligence, wrote in a note.

If they extend the tax cuts for a limited period, they'll have more flexibility on whether to fund it by raising taxes or cutting costs, he added.

Back in 2017, the Trump tax cuts eliminated the exemption on bonds sold for a debt refinancing technique, crimping municipal bond sales in the years after that. And earlier this year, the American Enterprise Institute, a conservative think tank, floated repealing the tax-exemption on muni bonds, calling it an inefficient subsidy for local governments.

The tax exemption of muni bonds, established in 1913, is the defining feature of the US public finance market in which states, cities, towns, school districts, hospitals and other borrowers raise money to finance the bulk of the bridges, roads and tunnels. According to Emily Brock, director of the Government Finance Officers Association's federal liaison center, 75% of infrastructure is built with muni bonds. Investors in such debt generally don't pay taxes on the interest they earn, allowing governments to borrow at lower rates.

State and local governments would need to turn to the taxable-bond market if the exemption is completely eradicated. That could "slow the pace of debt issuance and make the cost of capital more expensive for current tax-exempt borrowers," said S&P Global Ratings analysts in a Nov. 7 report.

Brock said the burden to make up for any shortfall in public financing projects will fall on taxpayers, adding that "we haven't seen evidence that the federal government is capable of meeting local infrastructure needs."

To be sure, there is bipartisan support for the muni tax-break. The House Municipal Finance Caucus includes members of both parties.

"We believe that there's strong political support and justification for the muni tax exemption," said Margot Kleinman, director of research for Nuveen's municipal fixed income team.

As part of the tax overhaul in 2017, Congressional Republicans proposed restricting the sale of tax-exempt muni bonds for private-sector projects. That provision ultimately wasn't included in the legislation.

Mikhail Foux, a strategist at Barclays Plc, said he's not "overly concerned" about the repeal of the tax exemption because the cost of the subsidy is relatively low. But he said it's possible that certain sectors, like education, may see their use of the financing tool curtailed.

"Some parts of the muni market might end up on the chopping block, despite not generating sizable revenues for policymakers," he wrote in a report Friday.

Bloomberg Markets

By Maxwell Adler and Amanda Albright

November 11, 2024

— With assistance from Lily Meier

TAX - GEORGIA

Jones v. City of Atlanta

Supreme Court of Georgia - October 31, 2024 - S.E.2d - 2024 WL 4633416

Property owner filed action against city, alleging that ordinances authorizing the city department of watershed management to impose a franchise fee and a payment in lieu of taxes (PILOT) for water and sewer services constituted unlawful taxes under state and federal law and seeking, inter alia, a tax refund.

The Superior Court granted city's motion for judgment on the pleadings, and denied customer's motions for summary judgment. Property owner appealed.

The Supreme Court held that:

- On city's motion for judgment on the pleadings, trial court was required to accept as true property owner's allegations that he paid the disputed charges and that they grossly exceeded the costs of providing the services;
- Genuine issues of material fact precluded summary judgment on property owner's claim that the disputed water and sewer fees were an illegal revenue-producing tax rather than fees for providing services; and
- Property owner's allegations did not establish as a matter of law that the disputed franchise fee was a tax based on the payor's gross revenue.

In property owner's challenge to the legality of city ordinances establishing a franchise fee and payment in lieu of taxes (PILOT) to be collected by city department of watershed management for water and sewer services, trial court was required to accept as true property owner's allegation that he paid the disputed charges for purposes of city's motion for judgment on the pleadings, where there was no conflict between the text of the ordinances and property owner's allegation that his water and sewer bill contained hidden taxes on water and sewer customers, and property owner's payment of the disputed charges to the department of watershed management was payment to the city.

On city's motion for judgment on the pleadings in property owner's challenge to ordinances establishing a franchise fee and payment in lieu of taxes (PILOT) to be collected by city department of watershed management for water and sewer services, trial court was required to accept as true property owner's allegations that the disputed fees grossly exceeded the associated costs of providing the services, and that the city was compensated for the associated costs through other means; recitals in ordinances that expressed city council's intention that the fees be used to compensate the city for costs associated with providing water and sewer services did not restrict the city from using the fees for other purposes or being compensated from other sources.

Property owner's allegations in action challenging city ordinance imposing a franchise fee for water and sewer services did not establish as a matter of law that the disputed fee was a tax based on the payor's gross revenue, where the ordinance imposed a charge based on the gross revenues of city's department of watershed management, which was passed on to property owner as a percentage of his water and sewer bill, which was comprised of a flat base charge and a variable portion based on the services he used and not on his income.

What Does the Expiration of Washington’s Tax Cuts Mean for Munis?

Nicholos Venditti, senior portfolio manager at Allspring Global Investments, sits down with InvestmentNews anchor Gregg Greenberg to offer his outlook for municipal bonds and the sunsetting of the Tax Cuts and Jobs Act (TCJA).

Watch podcast

investmentnews.com

October 30, 2024

Wealth Managers Eyeing Municipal Bonds Ahead of Tax Cut Sunsets.

Some advisors are waiting for the election before adding more muni-bonds. Others are getting a head start.

The Tax Cut and Jobs Act (TCJA) enacted by President Trump in 2017 increased the standard deduction and eliminated personal exemptions. It lowered marginal income tax rates across the scale. It imposed a $10,000 cap on the deductibility of state and local taxes (SALT). It increased the tax credit for each child under 17 from $1,000 to $2,000. It provided a 20 percent deduction for small businesses and also hiked the AMT exemption.

It’s also sunsetting in 2025 leaving financial advisors with some big portfolio decisions to make. One of the bigger ones being whether to raise their clients’ municipal bond allocations and, if so, by how much.

Munis are tax free, you know.

Continue reading.

investmentnews.com

By Gregg Greenberg

OCT 31, 2024

Election-Related Tax Concerns Looming? Look to Muni Bond ETF TAXF.

With U.S. elections just under a week from now, many investors may be tuning in with questions about taxes. Overlapping with a time of year when many advisors look to mitigate tax impacts for clients, it may be worth considering ETFs to help. A muni bond ETF, for example, can provide a way to move assets into more tax-efficient holdings. The American Century Diversified Municipal Bond ETF (TAXF) provides an option therein that can particularly intrigue.

TAXF charges 29 basis points for its active investing approach. The fund combines investment-grade and high-yield muni bonds to offer both income and tax benefits. The active muni bond ETF invests up to 35% of its portfolio to “riskier” municipal bonds.

That active approach can help the fund parse the sometimes-complicated world of bonds. Where passive ETFs must track a list of bonds and can’t adapt, active funds can scrutinize bonds more closely. That fundamental analysis can make a big difference especially when diving into riskier muni bond areas.

The muni bond ETF has returned 10.8% over the last year, per American Century Investments data, outperforming the S&P National AMT-Free Municipal Bond Index. Having launched in 2018, the strategy’s AUM is very close to half a billion, per YCharts data. It offers a weighted average coupon of 4.8% as of Sept.30, with a 3.89% yield to maturity, as well.

Should U.S. elections project higher taxes, adding muni bonds could provide a helpful countermeasure. A strategy like TAXF, with its active muni bond approach, may provide performance, income, and yield on top of its tax advantages. Especially for those moving out of fixed income mutual funds or looking to tax loss harvest, TAXF can appeal.

etftrends.com

by Nick Peters-Golden

October 30, 2024

IRS Increases LIHTC, Bond Caps for 2025.

The amount used to determine the state housing credit ceiling hits $3 multiplied by the state population.

The amount used to determine the low-income housing tax credit ceiling will increase to $3 multiplied by the state population in 2025, announced the Internal Revenue Service (IRS).

That’s a 10-cent hike over this year’s figure and marks the first time the per-capita multiplier hits $3. The state minimum is set to rise to $3,455,000 in 2025, up from $3,360,000 this year.

On the private-activity bond side, the amounts used to calculate the state ceiling will be the greater of $130 multiplied by the state population or $388,780,000. That’s an increase from this year’s $125 per capita multiplier and the $378,230,000 state minimum.

The IRS reported the volume caps were reported in Rev. Proc. 2024-40.

Affordable Housing Finance

By AHF Staff

Oct 22, 2024

TAX - TEXAS

South Texas Independent School District v. Busse

Court of Appeals of Texas, Corpus Christi-Edinburg - August 1, 2024 - 696 S.W.3d 773

Taxpayers and consolidated independent school district that overlapped with another independent school district that primarily served persons with disabilities brought action for declaratory and injunctive relief against the independent school district that primarily served persons without disabilities, seeking declarations that its levy and expenditure of annual ad valorem taxes collected in the county for its maintenance and operation violated the contract with the voters doctrine and constituted ultra vires conduct.

The 197th District Court denied school district's plea to the jurisdiction. School district filed interlocutory appeal.

The Court of Appeals held that:

- Taxpayers lacked standing to bring action for declaratory and injunctive relief against independent school district that primarily served persons with disabilities, and
- Consolidated independent school district lacked standing to bring action for declaratory and injunctive relief against independent school district that primarily served persons with disabilities.

Taxpayers lacked standing to bring action for declaratory and injunctive relief against independent school district that primarily served persons with disabilities, alleging that it unlawfully levied and expended public funds because voters only agreed to be taxed for the limited purpose of maintaining and operating a rehabilitation district for persons with disabilities, not an independent school district that primarily served persons without disabilities; school district had been operating for 40 years, had made countless maintenance and operational decisions with expectation that it would collect ad valorem taxes to partially fund its short- and long-term obligations, and expectations of other taxpayers who were served by school district took root several decades ago and had become firmly fixed over multiple generations.

Consolidated independent school district that overlapped with another independent school district that primarily served persons with disabilities lacked standing to bring action for declaratory and injunctive relief against the independent school district that primarily served persons with disabilities, alleging that the property tax of the independent school district that primarily served persons with disabilities impaired its own ability to raise its own taxes; tax rate of independent school district that primarily served persons with disabilities had no legal impact on consolidated independent school district's ability to set its own tax rate, and consolidated independent school district was already levying the highest possible maintenance and operation tax rate allowed under law without seeking voter approval.

TAX - WYOMING

State v. Uinta County Assessor

Supreme Court of Wyoming - October 9, 2024 - P.3d - 2024 WL 4448731 - 2024 WY 106

State petitioned for review of State Board of Equalization's decision upholding county board of equalization's determination that state land that Board of Land Commissioners managed for benefit of state hospital and that Board leased to private corporation for operation of truck stop was not exempt from taxation.

The District Court affirmed. State appealed.

The Supreme Court held that:

- Land was not used primarily for a government purpose under tax exemption criteria, and
- No implied exemption existed based on statute precluding tax-exempt status for private or commercial improvements on leased state land.

State land that Board of Land Commissioners managed for benefit of state hospital and that Board leased to private corporation for operation of truck stop was not used primarily for a government purpose, and thus the land was not exempt from taxation, even though Board leased the land to generate revenue.

Board of Land Commissioners' statutory obligation to manage land for the benefit of state hospital did not trigger tax-exempt status for land that Board leased to private corporation for non-governmental purpose of operation of truck stop; nothing in statutory mandate required Board to manage the land in a manner that maintained its tax-exempt status.

Statute precluding tax-exempt status for improvements placed on state lands by lessees for private or commercial use did not impliedly give tax-exempt status to state land that Board of Land Commissioners managed for benefit of state hospital and that Board leased to private corporation for non-governmental purpose of operation of truck stop; allowing an implied exemption would have been directly contrary to statutory directive that all property in state was subject to taxation except as prohibited by Federal or State Constitutions or expressly exempted.

TAX - MONTANA

Solem v. Department of Revenue

Supreme Court of Montana - September 24, 2024 - P.3d - 2024 WL 4274187 - 2024 MT 217

Property taxpayers brought class action seeking to challenge mass appraisals of their lakefront properties.

The District Court entered judgment as to liability that Department of Revenue's mass appraisal methodology was unfair and unconstitutional. Following a stipulated final judgment, Department of Revenue appealed.

The Supreme Court held that Department of Revenue's method for appraising properties in lakefront development, which included a 29-property sample size, was adequate and not arbitrary.

Department of Revenue's method for appraising properties in lakefront development, which included a 29-property sample size, was adequate and not arbitrary, although Department removed 17 "outlier" verified sales; mass appraisal approach, the sales comparison method, and the base lot model employed were appropriate, widely accepted methodologies, and while other appraisers may have made different decisions regarding particular variables included in the methodology, the Department employed a consistent, accepted process for arriving at market value.

TAX - PENNSYLVANIA

Circle of Seasons Charter School v. Northwestern Lehigh School District

Supreme Court of Pennsylvania - September 26, 2024 - A.3d - 2024 WL 4293601

Charter school brought action against school district, seeking refund of real estate taxes that school alleged were erroneously collected on charter school's tax-exempt property.

The Court of Common Pleas sustained school district's preliminary objections asserting a lack of subject matter jurisdiction and dismissed the complaint with prejudice. Charter school appealed. The Commonwealth Court reversed and remanded, and school district appealed.

The Supreme Court held that:

- Charter school, which had purchased properties from state university and had full opportunity to challenge reassessments of properties, was not entitled to another hearing simply because mailing date on tax assessment change notices was omitted, and
- Commonwealth Court abused its discretion when it granted nunc pro tunc relief to charter school.

Charter school, which had purchased tax exempt properties from state university and had full opportunity to challenge reassessments of properties before county board of assessment appeals in its annual appeal, was not entitled to another hearing simply because the mailing date on tax assessment change notices was omitted.

Commonwealth Court abused its discretion when it granted nunc pro tunc relief to charter school, which had purchased properties from state university, due to county's failure to include mailing date on tax assessment change notices; charter school did not request county board of assessment appeals refund the taxes it had paid before the properties were granted tax exempt status or challenge effective date of that exemption, and thus, it was not entitled to revisit these waived claims in a nunc pro tunc appeal.

Taxpayers Shoulder a Heavy Burden for Sports Stadium Subsidies.

State and local governments spend significant sums for the construction, operation, and continued maintenance of sports stadiums and arenas. According to recent estimates by sports economists, "between 1970 and 2020 state and local governments devoted $33 billion in public funds to construct major-league sports stadiums and arenas in the United States and Canada, with the median public contribution covering 73 percent of venue construction costs." In other words, taxpayers were on the hook for nearly three-quarters of the costs of each new sports venue that received public funding in the past 50 years.

Public interest in funding sports stadiums is at a fever pitch. A non-exhaustive list of publicly discussed future sports stadium subsidies can be found below. These do not include any public spending on new construction related to the US hosting the Summer Olympics in Los Angeles in 2028 or the Winter Olympics in Salt Lake City in 2034.

Continue reading.

Tax Foundation

By: Adam Hoffer, Joseph Johns, Craig Depken

October 3, 2024

Bank Holdings of Muni Debt Fall to Nine-Year Low on Tax Changes.

- **Institutions held $498.5 billion of muni securities as of June**
- **Banks pull back as taxable state and local issuance declines**

US banks' investment in state and local debt is at the lowest level in nearly nine years, as sales of taxable municipal securities have dropped and lending institutions continue to reap the benefits of a lower corporate tax rate.
Banks held a combined $498.5 billion of municipal debt, as of June 30, the least amount of exposure for the banks since September 2015, and down 21% from a record high of $631.3 billion held at the end of 2021, according to data from the Federal Reserve.

Banks have traditionally served as a reliable and sizable buyer of state and city debt, alongside individual investors, mutual funds and insurance companies. Though the firms pulled back from tax-exempt securities after former President Donald Trump cut the corporate tax rate to 21% from 35% in 2018, banks returned to the product in 2020 and 2021 to take advantage of a boost in issuance of taxable municipals.

That volume has died down since the Fed hiked rates in 2022. States and local governments have sold $23.3 billion of taxable bonds so far this year, about a third of the $74.4 billion sold during the same period in 2021, according to data compiled by Bloomberg.

"That's been a challenge for the banks, not enough taxable supply," said Matt Fabian, a partner at research firm Municipal Markets Analytics.

Banks generally like municipal debt for their longer maturities and lower risk compared to other investments. But with a 21% corporate tax rate, the banks don't need to rely as much on tax-exempt securities. Some are also scarred by losses endured in 2022, when the broader municipal market declined 8.5%, Fabian said.

"They took large losses on munis, so they fear them now," Fabian said about the banks.

A bank pullback could affect prices on municipal securities if the tax-exempt market needs to rely more on individual buyers who may shy away from lower yields, according to Fabian.

"We have more exposure to changes in retail behavior," Fabian said. "If the Fed cuts rates and interest rates fall and then retail becomes less interested in buying lower yielding bonds, it's going to be a drag on muni performance because you don't have corporations or others to help chase muni-bond prices higher."

Bloomberg Markets

By Michelle Kaske

September 13, 2024

Empty Downtowns Are Still Depleting Local Coffers.

In much of the country, downtowns remain relatively empty. The implications for property values, mortgage debt and property tax collections have not yet fully played out, says a Columbia University economist.

A few weeks ago, a building on West 50th Street in Midtown Manhattan sold at a steep discount. The 23-story office building had sold for $332 million as recently as 2006, but at an auction in July, it fetched only $8.5 million.

This was not a fluke or even an isolated incident. With office workers staying away from their offices in droves, downtown office buildings have sold at fire-sale prices, with defaults on office loans reaching near-record levels.

To get a sense of how shaky the downtown office market remains, Governing spoke with Stijn Van Nieuwerburgh, a professor of finance and real estate at Columbia University who coined the term "urban doom loop" back in 2022.

Continue reading.

governing.com

by Alan Greenblatt

Sep. 13, 2024

Some Solutions for State and Local Tax Deductibility.

When the 2017 tax law expires next year, Congress will revisit the limits on SALT deductions on federal returns. With elections approaching, it's time for governors and mayors to offer some viable new policy options — and ways to pay for them.

To help pay for middle-class tax cuts in 2017, Congress put a $10,000 limit on itemized deductions for state and local taxes, known as the "SALT" deduction. Although only some 10 percent of federal income tax returns included itemized deductions last year, fewer yet exceed the SALT ceiling — mostly a subset of taxpayers with six-figure incomes.

Yet when it was enacted, this move prompted more vocal complaints than almost any other tax law provision. Its impact is felt mostly by homeowners in jurisdictions where a combination of above-average state income taxes and hefty local property taxes puts them over the deduction limit.

Along with other provisions of the 2017 tax law, the SALT cap is set to expire next year, guaranteeing that it will become a political football. Even though this is a non-issue to 90 percent of the tax-paying population, it's a heated topic along partisan lines, with anti-tax conservatives claiming that an uncapped SALT deduction rewards spendthrift state and local politicians while others argue that the cap penalizes too many middle-class households. Public officials in the most affected states and localities have a clear interest in finding a way to provide some extra tax relief to households that pay out more than the $10,000 deduction limit. The problem is how to pay for it.

Continue reading.

governing.com

by Girard Miller

Sept. 10, 2024

TAX - CALIFORNIA
Sutter's Place, Inc. v. City of San Jose
Court of Appeal, Sixth District, California - August 30, 2024 - Cal.Rptr.3d - 2024 WL 4002415

Cardroom operator brought action against city and Division of Gaming Control, alleging city's cardroom regulation fee was an unconstitutional tax imposed without the required voter approval and that its imposition violated due process.

Following bench trial, the Superior Court entered judgment for defendants, granted them $44,349.42 in costs, and denied their request for attorney fees. Operator appealed.

The Court of Appeal held that:

- Trial court applied incorrect legal standard in making decision that cardroom regulation fee was not an unconstitutional tax;
- Trial court's error was prejudicial to operator;
- Substantial evidence supported trial court's finding that equally allocating cardroom regulation fee between two cardrooms bore fair or reasonable relationships to their respective burdens on, or benefits received from city's regulatory activity;
- Trial court did not abuse its discretion by limiting scope of expert's testimony;
- There was no cumulative prejudice warranting a new trial; and
- City was not required to refund entire cardroom regulation fee based on inclusion of certain unpermitted costs.

TAX - NEBRASKA
Continental Resources v. Fair
Supreme Court of Nebraska - August 23, 2024 - N.W.3d - 317 Neb. 391 - 2024 WL 3908797

Tax-certificate holder, which obtained tax deed from county treasurer, brought quiet-title action against property owner. Property owner filed counterclaim and also filed third-party complaint against county and county treasurer in her official capacity, alleging that tax certificate sale process violated property owner's constitutional rights.

Attorney General exercised right to be heard on constitutional claims.

The District Court granted purchaser's motion for summary judgment. Property owner appealed, and the Supreme Court moved case to its own docket. The Supreme Court affirmed.

Property owner petitioned for writ of certiorari to United States Supreme Court. The Supreme Court granted petition, vacated judgment, and remanded to Supreme Court of Nebraska.

On remand, the Supreme Court held that:

- County's issuance of tax deed to purchaser of tax-sale certificate to collect delinquent real property taxes did not constitute taking for private use;
- Property owner had protected interest in property to extent value of property exceeded his tax debt, thereby potentially entitling him to just compensation under Takings Clauses;
- Holder was potentially liable to pay just compensation to property owner; and
- Factual issues precluded summary judgment for holder on owner's claim seeking compensation due to taking.

County's issuance of tax deed to purchaser of tax-sale certificate to collect delinquent real property taxes did not constitute taking for private use violative of either Federal or Nebraska Constitutions, as Nebraska's tax sale certificate process served undoubtedly public purpose of tax collection.

Property owner had protected interest in property to extent that value of the property exceeded his tax debt, thereby potentially entitling him to just compensation under Takings Clauses of Federal and Nebraska Constitutions upon issuance of tax deed to property and certificate holder's pursuit of strict foreclosure option that resulted in owner's loss of equitable title.

Tax certificate holder, rather than county, was potentially liable to pay just compensation to property owner, under Taking Clauses of Federal and Nebraska Constitution, to extent that value of the property exceeded owner's tax debt; holder pursued strict foreclosure option that resulted in owner's loss of equitable title.

Tax certificate holder was potentially liable to pay just compensation to property owner, under Taking Clauses of Federal and Nebraska Constitution, to extent that value of the property exceeded owner's tax debt, despite contention that county took owner's interest in property, and holder merely purchased it via the sale of tax certificate; holder did not purchase a property the county had already taken, as county did not have authority to take property when it sold certificate but, instead, merely had lien on property in amount of tax debt, such that it lacked power to take "absolute title" to property, and as result of state statutes pertaining to tax deeds, holder obtained right to obtain such a deed and, with it, owner's equitable interest in property.

Tax certificate holder was potentially liable to pay just compensation to property owner, under Taking Clauses of Federal and Nebraska Constitution, to extent that value of the property exceeded owner's tax debt, despite contention that county was also potentially liable for because its issuance of tax deed was also essential to loss of protected property interest; county never obtained title to property, and county treasurer was obligated by statute to issue deed to holder.

Genuine issues of material fact as to amount of compensation property owner was owed by tax certificate holder due to issuance of tax deed on property, as well as the amount of equity that existed in property in excess of tax debt, precluded summary judgment for holder on owner's claim seeking compensation due to taking in violation of Federal and Nebraska Constitutions.

TAX - MINNESOTA

Vasko v. County of McLeod

Supreme Court of Minnesota - August 21, 2024 - N.W.3d - 2024 WL 3882574

Taxpayer brought action against county, challenging its decision to revoke homestead classification for property for tax year at issue, as well as property's assessed value.

The Tax Court entered judgment after bench trial for county. Taxpayer filed petition for writ of certiorari, which was issued by Supreme Court.

The Supreme Court held that:

- Tax court properly placed on taxpayer the ultimate burden of proving that county's revocation of homestead classification was unlawful, and that the assessed value of the property was incorrect;
- Tax court's finding of fact that taxpayer and her son did not occupy and use property as primary residence during tax year was not clearly erroneous; and
- Tax court's findings of fact as to market value of property were not clearly erroneous.

Tax court properly placed on taxpayer the ultimate burden of proving that county's revocation of a homestead classification was unlawful, and that the assessed value of the property was incorrect; although taxpayer overcame prima facie validity of county's non-homestead classification, and court then considered evidence presented by both parties as if presumption did not exist, taxpayer continued to bear burden of proof by preponderance of evidence.

Sufficient evidence supported Tax Court's finding of fact, when determining county properly revoked homestead classification for taxpayer's property for tax year at issue, that taxpayer and her son did not occupy and use property as primary residence during tax year; county produced water bills that showed no measurable water use at property during six-year period that included tax year at issue, letters sent by taxpayer's attorneys to county and city were entitled to no weight because they originated from her attorneys and simply reiterated her litigation position, and pieces of mail, mostly addressed to property, did not establish occupancy or use of property because taxpayer admitted the property did not have mailbox, and that mail with property's address was actually routed to her post office box.

Taxpayer did not overcome the presumption that county's assessed market value of property was accurate; even assuming tax-assessed value of properties submitted by taxpayer when challenging assessed value of her property could be used as proxy for their market value, taxpayer did not show properties were comparable to her property at issue, and she never explained how only property for which she provided a sale price was in any way comparable to property at issue.

Expanding User Fees for Transportation: Roads and Beyond

Key Findings

- Thanks to elevated deficits and interest rates, fiscal restraint is back in Washington.
- While substantially reversing America's fiscal situation requires structural reforms to entitlements and taxes broadly, reforming transportation funding would also help.
- The user-pays principle is a sound way to fund major infrastructure projects.
- Unfortunately, the US has moved away from the user-pays model, primarily due to the gas tax declining in real terms, but also due to excise taxes becoming weaker approximations of true user fees.
- By 2034, the gas tax and other car-related excise taxes are projected to raise less than half of the Highway Trust Fund's outlays.
- The ideal solution would be to replace existing excise taxes with true user fees, but raising existing

excise taxes would be a better solution than continuing a growing reliance on general revenue.
- Fully paying for federal highway spending with user fees could reduce the federal deficit by over $200 billion over the course of the next decade.

Introduction

The United States faces several fiscal challenges. In 2025, the individual tax cuts passed in the Tax Cuts and Jobs Act are scheduled to expire.[1] Meanwhile, long-run deficits are projected to remain at an elevated level in coming years and decades, even with the tax cuts expiring. The long-term increases in the debt come from growing entitlement obligations to programs such as Social Security and Medicare.[2] To bring deficits under control, policymakers will have to consider substantial reforms to growing entitlement programs, and, likely, broad-based tax increases, ideally focused on consumption.[3]

To actually address long-term deficits, lawmakers will have to make difficult trade-offs. But in addition to structural changes to entitlement spending and major tax reforms, some deficit-reducing reforms can bring efficiency gains as well. One particularly salient example is transportation.

Continue reading.

Tax Foundation

By: Alex Muresianu, Adam Hoffer, Jacob Macumber-Rosin, Alex Durante

August 7, 2024

TAX - SOUTH CAROLINA

City of Hardeeville v. Jasper County

Court of Appeals of South Carolina - July 17, 2024 - S.E.2d - 2024 WL 3434583

In 1999, Jasper and Beaufort counties drafted an agreement (the Park Agreement) to jointly develop the Nickel Plate Multi-County Business Park (MCBP).

The Park Agreement provided that property located in the MCBP was exempt from ad valorem taxes for the duration of the agreement and instead of ad valorem taxes, owners or lessees of park property would pay fee in lieu of tax (FILOT) payments.

In 2001, the Jasper County Council authorized the issuance of $14M in special source revenue bonds and authorized payment of the bonds secured by earmarking 40% of net fee payments under the Park Agreement.

In 2006, Hardeeville – a city located in Jasper County – annexed part of the MCBP property into its jurisdictional limits.

In 2020, Jasper County sent a letter to Hardeeville stating that it had discovered Hardeeville's collection and retention of the total millage levy, with no portion going to Beaufort County or payment of the special source revenue bonds pursuant to the Park Agreement.

Hardeeville then commenced an action against Jasper County, seeking (1) a declaratory judgment with respect to its authority to levy and collect taxes and retain tax revenue without regard to the

Park Agreement and (2) injunctive relief preventing Jasper County from collecting the alleged overpayment or negatively impacting Hardeeville's ability to impose a tax levy on the annexed property.

Jasper County answered and filed a cross-complaint seeking a declaratory judgment that all park property was subject to the Park Agreement and alleging unjust enrichment from Hardeeville's collection and retention of the total millage levy.

The Circuit Court held that: (1) the Park Agreement between Beaufort and Jasper counties was valid and in compliance with constitutional and statutory law; (2) Hardeeville's consent to the agreement was not required; and (4) all property in the MCBP, including the annexed property, was exempt from all ad valorem taxation.

Hardeeville appealed and the Court of Appeals affirmed.

Wyden Vows to Protect Tax-Exempt Financing in 2025 Tax Debate.

Senate Finance Committee Chairman Ron Wyden (D-OR) recently vowed to strongly defend tax-exempt financing in 2025, when Congress is expected to debate nearly $8 trillion in tax policy decisions.

Wyden noted that the 2017 Tax Cuts and Jobs Act repealed the ability to issue tax-exempt advance refunding bonds "making it harder for state and local governments to reduce their debt."

Now, with much of the 2017 act expiring at the end of 2025, "there are fresh concerns that Republicans will want to go after these key financing tools." Wyden said doing so "would be a huge setback for our infrastructure needs and for local communities across the country" and vowed to "strongly oppose that effort."

Wyden's comments came at the committee's hearing yesterday titled "Tax Tools for Economic Development."

C. LaShea Lofton, Deputy City Manager of the City of Dayton, OH, asked the committee to defend and modernize tax-exempt municipal bonds.

"I would like to share two points…: the tax exemption of municipal bonds should be fully maintained as they enable state and local governments to invest in the vital infrastructure that supports local community needs; and enacting federal bond modernization provisions will further enhance this financial tool and unlock additional infrastructure investment in urban, suburban, and rural communities," Lofton testified.

Lofton noted that tax-exempt financing saves Dayton millions of dollars in financing of infrastructure investments. However, she said, it is the combination of local control and local responsibility that makes municipal bonds an effective and efficient tool.

She said that voters throughout the country overwhelmingly support tax-exempt municipal bonds, which are either approved by locally-elected officials or directly through bond referenda. And it is residents and businesses in these communities who pay the interest and principal on this debt, she said. This important link between citizen and public finance fosters prudent decision-making, she said.

In terms of improving tax-exempt financing, Lofton asked the Committee to restore the ability to issue tax-exempt advance refunding bonds, increase the small issuer exception from $10 million to $30 million, and end the sequestration of direct payment bonds.

Senate Sherrod Brown (D-OH) said he supports reinstating the ability to issue tax-exempt advance refunding bonds and that he is “preparing legislation” to end the sequestration of direct payment bonds. “Both will help our municipalities save money that they can reinvest,” Brown said.

publicpower.org

August 1, 2024

TAX - CONNECTICUT

FuelCell Energy, Inc. v. Town of Groton

Supreme Court of Connecticut - July 24, 2024 - A.3d - 2024 WL 3529177

Taxpayer sought review of town’s denial of property tax exemption for its fuel cell modules and retroactive tax assessment to which a 25% penalty was added based on taxpayer’s failure to file a declaration for the property.

The Superior Court, in accordance with prior decision granting summary judgment to taxpayer, entered judgment for taxpayer. Town appealed.

The Supreme Court held that:

- Canon of statutory construction providing that a specific statute prevails over a general statute does not constitute extratextual evidence of legislative intent that can be considered only when a statute is deemed ambiguous, abrogating *Miller’s Pond Co., LLC v. New London*, 273 Conn. 786, 873 A.2d 965;
- Fuel cell modules were exempt from taxation under statute that exempted renewable energy sources;
- Fuel cell modules constituted “goods in the process of manufacture” under tax exemption for manufacturers’ inventories; and
- Taxpayer was not required to file a personal property declaration.

Fuel cell modules that could be deemed exempt from property taxation under two statutory provisions, one generally covering cogeneration systems including renewable sources and nonrenewable energy sources, and another specifically covering “renewable energy sources,” expressly defined to include fuel cells, were properly covered by statute that specifically exempted renewable energy sources; applying specific exemption for renewable energy sources was consistent with legislative intent to specifically exempt renewable energy sources, and fuel cells in particular, that generate energy and cut down on environmental emissions.

TAX - ARIZONA

Pima County v. State

Supreme Court of Arizona - July 22, 2024 - P.3d - 2024 WL 3492043

County and school district sued the State and Department of Revenue, seeking reimbursement of school district's desegregation expenses through payment of disputed tax funds as additional state aid for education.

Parties cross-moved for summary judgment.

The Arizona Tax Court granted motion in favor of county and school district, denied State's motion, and ordered the State to pay disputed amount. State appealed. The Court of Appeals reversed and remanded, holding that funding allocations for desegregation expenses were secondary, and not primary, property taxes. County and school district petitioned for review.

The Supreme Court held that State was not obligated to reimburse, as additional state aid for education, desegregation expenses paid by county that exceeded constitutional 1% limit on residential property taxes.

School district's desegregation expenses were secondary and not primary property taxes under amended statutory scheme, and thus State was not obligated to reimburse, as additional state aid for education, desegregation expenses paid by county that exceeded constitutional 1% limit on residential property taxes; statute allowed district to budget for desegregation expenses outside revenue control limit only if revenues from secondary property taxes were used, credit for additional state aid for education could only be applied against primary property taxes, statutes reflected legislature's intent to end state funding of desegregation expenses with primary taxes, and statutes were not unworkable, rather, districts needed to reduce overall expenditures so that tax levy complied with 1% limit.

TAX - CONNECTICUT

William W. Backus Hospital v. Town of Stonington

Supreme Court of Connecticut - July 12, 2024 - A.3d - 2024 WL 3405653

Taxpayer, a general hospital and wholly owned subsidiary of healthcare delivery system formed for charitable purposes, appealed decision of town's Board of Assessment Appeals, which denied taxpayer's application for tax exemption for certain personal property it used to provide outpatient medical rehabilitation services at subleased facility for two taxable years at issue.

The Superior Court granted taxpayer's motion for summary judgment. Town appealed.

The Supreme Court held that:

- Term "acquire," as used in statute governing taxation by municipality of real and personal property acquired, held by or on behalf of health system, did not exclude property obtained via lease from taxation, and
- Taxpayer was not entitled to tax exemption for personal property.

Term "acquire," as used in statute governing taxation by municipality of real and personal property acquired, held by or on behalf of health system, broadly referred to both possession and control as well as ownership, and did not exclude property obtained via lease from taxation.

Taxpayer, a general hospital and wholly owned subsidiary of healthcare delivery system formed for charitable purposes, was "acquired" by entity and, thus, was not entitled to tax exemption for certain personal property it used to provide outpatient medical rehabilitation services at facility it subleased from entity for two taxable years at issue, despite contention it was not “health system” under statute governing taxation by municipality of real and personal property acquired, held by or on behalf of health system but was, instead, a singular hospital affiliated with a health system; statute’s definition of “health system” included health system itself as well as any affiliated hospitals or entities, and facility was located in suite, subleased to taxpayer, of building system acquired by lease.

Wells Fargo Says Muni Tax Break at Risk No Matter Who Wins US Elections.

Wells Fargo & Co.’s head muni strategist Vikram Rai says the tax-exempt status of bonds sold by state and local governments could be in jeopardy regardless of who wins the US elections in November.

Municipal bonds pay interest to investors that’s exempt from income taxes. Proposals to change that feature could emerge from either Democrats or Republicans, he said in a Monday report. The Obama administration, for example, proposed limiting the interest from municipal bonds that top earners can exclude from their taxable income.

“The possibility of such proposals being put forward again in the future in light of a worsening fiscal picture cannot be ignored as deficit reduction and/or tax reform moves forward,” according to Rai.

The silver lining is that limiting access to tax-exempt bonds boosts the value of existing muni debt, he said.

“At present, there is no threat whatsoever to the tax exemption of outstanding bonds,” Rai said in the report.

Rai also examined muni-bond yields versus Treasuries, which is used to assess valuations in the market. He said these ratios haven’t exhibited any clear patterns around the elections.

Bloomberg Markets

By Amanda Albright

July 22, 2024

— With assistance from Skylar Woodhouse

Governments, Get Your Refundable Tax Credits Here.

COMMENTARY | The Inflation Reduction Act includes green tax credits that state and local agencies can use on clean energy vehicles, infrastructure and renewable energy projects.

From deficit and pollution reduction to creating a fairer tax code, the stated goals of the climate law, the Inflation Reduction Act, have been well-publicized. With this far-reaching piece of legislation also comes a slew of financial operations, tweaks and opportunities that organizations can embrace. Arguably the most notable—yet often overlooked—feature of the IRA is what it means for state and local governments … and their tax returns.

Until the implementation of the IRA, states and localities generally had not had the distinct pleasure of filing tax returns. However, under the IRA, certain costs that many governments regularly incur as they transition from traditional to “greener” infrastructure qualify for refundable tax credits if they file a tax return.

With that in mind, here are a few of the key opportunities that state and local governments should look for ahead of next year’s filing deadline, as well as best practices for taking advantage of them.

Continue reading.

Route Fifty

By Jack Reagan,
UHY Advisors

JULY 25, 2024

Montana Looks to Become Latest State to Boost Nonprofit Hospital Oversight.

Montana’s proposal to increase oversight is part of a national trend by states to ensure nonprofit hospitals act as charitable organizations as they claim tax-exempt status.

Montana is poised to become the latest state to increase scrutiny of how its nonprofit hospitals deliver community benefits in exchange for their tax-exempt status.

Under proposed rules, the Montana Department of Public Health and Human Services plans to collect data on nonprofit hospitals’ charitable acts, such as discounting prices, providing health education, or conducting free screenings. Montana officials expect to adopt the new rules in August, but state officials have yet to set standards for exactly what constitutes acceptable giving or how much hospitals must do.

The proposal comes some four years after a state audit found shortcomings in the health department’s oversight. The rules largely mirror federal requirements that national health policy analysts said have yet to lead to any meaningful enforcement.

Continue reading.

Route Fifty

By Katheryn Houghton,
KFF Health News

JULY 26, 2024

What Happens If Munis Lose Their Tax Exemption? Advisors Weigh In.

Uncle Sam is sitting on a mountain of debt and needs to find revenue wherever it can.

Tax-free municipal bonds have traditionally been the cornerstones of high-net-worth investor portfolios.

So what happens if those tax-free benefits go away?

Wells Fargo & Co.'s head municipal bond strategist Vikram Rai said this week the tax-exempt status of bonds sold by state and local governments could be in jeopardy no matter which candidate wins the Presidential election in November. Rai stated that the potentially drastic measure would be made to combat the national debt which now sits at $34.95 trillion – and climbing.

Municipal bonds, which pay interest to investors that's exempt from income taxes, have been viewed as a vehicle to raise revenue for the Federal government before. The Obama administration, for instance, proposed limiting the interest from municipal bonds that top earners can exclude from their taxable income, but the plan was never put into action.

"The possibility of such proposals being put forward again in the future in light of a worsening fiscal picture cannot be ignored as deficit reduction and/or tax reform moves forward," according to Rai.

Rai added that at present there is currently "no threat whatsoever" to the tax exemption of outstanding bonds. Nevertheless, Christopher Davis, partner at Hudson Value Partners, says it is not inconceivable for such a plan to be enacted considering the country's dire financial outlook.

"Altering the tax status of municipal bonds would be an out of the box way for either party to find revenue and likely be politically palatable as it primarily hits higher earners," said Davis.

Added Davis: "Losing their tax status would make us much more inclined to buy corporate bonds over municipals given their better liquidity and greater transparency in public company financials. Corporate boards see default as the death of the business and not a negotiating tool the way some legislators unfortunately do."

Michael Cordano, investment advisor at Jackson Square Capital, meanwhile, believes the price of current munis with tax-exempt covenants should increase if tax exempt status were rescinded for future municipal bond issuance.

"Government bodies issuing new bonds will have to offer higher yields to compete with the overall taxable bond market," said Cordano.

Eric Lutton, chief investment officer at Sound Income Strategies, highly doubts local governments will lose their tax-exempt status anytime soon. In his view, it would pose too great a risk to ultra-high-net-worth investors and wealth management firms that employ a more traditional defensive fixed income investment strategy that relies heavily upon tax-exempt municipals.

"We focus on more of a non-traditional offensive fixed income strategy for clients in or near retirement, so our investment strategy would not change too much if municipals lost their tax-advantage," said Lutton, adding that the vast majority of Americans are in lower tax brackets after retirement, so "municipals don't pack as much of a punch as they do for ultra-high-net-worth portfolios."

K. Brad Tedrick, director of wealth management at Wright Ford Young & Co. Wealth Management, says alternative considerations should the tax-exempt status of municipal bonds fall into jeopardy include "options that would provide cash flows that include depreciation or principal while always considering the impact of risk management."

Another idea, according to Tedrick, would be to "pair a portfolio with direct indexing options that can provide other tax benefits."

Like Rai, Sean Carney, head of municipal strategy at BlackRock, does not believe the tax-exempt status of municipal bonds is at risk even as discussions around it tend to intensify during election cycles. In his view, the positive outcomes that municipal bonds provide to state and local governments, as well as to the investors who hold these investments, are "widely understood."

Carney is bullish on muni bonds heading into the second half of 2024, partially because of the widespread belief that taxes will inevitably rise due to the massive deficits being run up in Washington.

"I think it also comes from people looking for an allocation to higher quality, less volatile assets like you get in municipal bonds. And then municipals also help you keep a little bit more of what you earn, which is always important," said Carney.

And while the federal government is sitting on a mountain of debt, Carney says state and local government debt is at record lows while revenues are at record highs.

"As we look at the state and local governments, we know that as they came out of the Covid era and all of the fiscal stimulus they received, they were very strong. We've been keeping a very close eye on how the states are spending coming out. But pension fund ratios are elevated. Rainy day funds are at record highs," said Carney. "So on the fundamental side, things are very good."

investmentnews.com

By Gregg Greenberg

July 23, 2024

TAX - MARYLAND

Ben Porto & Son, Ltd. v. Montgomery County

Appellate Court of Maryland - July 9, 2024 - A.3d - 2024 WL 3338200

Taxpayers, which were companies that owned or operated a quarry, appealed decision of county finance director to affirm decision of county's department of environmental protection to deny taxpayers' applications and appeals for an exemption from or credit against county's stormwater-remediation charge on impervious surfaces on taxpayers' property, against which charge property owners could obtain a credit if they treated their stormwater on-site.

The Tax Court denied taxpayers' request for an exemption but awarded taxpayer a 100% credit against the charge due to taxpayers' on-site treatment of stormwater. The parties then sought judicial review.

After consolidation, the Circuit Court affirmed the Tax Court's decision as it related to exemption and entitlement to credit but remanded the matter to the Tax Court because neither the record nor the Tax Court's order reflected how the credit award was calculated. The parties cross-appealed.

The Appellate Court held that:

- Stormwater-remediation charge was an excise tax within the county's taxing authority, and thus it was not preempted by state and federal regulation of mines;
- Charge was required to comply with statute that required that such a charge be set in an amount that was based on the share of stormwater-management services related to the property and provided by the county;
- County's lack of provision of stormwater-management services to taxpayers' property did not establish that charge failed to comply with that statute;
- Taxpayers' National Pollutant Discharge Elimination System (NPDES) permit did not preclude the charge;
- Neither county code not State regulations required absolute compliance with the Maryland Stormwater Design Manual in order for a taxpayer to be eligible for a credit against the charge;
- Sufficient evidence supported Tax Court's conclusion that stormwater treatment undertaken by taxpayers made them eligible under the county code for a credit against the charge;
- Tax Court lacked an adequate factual basis to support awarding taxpayers a 100% credit; and
- Tax Court is without statutory authority to award attorney fees to prevailing party.

County's stormwater remediation charge was a "tax" rather than a regulatory "fee," as would support finding that it was within taxing authority of county, which was a charter county with home-rule powers, and not preempted by state and federal regulation of mines insofar as it applied to taxpayers' quarry; fee's purpose was to raise revenue and benefit the general public rather than regulate stormwater, and fee did not require a property owner to do anything with their property other than pay the charge.

Stormwater-remediation charge was an "excise tax," rather than a "property tax," within taxing authority of charter county with home-rule powers, and thus charge was not preempted by state and federal regulation of mines insofar as it applied to taxpayers' quarry; county council labeled the charge as an excise tax, charge was not imposed upon taxpayers solely because they owned land but rather because of taxpayers' use of the land, and fee did not require any assessment of the value or nature of the property being taxed.

Taxpayers, which were companies that owned or operated a quarry, did not preserve for appellate review their argument that county's stormwater-remediation charge was an invalid retroactive tax on a vested right because, so the argument went, it taxed impervious surfaces that were on taxpayers' property before the county imposed the charge; although the record was clear that taxpayers raised a retroactivity challenge to the county in their credit applications and appeals, their filings and arguments before the Tax Court did not clearly demonstrate that they were continuing to challenge the charge on the grounds that it retroactively taxed existing impervious surfaces.

Although it was a valid excise tax, county's stormwater-remediation charge was required to comply with statute that required that such a charge be set in an amount that was based on the share of stormwater-management services related to the property and provided by the county; both county code and state statutes governing such a charge indicated that county still had to comply with state-law requirements for such a charge.

County's lack of provision of stormwater-management services to taxpayers' property, on which a quarry operated, did not establish that county's stormwater-remediation charge, which applied to impervious surfaces on the property, failed to comply with statute requiring a stormwater-remediation charge to be set in an amount that was based on the share of stormwater-management services related to the property and provided by the county; charge operated under the valid assumption that a property's impervious surface related to the stormwater services provided by the county.

Fact that taxpayers, which were companies that owned or operated quarry, had a National Pollutant Discharge Elimination System (NPDES) permit that was covered under State's General 15MM permit did not preclude county from charging them its stormwater-remediation fee for impervious surfaces on the property, despite argument that statute governing when a property owned by the State or a unit of State government could be charged such a fee prohibited a county from charging the fee to property covered by such a permit; statute clearly referred to NPDES Phase I permits, and it seemed clear that the General Assembly's intent with the statute was to provide an exemption for State entities that already held a NPDES permit, not for private entities with a NPDES permit.

Taxpayers, which were companies that owned or operated a quarry, did not show that the Water Management Administration had either found mining to be subject to any State law that regulated stormwater-management runoff or determined that mining would be regulated under specific State laws that provided for managing stormwater runoff, and thus neither county code provision nor state regulation that provided that land-development activity that was subject to such findings was exempt from stormwater-management requirements precluded county from charging stormwater-remediation fee to taxpayer for the impervious surfaces on its property; although taxpayers argued that mines were among the most regulated entities in the State, that did not inherently mean that the Water Management Administration had found the quarry's stormwater to be regulated.

County code did not require absolute compliance with the Maryland Stormwater Design Manual in order for a taxpayer to be eligible for a credit against county's stormwater-remediation charge, which credit was available to taxpayers who treated stormwater on-site; despite code's repeated references to the Manual, the code's provision governing the credit did not provide any requirements that practices eligible for the credit had to conform to that Manual.

State regulations on stormwater management did not require compliance with the Maryland Stormwater Design Manual in order for taxpayers' on-site stormwater treatment to allow them a credit against county's stormwater-remediation charge; the various references to the Manual in the regulations referred to complying with minimum control requirements, not to potential eligibility for credit against a stormwater-remediation charge.

Sufficient evidence supported Tax Court's conclusion that stormwater treatment undertaken by taxpayers, which were companies that owned or operated a quarry, made them eligible under the county code for a credit against county's stormwater-remediation charge on impervious surfaces on their property; based upon uncontroverted testimony of taxpayers' engineering expert, taxpayers demonstrated both onsite treatment of all of property's stormwater and additional treatment of offsite stormwater, and each of taxpayers' applications and appeals to the county for the credit explained the stormwater management and treatment present on the property.

Although sufficient evidence supported Tax Court's conclusion that stormwater treatment undertaken by taxpayers, which were companies that owned or operated a quarry, made them eligible under the county code for a credit against county's stormwater-remediation charge on impervious surfaces on their property, Tax Court lacked an adequate factual basis to support awarding taxpayers a 100% credit; pursuant to county regulation, the credit could only be awarded according to specific calculations and guidance, and Tax Court did not engage in any calculation or demonstration of how it reached the determination that taxpayers were entitled to a 100% credit.

Remand to Tax Court, rather than to county's department of environmental protection, was appropriate following Appellate Court's finding that Tax Court lacked an adequate factual basis to support awarding taxpayers, which were companies that owned or operated a quarry and that had appealed to the Tax Court from county's decisions, a 100% credit against county's stormwater-remediation charge on impervious surfaces on their property, which credit, as provided by the county code, stemmed from taxpayers' own stormwater treatment; the Administrative Procedure Act's judicial-review provisions allowed a final order from the Tax Court to be remanded for further proceedings before the Tax Court.

Tax Court, which, despite its name, is an adjudicatory administrative agency in the executive branch of state government, is without statutory authority to award attorney fees to prevailing party.

Circuit court would not have had authority to award attorney fees itself on judicial review following Tax Court's decision that denied request by taxpayers, which were companies that owned or operated a quarry, for an exemption from county's stormwater-remediation charge on impervious surfaces on taxpayers' property but that awarded taxpayers, pursuant to the county code, a 100% credit against the charge due to taxpayers' treatment of stormwater; such an award of fees was not available for administrative appeals brought pursuant to the Administrative Procedure Act.

Statute providing that a county or municipality may not charge a stormwater remediation fee to property specifically covered by a current National Pollutant Discharge Elimination System (NPDES) Phase I municipal separate storm sewer system permit or industrial stormwater permit held by the State or a unit of State government does not exempt any entity with a NPDES permit from stormwater remediation charges, only State government entities with NPDES permits.

TAX - WASHINGTON

Wiklem v. City of Camas

Court of Appeals of Washington, Division 2 - July 9, 2024 - P.3d - 2024 WL 3335985

Petitioner brought action against city and county, alleging that county's conclusion that petitions for referendum vote on city ordinance imposing a new utility tax lacked sufficient valid signatures, and seeking a writ of mandamus, a writ of review, and declaratory relief.

The Superior Court granted county's motion to dismiss for failure to state a claim, which was converted into one for summary judgment, and denied petitioner's motion for reconsideration. Petitioner appealed.

The Court of Appeals held that:

- Writ of mandamus was not warranted to order county to validate signatures which had already occurred;
- Process of verification of sufficiency of signatures involved discretionary acts for which a writ of mandamus was not appropriate;
- County was not exercising a judicial function in certifying signatures, thus precluding statutory writ of review.
- Declaration of elections director was sufficient for trial court to determine whether county's process in verifying signatures was performed illegally or in an arbitrary and capricious manner, at summary judgment stage, thus precluding constitutional writ of review; and
- Trial court did not abuse its discretion in denying motion for reconsideration.

TAX - CALIFORNIA

Loeber v. Lakeside Joint School District

Court of Appeal, Sixth District, California - June 24, 2024 - Cal.Rptr.3d - 2024 WL 3353457

Petitioner, a trustor of an irrevocable trust that owned two undeveloped properties within school district but who did not live in school district or personally own any property within school district, petitioned for writ of mandate seeking a court order to mandate an election on proposed citizen's initiative petition, for which petitioner had secured enough qualifying signatures, to add a new parcel tax exemption for taxpayers who were owners of unimproved parcels and who were over the age of 65, and seeking declaratory relief.

The Superior Court, Santa Clara County, dismissed petition for lack of standing. Petitioner appealed.

The Court of Appeal held that:

- Petitioner did not have a beneficial interest in writ that was direct and substantial;
- Petitioner's role as drafter, sponsor, and official or authorized executive of successful initiative campaign did not establish that petitioner had a sufficient beneficial interest in writ;
- Petitioner articulated a sufficiently weighty public need and public duty to apply public interest exception to beneficial interest requirement to have standing to seek writ of mandate;
- Petitioner's delay in filing citizen's initiative petition until several days after deadline did not provide a persuasive basis to deny application of public interest exception;
- Cost to school district of calling a general or special election on citizen's initiative petition did not outweigh school district's duty to act on an arguably valid ballot petition; and
- Initiative fell outside constitutional authority for initiative power in matters to reduce or repeal local fees.

Trump's Rise Poses Threat to Tax Break That Underpins Muni Bonds.

- **Muni tax-exemption is defining feature of local debt market**
- **Policymakers expected to hunt for revenue to offset tax cuts**

The momentum behind Donald Trump's campaign for a second term as president is rekindling concerns that the long-cherished municipal bond tax-break may be scrapped to help pay for permanent tax cuts.

The Tax Cuts and Jobs Act — which lowered levies for corporations and individuals — marked a major Trump policy achievement during his first stint in the White House. Those breaks for individuals are set to expire in 2025. If elected this November, he's promised across-the-board tax cuts, likely raising deficits and pushing lawmakers to hunt for additional revenue. The muni tax-exemption — estimated to cost the US government roughly $40 billion each year — has been mentioned as a target.

"The most extreme impact to the market would be if the tax exemption goes away, if there's massive deficits maybe that comes into play," Chad Farrington, co-head of municipal bond strategy at DWS Investment Management, said in an interview. "That would of course cause intense pushback from states and local governments."

Trump's policies have been thrust into even greater focus after an assassination attempt on the former president over the weekend at a campaign rally. The incident has further rallied the GOP party as it prepares to nominate him at the Republican National Convention in Wisconsin this week.

Established in 1913, the municipal-bond tax exemption is the defining feature of the $4 trillion state and local government debt market where cities, towns, school districts, hospitals and other borrowers raise money to finance the bulk of US infrastructure. Investors in muni debt generally don't pay taxes on the interest they earn, allowing governments to borrow at lower rates.

Repealing that exemption was floated by a conservative think tank earlier this year as a way to keep the Trump tax cuts. Matt Fabian, a partner at Municipal Market Analytics, said that Democratic President Joe Biden's "poor" debate performance has raised the potential for Republican electoral victories in November, risking damage to the tax-exemption.

After the inauguration, next year will be focused on tax reform, Fabian said in an interview. "We worry that munis would be caught up in paying for that as collateral damage," he said.

To be sure, a Trump presidency is not a foregone conclusion. In swing states, Trump led Biden by just 2 percentage points, 47% to 45%, according a Bloomberg News/Morning Consult poll conducted before the shooting. And regardless of who wins the election, investors at MacKay Shields said in a Monday research note that demand for state and local government debt should increase.

Tax-Exemption Rollback

The muni tax exemption has been scaled back before. In 2017, during Trump's first administration, lawmakers eliminated a key refinancing tactic that allowed governments to call back their bonds and replace it with tax-free debt before they were able to be repurchased. The policy initially reduced new issue sales.

An earlier iteration of that legislation also proposed ending the exemption for so-called private-activity bonds which allow companies to issue tax-free debt under certain circumstances like privately run infrastructure projects such as toll roads and airports. That provision was eventually scrapped.

In a red-wave scenario, where Republicans win the presidency and both chambers of Congress, lawmakers would likely focus on extending Trump's tax-cut provisions, strategists at Barclays Plc led by Mikhail Foux and Clare Pickering wrote in a July 10 research note.

"Not only would the focus be on keeping top tax brackets low, but policymakers might also need to find additional pay-fors, and some parts of the tax-exempt muni market might be looked at for additional revenue," the analysts said.

Bloomberg Markets

By Skylar Woodhouse

July 15, 2024

— With assistance from Nic Querolo

Tax Hikes Seen No Matter Who's President, Making Muni Bonds Attractive.

- **Muni bonds appeal grows from tax-exempt status: MacKay Shields**
- **Says even Republican sweep may not stop tax bills from growing**

No matter who wins November's US presidential election, there's a growing risk that Americans will be paying higher taxes next year, according to MacKay Shields LLC. That makes muni bonds an attractive shield.

Thanks to higher interest rates, savers that piled a record amount of cash into money market funds and grew their earnings will be facing steeper tax bills. On top of that, key individual tax cuts are due to expire just as the US's swelling deficit may prompt lawmakers to consider raising taxes, according to a mid-year report by the fixed-income boutique firm published Monday.

Buying municipal bonds offers investors — especially those in higher tax brackets — a way to cut their tax bill, since the income they generate is tax-exempt, according to the investment firm owned by New York Life Insurance Co.

Continue reading.

Bloomberg Markets

By Nic Querolo

July 15, 2024

States, Cities Consider 'Mansion Taxes' to Fund Affordable Housing.

From sales taxes to real estate transfer taxes, governments are desperately trying to identify dedicated funding tracts for homelessness and housing initiatives.

States and cities have been throwing darts at the wall, trying to find dedicated funding to tackle affordable housing needs.

Nationwide, tens of millions of families are struggling amid a housing shortage with rent and housing costs. Home prices are up about 60% over the past decade, adjusted for inflation. And about a quarter of renters—some 12 million households—spend more than half their income on housing, which is far above the recommended 30%.

To support affordable housing development and other initiatives in the rapidly growing Denver area, Mayor Mike Johnston on Monday unveiled a proposed new tax that would add 0.5% atop Denver's current effective 8.81% sales tax rate. The tax is estimated to bring in $100 million a year in proceeds for the efforts.

Continue reading.

Route Fifty

By Elizabeth Daigneau,
Executive Editor, Route Fifty

JULY 12, 2024

[Your 2024 Election Guide – Separate Issue Election and/or Multipurpose Issue Allocation (an Election of Sorts)? - Squire Patton Boggs]

While probably not the most consequential election in 2024, a bond issuer might need to decide whether to make a separate issue election under Reg. §1.150-1(c)(3) and/or a multipurpose issue allocation under Reg. §§1.148-9(h) and 1.141-13(d).[1] To ensure that issuers (and conduit borrowers)[2] are a fully informed electorate, this 2024 Election Guide will explain the who, what and why of each type of election or allocation (but not necessarily in that order).

Separate Issue Election

Who qualifies? An issuer issuing tax-exempt bonds that have more than one purpose (e.g., new money and refunding) – but only if the proceeds, investments and bonds of the aggregate issue are allocated between each of the separate purposes using a reasonable, consistently applied method. It should be noted, however, that if a refunding is one of the separate purposes, certain multipurpose issue allocation criteria (discussed below) must also be met.

Why make a separate issue election? An issuer will frequently make the separate issue election when governmental use bonds and tax-exempt qualified private activity bonds would otherwise be part of a single issue for federal income tax purposes (because the governmental use bonds and qualified private activity bonds will be payable from the same source of funds and will be sold at substantially the same time (i.e., within 14 days of each other) pursuant to the same plan of financing). For example, a state university may be selling governmental use bonds and qualified 501(c)(3) bonds at substantially the same time pursuant to the same plan of financing, and these bonds are payable from the same source of funds. Also, some airport financings involve both governmental use bonds and exempt facility bonds. Both qualified 501(c)(3) bonds and exempt facility bonds are subject to more stringent rules than governmental use bonds. Thus, it is often beneficial for the issuer to separate the governmental use bonds from the other more highly regulated qualified private activity bonds.

[Continue reading.]

The Public Finance Tax Blog

By Cynthia Mog on July 10, 2024

Squire Patton Boggs

[Soon Gas Taxes Won’t Pay for Roads. But Amazon Deliveries Might.]

As cars become more fuel efficient and EVs become more prominent, states will not be able to rely on gas taxes for much longer. But some states are considering fees on Amazon deliveries as part of their road-funding solution.

For decades, states have relied on gas taxes to provide much of the money to maintain roads and bridges. But as cars become more fuel efficient, and some Americans switch to electric vehicles, state leaders say the gas tax won’t pay the bills for much longer.

At the same time, many cities have seen their streets crowded with delivery trucks from Amazon and other companies, as consumers increasingly opt to have products delivered to their homes. In a few states, lawmakers think fees on those deliveries could be part of their road-funding solution.

"If you're going to be creating wear and tear on our roads, you should help pay to maintain them," said Colorado state Rep. Cathy Kipp, a Democrat who chairs the Energy and Environment Committee.

[Continue reading.]

governing.com

July 11, 2024 • Alex Brown, Stateline.org, TNS

TAX - FLORIDA
[Pinellas County v. Joiner]
Supreme Court of Florida - June 27, 2024 - So.3d - 2024 WL 3190642

First county, which owned property in second county, brought action against second county's appraiser for a judgment declaring that its property was immune from ad valorem taxes and an injunction prohibiting future assessment and collection of such taxes.

After both sides moved for summary judgment, the Circuit Court entered summary judgment for first county. Second county's appraiser appealed. The District Court of Appeal reversed but certified a question as being of great public importance. First county sought discretionary review based on the certified question.

The Supreme Court held that common-law principles of sovereign immunity do not protect county-owned property from ad valorem taxation when that property is located outside the county's jurisdictional boundaries.

TAX - CALIFORNIA
[Legislature of the State of California v. Weber]
Supreme Court of California - June 20, 2024 - P.3d - 2024 WL 3059632

State Legislature, Governor, and former Senate President Pro Tempore filed an original proceeding to petition for a writ of mandate or prohibition to bar the Secretary of State from placing an initiative measure on the general election ballot.

The Supreme Court held that:

- Preelection review was appropriate for ballot initiative;
- Ballot initiative which sought to require voter approval of tax increases by state or local governmental entities would substantially transform the process for enacting new statewide tax legislation;
- Ballot initiative which sought to require that every nontax government fee or charge be subject to referendum would effect a significant change in how the state government raised revenue;

- Ballot initiative which sought to reassign local fee-setting from administrative to legislative processes and subject such fees to referendum would substantially alter the processes by which local governments raised revenue; and
- Ballot initiative exceeded the scope of the power to amend the California Constitution via citizen initiative.

TAX - TEXAS

[Oncor Electric Delivery Company NTU, LLC v. Wilbarger County Appraisal District]

Supreme Court of Texas - June 21, 2024 - S.W.3d - 2024 WL 3075706 - 67 Tex. Sup. Ct. J. 1196

Taxpayer, an electricity transmission delivery service provider, sought judicial review in separate county district courts in connection with appraisal districts' and appraisal review boards' (ARB) refusal to correct appraisal roll, claiming that a clerical error overstated value of transmission lines.

The 35th District Court granted appraisal district's plea to the jurisdiction, but did not expressly address ARB's plea. Taxpayer filed interlocutory appeal. The Austin Court of Appeals, sitting by assignment, reversed in part and remanded. Meanwhile, the 46th District Court denied taxing authorities' joint plea to the jurisdiction, and their motion for partial summary judgment. Taxing authorities filed interlocutory appeal. The Amarillo Court of Appeals reversed and rendered judgment granting taxing authorities' plea. Taxing authorities and taxpayer filed petitions for review in the Supreme Court, which were granted.

The Supreme Court held that:

- Assertion of a preclusion defense based on a statutory agreement between a property owner and a chief appraiser is not jurisdictional;
- Trial court's order granting county appraisal district's plea to the jurisdiction was not a final judgment, so that ARB was not a proper party to taxpayer's interlocutory appeal of trial court's order; and
- Record contained no ruling from the trial court on county ARB's plea to the jurisdiction or the extent to which the Tax Code waived its governmental immunity, thereby precluding an interlocutory appeal of issue.

Although the assertion of a preclusion defense based on a statutory agreement between a property owner and a chief appraiser may narrow the trial court's scope of review, this limitation is not jurisdictional; rather, much as the scope of the taxpayer's protest limits the grounds a county appraisal district may assert on appeal, the limitation is procedural.

Trial court's order granting county appraisal district's plea to the jurisdiction, construed as a whole, did not actually dispose of taxpayer's cause of action against county appraisal review board (ARB) in connection with refusal to correct appraisal roll, claiming that a clerical error overstated value of taxpayer's transmission lines, and therefore trial court's order did not actually dispose of every pending claim and party, and did not do so clearly and unequivocally, such that trial court's order was not a final judgment, so that ARB was not a proper party to taxpayer's interlocutory appeal of trial court's order; taxpayer's claim against ARB was still pending in the trial court.

Record contained no ruling from the trial court on county appraisal review board's (ARB) plea to the jurisdiction or the extent to which the Tax Code waived its governmental immunity, thereby precluding an interlocutory appeal of issue.

TAX - NEW HAMPSHIRE

New London Hospital Association, Inc. v. Town of Newport

Supreme Court of New Hampshire - June 26, 2024 - A.3d - 2024 N.H. 33 - 2024 WL 3167414

Property owner, a nonprofit corporation exempt from federal income taxation and a regulated charitable trust registered with the New Hampshire Department of Justice Charitable Trusts Unit, sought judicial review of town's decision denying owner's applications for charitable property tax exemptions for property on which owner operated a rural health clinic.

Appeals were consolidated, and following a bench trial, the Superior Court dismissed appeals, but found that owner had proved two factors supporting exemption. Parties cross-appealed.

The Supreme Court held that:

- Statement of purpose in owner's articles of incorporation sufficiently obligated owner to perform its charitable purpose;
- Owner established that the land it owned was occupied by owner and used directly for a stated charitable purpose;
- Owner's practice of referring patients to its sole member did not impermissibly confer on sole member a pecuniary benefit;
- Owner received services that furthered owner's charitable purposes in exchange for monies it paid to independent contractors; and
- Owner was not required to rule out possibility that rule that owner's officers or members may not derive any pecuniary profit or benefit was not satisfied.

How IRA Elective Pay is Helping Cities Meet Climate Action Plans

The Inflation Reduction Act (IRA) of 2022 continues existing and creating numerous new tax incentives for clean energy today. The most notable change for municipal governments has been the option for elective pay, in which local governments can take advantage of rebates as a non-taxable entity. Through elective pay, cities large and small can receive rebates for projects in clean energy and electric vehicles.

Understanding which projects are eligible for direct pay and how to file with the IRS is important for city staff as due dates are approaching, plus filing depends on how your jurisdiction elects to calculate their tax year (e.g., calendar year or fiscal year). For first-time filers and municipalities electing a calendar tax year — which are likely most local governments — filings for projects that were put into service in 2023 are due November 15, which includes an automatic six-month extension for first-time filers. In subsequent years, for local governments that choose a calendar year calculation, filings would be due on May 15.

Each project must preregister and receive a number before filing. Due to wait times for registration numbers from the IRS lasting upwards of several months, local leaders should act now to be ready by the filing deadline. It is also worth noting that coordination across multiple city departments is likely needed, including legal, financial and sustainability teams and others.

Continue reading.

National League of Cities

by Kelly Aves

JULY 2, 2024

California Supreme Court Removes Anti-Tax Measure From November 2024 Ballot: Kutak Rock

On June 20, 2024, a unanimous California Supreme Court ordered the removal of the self-styled "Taxpayer Protection and Government Accountability Act," an initiative measure backed by business and taxpayer rights groups, from California's November 2024 ballot.

The Court took the rare step of striking the initiative before it appeared on the ballot on the grounds that it would have brought about a fundamental revision of California's Constitution rather than merely amending tax-related provisions within the State's existing Constitutional framework. The Court held that such fundamental changes could only be submitted to voters if approved by two-thirds majorities in both houses of the State Legislature or through a Constitutional convention.

The initiative would have required virtually any tax imposed by any State or local agency to be submitted to voters (with retroactive effect to January 1, 2022), and it would have narrowed the definition of "exempt charges" to fees which do not exceed the actual (as opposed to reasonable) costs to the local government of providing a service or product to taxpayers. Moreover, the initiative would have shifted the burden to the State and local governments to demonstrate by clear and convincing evidence—a very high legal standard—that an exempt charge met the actual costs standard.

Continue reading.

Kutak Rock LLP

by Cyrus Torabi

26 JUNE 2024

Fitch: U.S. States' Credit Not Affected by Weak April Tax Collections

Fitch Ratings-New York-12 June 2024: Weak overall tax collection growth through April 2024 should not result in negative credit implications for U.S. states, given ample reserves and broad budgetary flexibility, Fitch Ratings says.

State reserves remain robust due to large surpluses accumulated in 2021 and 2022, with state rainy day funds averaging 13.8% of prior-year revenues in fiscal 2023 compared with 7.9% in fiscal 2019. However, states that have made large tax cuts and/or may implement additional cuts are more vulnerable to credit pressure if lower revenue growth or revenue declines weaken financial resilience. Recent tax cuts have not yet been tested by a cyclical downturn, which could have a more pronounced effect on collections.

April collections were generally in line with states' expectations. Average state tax collections for fiscal 2024 are on track to be roughly flat over 2023 and close to state forecasts.

Continue reading.

The Great Salt Lake City Tax Tradeoff.

In a few weeks, the city council will be voting on a 0.5% sales tax to support economic development downtown. But it's not the money that is drawing all the attention, it's what the city is giving up.

On June 11, the Salt Lake City Council held the latest in a series of public hearings about a proposed 0.5% sales tax increase within the boundaries of the city. The proceeds are intended to raise about $54 million a year to subsidize the financing of a major reconfiguring of the Delta Center. Currently home to the NBA's Utah Jazz, the center needs substantive updates to accommodate a new hockey team next year. The NHL approved the sale of the Arizona Coyotes to the owner of the Jazz and tech billionaire Ryan Smith in early April. The money will also be used to help build housing, restaurants and other amenities in the area. A final vote will take place this summer.

Despite decades of research that show pro sports franchises often don't boost local economies as much as promised, proponents of the deal still argue it will be a boon to downtown Salt Lake City, particularly in revitalizing several distressed neighborhoods.

But what makes this deal different from all the other stadium financing deals passed this year and in years past is that about 75% of the new revenues would go directly into the hands of a private sector entity, the Smith Entertainment Group.

Continue reading.

Route Fifty

By Katherine Barrett & Richard Greene

JUNE 17, 2024

Municipal Bonds: Planning for the TCJA Sunset

Clients who invest in municipal bonds may require new strategies because of tax changes that lie ahead in 2026.

Since Dec. 31, 2021, when, within the depths of the COVID-19 pandemic, a five-year investment-rated municipal ("muni") bond paid only 0.6%, returns have significantly risen (e.g., the BVAL Muni Benchmark 5-Year yield was 2.55% on April 1, 2024) to levels that may make tax-advantaged municipal bond investing increasingly relevant for a broader segment of the investor community.

Even during the low-interest-rate environment of recent years, there were some potential new municipal bond investing opportunities, such as possible higher after-tax yields from private activity bonds (PABs) (see "Recent Developments for Municipal Bond Investors," JofA, Sept. 1, 2020). Subsequently, municipal bonds have resurged as an asset class, but there is concern about the pending but politically uncertain expiration after Dec. 31, 2025, of many provisions of the law known as the Tax Cuts and Jobs Act (TCJA), P. L. 115-97. Because of these events, now may be an appropriate time for advisers and clients to once again consider and evaluate strategies to optimally employ these tax-advantaged bonds within investment portfolios.

Municipal bonds are used to raise money for local and state projects such as building roads, schools, water systems, and libraries, as well as to fund day-to-day governmental expenses. Generally, interest paid on the bonds is exempt from federal income tax and, in many cases, state and local taxes if the investor resides in the state where the bond is issued. Often, states tax interest derived from out-of-state bonds. In addition, on disposition of the bonds, gain or loss is taxable.

This article focuses on the tax implications applicable to municipal bond investments of expiring provisions of the TCJA. It also briefly addresses other tax and nontax issues of potential concern to municipal bond investors.

Continue reading.

Journal of Accountancy

By Seth Hammer, CPA, Ph.D.

June 1, 2024

Resources to Make Deploying Tax Credits for Clean Energy Projects in Small and Rural Communities Easier.

Deploying tax credits takes expertise, human capacity and the ability to access resources, be that the tax code or regulations. The top challenges small and rural communities face utilizing the State and Local Fiscal Recovery Funds are not having expertise, lack of human capacity, and lack of access to resources.

The federal clean energy tax credits from the Inflation Reduction Act are a game changer for local governments nationally. But they come with their own challenges. To help small and rural communities navigate them, NLC has compiled information on how small and rural communities can access help.

NLC resources

Over the coming months, NLC will produce resources for all cities, towns and villages on how to utilize the elective pay (also known as direct pay) clean energy tax credits, what to know, how to avoid mistakes, and real-life examples, among others.

Continue reading.

National League of Cities

by Carolyn Berndt

MAY 27, 2024

S&P: U.S. Not-For-Profit Health Care Governmental Entities Are Converting To Private 501c3s To Maximize Operating Flexibility

Governmental not-for-profit acute health care entities, usually without significant tax revenue benefits or tax-backed debt, are increasingly converting to private 501c3s. These providers are converting to capture efficiencies and compete more effectively in a challenged operating environment within an evolving health care landscape. Rating implications are specific to each scenario, but S&P Global Ratings generally views conversions as neutral factors with positive credit potential over time should benefits be realized.

Continue reading.

[Free Registration Required.]

3 Jun, 2024

TAX - ARKANSAS

Hotels.com, L.P. v. Pine Bluff Advertising and Promotion Commission

Supreme Court of Arkansas - May 16, 2024 - S.W.3d - 2024 Ark. 8620 - 24 WL 2195663

County and city advertising and promotion commission brought putative class action against online travel companies that facilitated reservations between travelers and lodging establishments that supplied rooms, seeking declaratory judgment that companies were liable for state and local gross receipts tax and state and local tourism tax.

After class certification was granted, numerous advertising and promotion commissions, cities, and counties filed motion to intervene, and companies filed motion to decertify damages class.

The Circuit Court denied both motions. Companies filed interlocutory appeal. The Supreme Court dismissed appeal for lack of a final order. Thereafter, the Circuit Court granted plaintiffs' summary judgment motion, denied companies' cross-motion for summary judgment, and ordered companies to pay previously unpaid taxes, plus penalties, interest, and attorney fees and costs. Companies appealed.

The Supreme Court held that:

- Statutes governing state and local gross receipts tax and state tourism tax were ambiguous;
- Ejusdem generis doctrine supported finding that statutes governing state and local gross receipts tax and state tourism tax did not apply to companies;
- Legislative amendment demonstrated that accommodations intermediaries were newly subject to the taxes;
- Department of Finance and Administration's (DF&A) established position was that prior to amendments accommodations intermediaries were not entities subject to state and local gross

receipts tax; and
- Companies were not subject to local tourism tax.

Reasonable minds might have disagreed or been uncertain as to whether online travel companies that facilitated reservations between travelers and lodging establishments that supplied rooms constituted "any other provider of accommodations," within meaning of statutes governing state and local gross receipts tax and state tourism tax, so that statutes were ambiguous requiring interpretation of phrase according to legislative intent; entities subject to taxation plainly included owners and managers of lodging establishments, but it was not clear that accommodations intermediaries such as companies were included, given that those entities were not specifically listed in statutes, and that phrase "any other provider of accommodations" was not statutorily defined.

"Ejusdem generis doctrine," which provides that when general words follow specific words in a statutory enunciation, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words, supported finding that phrase "any other provider of accommodations" in statutes governing state and local gross receipts tax and state tourism tax did not apply to online travel companies that facilitated reservations between travelers and lodging establishments that supplied rooms; preceding specific words in these statutes listed only lodging establishments or entities that managed lodging establishments, did not expressly list such companies as entities subject to those taxed, and companies did not own, operate, or manage lodging establishments, but rather were accommodations intermediaries.

Legislature's addition of "accommodations intermediaries" to list of entities subject to state and local gross receipts tax, its specific definition of that group as a "person other than the owner, operator, or manager," and its decision to title act as one to require accommodations intermediaries to collect and remit sales and tourism taxes, demonstrated that accommodations intermediaries were newly subject to the taxes, such that prior to addition such intermediaries were not subject to taxation; if accommodations intermediaries had previously been subject to taxation, then amendments would have been unnecessary.

Department of Finance and Administration's (DF&A) established position, that prior to legislative amendments accommodations intermediaries such as online travel companies that facilitated reservations between travelers and lodging establishments that supplied rooms were not entities subject to state and local gross receipts tax, supported interpretation of statute to not apply to such companies prior to amendments; internal DF&A memo had concluded law prior to amendments did not require intermediaries to collect and remit hotel taxes, DF&A Revenue Legal Counsel had issued a legal opinion concluding that intermediaries would not be subject to gross receipts and tourism tax levied on service of furnishing rooms to transient guests, and DF&A had issued legislative-impact statement observing that amendments modified existing law to include "accommodations intermediary" as an entity furnishing, making available for, or otherwise arranging for the sale or use of a room.

Online technology companies that facilitated reservations between travelers and lodging establishments that supplied rooms were not subject to local tourism tax, which, prior to amendments, imposed tax on gross receipts from renting, leasing, or otherwise furnishing hotel rooms, motel rooms, or similar accommodations; companies' services did not fit within the plain language of "renting, leasing, or otherwise furnishing" rooms given that contracts between companies and hotels included language that companies did not acquire inventories of rooms and that nothing in contracts constituted a sale or rental of rooms from hotel to companies, and dictionary definition of "furnish" meant "to provide with what is needed," or to "supply" or "give," but companies' services were intermediary, not as actually "providing," "supplying," or "giving" rooms to guests.

TAX - ILLINOIS

Shawnee Community Unit School District No. 84 v. Illinois Property Tax Appeal Board

Supreme Court of Illinois - May 23, 2024 - N.E.3d - 2024 IL 128731 - 2024 WL 2341276

School district filed direct appeal from Property Tax Appeal Board's (PTAB) denial of its motions to dismiss taxpayer's appeals from final property tax assessments imposed by county board of review for taxpayer's power plant and appealed from PTAB's decisions reducing assessments for two tax years, and county board of review joined in the appeal.

The Appellate Court affirmed. School district's petition for leave to appeal was granted.

The Supreme Court held that:

- Statutory requirement that a taxpayer who wishes to file a tax objection complaint in circuit court pay the contested taxes does not apply to initiating and maintaining an administrative appeal filed with PTAB;
- County collector's applications for judgments and orders of sale for the delinquent taxes did not divest PTAB of its jurisdiction to review taxpayer's properly filed appeals; and
- Circuit court's entry of orders for judgment and tax sales with respect to taxpayer's delinquent property taxes did not estop taxpayer from challenging in administrative appeals the correctness of the assessments.

Statutory requirement that a taxpayer who wishes to file a tax objection complaint in circuit court challenging a property tax assessment pay the contested taxes does not apply to a taxpayer's initiation and maintenance of an administrative appeal filed with the Property Tax Appeal Board (PTAB) challenging a property tax assessment.

Property Tax Appeal Board's (PTAB) jurisdiction for taxpayer's appeals from final property tax assessments imposed by county board of review for taxpayer's power plant for two tax years, which jurisdiction PTAB acquired when taxpayer timely filed its petitions for appeal, was not divested when circuit court acquired jurisdiction for county collector's applications for judgments and orders of sale regarding the delinquent taxes for those two tax years.

Circuit court's entry of orders for judgments and tax sales with respect to taxpayer's delinquent property taxes for its power plant for two tax years did not constitute conclusive determinations of the assessments for those two tax years, as purported basis for estopping taxpayer from obtaining relief from Property Tax Appeal Board (PTAB) pursuant to appeals from final property tax assessments imposed by county board of review; circuit court would have lacked statutory authority to review correctness of contested assessments when county collector applied for judgments and orders of sale.

Bill Would Restore Advance Refunding, Create New Direct-Pay Bond.

The municipal finance market is rallying behind legislation that Rep. Terri Sewell, D-Ala., introduced this week that hits all the market's top priorities: restoring tax-exempt advance refunding, creating a new taxable direct-pay tool and lifting the cap for small borrower bank-qualified bonds.

Sewell, a former public finance attorney and senior member of the House Committee on Ways and Means, introduced on Tuesday the Local Infrastructure Financing Tools, or LIFT, Act.

"By restoring and expanding these proven tools, we can lower borrowing costs, bring additional investors to the table, and provide long-term, efficient financing for these critical investments across Alabama and the United States," Sewell said in a press release.

Sewell introduced the same bill in 2021, which failed to gain traction. The provisions were incorporated into an early version of President Joe Biden's Build Back Better bill, but were later stripped out.

Sewell reintroduced the bill now in part because "we know that the summer months are when most infrastructure projects typically occur in many cities and towns," said Sewell's communication director Christopher Kosteva. "We are reminded that often the largest obstacle faced by municipalities is the lack of access to capital that allow for these projects to commence."

Kosteva added that restoration of tax-exempt advance refunding and expanding the small borrower exception are "two of the most discussed policy changes that come up when meeting with constituents and stakeholders on this issue. We know that the same message is being shared with other Democrats and Republicans on the Hill and we are hopeful that it will generate bipartisan momentum and make these policies part of the overall tax dialogue."

The bill will be referred to the House Ways and Means Committee, which oversees all tax-related measures in the House. It comes as Congress is expected next year to take up major tax measures as several provisions in the Tax Cuts and Jobs Act expire.

The bill has "very little chance of enactment but it sets the table for a likely big tax bill next Congress, where we will need to be on defense as well as offense with this type of legislation," said Charles Samuels of Mintz Levin, who is counsel to the National Association of Health & Educational Facilities Finance Authorities. The measure is an "important symbol of the continuing interest to improve municipal financing for the benefit of government, nonprofits and the citizens they serve," Samuels said.

In a May 15 blog, Mintz Levin said advocates "will be working to identify a potential pathway for consideration of the bill in the remaining months of the current 118th Congress. Given the increasingly limited number of legislative days and the ramping up of the election season, advocates will also use the introduction of the bill to build support for tax-exempt bonds in the 119th Congress when much of the 2017 Tax Cuts and Jobs Act will sunset, creating an opportunity for a major tax package to advance."

The bill would restore tax-exempt advance refundings, which were eliminated under the TCJA, and would lift the cap on bank-qualified debt to $30 million from $10 million, a cap that was set in 1986. For non-profit conduit issuances, the cap would be expanded to apply to the borrower-beneficiary rather than the conduit issuer, Mintz noted. The direct-pay provision would create a taxable tool that features a direct-pay interest subsidy from the government.

Top bond advocates like the National Association of Bond Lawyers, Government Finance Officers Association, National Association of Counties, and the Bond Dealers of America all applauded the legislation.

The GFOA said "restoring tax-exempt advanced refunding and expanding the small borrower exception are top priorities for our 24,000 members and with Congresswoman Sewell's leadership, we look forward to advancing these issues through Congress."

The bill is "critical legislation" that would make "capital more accessible and affordable for issuers, in turn creating more affordable infrastructure nationwide," the BDA said. "We look forward to working with Rep. Sewell and her colleagues in Congress to get this legislation across the finish line."

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL | 05/16/24 11:32 AM EDT

[Legislation to Restore Advance Refunding for Tax-Exempt Municipal Bonds Introduced in U.S. House of Representatives.]

Key Takeaways

- The Local Infrastructure Financing Tools (LIFT) Act would restore advance refunding of tax-exempt municipal bonds, a critical tool for county municipal finance
- The bill would also reauthorize the use of American infrastructure bonds and increase the small issuer exception on bank-qualified debt from $10 million to $30 million
- Counties strongly support reinstating advance refunding of tax-exempt municipal bonds

On May 14, Rep. Terri Sewell (D-Ala.) introduced the Local Infrastructure Financing Tools (LIFT) Act, that would make several significant adjustments to municipal finance tools for county governments. Specifically, this legislation would restore advance refunding of tax-exempt municipal bonds, which has been unavailable to counties since the enactment of the Tax Cuts and Jobs Act in 2017. It would also increase the small issuer exception on bank-qualified (BQ) debt from $10 million to $30 million, and authorize the use of American Infrastructure Bonds.

Prior to 2017, counties could refinance a municipal bond once over its lifetime and more than 90 days prior to the bond's redemption date at a tax-exempt status. This practice, also referred to as advance refunding, allowed counties to lower borrowing costs and take advantage of more favorable interest rates. Advance refunding bonds allows counties to address problematic bond terms and conditions or restructure debt service payments for budget flexibility. It also frees up county funds to be used for other important capital projects and minimizes costs to taxpayers.

Established as part of the Build America Bonds program, American Infrastructure Bonds allow taxable bond issuers to receive a direct payment from the federal government to cover a percentage of the interest costs associated with the issuance. Expanded access to the taxable bond market through the reauthorization of American Infrastructure Bonds would also incentivize and boost infrastructure investments in local communities.

The small issuer exception on bank-qualified debt currently allows counties issuing less than $10 million in bonds per calendar year to designate this debt as bank-qualified, allowing them to bypass the traditional underwriting process. However, the current cap of $10 million has not been adjusted since its creation in 1986. Increasing the cap to $30 million would allow more counties that issue small, less-frequent bonds to access the lower costs municipal debt needed to provide essential services and projects for residents.

Counties across the country would benefit from all the renewed municipal financing opportunities made available through this legislation. NACo has endorsed the LIFT Act and will continue to work with our federal partners in Congress to advocate for passage of this legislation.

by Maxx Silvan & Paige Mellerio

May 15, 2024

National Association of Counties

New Legislation Would Expand the Use of Municipal Bonds: Mintz

Local Infrastructure Financing Tools (LIFT) Act

Legislation reintroduced by US Rep. Terri Sewell (D-AL) has the potential to significantly expand the use of tax-exempt municipal bonds while creating a new "direct pay" bond. The Local Infrastructure Financing Tools (LIFT) Act calls for policy changes and types of bonds that could be used by governments and nonprofits nationwide for a range of public infrastructure and capital improvement projects, such as libraries, schools (including nonprofit higher education institutions), roads and road improvements, water systems, mass transit, affordable housing, public and nonprofit hospitals, and other government-owned facilities.

Expanding the Use of Bonds

The LIFT Act was first introduced by Rep. Sewell, a senior member of the US House Committee on Ways and Means and a former bond lawyer, in the previous Congress. The reintroduced legislation would:

- **Restore the ability to advance refund municipal bonds.**
- **Enhance small borrower rules for bank qualified bonds.**
- **Create a new taxable direct pay bond known as the American Infrastructure Bond.**

Continue reading.

By R. Neal Martin, Charles A. Samuels, Matthew O. Page, Christie L. Martin, Meghan B. Burke, Poonam Patidar

May 15, 2024

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo,

TAX - RHODE ISLAND

City of Pawtucket v. Rhode Island Department of Revenue

Supreme Court of Rhode Island - May 2, 2024 - A.3d - 2024 WL 1917355

City appealed decision of Department of Revenue (DOR) denying PILOT funds for properties owned by hospital.

The Superior Court granted judgment for DOR. City filed petition for writ of certiorari.

The Supreme Court held that:

- City's appeal was timely, but
- Hospital did not meet PILOT Act's explicit definition of "nonprofit hospital facility."

City received final, formal notice of decision of Department of Revenue (DOR) to deny city's request for PILOT funds for properties owned by hospital, and appeal period began to run, when Director of DOR formally notified city in letter that properties did not qualify for inclusion in grant program, rather than when there were various communications and actions indicating that eligibility of properties for PILOT funds was in question.

Hospital did not meet PILOT Act's explicit definition of "nonprofit hospital facility," and thus properties owned by hospital were not eligible for receipt of PILOT Act funding, even though medical care and treatment services were being provided at properties through licenses held by other hospitals, where hospital-owner was not a licensed nonprofit hospital facility at relevant time.

Flood of Property Assessment Appeals Could Wallop U.S. Cities.

'A lot of owners and operators have what they perceive as significant data to support a 40 percent or 50 percent reduction'

For big city landlords and office owners, seeking to shave a few dollars off tax bills might as well be muscle memory. On March 1 of this year, there was a line down the block in front of the Municipal Building in Lower Manhattan to file property tax appeals.

"In New York City, 99 percent of owners appeal," said Steve Thompson, a commercial property tax expert at tax consulting firm Ryan. "Most commercial owners are acutely aware that this is their largest annual operating expense, and it becomes like spraying for pests. If you don't do it every year, it can snowball and become a huge problem."

This year, the appeals came with a lot more angst. Amid steeply declining office values and open questions about the future of this sector of commercial real estate, tax appeals and efforts to reduce tax burdens have become more frenzied. Thompson's clients, which include Fortune 1000 firms and large real estate investment trusts, have petitioned for significantly lower tax assessments: 40 percent to 50 percent in New York City and San Francisco, and even 75 percent in Washington, D.C. In his two decades of work, he's never seen owners dig in their heels and be so combative.

Continue reading.

COMMERCIAL OBSERVER

BY PATRICK SISSON

MAY 9, 2024

[Are Your Traffic-Impact Fees Tied to Your Land-Use Interests and Roughly Proportional to the Development's Impact on Those Interests? If Not, They Should Be.]

Developers often bemoan the costs they incur before breaking ground on new residential projects. But the developer isn't the only party that experiences costs. New residential developments require new (or stress existing) municipal services, like water and sewer systems, roads, schools, libraries, parks, and recreation facilities.

To address these costs, municipalities commonly assess reasonable impact fees (sometimes called "exactions") on developments. Some fees are assessed on an *ad hoc* basis by administrators after an individualized review of the development. Others are assessed by legislation through impact schedules.

On April 12, 2024, the U.S. Supreme Court addressed a question about development impact-fee schedules that most municipal officials probably hadn't ever asked themselves: Does the so-called *Nollan/Dolan* exactions test—which applies to ad hoc permit conditions—apply also to permit conditions imposed by legislation? *See Sheetz v. County of El Dorado, California*, 144 S.Ct. 893 (2024) (slip op.).

The Supreme Court held unanimously that it does. Thus, all permit conditions that constitute compensable takings—whether enacted by legislation or adopted by administrators—must have: (1) an "essential nexus" to the government's land-use interest; and (2) "rough proportionality" to the development's impact on the land-use interest, *i.e.*, they must not require a landowner to give up (or pay) more than is necessary to mitigate harms resulting from the new development. *See Nollan v. California Coastal Comm'n,* 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

If the permit does not satisfy these *Nollan/Dolan* elements, then it might be an unconstitutional taking. Why only might? Because the controlling opinion answered only the narrow question stated above. The Supreme Court did not address whether the permit fee at issue was a compensable taking that triggered the *Nollan/Dolan* test in the first place or whether legislative permit conditions must be tailored with the same degree of specificity as a permit condition that targets a particular development. It left these questions for the lower courts, and each affects the takings analysis.

Despite its limited scope, the Supreme Court's *Sheetz* opinion isn't feckless. Rather, it puts on notice municipal officials that impose permit conditions—such as impact fees—on new developments through legislation. It signals that municipalities should carefully consider whether their legislative permit conditions have an essential nexus to their land-use interests and are roughly proportional to the development's impact on those interests. If they are not, then municipal officials would be wise to devise permit conditions that do satisfy those elements.

Frost Brown Todd LLP – Yazan S. Ashrawi, Thaddeus M. Boggs and Anthony R. Severyn

April 30, 2024

TAX - NEW YORK

[Brookdale Physicians' Dialysis Associates, Inc. v. Department of Finance of City of New York]

**Court of Appeals of New York - March 21, 2024 - N.E.3d - 2024 WL 1199333 - 2024 N.Y.

Slip Op. 01583

Building owner, which was a not-for-profit healthcare fund, filed, along with its tenant, which was a for-profit corporation that provided dialysis services for a fee, petition commencing hybrid article 78 and declaratory-judgment action to annul city department of finance's revocation of building's status as exempt from real-property taxation.

The Supreme Court, New York County granted petition. Finance department appealed. The Supreme Court, Appellate Division, affirmed. The Court of Appeals granted the finance department leave to appeal.

The Court of Appeals held that:

- Building was not property-tax exempt under statutory provision allowing for a property-tax exemption for property that was owned by certain not-for-profit entities and that was used for certain not-for-profit purposes, and
- Building was not tax exempt under statutory provision governing that same not-for-profit tax exemption for property that was leased for non-exempt purposes.

Building was not property-tax exempt under statutory provision allowing for a property-tax exemption for property that was owned by certain not-for-profit entities and that was used for certain not-for-profit purposes; building owner was a not-for-profit healthcare fund that did not reside on the premises or otherwise itself use the building in whole or in part for its exempt fundraising purpose, and owner's tenant was a for-profit corporation that had sole occupancy and used the building during the lease term exclusively to perform its for-charge dialysis services.

Building that was owned by a not-for-profit healthcare fund that did not reside on the premises or otherwise itself use the building in whole or in part for its exempt fundraising purpose was not property-tax exempt under statutory provision governing the property-tax exemption for property that had a particular kind of not-for-profit owner but was leased for non-exempt purposes; building was leased and used solely for pecuniary gain by a for-profit corporation that performed dialysis services for a fee.

TAX - MINNESOTA

Huizenga v. Independent School District No. 11

United States District Court, D. Minnesota - March 29, 2024 - F.Supp.3d - 2024 WL 1345173

Taxpayers brought § 1983 action against school district and teachers union, alleging that political advocacy by teachers while on paid leave, under provision of collective-bargaining agreement (CBA) allowing paid leave for the conduct of union business, violated taxpayer's free-speech rights under the First Amendment and the Minnesota Constitution and violated the Minnesota Public Employee Labor Relations Act.

The District Court dismissed taxpayers' federal claims for lack of Article III standing and declined to exercise supplemental jurisdiction over state-law claims. On taxpayers' appeal, the United States Court of Appeals for the Eighth Circuit vacated and remanded, holding that taxpayers had sufficiently alleged municipal taxpayer standing as school-district taxpayers. On remand, after discovery, the parties filed cross-motions for summary judgment.

The District Court held that:

- Wife whose husband paid property taxes as a county taxpayer did not establish that she paid municipal taxes relevant to school district, and wife thus lacked municipal taxpayer standing;
- Taxpayers failed to show that school district spent any money providing paid leave under challenged provision of CBA, and taxpayers thus lacked municipal taxpayer standing; and
- Even if school district lost money providing paid leave under challenged provision of CBA, that loss was not clearly tied to municipal tax revenues, and taxpayers thus lacked municipal taxpayer standing.

TAX - HAWAII

Tax Appeal of West Maui Resort Partners LP v. County of Maui

Supreme Court of Hawaiʻi - April 23, 2024 - P.3d - 2024 WL 1738908

Taxpayers, which were plan managers for nearly 700 time share units, sought judicial review of decision of County Board of Review which upheld county tax assessments on time shares.

The Tax Appeal Court granted county's summary judgment motion, and denied taxpayers' cross-motion for summary judgment. Taxpayers appealed to the Intermediate Court of Appeals (ICA), and the cases were transferred to Supreme Court and were consolidated.

The Supreme Court held that:

- Taxpayer's appeal from Tax Appeal Court was required to be filed within 30 days of orders denying taxpayer's summary judgment motion and granting county's summary judgment motion;
- Application of the equitable doctrine of "unique circumstances" was in the interests of justice and appropriate in connection with taxpayer's untimely appeal;
- County's time share tax classification and its rate acted as a real property tax based on the assessed property value, rather than as a tax assessed on individual time share unit users and value of their stay;
- Time share units were not required to be assigned to a real property tax classification according to their use;
- State's comprehensive transient accommodation tax (TAT) scheme did not cover the same subject matter as county's time share tax classification;
- County's time share tax classification and rate did not duplicate, contradict, or enter an area fully occupied by state's general law; and
- County's creation of a separate real property tax classification for time share units was reasonably related to legitimate policy purposes.

Supreme Court Rules on Important Impact Fee Case.

This month, the Supreme Court issued a unanimous decision in *Sheetz v. El Dorado County*, which is a case involving government "Takings," specifically ones that involve the government's use of impact fees. Impact fees are typically a one-time payment that local governments levy on a property developer for new development projects. Municipalities use these fees to offset the financial impact that new development places on public infrastructure, such as roads and utilities.

In their ruling, the Court narrowly determined that legislatively enacted impact fees are not exempt from the requirements set forth in two previous property rights cases *(Nollan v. California Coastal Commission and Dolan v. City of Tigard, Oregon)*. As such, **local governments that impose impact fees will now be subjected to a standard requiring them to demonstrate the relationship and relative impact of the development on the community**. Specifically, cities will have to show that conditions (impact fees) to obtain a land-use permit have an "essential nexus" (relationship) to the government's land-use interest and a "rough proportionality" between the weight on the property owner and the development's effects of the proposed land use.

This case involves the County of El Dorado's traffic impact mitigation fee, which it adopted via the General Plan, to require new development to help finance the construction of new roads and widen existing roads. The amount of the fee is set by formula after the County conducted a nexus study and generally, the fee was based on the location of the project and the type of project. In assessing the fee, the County does not make any "individualized determinations" as to the nature and extent of the traffic impacts caused by a particular project on state and local roads.

Continue reading.

National League of Cities

by McKaia Dykema

APRIL 25, 2024

Tax Code Constraints Limit Tribal Tax-Exempt Bonding.

Legal barriers may contribute to tribal governments' lower usage of tax-exempt bonds

Tax-exempt municipal1 bonds play an important role in financing the construction of public purpose projects and supporting private development across the country. For a given level of risk, tax-exempt debt can offer a lower cost of capital than financing the same project using taxable debt.2 Tribal governments, however, face both legal and debt service barriers to using this important financing mechanism available to state and local governments. These barriers can create challenges for tribes seeking to access the half-trillion-dollar annual tax-exempt municipal bond market for low-cost capital financing.

As part of our mission to advance the economic self-determination and prosperity of Native nations and Indigenous communities, the Center for Indian Country Development provides research and analysis on factors influencing access to capital in Native communities. To shed light on the barriers to tribes using tax-exempt bonding, we review the legal framework governing tribal tax-exempt bonding authority. We also provide an analysis of per capita tax-exempt bond financing. Our analysis spans 2003–2010—the most recent years for which both tribal-specific bond data are publicly available from the U.S. Department of the Treasury (Treasury) and annual municipal bond data are available from the Internal Revenue Service (IRS).

After accounting for differences in the target populations of both tribal governments and municipalities, we find that from 2003–2010, tribal governments' use of tax-exempt bonds falls below that of state and local governments. We also explore tribal-specific factors that may explain why we observe this large capital gap. More tribal tax-exempt bond data are needed to extend this analysis to recent years.

Continue reading.

The Federal Reserve Bank of Minneapolis

by Matthew Gregg & John Morseau

April 25, 2024

Final Municipal Tax Credit Regulations Present Opportunities for Clean Energy Projects.

In March, the U.S. Department of the Treasury and Internal Revenue Service (IRS) published final regulations for the Inflation Reduction Act elective pay program, also known as direct pay, that provides tax incentives to municipalities for installing a variety of clean energy projects.

Since the initial guidance was published last year, NLC hosted focus groups with members to inform our comments to Treasury and the IRS on what municipalities need to see in these rules to make them work. We are pleased to see much of our feedback incorporated into the final rule, which will make it easier for local governments to take advantage of the tax credits and clean energy projects in communities that help meet local climate action goals. The final regulations incorporate much of our feedback.

This blog breaks down the final regulations into things municipalities should know, key wins, and remaining challenges for municipalities as they move forward with implementing elective pay programs in their communities.

Continue reading.

National League of Cities

by Michael Gleeson & Carolyn Berndt

APRIL 24, 2024

TAX - ILLINOIS

Village of Shiloh v. County of St. Clair

Appellate Court of Illinois, Fifth District - December 19, 2023 - N.E.3d - 2023 IL App (5th) 220459 - 2023 WL 8722508

Village filed action against county, county clerk, and others, petitioning for a writ of mandamus requiring that alleged incremental taxes owed to village be paid and sought declaratory judgment regarding payments and alleged violations of the Tax Increment Allocation Redevelopment Act.

The Circuit Court granted defendants' motion for involuntary dismissal based upon certain defects or defenses. Village appealed.

The Appellate Court held that:

- Village was entitled to payment for taxes collected from its tax increment finance (TIF) districts, but
- Reversal was not required based on village's failure to join necessary parties.

Village did not forfeit, on appeal in mandamus action, issue of whether county and county clerk were required to collect and then pay village funds from incremental taxes collected from village's tax increment finance (TIF) districts established by ordinance, where village's response in trial court to county and clerk's motion to dismiss argued that while a TIF district's life expectancy was 23 years, the last payment came in the 24th year because the property had to be assessed in the 23rd year as well, which was same argument village presented on appeal.

Village was entitled to a 24th payment from county and county clerk for incremental taxes collected from village's tax increment finance (TIF) districts, even though the life expectancy of a TIF was limited to 23 years under the Tax Increment Allocation Redevelopment Act; in the year after village adopted ordinances establishing TIF districts, county distributed its first payment to village for taxes levied in the prior year, county made 23 yearly distributions of taxes, life of village's TIF districts did not exceed the 23-year limitation, and therefore, the fact that 24 payments were required, rather than 23, did not mean that a violation of the Act occurred.

Absence of school districts and fire protection district in village's mandamus and declaratory judgment action against county and county clerk, which sought payment for incremental taxes collected from village's tax increment finance (TIF) districts, did not require reversal of trial court's order dismissing village's complaint based on failure to join necessary parties, where court's order did not materially affect school districts or fire protection district.

TAX - ALASKA

City of Valdez v. Prince William Sound Oil Spill Response Corporation

Supreme Court of Alaska - April 19, 2024 - P.3d - 2024 WL 1689057

Corporate taxpayer, which owned oil spill prevention and response vessels stationed at a marine terminal that stored oil, appealed State Assessment Review Board's (SARB) orders that were entered in city's long-pending property-tax appeals and that stated SARB's refusal to entertain arguments that certain tax years should not be included in a tax audit that spanned approximately 20 tax years.

The Superior Court reversed the orders related to the limitation on the audit and determined that the three-year statute of limitations applied. City appealed.

The Supreme Court held that:

- Prior superior-court decisions were not the law of the case so as to preclude finding that the three-year statute of limitations for assessments applied, and
- Even when an administrative tribunal or court holds that the Department of Revenue wrongly determined certain property was not taxable, the statute of limitations on assessments bars the Department from assessing a tax on the property more than three years after the tax return was filed.

TAX - MASSACHUSETTS

Outfront Media LLC v. Board of Assessors of Boston

Supreme Judicial Court of Massachusetts, Suffolk - April 22, 2024 - N.E.3d - 2024 WL 1707561

Taxpayer, which contracted with Massachusetts Bay Transportation Authority (MBTA) to use MBTA's outdoor advertising signs, sought abatement of real estate tax assessed by city of Boston for fiscal year at issue.

After City denied claim, taxpayer appealed to Appellate Tax Board, which upheld assessment. Taxpayer appealed, and action was transferred from Appeals Court to Supreme Judicial Court on latter court's own initiative.

The Supreme Judicial Court held that:

- Taxpayer "used" MBTA signs "in connection with a business conducted for profit" and, thus, was not entitled to abatement of real estate taxes, and
- Essential government function doctrine did not bar city of Boston from assessing real estate taxes upon taxpayer.

Taxpayer, which contracted with Massachusetts Bay Transportation Authority (MBTA) to use MBTA's outdoor advertising signs, "used" those signs "in connection with a business conducted for profit" and, thus, was not entitled to abatement of real estate taxes assessed by city of Boston for fiscal year at issue; taxpayer did not just provide services to MBTA but, also, used signs on public property to conduct a for-profit business, as agreement with MBTA gave taxpayer exclusive right to advertise on existing signs and to advertise on new signs designed and installed by taxpayer on MBTA property, to contract with private parties seeking to advertise on those signs, to install, license, operate and maintain telecommunications equipment on MBTA signs, to contract with those telecommunications companies, and taxpayer was compensated through revenue it generated from signs and equipment installed on signs, and could reap significant, uncapped profits from such operations.

Taxpayer, which contracted with Massachusetts Bay Transportation Authority (MBTA) to use MBTA's outdoor advertising signs, "used" those signs "in connection with a business conducted for profit" and, thus, was not entitled to abatement of real estate taxes assessed by city of Boston for fiscal year at issue, despite contention that statute governing MBTA's tax exemption incorporated a specific, restrictive, common-law meaning for term "use and occupancy" requiring greater possessory interest in property than that granted to taxpayer in order to be subject to taxation; statute did not refer to "use and occupation" and, instead, use of property alone was sufficient so long as it was in connection with a business for profit.

"Essential government function doctrine," which prohibited regulation of entities or agencies created by legislature in manner that interfered with their legislatively mandated purpose, did not bar city of Boston from assessing real estate taxes upon taxpayer, which contracted with Massachusetts Bay Transportation Authority (MBTA) to use MBTA's outdoor advertising signs, for fiscal year at issue; although taxing MBTA property when contracted out to private parties to operate businesses for profit could affect MBTA's negotiating power and lower revenues MBTA would be able to receive from private parties to support its provision of mass transportation services, such a possible reduction was understood by Legislature when it passed the specific exception to the MBTA's tax exemption for use of MBTA property "in connection with a business conducted for profit."

TAX - NEW JERSEY

Freda by Acme v. City of Sea Isle City

Tax Court of New Jersey - March 5, 2024 - 33 N.J.Tax 292

Taxpayer that operated a new supermarket filed tax appeal challenging property tax assessment.

City moved to dismiss.

The Tax Court held that:

- Unpaid non-residential development fee was not an unpaid “municipal charge” precluding tax appeal, and
- Unpaid planning board escrow fees were not unpaid “municipal charges.”

An unpaid “municipal charge” that would prevent an appeal to the Tax Court challenging a property tax assessment from going forward is not merely a fee or imposition of a municipality; is part of a statutorily-specified class giving rise to a lien and eventual sale of the property

Unpaid non-residential development fee relating to taxpayer’s new supermarket was not an unpaid “municipal charge” that would preclude an appeal to the Tax Court challenging property tax assessment, where there was no statutory authorization creating a lien for the development fee.

Unpaid city planning board escrow fees relating to taxpayer’s new supermarket were not unpaid “municipal charges” that would preclude an appeal to the Tax Court challenging property tax assessment, where governing statute did not mention that escrow fees were a lien or charge.