The House GOP Tax Bill is Bad For the Muni Market, But the Byrd Rule Could Make Matters Worse.

WASHINGTON – If the Senate Republican tax bill looks similar to the one their House counterparts proposed, things could go from bad to worse for the municipal bond market, according to tax experts and economists.

Senate Finance Committee chair Orrin Hatch, R-Utah, said on Friday that Senate Republicans may release their tax bill by Nov. 10. If the Senate Republicans want to include in their bill most of the concepts in the House GOP plan it may have to find even more revenue raisers to meet the so-called Byrd Rule and allow it to pass a tax bill under the reconciliation process with a simple majority vote. In that scenario, muni bonds could again be on the table as potential revenue raisers.

Under the Byrd Rule, any Senate bill going through the reconciliation process can't have revenue losses and an increase in the deficit beyond a 10-year period.

The House Republican bill would increase the deficit by $166.8 billion in 2027, the tenth year, according to the Joint Committee on Taxation, and there's nothing to indicate those losses would lessen the following year.

"There's no question that the bill would not meet the Byrd Rule," said John Buckley, former House Ways and Means Committee Democratic tax counsel.

Alternatively, the Senate could also cut or make temporary some of the spending provisions to get a deficit-neutral tax bill by 2027 and that would lessen the need for revenue raisers and be a positive for the municipal market.

While most muni market participants are focused on the direct impacts to munis from the House Republican bill — the proposed termination of private activity bonds and advance refundings — tax experts said don't discount the harm that would come to the muni market from a 20% corporate tax rate.

Buckley said that rate would be "destructive" and take banks, life insurance companies and property and casualty insurance companies, out of the municipal market. Currently about 25% of tax-exempt bonds are held by banks and these insurance companies according to bond experts.

George Friedlander, managing partner at Court Street Group Research, said, "At a 20% tax rate, muni yields would have to rise sharply before municipals would be competitive with taxable investments for a corporate investor, such as a commercial bank or a property and casualty insurer."

Friedlander said the 20% rate, by itself, could push municipal bond yields up by 50 to 75 basis points, even before the proposed PAB and advance refunding provisions are considered. That would make borrowing more expensive for issuers.

Friedlander said that House Republicans, for all their talk about the U.S. corporations being competitive with their global counterparts, could have proposed a 29.4% corporate rate and still have been at the average global corporate rate (weighted by gross domestic product).

"There are several provisions in this tax bill that are likely to affect the pricing of municipal bonds," said Richard Chirls, a partner at Orrick Herrington & Sutcliffe.

For example, he said, owners of pass-through entities such as partnerships and Subchapter S Corporations will also be less likely to buy munis, thereby dampening demand for munis and raising muni prices, because they will only be subject to a 25% tax rate rather than a rate that is now as high as 39.6%.

As for defenders of muni bonds, some banks and corporations involved in private activity bond deals may prefer to have their tax rates reduced to 20% rather than quibble about muni bond provisions.

"Wall Street will be just as happy to underwrite taxable bonds as tax-exempt bonds," said Buckley.

Meanwhile, the municipal bond market may see a huge rush of PAB and advance refunding deals this month and next as issuers to cover their bases in case Congress passes a tax bill before the end of the year that terminates those financings.

"I anticipate that there will be a lot of transactions that will be moved to December to address the risk that the tax law will be changed," said Chirls.

"We're warning people, we're getting inquiries," said Milt Wakschlag, a partner at Katten Muchin Rosenman in Chicago. "Deals can be done this year by they have to be timely. There is a longstanding tax prohibition on issuing bonds earlier than necessary because that would be considered an over-issuance."

He and others said that issuers that have had PAB or advance refunding transactions in the pipeline will definitely consider doing them before the end of the year.

It might even be worse to go into next year with pending tax bills that propose to terminate PABs and advance refundings at the end of 2017, than to have an actual tax bill passed that includes those provisions, he said, adding this would cause enormous uncertainly and chaos in 2018.

"But this not going down without a fight," he said, referring to efforts to try to convince Congress to back away from the attacks on munis.

The Bond Buyer

By Lynn Hume

November 03 2017, 5:02pm EDT

Tax Bill Puts New Limits on Deductibility of State and Local Taxes.

WASHINGTON – The new House Republican tax reform bill unveiled today would put new limits on the federal deductibility of state and local taxes. It would limit the deductibility of property taxes to $10,000 annually while other state and local taxes would be deductible only for households with incomes under $400,000.

The mortgage interest deduction, another key component for households that claim the state and local taxes deduction, would be capped for future mortgage loans of $500,000. Current mortgages would be grandfathered.

The tax-exemption for municipal bonds would not be altered, but the desirability of munis as an investment would be diminished somewhat because the threshold for the 39.6% income tax rate would climb. Republicans propose raising it to $1 million from the scheduled 2018 threshold of $426,700 for individuals and $480,050 for married couples filing jointly.

Other changes in the plan include:

- Households would get a larger standard deduction of $24,000 for families and $12,000 for individuals. An average family of four earning about $59,000 would get a tax cut of about $1,100, according to Brady.
- Personal exemptions would be replaced with a $300 credit for adults and a larger credit tax credit of $1,600 instead of the current $1,000.
- Private activity bonds would be eliminated, though the tax exemption for other municipal bonds would remain under the House Republican tax reform bill, Ways and Means Committee chairman Kevin Brady, R-Texas. private equity bonds, which are widely used for financing multifamily and single family housing projects as well as, airport, water, sewage and other facilities.
- The plan would repeal the alternative minimum tax, which is currently applied to private equity bonds. The maximum tax rate that can be applied to the business income of small and family owned businesses conducted by sole proprietorships, partnerships and S corporations would be 25%.
- The corporate rate immediately would be reduced to 20% from 35%. The plan would allow businesses to immediately write off or expense the cost of new investments in depreciable assets other than structure for the first five years. Net interest expense incurred by C corporations would remain deductible for businesses of up to $25 million, but not for larger businesses.

Democrats are likely to propose restoration of private equity bonds and expansion of the use of municipal bonds during deliberations by the House Ways and Means Committee members next week.

The Bond Buyer

By Brian Tumulty

November 02 2017, 12:52pm EDT

[Muni Market Blindsided by Bond Provisions in House GOP Tax Plan.]

WASHINGTON – Municipal bond market participants and infrastructure advocates were stunned and unhappy on Wednesday when House Republicans released a tax bill that would terminate private activity bonds and advance refunding bonds after this year.

Lawmakers had told them that munis were likely “safe” from dramatic cuts in the bill and top administration officials had said that PABs might be expanded and subject to looser tax restrictions so they could be used for infrastructure projects involving private parties.

Treasury Secretary Steven Mnuchin had talked about “enhancing” PABs during his confirmation process. The Treasury Department had just proposed public notice and approval requirements for PABs and last month and released a priority guidance plan for 2017-2018 that said it was working on guidance for PABs.

"We've had over 90 Hill meetings and there was absolutely no talk of advance refundings, private activity bonds, or tax credit bonds," said Emily Brock, director of the federal liaison center for the Government Finance Officers Association.

"The infrastructure stakeholder community appears to be blindsided by this," said one transportation expert who did not want to be named.

Brock said the proposed termination of PABs doesn't seem in line with the administration's infrastructure statements. "It does seem to beg the question of [what was the] coordination between Congress and the White House."

Termination of advance refundings would hurt governmental bonds. Under current law, governmental bonds are allowed one advance refunding. Brock said advance refundings help issuers when interest rates plummet. They can advance refunding their bonds and reap considerable savings so they are not stuck with the higher coupon bonds. Sometimes advance refundings are needed to change covenants in bond documents that become outdated

Bond Dealers of America CEO Mike Nicholas commended the House leadership for maintaining the tax exemption for muni bonds, but said, "It is disappointing, however, to see the provision to eliminate tax-exempt private-activity bonds, including all 501c3 bonds, and municipal bond advance refundings, which have a long and proven history of reducing issuance costs for state and local governments when issuing debt for capital improvement projects."

The PAB and advance refunding proposals in the House GOP's Tax Cuts and Jobs Act could significantly shrink the muni bond market, sources said. PABs make up 15% to 20% of the muni market, they said. Advance refundings vary widely depending on interest rates, but three years ago they represented half of all new muni issuances, they said.

Tax experts said the committee staff was probably grabbing for revenue raisers at the last minute to make up for the rate cuts, especially the proposed cut from 35% to 20% in the corporate rate. They noted that former House Ways and Means Committee chair Dave Camp, R-Mich. also proposed to eliminate PABs and advance refundings in the tax plan he floated in 2014.

The Joint Committee on Taxation estimated the termination of PABs would raise $38.9 billion in revenues from 2018-2027. It found the halt to advance refundings would provide $17.3 billion in revenues over 10 years.

The bill would also eliminate tax credit bonds after this year, for a revenue gain of $500 million, and prohibit the use of tax-exempt bonds for professional sports stadiums as of Nov. 2, 2017, for a gain of $200 million of revenues over 10 years.

While the tax-exemption for municipal bonds would not be altered, the desirability of munis as an investment would be diminished somewhat because the threshold for the 39.6% income tax rate would climb. Republicans propose raising it to $1 million from the scheduled 2018 threshold of $426,700 for individuals and $480,050 for married couples filing jointly.

The bill also would put new limits on the federal deductibility of state and local taxes. It would limit the deductibility of property taxes to $10,000 annually while other state and local taxes would be deductible only for households with incomes under $400,000.

The mortgage interest deduction, another key component for households that claim the SALT deduction, would be capped for future mortgage loans of $500,000. Current mortgages would be grandfathered.

Households would get a larger standard deduction of $24,000 for families and $12,000 for individuals. Personal exemptions would be replaced with a $300 credit for adults and a larger credit tax credit of $1,600 instead of the current $1,000.

The committee defended its proposed termination of PABs, saying In its section-by-section analysis of the bill: “The federal government should not subsidize the borrowing costs of private businesses, allowing them to pay lower interest rates while competitors with similar creditworthiness but that are unable to avail themselves of PABs must pay a higher interest rate on the debt they issue.”

But many market participants were surprised the House GOP proposed to indiscriminately eliminate all PABs.

“Many people might not realize that this would include bonds for airport projects, affordable and low-income housing, nonprofit hospitals and nonprofit colleges and universities,” said Sandy MacLennan, president of the National Association of Bond Lawyers and a lawyer at Squire Patton Boggs.

“This proposal strikes a cruel blow to thousands of charities of all size from colleges to hospitals from walk in clinics to sheltered workshops and boys clubs,” said Chuck Samuels, a lawyer at Mintz Levin who is counsel to the National Association of Health & Higher Education Facilities Authorities. “It is unjustified, doesn’t raise much money and undermines infrastructure efforts. I hope it is quickly reversed.”

House Republican leaders have said the Ways and Means Committee will start deliberations on the bill on Monday and may take several days for that and voting, despite complaints from Democrats that this leaves little time to scrutinize the bill. The full House vote would come after that.

The Senate Finance Committee plans to release its own tax bill after the committee’s action. But Micah Green, a partner at Steptoe & Johnson, said that if the basic rates and parameters remain the same as in the House bill, he can’t see how the bill in the Senate could be that much different. “It could be a different set of oxes gored,” he said, referring to revenue raisers.

Senate Republicans have not yet decided whether to keep the tax exemption for PABs, according to Sen. Rob Portman, R-Ohio, a member of the Finance Committee. “We haven’t made any of those decisions yet,” Portman told The Bond Buyer. “We’re pleased with the basic framework of those House bill. I think it will keep the momentum going for good tax reform, but I haven’t looked at that issue yet.”

Senate Majority Whip John Cornyn, R-Texas, another member of the Senate Finance Committee said, “It’s just the beginning of the process and I suspect the Senate will have a different bill.”

The top ranking Democrats on the House and Senate committees with tax jurisdiction defended PABs for their role in building infrastructure and providing economic stimulus during the Great Recession.

Rep. Richard Neal of Massachusetts, ranking Democrat on the House Ways and Means Committee, introduced legislation earlier this week with 19 other House Democrats to create a new category of tax-exempt private-activity bonds to be used for reconstruction and rehabilitation following natural disasters.

Neal said that “anybody who’s been through an airport in America” that expanded in the last four or five years has seen the results of the use of PABs or Build America Bonds.

Neal said House Republicans have “shaved back the exemption on municipal bonds,” which will make them not as attractive an investment as they once were. “So I can’t wait until mayors and others begin to take a look at this information,” Neal said.

“I wrote the Build America Bonds program in 2009,” said Sen. Ron Wyden of Oregon, ranking Democrat on the Senate Finance Committee. “And everybody thought you might sell a few bonds. We sold $181 billion worth of Build America Bonds and I will tell you given the fact the president said, ‘I am a private business guy. I’m a builder. We’ve got to fix our roads and bridges.’ The fact that he has no infrastructure – roads and bridges and transportation systems – is in my view legislative malpractice.”

Sen. Richard Blumenthal, D-Conn. said, “I’m very skeptical about that kind of change in the tax code that discourages infrastructure building at a time when we desperately need to repair and reconstruct and build anew our ports, airports, a lot of facilities that are supported by that kind of financing.” He added, “I have no idea how they can put together an infrastructure program if they fail to consider the tax consequences.”

The Bond Buyer

By Lynn Hume & Brian Tumulty

November 02 2017

Tax Tradeoffs Would Leave Muni Market Unrecognizable.

The municipal industry will be forever changed if the tax reform package proposed in the House is adopted unaltered. Of course, the probability of no alterations to Tax Cuts and Jobs Act H.R. 1 is quite remote. But the allotted compressed timeframe considered for adoption means that the tradeoffs will need to be determined quite swiftly, with less contemplation and reflection.

Administration officials had said the bill would preserve the municipal tax exemption, and thus leave the muni market untouched. I do not call eliminating the tax exemption for Private Activity Bonds (PABs) leaving the market untouched. When bonds representing about 20% of the existing market are no longer eligible for tax exemption by proposed legislation it is quite noticeable. We continue to refine the percentage but it is not available in a discrete category in the existing classifications for debt outstanding. The other complicating factor is that the description cuts across sectors. Housing, healthcare, and bonds across other sectors will be forever transformed.

If it were not for the federal government’s need to offset the effect of the tax cuts with other revenues and expenditure reductions, why would anyone want to curtail advance refundings? Advance refundings have saved mainstream municipal issuers billions in this cycle. Although current refundings will remain an option, the greatest amount of savings has been obtained with advance refundings. The category in a “normal” market typically represents about 25% to 35% of our total annual volume, not taking into account some of the recent peaks in refunding activity. One of the primary rationales over the years for an investment banker to visit an issuer has been the premise of discussing a refunding of higher coupon debt for real savings in interest costs. You will recall that refundings used to be unlimited and then were permitted only once. The inexorable progression to zero has arrived. It would make sense for bonds outstanding to have their one chance preserved.

I have not met many professionals in our business who are enamored of tax credit bonds. Having said this bluntly, tax credit bonds have encouraged issuance in segments where needs are great, including schools and energy efficiency just to name a couple. Some interested parties have even been discussing bringing back some form of Build America Bonds. The existing subsidy had become troublesome due to sequestration, but most consider the BABs program a resounding success even long after the program ceased. Taxable buyers had a real opportunity to get much more familiar with the widespread stability that municipals offer for the most part. Many in the buyer base consider that stability only second to the Treasury market.

Removing the tax exemption for stadium bonds has been in view for a very long time. Senator Moynihan was the first to raise the issue many years ago when he maintained that new stadiums were being constructed with taxpayer subsidies while schools were crumbling. Although many sports fans will lament the more mixed prospects for new stadiums, somehow, we believe the industry will find a way.

Many other provisions in the bill will affect the municipal industry in myriad ways. The deduction for state and local taxes, or SALT, has been under assault. Limiting the property tax deduction to $10,000 per year will directly affect many homeowners on both coasts. One does not consider the purchase of a home just based on the amount of property taxes due on that property. On the other hand, many consider the purchase of a home based on the quality of the local school district. Local schools are primarily supported by state aid and the property tax. Given that the real estate tax deductibility would be trimmed, it may not be as easy to pass a school tax increase in the future. There is the tax consideration for operations but also for capital improvements a.k.a. debt service. The limitation on the deductibility may have an effect on the outcome of ballots for school bonds in the future. It stands to reason that the increase in taxes necessary for the improvements being contemplated may not be as forthcoming in the future.

Deductibility for other state and local taxes, primarily income taxes, would not be preserved over the $400,000 limit. The bulk of the taxes that are collected are skewed to these higher income levels. High wealth and income states would be particularly vulnerable to this provision. Of course, there is also the weighty matter of how the states that have income taxes would “harmonize” with a vastly changed federal system of taxation.

Capping the mortgage interest deduction at $500,000, down from $1,000,000, will also pose challenges, although existing property holdings before Nov. 2 are grandfathered. The “move up” market will be greatly affected. Assessed valuation (AV) growth is linked to new growth and the appreciation that has been accumulated on existing properties. One has to come to the conclusion that AV growth will probably slow appreciably. Once again, this tendency will serve to slow the growth in property tax revenues or the fundamental revenue source for local governments. One other provision that will serve to suppress housing turnover is the lengthening of the holding period for the break from taxes on a housing capital gain to five years from two years. AV growth also climbs considerably at times based on housing turnover activity.

The four proposed tax brackets on the personal side and the corporate tax bracket change to 20% will lead to greater savings for taxpayers of all kinds. Adjusting the threshold to $1 million for the 39.6% top bracket will serve to dissuade some from investing in municipals. Municipal issuers will have to adapt simply by offering higher returns to investors. At the same time, if PABs are no longer allowed, the market will be smaller by definition.

How to adapt in the new environment? Consider buying revenue bonds in “safe” sectors. Revenue bonds already represent approximately 65% of issuance. General obligation bonds will be more affected going forward and it may take some time to determine to what degree.

Also, taxing large endowments at colleges and universities is a new one. I thought we cared about college affordability! Many other provisions will also affect higher education if adopted.

We know that the final bill will inevitably be transformed before adoption. But many of the base case provisions will be preserved through the process. Some doubt whether there will be any bill, but the momentum is there along with the concern over the mid-term elections. Municipals are clearly being asked to forgo a lot of consideration for the greater good.

Repealing AMT will be a boon to outstanding holders of AMT bonds and will be a positive for many middle class taxpayers that have had to pay the AMT and who were not the original targets for same.

The time to voice opposition is now!

The Bond Buyer

By John Hallacy

November 03 2017, 1:06pm EDT

[Federal Tax Reform: House Bill Rewrites Municipal Bond Rules - Ballard Spahr]

The proposed Tax Cuts and Jobs Act released yesterday would eliminate the federal tax exemption for interest earned on all private activity bonds—including 501(c)(3) bonds and exempt facility bonds—and advance refunding bonds issued after December 31, 2017. These provisions would have a devastating effect on job creation and the cost of capital projects for tax-exempt entities, developers, hospitals, colleges, universities, and other research institutions and state and local governments for reasons described more fully below.

In addition, Chairman Kevin Brady of the House Ways & Means Committee unveiled the House bill along with a proposed timeline to pass tax reform through the House and into the Senate before Thanksgiving. Last week, House Republicans passed a budget resolution that paves the way for budget reconciliation—a process that would allow passage of the reform package without the threat of Democratic filibuster in the Senate.

Repeal of Tax Exemption for Private Activity Bonds

Historically, Congress has sanctioned public financing of certain privately-run projects on a tax-exempt basis through municipal bonds called industrial development bonds and later private activity bonds under the 1954 and 1986 Internal Revenue Codes, respectively. Since the late 1960s, private activity bonds have become an increasingly-significant part of the municipal bond market, which Republicans in Congress now propose eliminating on less than two months' notice.

The House bill would tax interest on private activity bonds issued on or after January 1, 2018. This sweeping change would strike from the Internal Revenue Code sections 142 (Exempt Facility Bonds), 143 (Qualified Mortgage Bonds and Qualified Veterans' Mortgage Bonds), 144 (Qualified Small Issue Bonds, Qualified Student Loan Bonds and Qualified Redevelopment Bonds), and 145

(501(c)(3) Bonds), as well as 146 and 147, which set forth operating rules for interest on private activity bonds, including 501(c)(3) bonds, to qualify for the exemption from federal income tax under section 103 of the code.

Section 103 encourages investment in state and local governments and non-governmental entities carrying out public projects such as charter schools and low-income housing projects by making it less costly for them to borrow funds. Bondholders will accept a lower interest rate from borrowers when that interest is tax-exempt because after-tax earnings on tax-exempt bonds will be higher by an amount equal to the forgone tax on interest income (currently 35% for public companies).

Taxing interest on qualified private activity bonds, as House Republicans propose, will increase the cost of borrowing for charitable, scientific, literary, educational, and other nonprofit organizations to fund public projects and may prevent many important projects from being funded. The repeal of private activity bonds will negatively affect the financing of colleges and universities, museums, charter schools, charities, independent living facilities, multifamily housing developers, hospitals, other nonprofit health care providers, research institutions, and other nonprofit organizations, as well as public-private partnerships used to finance public education, government utilities, and rehabilitation of blighted areas.

In short, the bill makes it more expensive for nonprofit organizations and private entities undertaking public projects to finance capital projects.

Repeal of Advance Refunding Bonds

The House bill also proposes to prohibit advance refunding of tax-exempt governmental and 501(c)(3) bonds. Advance refunding bonds are issued to refund a prior issue of the obligor more than 90 days before the refunded bonds are redeemed. Sale proceeds from the advance refunding bonds are typically deposited in a defeasance escrow and used to purchase government securities so that principal and interest on the securities can be used to pay debt service on the refunded bonds. Advance refunding allows the issuer to obtain the benefit of lower interest rates when the outstanding bonds are not currently callable.

Low-Income Housing Projects Financed by Tax-Exempt

Although the House bill preserves the Low-Income Housing Tax Credit (LIHTC), its repeal of the private activity bond rules will eliminate the availability of credits for projects where at least 50% is financed by tax-exempt private activity bonds.

In general, each state and the District of Columbia receive an allocation of LIHTCs based on population, which may be allocated on a competitive basis to affordable housing projects in the jurisdiction. Project owners recognize an annual LIHTC allocated through designated housing agencies in an amount equal to 9% of the project's eligible basis over 10 years (9% LIHTC). But for the District of Columbia and other jurisdictions where the annual housing credit ceiling on 9% LIHTCs is insufficient to finance necessary affordable-housing projects, tax-exempt private activity bonds have provided an alternative source of LIHTCs to attract developers—which the House bill would eliminate.

Low-income housing projects automatically qualify for a 4% LIHTC allocation over 10 years without regard to the state housing credit ceiling if at least 50% of the project's aggregate basis is financed by tax-exempt qualified 501(c)(3) bonds under section 145, exempt facility bonds under section 142(d), or qualified redevelopment bonds under section 144(c). The House bill eliminates those provisions without increasing the state housing credit ceiling, which will result in a net decrease in

LIHTCs available for affordable housing projects nationwide.

Infrastructure

The proposal to eliminate issuance of private activity bonds after December 31, 2017, would likely have a devastating effect on many aspects of governmental, business, and nonprofit entities. It seems to run contrary to the Trump administration's stated goal of improving American infrastructure. The administration's proposals thus far have focused on increasing funding for the nation's decaying airports, docks and wharves, water facilities, and other categories now being built with tax-exempt bonds. It is unclear how Republicans plan to address the gaps in infrastructure financing likely to result if the House repeals tax-exempt bond rules under section 142 available for infrastructure projects.

No Transition Rule for State and Local Bonds Issued after 2017

Nearly as onerous as the House bill's bond provisions is their effective date of January 1, 2018, which, unlike the 1986 Act, applies with full force to not only new issues of tax-exempt bonds on or after that date, but any refund of bonds that are currently tax exempt. Thus, assuming enactment of the House bill, state and local governments and conduit borrowers must refund eligible tax-exempt bonds before the end of next month or forego potential debt service savings from refunding bonds.

As in the case of advance refunding bonds, tax-exempt private activity bonds issued and outstanding under current law before the end of 2017 would nonetheless lose their tax-exempt status upon a reissuance or deemed reissuance occurring on or after January 1, 2018. Tax-exempt private activity bond issuers will be limited in, if not prevented from, modifying terms of outstanding private activity bonds to reflect economic changes after the effective date because any "significant modification" of the terms of a tax-exempt private activity bond issued before 2018 will lose its tax exemption upon such modification.

Under general tax principals, a modification of a bond is considered significant if there is a change in the yield on the debt instrument of more than 0.25%, a deferral of one or more scheduled payments for a period of more than five years (or, if lesser, 50% of the original term of the instrument), or a change of obligor on the tax-exempt bond if the new obligor is not a related entity of the original obligor.

Under technical tax regulations and guidance, the lack of a refunding transition rule could also take away tax-exempt financing for draw-down loans with respect to any draws after 2017 and for any "reissuance" after 2017 of a pre-2018 tax-exempt private activity bond. This means that for certain private activity draw-down loans that were issued as tax-exempt with the expectation that all of the draws would be tax-exempt, any draws occurring after 2017 would not be tax-exempt if the House bill is enacted.

If enacted, these new rules will impose substantial diligence costs on already-strapped municipalities and, in the interim, may increase the impetus for obligors on tax-exempt bonds to advance refund bonds at current interest rates before the end of 2017. Given House Republicans' interest in stimulating commerce, the disruptive force of their tax-exempt bond proposals (including the lack of transition rules) is surprising and should deeply trouble issuers, investors, underwriters and other parties involved in the municipal bond market.

Attorneys in Ballard Spahr's Public Finance Group have participated in every kind of tax-exempt bond financing. These financings include bond issues for governments, hospitals and health care institutions, universities, colleges, student housing, single- and multifamily housing, airports and other exempt facilities, and public-private partnerships.

This is the latest in an ongoing series of Ballard Spahr advisories on the federal tax reform effort and its potential impact on organizations and people across the American economy. An alert on how the tax plan would affect employee benefits and compensation is available here.

November 3, 2017

by the Public Finance Group

Market Commentary: Tax Reform Proposal Hammers Munis.

Infrastructure? We don't need no stinkin' Infrastructure.

In a document rife with broken promises and misstatements about the muni market, the "Tax Reform" proposal announced last week beats up on the municipal bond market and state and local bond issuers to an extent **never envisioned prior to the publication of that proposal**. Indeed, there had been a list of signs pointed in the other direction:

- Promises from a long list of Federal lawmakers that the municipal bond market and state and local issuers would basically be left alone as a tax bill was drafted;
- Strong indications from the Administration that it was interested in boosting the economy by dramatically boosting investment in infrastructure; and
- There appeared to be at least some recognition that the public sector and private sector participants would need to work together in the future to optimize the amount of funding that would be needed to keep state and local projects and activities from falling farther into disarray.

This recognition, it was believed before Thursday, connected the effective functioning of the municipal bond market to the need to enhance economic growth by maintaining and expanding state and local projects, such as infrastructure, that create jobs and provide needed governmental services.

And yet when the rubber met the road in the form of a new, more complete tax reform proposal, market participants learned that the drafters of this document had no interest in leaving the muni market alone, or in keeping the state and local component of the Federal "compact" intact to meet funding needs.

Factors that would harm the muni market indirectly.

The damage that would accrue as a result of the provisions of the proposal that touch the municipal bond market come in a number of forms. Let us start with key provisions that would substantially increase borrowing costs, even though they are not targeted at the muni market specifically: the proposed reductions in corporate and individual maximum tax rates.

On the corporate side the document confirms a strong desire to cut the maximum corporate tax rate to 20%, even though that rate appears to be sharply lower than the rate needed to keep the U.S.

competitive.

According to the Tax Foundation, “we find the United States corporate tax rate of 38.91% is the fourth highest rate in the world. The United States statutory corporate income tax rate is 15.92 percentage points higher than the worldwide average,” but that it is only “9.5 percentage points higher than the worldwide average weighted by gross domestic product.”

In other words, the rate needed to put the U.S. at the average global rate, weighted by GDP, would be 29.4%, sharply higher than the 20% target in the proposal. We then note that even though the drastic cut in the corporate tax rate is not being done “to the muni market,” the impact of such a large cut in rates are likely to be severe for state and local borrowers:

At a 20% tax rate, muni yields would have to rise sharply before municipals would be competitive with taxable investments for a corporate investor, such a commercial banks or property and casualty insurers.

We expect that this provision, by itself, would push municipal bond yields up by 50-75 basis points, even before the provisions targeted at munis specifically are considered.

Our key points on the corporate tax rate, aside from severe indirect impact on state and local borrowing costs are that:

1. The cuts are sharply greater than those needed to make corporate tax rates competitive on a global basis;
2. Cuts this dramatic sharply increase the projected Federal deficit—which used to be a concern of Republicans—all the way up to the distant past of a month or two ago, when a tax cut bill that raises the deficit by $1.5 trillion or more over 10 years would have been anathema to most lawmakers;
3. The case that cuts of this magnitude will be massively stimulative to the economy is a weak one that has been refuted by most economists, many of whom note that a) unemployment is already extremely low, and unlikely to be pushed significantly lower by such a corporate tax cut; b) corporation are already awash in cash that they have been unable or unwilling to invest in new projects because they do not find such projects to meet profitability targets—a pattern exacerbated by accelerating technological change, which no one seems to want to discuss, but which mutes the benefit of large new brick and mortar projects;
4. Cuts this deep clearly leave a hole in the Federal budget that will be filled over time in ways that are damaging to recipients of disbursements from the Federal government. High on that list will be state and local governments. Witness the likely impact of this proposal, which, in a bolt from the blue, seeks dramatic new revenues from the municipal sector to pay, in part for the massive tax cuts, and which will leave no room for the previously planned, highly publicized “infrastructure program.”

To sum up, we are not opposed to corporate tax cuts as needed to make the U.S. competitive with the rest of the world, given that our rates are already at the top end for developed nations. However, we strongly question the economic and policy case for cuts so severe as to leave the Federal government gasping for revenues, with highly questionable assumptions about the magnitude of stimulus that would occur as a consequence. And, of course, with this proposal, we are already seeing evidence as to the way deep new holes in the Federal budget would beggar state and local governments.

This evidence is, unfortunately, likely to become greater over time, as the purported stimulative effects of the cuts fall behind projections, and as deficit hawks lose their “hawkishness” to support this package experience a rebirth of their core philosophy. How will that renewed hawkishness be manifested? For hints, see the Trump/Mnuchen budget proposal from earlier this year. It won't we pretty, and it won't be in the form of a renewal of higher tax rates, at least for a very long time. It will, we expect, be in the form of highly damaging new spending cuts. This, by the way, has been a key strategy in tax reform proposals for decades: cut Federal revenues, and then if as a consequence revenues resulting from the purported stimulus do not meet inflated expectations, come back and force through spending cuts to make up the difference.

In addition, while the maximum tax rate for potential individual investors in munis would not be cut, the desirability of munis as an investment for individuals would be diminished somewhat in this environment of lower corporate demand because the threshold for the 39.6% income tax rate would climb because of the $1 million income level at which the maximum tax rate would apply, up from the scheduled 2018 threshold of $426,700 for individuals and $480,050 for married couples filing jointly.

Again, this change is not being done to municipals, but particularly in an environment of sharply lower corporate rates, it would cause the break-even yield at which munis would be competitive with taxable bonds such as corporates to move somewhat higher.

Again, we stress that these changes in tax rates are not targeted at state and local bond issuers. The fact remains that, in combination, they would severely increase state and local borrowing costs, even before the provisions specifically targeted at municipal bonds are considered.

Key provisions specifically targeted at municipal borrowings.

Before listing and describing these provisions, we think that it's important to note two general factors.

First, as we have noted in previous discussions, the methodology and data utilized by the Joint Committee on Taxation has always sharply overstated the cost of a given benefit in the muni sector to the Federal Government, and thereby sharply overstated the benefit to the Federal Government of eliminating a given provision. There is no reason to believe that the estimated benefit to the Federal government from the changes in this proposal are any different: the benefit should be expected to sharply overstate the benefit to the Federal government of each reduction in access to the muni market described below.

In fact, we can virtually guarantee that the benefit of each change is overstated, because we expect that the estimates do not take into account the sharply lower corporate tax rates described above. In other words, if elimination of a given provision would be estimated to increase Federal revenues by $X with a 35% Federal tax rate and strong demand for munis from corporations then the benefit of eliminating that provision would have to be sharply lower if corporate tax rates were only 20%.

Secondly, we think that it is essential to view all of the changes described below in the context of a Federal system of government. If a given change increases revenues at the Federal level, but sharply increases borrowing costs at the state and local level, then in a Federal system, the aggregate increases in costs at the state and local level need to be netted out. After all, state and local governments are NOT "just another special interest;" they are partners with the Federal government in providing governmental projects and services.

Now, on to detail the changes proposed in the muni section:

Elimination of all advance refundings

The proposal would prohibit issuers from refunding bonds more than 90 days before the first call date, with a claimed benefit to the Federal government of $17 billion. Given the factors noted above, and the general short time to first call on recent advanced refundings, we expect that this estimate is wildly on the high side. And the benefit to state and local issuers from being able to take advantage of sharply lower borrowing costs, when they occur, through the flexibility to issue advance refundings is completely ignored.

Elimination of the ability to issue ANY private activity bonds on a tax-exempt basis after 2017 is a shockingly broad-based change to the municipal bond market. It would eliminate access to tax-exempt financing for all hospitals, nonprofit colleges and universities, affordable and low-income housing bonds, qualified redevelopment bonds, airports, ports, solid waste disposal revenue bonds, wastewater treatment facilities that are defined as "private activity," student loan revenue bonds, and a number of other activities.

In our view the rationale for this incredibly sweeping diminution in access to tax-exempt financing, as described in the documents supporting the changes, in particularly misleading and disingenuous. As noted,

"The federal government should not subsidize the borrowing costs of private businesses, allowing them to pay lower interest rates while competitors with similar creditworthiness but that are unable to avail themselves of PABs must pay a higher interest rate on the debt they issue."

This statement is incredibly misleading and incorrect in a number of ways. First, many activities listed as "private activities" under the code are not substitute or competitors for bonds issued on a taxable basis. The list where this would be the case includes nonprofit hospitals and educational facilities, airports, ports, solid waste disposal facilities, affordable and low-income housing bonds, redevelopment bonds, and a number of other types of bonds that are defined as PABs.

If these activities, which clearly relate to governmental activities, had to be financed in the taxable market, borrowing costs would be sharply higher. The estimated benefit to the Federal government of this change according to Joint Tax, would be $39 billion. Again, for reasons noted above, we expect that this estimate overstates the federal benefit, while at the same time ignoring the increased costs to state and local governments if the elimination of PABs were effectuated.

Reduction in the benefit of owning tax-exempt bonds for certain institutional investors. The proposal would increase the "haircut" on tax-exempt income for property and casualty companies owning munis, and create a new "haircut" for life insurance companies. This would reduce the benefit from owning such bond, after that benefit has already been reduced sharply through the cut in the maximum corporate tax rate to 20%.

In other words, the benefit for insurers owning tax-exempts, especially for P and Cs, would be as if they were paying a tax rate well below the statutory 20% rate in the proposal. There is no grandfathering in this provision, as far as we can tell, so if the provisions were enacted, insurance companies would have a strong incentive to sharply reduce current holdings of tax-exempts. The provisions are estimated to increase Federal Revenues by $2 billion in the case of P and Cs and $1 billion in the case of life insurance companies, which already get relatively limited benefit from owning tax-exempts. Once again, we expect that the estimated benefits are overstated, and that the costs to state and local governments are ignored.

Other, less drastic provisions. The proposal would eliminate the tax-exemption for stadium revenue bonds, and repel the limited amount of tax credit bonds that can be issued each year.

The case for maintaining Private Activity Bonds

In our view, this case is extremely strong. It includes, at the very least:

- The fact that the description of most PABs as being in direct competition with corporate activities funded on a taxable basis is simply factually incorrect;
- The important governmental purpose provided by a large proportion of the sectors defined in the code as "private activities" including (but not limited to) nonprofits, airports, ports, redevelopment agencies, affordable housing bonds, waste disposal facilities, sewerage treatment facilities, and on and on.
- After months of the administration calling for more private capital and tax credits to fund infrastructure that the proposal would be designed to cut these same existing programs that have helped issuers fund infrastructure.

The challenge for the issuer community represented in DC is that they needed to focus so heavily on maintaining the tax-exemption, and fighting for deductibility of state and local taxes (a fight they lost in whole or in part). As a consequence, they may have lost an opportunity to show why having more tools in the toolbox was and is compelling. In particular, we would make the case that under current and future conditions, the need for public-private partnerships to effectively fund projects as technology changes rapidly is going to grow, or even explode. Issuers are going to be extremely challenged to keep up with accelerating technological change in a number of areas, including transportation as we discussed last week.

Given these challenges, the need to partner up with private vendors early in the design, funding, construction and operation of a vast proportion of projects is simply going to grow over time. This permanent change in the infrastructure landscape is going to be made more costly and more difficult by provisions that limit or eliminate private involvement in combination with tax-exempt financing, such as this one would do.

Market implications

It is probably not a surprise that muni yields increased modestly this week, even as long-term Treasury yields dropped by roughly 12 basis points. The muni market is beginning to consider:

- The risk to the demand side of a sharp decline in marginal tax rates;
- The potential rush to market for advanced refunding bonds before year-end;
- The potential rush to market for private activity bonds before year-end.

At the same time, the portion of outstanding private activity bonds that are subject to the alternative minimum tax rallied fairly sharply. The reason is that, if this proposal were to be enacted, the alternative minimum tax would be eliminated, which would eliminate that difference in tax treatment between outstanding non-AMT and AMT bonds.

The only "good news" for issuers at this point is, first, the possibility that major Tax Reform may not be enacted at all, and second, the possibility that some of the more onerous provisions described above might be modified in the tax bill writing process. We are not hugely optimistic regarding the second possibility. Nevertheless, we believe that the case for such modifications is extremely strong and compelling. We expect to discuss these topics further in future writings.

Neighborly Insights

Posted 11/03/2017 by George Friedlander

This Market Commentary is a part of Court Street Group's Perspective report.

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NABL: House Tax Bill Eliminates PABs, Advance Refundings.

The House Republican leadership has released its draft tax bill, which is available here. A section-by section description of the bill is available here.

Among the provisions that would affect state and local bonds, the bill would eliminate private activity bonds (sec. 3601), advance refundings (sec. 3602), and tax credit bonds (sec. 3603) beginning with bonds issued after December 31, 2017. The draft bill would also eliminate tax-exempt bonds for professional stadiums for bonds issued after today, November 2, 2017 (sec. 3604). The bill would also terminate the New Markets Tax Credit (sec. 3406).

The House Ways and Means Committee is expected to mark up the bill beginning next Monday, November 6.

Republican Tax Plan May Mean Slightly Less Grand Sports Stadiums.

(Reuters) – Some wealthy owners of U.S. major-league sports teams may have to put up more of their own money to fund stadium construction under a tax bill proposed by U.S. House of Representatives Republicans, but the overall impact could be slight, sports economists said.

The legislation unveiled on Thursday could mean just a modest scaling-back of grand plans for new stadiums, with one expert suggesting team owners could help offset any lost federal subsidies, for example, by pouring concrete flooring instead of terrazzo.

Outside some of the biggest cities, team owners may have enough leverage to compel local governments hungry for the prestige and perceived economic benefits of new stadiums to come up with alternative funding streams.

Various sports owners in the past have relocated teams to other cities because of stadium funding issues or used the threat of a move to extract concessions from local governments.

“I’m sure the teams will be in a lather but, based on experience, if the cities/counties/states want to subsidize the stadium they’ll figure out some way,” Rick Eckstein, a sociology professor at Pennsylvania’s Villanova University, wrote in an email.

Andrew Zimbalist, an economics professor at Massachusetts’s Smith College, said it may make future plans for billion-dollar stadiums “less elaborate,” but added it was nothing that team owners and local governments could not take in their stride.

Under the Republican plan, local governments could no longer fund the building or renovating of professional sports stadiums by issuing tax-exempt public-purpose bonds, the sort of bonds typically used to fund things like schools, libraries and public transit.

U.S. President Donald Trump has called for an end to the subsidy, at least for the National Football League after some of its players angered the Republican president by kneeling during the national anthem to protest racial bias in the criminal justice system. His Democratic predecessor, Barack Obama, also proposed ending the tax break for stadiums in 2015.

A report last year by the Brookings Institution, the Washington-based social sciences research group, found that of the 45 major-league stadiums built or overhauled since 2000, 36 were at least partly funded by tax-exempt municipal bonds.

The total tax-exempt bond principal issued to fund those stadiums was about $13 billion and led to a federal tax revenue loss of about $3.7 billion, the study found. Republicans say they would expect to see only an additional $200 million in tax revenue over the ensuing decade if the plan becomes law.

Ted Gayer, one of the authors of the Brookings study, welcomed the proposal to end what he called an “egregious but small misuse of federal tax dollars.”

“Will it substantially affect the lucrative business of professional sports teams? No,” he said. “Will it substantially impact the ability of sports teams to get subsidies? No, maybe at the margins, but probably not.”

By REUTERS

NOV. 2, 2017, 9:30 P.M. E.D.T.

(Reporting by Jonathan Allen in New York; Additional reporting by Rory Carroll; Editing by Peter Cooney)

NFL Lines Up Against Stadium Provision in Tax Plan.

In a season filled with political clashes, the league is now preparing to oppose the proposed removal of a tax break for stadium construction

The National Football League is pushing back against a provision in the Republican tax bill that would get rid of tax breaks for cities and states that borrow money to fund stadiums for sports teams.

The league's opposition is the latest in a series of political clashes this football season, including a feud with the White House over player protests during the national anthem.

"It's something that the NFL will oppose because we believe that the construction of new stadiums and renovations of stadiums are economic drivers in local communities," NFL spokesman Joe Lockhart said. "If the idea is to promote economic growth, this would be a step backwards."

Public funding of sports stadiums, and a tax exemption on municipal bonds that often underpin such deals, has come under fire from members of both parties, including President Donald Trump, in recent years.

Trump has used the issue as part of his conflict with the NFL over the anthem protests. He has repeatedly blasted the league, owners and players for the demonstrations, which began a year ago to draw attention to social issues such as racial inequality and police brutality. Trump has called the protests unpatriotic.

"Why is the NFL getting massive tax breaks while at the same time disrespecting our Anthem, Flag and Country? Change tax law!" Trump tweeted on Oct. 10.

Previously, the league had tax-exempt status, but it gave that up in 2015.

After Trump's tweet on the topic, White House press secretary Sarah Huckabee Sanders said despite that change "it's been well documented that billions of taxpayer dollars continue to subsidize the construction and renovation of professional sports stadiums."

"If this industry is going to use money from American taxpayers to build the very fields they play on, is it really too much to ask that they show respect for the American flag at the beginning of the game?" Sanders said.

A 2016 study by the Brookings Institution said the federal government had lost about $3.2 billion in federal tax dollars on the construction and renovations of professional sports stadiums since 2000.

Major League Baseball and the National Basketball Association did not immediately respond to requests for comment.

"Eliminating this is a good idea," said Ted Gayer, one of the authors of the Brookings study. "It's a transparently egregious misuse of federal tax dollars."

According to the Brookings report, subsidies for NFL stadiums cost $1.1 billion, and that study didn't include the Atlanta Falcons' new home that opened this year. That was in part financed by about $200 million of public bonds.

These bonds are also linchpin of the planned stadium for the Oakland Raiders when they move to Las Vegas. The funding for that project includes $750 million in public backing.

The Wall Street Journal

By Andrew Beaton

Nov. 2, 2017 6:07 p.m. ET

Write to Andrew Beaton at andrew.beaton@wsj.com

Republicans Push to End Muni Sales by Businesses, Stadiums.

- **Tax-cut bill would do away with private-activity bonds**
- **Advanced refundings, stadium deals would also be scrapped**

Congressional Republicans proposed barring the sale of municipal bonds for professional sports stadiums and privately run infrastructure projects such as toll roads and airports, a step that's at odds with President Donald Trump's push to increase funding for public works.

The tax-cutting bill released Thursday would also eliminate advanced refundings of debt issues, a popular refinancing technique with state and local governments, as well as bonds backed by federal tax credits. If enacted, the proposals would cut the amount of municipal debt sold each year by billions of dollars and potentially boost demand for the bonds.

"If you reduce the supply of municipal securities that would make them generally more valuable," said Rob Amodeo, head of municipal debt for Western Asset Management. "But if you look at the idea that munis are going to act as a cornerstone for financing U.S. infrastructure, some of the provisions in this tax plan may challenge that a bit."

The rollback to so-called private-activity bonds would increase costs for companies that finance public works by borrowing billions each year in the municipal securities market, where interest rates are lower. Ending the program would increase revenue by about $39 billion through 2027, according to Congressional estimates.

The proposal shows how the Republican drive to slash taxes may come into conflict with a pillar of Trump's agenda. His administration in May promised $1 trillion to rebuild crumbling roads, bridges and airports, in part by relying on investment by businesses. Businesses that work on infrastructure projects typically raise money with private activity bonds.

There will be a concerted effort by advocates to get the provision removed from the bill, said Robert Poole, director of transportation policy at the Reason Foundation, a free-market research group.

"This would be completely at odds with getting more private investment in infrastructure," Poole said.

The push to roll back federal support for professional sports teams and billionaire owners may be less contentious, with the subsidies drawing criticism from both sides of the political spectrum. Conservative opponents of the subsidies got a boost after Trump attacked the National Football League for not penalizing players who kneel during the national anthem to draw attention to police killings of black men. A Brookings Institution report in 2016 found that tax-exempt financing of professional sports stadiums has cost the federal government $3.7 billion in revenue since 2000.

Municipal bond prices were little changed after the release of the tax plan, with many analysts viewing it as a starting point that's likely to be heavily revised as it works its way through Congress. Yields on 10-year benchmark tax-exempt debt were unchanged at 2.01 percent, while those on 30-year bonds slipped 0.01 percentage point to 2.81 percent, according to Bloomberg's indexes.

The push to roll back sales of municipal bonds is likely to draw opposition from states, cities and securities firms, which for years have lobbied to prevent their ability to issue tax-exempt debt from being curtailed. Mike Nicholas, the chief executive officer of the Bond Dealers of America, an industry lobbying group, said the Republican proposal would increase costs for local governments and reduce funding for public works.

"Any alteration to the tax-exemption would significantly increase costs and lead to decreased infrastructure investment in communities where it is needed most," he said in a statement.

State and local governments sold $428 billion of debt last year. About $20 billion were private activity bonds, according to the Council of Development Finance Agencies. Many bonds are also each year for advanced refundings, which allow governments to refinance debt before it can be repurchased from investors.

Trump previously proposed expanding the use of private activity bonds, and his budget recommended lifting a $15 billion cap on their sale for highways and shipping facilities. In late September, however, Trump told lawmakers in a closed meeting that public-private partnerships weren't the solution for rebuilding U.S. infrastructure, the Wall Street Journal reported.

Scrapping the tax exemption on private-activity bonds wouldn't eliminate the private investment outright, since businesses interested in running infrastructure projects could still borrow in the corporate debt market, albeit at a higher cost.

The amount of private-activity bonds isn't uniform. Airports aren't subject to a cap, while debt for other uses is allocated on a state-by-state basis through a formula based on population. While the bonds have mostly been used for low-income housing, student loan programs and hospitals, they have increasingly been issued for major infrastructure projects, including toll lanes on expressways in Texas and Colorado.

A group led by Kiewit Corp. and a Macquarie Group Ltd. unit used $460 million private activity bonds to help finance a $1.5 billion replacement for the 85-year-old Goethals Bridge connecting New Jersey to New York's Staten Island. Kiewit, Macquarie and Skanska AB are using the securities to finance a two-lane tolled tunnel connecting the cities of Norfolk and Portsmouth, Virginia.

Bloomberg

By Martin Z Braun and Mark Niquette

November 2, 2017, 9:23 AM PDT Updated on November 2, 2017, 1:24 PM PDT

— With assistance by Amanda Albright

Sports Stadium Projects Lose Tax-Exempt Status in GOP Tax Plan.

- **Bond investors would owe federal income tax on interest earned**
- **Eighty percent of new or renovated stadiums use tax-free bonds**

Since 2000, the federal government has subsidized sports stadiums to the tune of $3.7 billion by allowing municipalities to fund construction and renovation with tax-free bonds. The Republican tax plan, released Thursday, would end that free lunch.

If passed, the new tax proposal would force investors who buy bonds to pay federal income taxes on the interest. The sports stadium reform is just one of many reductions to the availability of tax-exempt bonds outlined in the Republican tax plan, which is still a long way from becoming law.

Using public money to fund stadiums is less popular than it used to be, a reflection of increasing public resistance to those kinds of deals. But it's still common. Of the 45 stadiums built or renovated in the four major U.S. leagues between 2000 and 2016, 36 utilized tax-exempt bonds, according to a recent study by Brookings.

When the new Yankee Stadium was completed in 2009, for example, nearly $1.7 billion of the $2.5 billion cost was financed by tax-exempt bonds issued by the city, the Brookings report found. If those bonds had been taxed, the federal government would have collected $431 million.

The Joint Commission on Taxation estimates that the provision included in the new tax plan would increase tax revenue by $200 million from 2018-2027. In 2015, President Barack Obama advocated a similar change to the tax code, which he said would save $542 million from 2016-2025.

Eliminating the tax-free status wouldn't put an end to stadium construction, but it would make the projects more expensive, said Victor Matheson, an economics professor the College of the Holy Cross who has studied stadium finance.

"It's the difference between paying five percent on your mortgage and paying seven percent on your mortgage," Matheson said. "Obviously that makes a difference, but if mortgage rates jumped two percentage points, it wouldn't mean the end of housing."

The new tax provision would apply to bonds issued after Nov. 2.

Bloomberg

By Eben Novy-Williams

November 2, 2017, 1:34 PM PDT

— With assistance by Martin Z Braun

Do You Have a Recent Private Activity Bond Project?

Private Activity Bond (PAB) Project Submission Form

CDFA is building a list of project examples that have used tax-exempt private activity bonds. We want to include your projects in this effort.

Please help us lead the charge to preserve private activity bonds. We need projects that have been completed in the last 2-3 years. Project examples that will resonate include healthcare, rural, education, infrastructure, manufacturing. We need you to submit basic information about each of these projects.

Continue.

Sign On to CDFA Letter to Congress: Save Private Activity Bonds

Sign on to the CDFA Letter.

CDFA | Nov. 3

How Federal Tax Changes Would Affect the States.

Current discussions about federal tax reform include a number of proposals that could impact the states. These items may broaden the tax base and increase state revenue, or put pressure on states to cut taxes and reduce revenue, or even create administrative challenges for states. In this article, the Urban Institute's Kim Rueben, Frank Sammartino, and Richard C. Auxier discuss these proposals and what they mean for the states.

Just like individual taxpayers and businesses, state governments are closely watching Congress as it debates a tax bill. Most state income tax systems are linked to federal rules and definitions, so federal changes will affect state revenues and possibly force states to change their own tax laws.

Eliminating federal tax expenditures broadens state income tax bases, which could increase state income tax revenue. But eliminating the federal tax deduction for state and local taxes could pressure states to cut taxes and thus reduce revenue.

Continue reading.

Bloomberg BNA

October 30, 2017

By Richard C. Auxier, Kim Rueben, and Frank Sammartino

Fitch: Complex of State & Local Cannabis Taxes Could Scuttle Legal Markets In California.

Fitch Ratings-San Francisco-30 October 2017: California's high cannabis taxes may undermine the fledgling legalization initiative and complicate efforts to establish legal markets, according to Fitch Ratings.

With California's legal markets set to open in January 2018, Fitch estimates that effective state and local tax rates could be as high as 45%.

"High taxes increase prices in legal markets, and have the effect of reinforcing price advantages to long established black market cannabis," said Stephen Walsh, Director. "Taken together, state and local tax burdens put California at the high end of the tax range for states that have legalized nonmedical cannabis.”

Taxes applicable to nonmedical cannabis include a 15% state excise tax, state cultivation taxes of $9.25 per ounce for cannabis flowers and $2.75 per ounce for leaves, state and local sales taxes currently ranging from 7.75% to 9.75%, and local business taxes up to 20% of gross receipts.

Local governments in the state hope to reap substantial revenues from legal cannabis sales. However, over the long term, price declines and black market sales may limit tax growth.

Fitch’s special report titled “Local Taxes May Challenge Cannabis Legalization in California” is available at www.fitchratings.com or by clicking on the link.

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TAX - WASHINGTON

Ferlin v. Chuckanut Community Forest Park District

Court of Appeals of Washington, Division 1 - October 30, 2017 - P.3d - 2017 WL 4875818

Property owners brought action against park district, city, and county, alleging that property tax levy imposed on property owners by district to aid city in repaying loan that was used to purchase park land was illegal.

The Superior Court granted defendants’ cross-motion for summary judgment and denied property owners’ cross-motion for summary judgment. Property owners appealed.

The Court of Appeals held that:

- District was not void at inception;
- Raising and spending money generated from property tax levy to repay city’s loan was a legitimate park purpose, and thus district did not exceed its statutory authority by adopting levy;
- District was statutorily and organizationally distinct from city, and thus district was authorized to impose tax within its boundaries without violating state constitution’s requirement for uniformity in taxation; and
- Levy did not violate state constitution’s provision regarding the object of levied taxes.

Park district, which was created to aid city in repaying loan that was used to purchase park land by imposing a property tax, was not void at inception because it allegedly was not created for any of itemized statutory purposes, where the property owners who challenged district’s tax offered no authority for declaring a municipal corporation void ab initio on a theory that the individuals who voted to create it had improper purposes.

Raising and spending money generated from property tax levy imposed by park district to aid city in paying off its loan that city took out to purchase park land was a legitimate park purpose, and thus district did not exceed its statutory authority by adopting levy, although district did not own title to real property contained in the park in fee simple. District acquired a conservation easement that ran with the park property in perpetuity under which district exerted substantial control over the way the forest will be used and managed in years to come, and enabling city to pay off the loan was a means of preserving the entire property as a park, including acreage that most likely would not have been otherwise protected from development.

Park district, which was created to aid city in repaying loan that was used to purchase park land by imposing a property tax, was statutorily and organizationally distinct from city, and thus district was authorized to impose tax within its boundaries without violating state constitution's requirement for uniformity in taxation; district was permitted to include territory located in city, district had specific statutory authority to levy property taxes, district was vested with sufficient express and implied powers to carry out all essential functions without reliance upon city, and fact that district obtained a conservation easement from city in exchange for aid in paying loan indicated that it was not a shell for city.

Property tax levy that was imposed by park district to aid city in repaying loan that was used to purchase park land did not violate state constitution's provision regarding the object of levied taxes. The levy was in pursuance of law as district had statutory authority to levy a property tax within its boundaries, object or purposes of a park district levy were set forth in statute governing creation of park districts, and park district commissioners adopted a budget on the same day they passed the levy resolution that indicated that the primary expense they anticipated was repayment of city's loan.

How Tax Reform Can Support Rural Broadband.

Not all U.S. communities are created equal when it comes to broadband deployment and availability. Earlier this year, my colleagues Blair Levin and Carol Mattey shared the challenges associated with deploying broadband in rural areas. According to the authors, it is not only expensive, but it does not necessarily yield a profitable return for private companies.

The gap in high-speed broadband access between rural and urban areas remains wide in the U.S. According to the Federal Communications Commission, 39 percent of rural Americans (23.4 million) lack broadband access to a fixed service with speeds of 25 megabits per second (Mbps) download/3 Mbps upload, while only four percent of urban residents lack access to those speeds. Without access to high-speed broadband, rural residents are severely limited when it comes to economic development, civic engagement, and the other social benefits related to broadband availability and its adoption.

Continue reading.

The Brookings Institute

by Nicol Turner-Lee
Fellow – Governance Studies, Center for Technology Innovation

November 6, 2016

So it Begins: First Draft Tax Reform Bill Eliminates 501(c)(3) Bonds and All Other Private Activity Bonds, All Advance Refunding Bonds, All Tax Credit Bonds, and Governmental Bonds for Sports Venues.

Notwithstanding repeated assurances from all corners that tax reform wouldn't touch the exclusion from gross income of interest on tax-exempt bonds (here, here, and here), proposed legislation would touch it indeed, and quite profoundly. The opening statement in what is sure to be a long legislative discussion on tax reform came this morning, as the House Ways & Means Committee released the first draft of a tax reform bill, which was introduced as the Tax Cuts and Jobs Act. The high[sic]-lights, if the bill were enacted into law:

1. No private activity bond issued after 2017 could be issued as a tax-exempt bond. **This includes bonds issued for the benefit of 501(c)(3) organizations.**
2. No tax-exempt bond issued after 2017 could be issued to "advance refund" another bond.
3. No tax credit bonds (regular tax credit bonds or direct pay) could be issued after 2017.
4. No governmental bond issued after **November 2, 2017 (!)** could be used to finance a "professional sports stadium."

Let's take them in order, after the jump.

Continue Reading

The Public Finance Tax Blog.

By Johnny Hutchinson and Michael Cullers on November 2, 2017

Squire Patton Boggs

KBRA Assigns AAA/Stable to the Sales Tax Securitization Corporation's Sales Tax Securitization Bonds Series 2017 A&B

Kroll Bond Rating Agency (KBRA) has assigned a AAA long-term rating to the Sales Tax Securitization Corporation's Sales Tax Securitization Bonds Series 2017 A and Taxable Series 2017B.

KBRA believes the Bonds have strong legal and structural protections that insulate its pledged Sales Tax Revenues from day-to-day operating and financial risk of the City. After review of the Public Act 100-0023, the transaction documents and legal opinions, KBRA believes these protections apply even in the unlikely event of an insolvency or bankruptcy of the City.

After reaching the opinion that the Corporation has effectively and irrevocably acquired the pledged revenues through a true sale, and that the pledged revenues are insulated from ongoing operating and financial risk of the City, KBRA then examined and developed stress scenarios of the cash flow derived from the pledged revenues.

In all of the considered stress cases, the pledged revenues substantially covered annual debt service requirements. KBRA stated that even under severe economic downturns and other stressful scenarios, the pledged Sales Tax Revenues will remain more than sufficient to meet timely principal and interest requirements on the Bonds.

A full report will be published shortly.

[How Much Is the State and Local Property Tax Deduction Worth?]

House Republicans are set to unveil their tax plan this week. Retaining a deduction for state and local property taxes promises to change the math.

WASHINGTON — Keeping a federal tax deduction in place for property taxes would erase a sizable chunk of money that would have otherwise been available to help offset tax rate cuts Republican lawmakers and President Trump are pushing for as part of a major tax code rewrite.

House Ways and Means Chairman Kevin Brady, a Texas Republican, has indicated that lawmakers are for now planning to leave the deduction for state and local property taxes intact. His comments come as House Republicans prepare to release a tax bill on Wednesday.

The state and local tax, or SALT, deduction now applies to state and local real estate property taxes, personal property taxes on items like cars and boats, income taxes and sales taxes. It's seen as a fat target to help offset GOP-backed rate cuts for individuals and businesses.

Continue reading.

ROUTE FIFTY

BILL LUCIA

OCTOBER 30, 2017 07:59 PM ET

[Which Major U.S. Cities Have the Highest Sales Tax Rates?]

A new report from the Tax Foundation takes a look.

Long Beach, California and Chicago are tied for the top spot in a new ranking of combined state and local sales tax rates released this week.

The Tax Foundation issued the ranking, which looks at rates as of July 1 in U.S. cities with populations over 200,000.

Combined state and local sales tax rates in Long Beach and Chicago check in at 10.25 percent, according to the foundation's report. Contributing to that total rate is a local sales tax of 3 percent in Long Beach and 4 percent in Chicago. State tax accounts for the rest.

Baton Rouge and New Orleans, Louisiana and Birmingham and Montgomery, Alabama are next on the list with combined sales tax rates of 10 percent. In both of the Alabama cities, 6 percent of the total rate is local and 4 percent is state. In the Louisiana cities, the rate is evenly divided at 5 percent state, 5 percent local.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

October 24, 2017

NY, California Governors Say Residents Would Suffer Under Trump Tax Cuts.

NEW YORK — New York and California's Democratic governors said on Friday residents would face hefty tax increases and some would leave their states under a proposal in the Republican tax plan that would eliminate state and local tax (SALT) deductions on federal income tax.

Andrew Cuomo of New York and Jerry Brown of California spoke in a joint conference call a day after the Republican-controlled U.S. House of Representatives passed a measure that advanced President Donald Trump's tax plan.

Republican leaders have sketched out an outline of the tax measures that would eliminate the tax break, although detailed legislation will not be unveiled until next Wednesday.

If the SALT deduction were eliminated the tax package would disproportionately hit residents of states that have high income taxes, many of which are historically Democratic, the governors said.

"This is an attack on California, New York and New Jersey, and other states that would not vote for Trump," Brown said. "It's a gross manipulation of our tax code."

The SALT deduction allows residents to subtract income taxes paid to states and local governments from the total income taxed by the federal government taxes. Its elimination would be one among a series of measures to offset lost revenues from what are envisaged as sweeping overall cuts on corporate and personal taxes.

While analysts say the overall tax package would cut taxes for companies and individuals by up to $6 trillion over the next decade, many residents of high-tax states who use the deduction would pay more, the governors said.

In New York, taxpayers would pay an average of an additional $5,300 in federal income taxes a year without the SALT deduction, Cuomo's office said in a separate statement.

That sharp increase in taxes would likely lead to an exodus of residents, starting with high earners, who would see the greatest increases, Cuomo said. "Higher-income people will move," he said.

Some Republican lawmakers from high-tax states voted against the budget measure on Thursday to express opposition to the elimination of the SALT deduction. Republican congressional leaders are working to allay their concerns.

"If the SALT is repealed, we would expect some deterioration of credit quality for affected states and localities in the medium term, including some price pressure on housing markets in areas bordering states with lower local taxes (eg, southern New Jersey)," Barclays analysts wrote to clients on Thursday.

"However, municipal bonds issued by high tax states and localities would likely become even more valuable to investors, and there could be stronger demand from retail investors, bringing yields and muni-Treasury ratios down," Barclays said.

By REUTERS

OCT. 27, 2017, 6:48 P.M. E.D.T.

(Editing by Daniel Bases and Frances Kerry)

U.S. Conference of Mayors Calls for Senate to Preserve State and Local Tax Deduction in Budget Resolution.

Washington, DC — The U.S. Conference of Mayors issued the following statement in response to a proposed amendment by Senator Shelley Moore Capito (R-WV), which would eliminate or restrict the deduction for state and local taxes (SALT):

"The U.S. Conference of Mayors opposes the budget amendment offered by Senator Capito that seeks to limit or repeal the deductibility of state and local government taxes. Efforts to limit or repeal SALT deductions are an unwanted and unwarranted federal intrusion on local efforts to fund schools, police officers, firefighters, and public infrastructure.

Forty-four million households claim the SALT deduction, the majority of whom are middle-class taxpayers. If our taxpayers lose the deduction for their state and local taxes, they will face double taxation. Consequently, instead of allowing working families in every one of our communities to deduct the amount they pay in state and local taxes, the Federal government will be forcing taxpayers who make up the backbone of our economy to pay taxes a second time on the same income. The threat is real and the impact could be devastating to families across the country in just about every community – urban, rural, suburban."

Tax Policy Takes Center Stage.

After a federal infrastructure plan and healthcare legislation failed to materialize, an even higher priority has regained the center stage. Congress has now focused on tax reform – or cuts depending on where you stand. Of particular concern is what the effects will be on the municipal market.

Most observers have suggested that lowering the top bracket to 35% from 39.6% will have a marginal effect on demand for municipals. I tend to ascribe to that view. However, the middle bracket is recommended at 25%. That proposed level may have an effect in regards to mom & pop retail investors who may be considering a more modest investment in a mutual fund or exchange traded fund. Demonstrating the after tax return of a municipal will probably prove to be an even more important exercise in a post adoption environment.

Demand from corporations with at 20% rate would be more pronounced. Most corporations that hold municipals either have specific purposes, as insurance companies do, or they desire to shield earnings from the tax collector for a more limited time horizon. Banks remain relatively large holders, though the proportion of their holdings has been greatly diminished since the Tax Reform of 1986. Even so, we would not be hard pressed to see banks become net sellers of municipals, except for those institutions that need to maintain some presence in the market.

In many respects, the changes in the various deductions and credits will pose greater challenges. It is relatively easy to see that there is a fairly strong consensus to preserve the mortgage deduction and the charitable contributions deduction. Lower rates could still have an indeterminate effect on how much cash flow is devoted to each category.

Eliminating the State and Local Tax deduction, or SALT, is huge! Both coasts will be very affected due to the concentrations of high earners with valuable properties. Another aspect to consider is that a lot of states have their own income taxes that are in various ways linked to the federal return by formula. Many states would need to modify their own tax structures swiftly, as well as their individual withholding tables. As I recollect from the 1980's experience, the federal tax tables were out a few months late after the beginning of the year.

Would there be an outmigration from states with relatively high state and local tax burdens? It stands to reason that for those who are more mobile there certainly could be. But small business owners, who may be considered more mobile than wage earners, are also recommended to benefit from a lowering of the federal tax to 25%. When California raised its own income tax to new heights, an almost imperceptible level of outmigration developed. What has become more of a factor since is the high cost of housing that is attributable to many factors beyond just the tax considerations in the state.

On the positive front, repealing the AMT is likely to have many benefits including a lower tax due for those who have been affected in the past. AMT bonds in the municipal market in the past have paid a "penalty" of 25 to 50 basis points more in yield to attract investors. Airports that have many bonds outstanding and that are subject to AMT would enjoy a particularly salubrious effect due to the change. Holders of AMT bonds would potentially have a windfall.

Two strategies that would certainly reap some positive action for the economy include five year "expensing" of capital equipment and repatriation of profits held abroad at a low one-time tax rate. States would need to consider individually if they would match such favorable treatment in their own tax codes. The expensing could lead to much greater investment in equipment and machinery in the near term. Computer hardware would be expected to have a spike in orders along with many other industries.

Holding other factors constant, one would expect lower taxes to lead to greater profitability for businesses and a lower tax collections for all governments concerned. However, it is debatable whether the changes contribute to consistent higher growth of 3% to 4% for GDP.

One of my primary deliberations is whether or not the tax reductions will induce corporations to make more hires. In the past, more shallow tax cuts have not contributed to a greater upside in employment. Given the magnitude of the cuts being considered at this time, one should expect a greater contribution to employment. However, it is also quite appealing to return a fair portion of the upside to shareholders in order to sustain and improve already lofty valuation levels in most industries.

We also continue to be wary of the potential "silent killer." Preserving the tax exemption has been given a voice by administration officials and other key parties throughout this latest thrust for reform. But until we see in print in the bill that the tax exemption will be preserved, we just do not know definitively. There could also be some trimming of sectors that will remain tax exempt.

The "tax expenditure" representing the municipal exemption is worth billions per year. The original offset to the tax reductions would have been to a large extent covered by the repeal of the ACA. The federal government stands to forgo $1.5 Trillion over 10 years in revenue. This is a very large amount to offset even in a federal budget context. We also are reminded that we have to address the budget once again in the near term. Now the pressure is on to find the offsets elsewhere in order to adhere to the budget reconciliation rules. We are now in the mode of if we see something, we will say something.

By John Hallacy

SOURCEMEDIA | 10/17/17 07:18 PM EDT

When Gratuitous Honesty May be the Best Policy?

A few years ago, I wrote two blog posts (#1 and #2) regarding the likely penalties that a hospital qualifying for Section 501(c)(3) status (a "501(c)(3) hospital") would incur if it failed to comply with the Patient Protection and Affordable Care Act ("ACA") provisions set forth in Section 501(r) of the Internal Revenue Code of 1986, as amended. In sum, there are three levels of penalties for three levels of violations. Minor violations of the ACA made inadvertently or due to reasonable cause may be corrected by the 501(c)(3) hospital without any need to disclose them. Mid-level violations of the ACA require corrective action, restitution, and a public disclosure of the violation by the 501(c)(3) hospital. Willful or egregious violations may result in revocation of a 501(c)(3) hospital's status as such.

Continue reading.

By Cynthia Mog on October 17, 2017

The Public Finance Tax Blog

Squire Patton Boggs

Public Power Utilities Support Retention of Tax Exemption for Bonds.

More than 450 public power utilities have sent a letter to congressional Republican leaders and administration officials in support of their decision to retain the current-law tax exemption for municipal bonds in a tax reform framework announced by President Donald Trump in September.

"We the undersigned public power utilities are writing today to express our strong support for your decision to retain the current-law tax exemption for municipal bonds in the 'United Framework for Fixing Our Broken Tax Code,'" the utilities wrote in their letter, which was released by the American Public Power Association on Oct. 20.

The Sept. 27, 2017, "United Framework for Fixing Our Broken Tax Code" does not specifically mention municipal bonds, but administration officials briefing reporters on its details clarified that the framework would leave intact the current-law tax exemption for municipal bond interest.

The letter was sent to the six leaders who negotiated the framework: Treasury Secretary Stephen Mnuchin, National Economic Council Director Gary Cohn, House Speaker Paul Ryan, R-Wis., Senate

Majority Leader Mitch McConnell, R-Ky., House Ways and Means Committee Chairman Kevin Brady, R-Texas, and Senate Finance Committee Chairman Orrin Hatch, R-Utah.

“Tax-exempt municipal bonds are the most efficient tool for financing public infrastructure investments, benefitting all state and local residents,” the public power utilities wrote in their letter. “Tax-exempt municipal bonds finance maintenance and construction of roughly three-quarters of the nation’s core infrastructure: investments that make our communities livable and commerce possible. Simply put, bonds build America,” the utilities went on to say.

The letter noted that public power utilities rely on municipal bonds to cost-effectively raise capital needed to build, maintain, and improve generation, transmission, and distribution facilities that serve their communities.

“These projects require substantial upfront commitments of capital, but also tend to have long useful lives,” the utilities wrote. “Bonds are a responsible way to finance these costs and repay them over time: this allows the investments to be made, while ensuring that those customers benefiting from the investment are paying for them. In fact, over the last decade, public power utilities have used tax-exempt municipal bonds to finance more than 1,200 projects worth $97 billion,” the letter pointed out.

The public power utilities said that nationwide, “had public power utilities been forced to finance their electric system investments with taxable debt, we estimate they would be paying $4.5 billion more in borrowing costs every year. This would result in increased electricity costs that would be fully borne by our customers. This extra money paid by local residents and business would do nothing to improve the electric power grid, but instead would be used to pay higher interest rates to bondholders.”

Signatories to the letter included public power utilities large and small. These utilities serve (either directly or through the wholesale supply of electricity to other public power utilities) retail electric customers in 47 states, the vast majority of the more than 49 million Americans served by public power.

“The Association coordinated this effort, but it really was member-initiated and member-driven,” noted Association President and CEO Sue Kelly. “Bonds really do build America. I am incredibly proud of the effort by public power utilities across the country to get that message out today,” she said.

American Public Power Association

by Paul Ciampoli

October 20, 2017

IRS Notice 2017-66: New Clean Renewable Energy Bonds.

The Internal Revenue Service (IRS) released Notice 2017-66, inviting public power providers to submit applications for an allocation of the available volume cap to issue new clean renewable energy bonds. Interested public power providers must submit applications pursuant to the requirements set forth in section 3 of the IRS Notice. Applications must be submitted on or before June 19, 2018.

Notice 2017-66 is available here, and will appear in IRB 2017-45 dated November 6, 2017.

NABL: IRS Withdraws Proposed Political Subdivision Regulations.

The IRS has withdrawn its proposed regulations on the definition of political subdivision, an action the Treasury Department recommended in its final report for reducing the burden of significant tax regulations.

NABL previously urged Treasury to withdrawal the proposed regulations, warning that they would cause disruption in the municipal market, including creating significant uncertainty about whether governmental organizations qualify as political subdivisions because of multiple facts and circumstances tests.

You can find the notice of withdrawal of the proposed regulations here. It is expected to be published in the Federal Register on Friday, October 20, 2017.

TAX - WASHINGTON

End Prison Industrial Complex v. King County

Court of Appeals of Washington, Division 2 - September 26, 2017 - 402 P.3d 918

Nonprofit corporation sued county seeking declaratory and injunctive relief regarding county's calculation of property tax increases under local ballot measure that authorized property tax levy at a rate above established statutory limit and asserting that measure's language did not expressly state that increased base tax amount in the first year could be used to calculate future years' increases and that the measure did not expressly state that tax proceeds could be used to construct a juvenile detention facility, as were required by statute.

The Superior Court granted county's motion for summary judgment, denied nonprofit's motion for partial summary judgment, and dismissed nonprofit's claims with prejudice. Nonprofit appealed.

The Court of Appeals held that:

- Nonprofit was not required to bring its claim regarding measure before measure was put to election;
- Language in measure did not satisfy statutory requirement for an express statement of how subsequent years' levies would be calculated, and thus county improperly implemented measure; but
- First sentence of measure was a clear and express statement of the limited purpose of the funds created by the levy.

Nonprofit corporation was not required to bring its claim challenging county's calculation of property tax increases under local ballot measure that authorized property tax levy at a rate above established statutory limit before measure was put to election, under statute providing a preliminary procedure by which dissatisfied persons could object to a ballot title and seek its amendment. Nonprofit sought to enforce terms of ballot title as written and approved by voters, rather than claiming that ballot title was infirm under statute, and did not object to language of ballot title.

Language in local ballot measure, which authorized property tax levy at a rate above established statutory limit, that implied that levy amount during first year would be used to compute the amount of levies in subsequent years was insufficient to satisfy requirement for an express statement of how subsequent years' levies would be calculated under statute governing elections to increase property taxes, and thus county improperly implemented measure in calculating property tax increases under measure for subsequent years, where measure's statement concerning subsequent levies only stated that subsequent levies would be subject to limitations of statutory chapter governing limitations on property taxes.

First sentence of local ballot measure, which authorized property tax levy at a rate above established statutory limit for a replacement facility for juvenile justice and family law services, was a clear and express statement of the limited purpose of the funds created by the levy, as was required by statute governing elections to increase property taxes. Measure's use of word "replace" rather than "construct" did not make measure's limited purpose unclear, no voter was likely to have been deceived or misled when county inaccurately named the existing facility in measure, and measure was neither vague nor obscure and its limited purpose was clear.

TAX - OHIO

MacDonald v. Cleveland Income Tax Board of Review

Supreme Court of Ohio - September 26, 2017 - N.E.3d - 2017 WL 4296394 - 2017 -Ohio-7798

City income tax board of review and tax administrator appealed determination of the Board of Tax Appeals determining that taxpayers' supplemental executive retirement plan (SERP) was not subject to income tax.

The Supreme Court of Ohio held that:

- SERP was "pension" within meaning of ordinance excluding "pensions" from taxable income;
- Definition of "pension" in pension exclusion ordinance was not limited by administrator's rules and regulations defining "pensions";
- City ordinance defining "qualifying wages" for income tax purposes did not override exclusion of SERP from taxable income under pension exclusion ordinance; and
- City's election to tax income on qualifying-wage basis under state law did not require city to impose income tax on SERP.

Supplemental executive retirement plan (SERP) received by married taxpayers upon husband's retirement as corporate executive was "pension," within meaning of city ordinance excluding "pensions, disability benefits, annuities, or gratuities not in the nature of compensation for services rendered" from taxable income, though city asserted pension was compensation for services rendered. SERP was sum of money regularly paid to taxpayers as retirement benefit, and stated purpose of SERP was to provide for payment of pension, disability, and survivor benefits in addition to benefits that might be payable under other plans of corporation.

City ordinance defining 'qualified wages' on which taxes would be imposed to include compensation attributable to nonqualified deferred compensation program, which included supplemental executive retirement plan (SERP) received by married taxpayers upon husband's retirement as corporate executive, did not override exclusion of SERP from taxable income under conflicting ordinance excluding 'pensions, disability benefits, annuities, or gratuities not in the nature of compensation for services rendered'; two ordinances were at odds, and more general definition of 'qualifying wages' was limited by more specific provision excluding pensions from the broad definition.

City's election to tax income on qualifying-wages basis under state law defining 'qualifying wages' did not require city to impose income tax on supplemental executive retirement plan (SERP) received by married taxpayers upon husband's retirement as corporate executive; SERP was specifically excluded from taxable income under city ordinance governing pension exclusion, and city could not be commanded to impose tax on specific income when it had chosen not to tax that income.

New IRS Audit Procedures: Hawkins Advisory

The IRS Tax Exempt and Governmental Entities division has announced new procedures for conducting audits of tax-exempt and tax advantaged bonds. Based on our understanding of these new procedures, we would recommend issuers engage in oral discussion with the examining agent prior to submitting a written response in an effort to avoid any unintended consequences of such submission.

Read the Hawkins Advisory describing the changes.

IRS Releases New Public Approval Proposed Regulations: Mintz Levin

On September 28, 2017, the Internal Revenue Service (IRS) withdrew previous proposed regulations and released new proposed regulations (the "Proposed Regulations") relating to public approval requirements for tax exempt private activity bonds. The Proposed Regulations (found here) are intended to update and streamline implementation of the public approval requirement for tax exempt private activity bonds provided in section 147(f) of the Internal Revenue Code, including scope, information content, methods and timing for the public approval process. They generally do not change the requirements for issuer approval and host approval set forth in the current temporary regulations originally promulgated in 1983.

Timing and Dissemination of Reasonable Notice

Despite the move from 14 days to 7 days that was included in the previous proposed regulations, the Proposed Regulations unfortunately go back to providing that notice is presumed reasonable if given no fewer than 14 calendar days before the hearing. The preamble to the Proposed Regulations explains that commenters responding to the previous proposed regulations expressed concern that 7 days' notice would not provide sufficient time to make arrangements to be present at the hearing. It also referenced the legislative history of the original public hearing legislation that references a 14 day notice period.

Perhaps the most helpful part of the Proposed Regulations is the expansion of the permitted methods of providing reasonable public notice. In an attempt to recognize advances in technology, the Proposed Regulations allow for postings on a governmental unit's public website or alternative methods permitted under general State law for public notices for public hearings of a governmental unit (the "alternative notice provision") in addition to radio or television broadcast or newspaper publication. Although it is probably likely that more residents do not have access to a printed newspaper than do not have access to the internet, in the case of public notice posted on the approving governmental unit's website, the Proposed Regulations require that there must be a publicly known alternative method for obtaining the information for those who do not have access to the internet. Practitioners also have raised questions about the requirement to post the notice on the approving governmental unit's website. The Issuer's website would generally be the more logical place to post. Provided that the approving governmental unit's website links to the Issuer's website and the notice could be found through a search of the approving governmental unit's website, this should be acceptable. The alternative notice provision will likely prove more beneficial than the website method that requires an alternative to posting. If a governmental unit has a public meeting law that allows posting on a website alone, that should satisfy the alternative notice provision.

Content of Reasonable Notice

The Proposed Regulations generally retain the notice requirements set out in the existing regulations but require less project detail in the description. The Proposed Regulations helpfully allow the Issuer to describe the category of bonds being issued and the type and use of the project rather than providing specific project information. For example, "exempt facility bonds financing an airport pursuant to section 142(a)(1) of the Internal Revenue Code", "qualified small issue bonds, as defined in section 144(a) of the Internal Revenue Code, financing a manufacturing facility " and "qualified 501(c)(3) bonds, as defined in section 145 of the Internal Revenue Code, financing a hospital facility and working capital expenditures" would all be sufficient project descriptions under the Proposed Regulations.

The notice and approval must include the maximum stated principal amount of bonds to be issued for each project. The existing regulations use the term "facility" and state that a facility may be on separate tracts of land if part of an integrated operation. The Proposed Regulations use the term "project" and a project is defined as "one or more capital projects or facilities, including land, buildings, equipment and other property to be financed with an issue that are located on the same site, or adjacent or proximate sites used for similar purposes." This essentially means that a separate maximum amount of bonds will need to be stated for each project location. In practice, it should meet the requirements of the Proposed Regulations to state a maximum aggregate amount of bonds and say that not more than that amount will be spent at each different location.

Insubstantial Deviations and Curing Substantial Deviations

Perhaps the second most helpful part of the Proposed Regulations is the expanded description of what is an insubstantial deviation and the new ability to cure a potential substantial deviation with a subsequent approval. A deviation in actual principal amount allocated for a project is insubstantial under the Proposed Regulations if it is no more than 10% greater than the maximum amount in the notice or is any amount less. In addition, any amount used to finance working capital related to any project specified in the notice is an insubstantial deviation and any deviation in the name of an owner or user of the project named in the notice is an insubstantial deviation if the parties named in the notice and the actual parties are related parties on the issue date of the bonds.

All deviations that are not specifically treated as insubstantial deviations in the Proposed Regulations will need to be analyzed based on all the facts and circumstances. In the event a deviation is determined to be substantial, a new public approval can cure the deviation. In order to take advantage of the supplemental public approval, the issue must have had a public approval and the Issuer must have reasonably expected there would be no substantial deviation on the issue date, the substantial deviation must be as a result of unexpected events or unforeseen changes in circumstances that occur after the issue date, and the supplemental public approval must be obtained prior to using proceeds of the bonds in a manner or amount not provided for in the original public approval.

Optional Application

Issuers may apply the Proposed Regulations in whole but not in part to bonds that are issued pursuant to a public approval that occurs on or after September 28, 2017, and should give careful consideration to the potential benefits of applying the Proposed Regulations, including the ability to get new public approval in the event of a substantial deviation from the original public approval. The Proposed Regulations cannot be applied to bonds already issued or to be issued pursuant to an approval that occurred prior to September 28, 2017.

By Len Weiser-Varon on October 13, 2017

Mintz Levin

[Proposed TEFRA Rules Get Positive Reception from Bond Attorneys.]

CHICAGO — Bond attorneys are giving proposed Tax Equity and Fiscal Responsibility Act rules a positive reception, saying the update is long overdue while suggesting some tweaks before they are finalized.

The TEFRA rules proposed Sept. 28 by Treasury and the Internal Revenue Service would update public notice and approval requirements for private activity bonds from temporary rules that were issued back in 1983.

The proposed rules take into account tax law changes that have expanded the kinds of PABs that can be issued and technological changes that have occurred since 1983 such as the Internet and electronic communications.

“They are much more flexible than what’s out there now and should save issuers a lot of money because they won’t have to publish in newspapers, which in certain states can be very expensive,” Howard Zucker of Hawkins Delafield & Wood in New York City said at the National Association of Bond Lawyers’ Bond Attorneys’ Workshop here.

The proposed regulations reduce the burden of having to describe the projects to be financed with PABs in detail and also take into account the fact that mortgage revenue bonds and student loan bonds are portfolio loan financings or non-project based.

Practitioners attending the BAW said the proposed rules don’t provide enough specific advice on which websites will satisfy the public notice requirement. They also asked why Treasury didn’t defer to state law in covering other notice requirements.

Two senior Treasury Department attorneys who briefed practitioners on the new proposed TEFRA rules during three hot topics tax sessions advised them that posting the notice on the issuer’s website would satisfy the notice new requirement.

To the dismay of many attorneys who were encouraged by 2008 proposed rules that would have shortened the public notice requirement from 14 days to seven, the new proposed rules keep the 14 days.

Vicky Tsilas, supervisory general attorney at the IRS, one of the two principal authors of the new proposed rules, said 14 days for notice was retained because of criticism labor unions gave to the seven days.

“There were a lot of suspicions that this was a nefarious regulation,” Tsilas said, noting that the 2008 proposed rules came out at the end of the Bush administration. Several practitioners said that 14 days can be a difficult standard to meet. One suggested a compromise of 10 days.

Tsilas said Treasury officials welcome suggestions for improvements during the 90-day comment period.

Treasury also plans to hold a public hearing before the end of the comment period.
Issuers have the option of using the new proposed rules in the interim.

Several bond attorneys suggested that Treasury should allow issuers to use the new rules for “old bonds” with respect to insubstantial and substantial deviations.

The new proposed rules allow a change of up to 10% to be considered insubstantial.

An issuer can deal with a substantial change in a bond-financed project by issuing a second public notice that covers those changes and by holding another hearing.

Brian Organ of Hawkins Delafield & Wood in San Francisco said he was particularly happy to see “the post issuance ability to TEFRA for substantial deviations.”

“On occasion issuers issue their bonds for a particular project and that project’s scope changes,” said Organ. “Another project comes up that they would like to allocate bond proceeds to. So this will allow them to do that. Under the temporary regulations, that wasn’t possible.”

Tsilas said she believes the proposed rules “provide greater flexibility to state and local governments.” She joked that her work on TEFRA dates back to the proposed 2008 rules that were issued when she was pregnant with her son, who is now 10 years old.
Christie Martin of Minz Levin in Boston, a panelist for the tax hot topic sessions, said the attorneys in the audience were “generally happy” about the update.

“I think there are some things that need to be ironed out,” Martin said. “A couple of questions people have raised are ripe for comment projects. But on the whole I think they are a good step forward and a good modernization.”

The new rules have been proposed to implement the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), which first imposed the public notice and approval requirements for PABs. At that time the only PABs existed were industrial development bonds.

The Tax Reform Act of 1986 greatly expanded the types of projects and financings for which PABs could be used to mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds.

By Brian Tumulty

SOURCEMEDIA | MUNICIPAL | 10/06/17 07:09 PM EDT

South Dakota Asks Supreme Court to Consider Online Sales Tax.

For years, local authorities have tangled with online retailers over sales tax collection within communities. But this fall, a new development in a blockbuster Supreme Court case could force the issue into the national spotlight.

In Quill Corp. v. North Dakota (1992), the Supreme Court held that states cannot require retailers with no in-state physical presence to collect sales tax. Now, the state of South Dakota has filed a petition in South Dakota v. Wayfair asking the U.S. Supreme Court to hear a challenge to its law requiring out-of-state retailers to collect sales tax.

In March 2015, Justice Kennedy wrote a concurring opinion, stating that the "legal system should find an appropriate case for this court to reexamine Quill." Justice Kennedy criticized Quill in Direct Marketing Association v. Brohl for many of the same reasons the State and Local Legal Center stated in its amicus brief. Specifically, internet sales have risen astronomically since 1992 — and states and local governments are unable to collect most taxes due on sales from out-of-state vendors.

Following the Kennedy opinion, a number of state legislatures passed legislation requiring remote vendors to collect sales tax. South Dakota's law is the first to be ready for review by the U.S. Supreme Court. In September, the South Dakota Supreme Court ruled that the South Dakota law is unconstitutional because it clearly violates Quill and that it is up to the U.S. Supreme Court to overrule it.

Ruling in South Dakota's favor will require the U.S. Supreme Court to take the unusual step of overruling precedent. In its petition, South Dakota explains why the court should agree to hear this case and rule in its favor: Quill clearly needs to go.

When the court considers overruling its precedent, it looks to whether the existing rule: (1) is constitutional or statutory; (2) has engendered reliance interests; (3) has been undermined by changed circumstances; (4) has been consistently criticized as inconsistent with broader doctrine; and (5) has proven "unworkable" or "outdated" with experience.

Quill fares poorly on every measure. It is a severely criticized, constitutional holding that itself warned when decided that it might later be reconsidered. It is also, in Justice Gorsuch's words, a "precedential island … surrounded by a sea of contrary law." And after 25 years of technological progress and economic changes, it has proven entirely out of date.

At this point, the only thing South Dakota's petition asks the U.S. Supreme Court to do is agree to hear its case. U.S. Supreme Court review is discretionary; four of the nine justices must agree to hear any case. If the U.S. Supreme Court refuses to do so, the South Dakota Supreme Court ruling that South Dakota's law is unconstitutional will stay in place.

It is possible the court could hear this case this term — meaning it would issue an opinion by the end of June 2018.

National League of Cities

by Lisa Soronen
Executive Director, State & Local Legal Center

October 11, 2017

[As Towns Ban Pot, States Withhold Legalization's Profits.]

Massachusetts is deciding whether to keep marijuana tax revenue from anti-pot municipalities, stirring a debate that some states have already settled and others may face in the future.

Whenever a state legalizes recreational marijuana, there's always a local backlash. Have your drugs, towns and cities say, but keep them away from us. If a municipality bans pot, though, should they reap the financial benefits of it being legal?

Some states just say no.

Oregon has already started keeping marijuana tax revenue from localities that effectively ban the substance. California plans to withhold pot-funded law enforcement and health grants from places with a commercial marijuana ban. And now, an effort is underway in Massachusetts to reduce the amount of money that cities and towns with bans and other restrictions on operations get from the state's 17 percent tax on marijuana sales.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | OCTOBER 13, 2017

Finally: Withdrawal of the Political Subdivision Regulations Is Announced

The eagerly awaited verdict on the proposed political subdivision regulations (Proposed Political Subdivision Regulations) ("Proposed Regulations") is finally in and their withdrawal has been announced. These regulations have been a frequent subject of our posts (here, here, here, here, here, and here) Treasury issued its interim Report on June 22, 2017 (here) under Executive Order 13789 (here) identifying eight regulations for review, including the Proposed Regulations. (Discussed in previous blogs by Michael Cullers and Johnny Hutchinson here and here.) Now Treasury has issued its "Second Report to the President on Identifying and Reducing Tax Regulatory Burdens," ("Second Report") dated October 2, 2017, announcing its recommendations on those eight regulations as well as potentially far-reaching plans for further review of burdensome regulations. Of the eight regulations reviewed, Treasury recommended full withdrawal of only two, one being the Proposed Regulations (the other being an anti-taxpayer regulation addressing transfers of family businesses, which could be an especially sympathetic area under the Trump administration). In recommending withdrawal of the Proposed Regulations, Treasury noted that "some enhanced standards for qualifying as a political subdivision may be appropriate" but that "regulations having as far-reaching an impact on existing legal structures as the proposed regulations are not justified." So what might we expect in the future?

Continue Reading

The Public Finance Tax Blog

By Bob Eidnier on October 12, 2017

TAX - OHIO

[Buckeye Terminals, L.L.C. v. Franklin County Board of Revision]

Supreme Court of Ohio - September 21, 2017 - N.E.3d - 2017 WL 4195675 - 2017 -Ohio-7664

City school board filed a complaint challenging the auditor's valuation of real property for tax purposes. The Franklin County Board of Revision increased the value of the property.

Taxpayer appealed. The Board of Tax Appeals affirmed. Taxpayer appealed.

The Supreme Court of Ohio held that:

- Taxpayer bore the burden of demonstrating that the value reported on its initial conveyance-fee statement did not reflect the property's true value;
- Board of Tax Appeals was required to independently determine whether taxpayer had demonstrated that the value reported on its initial conveyance-fee statement did not accurately reflect the property's true value;
- Spreadsheet offered by taxpayer was admissible under the business-record exception to the hearsay rule;
- Board of Tax Appeals abused its discretion by rejecting taxpayer's appraiser's testimony and appraisal report as evidence that the conveyance-fee statement did not accurately reflect the property's value;
- Board of Tax Appeals abused its discretion in rejecting testimony regarding the property's value based on the witnesses lack of involvement prior to consummation of the bulk sale; and
- Board of Tax Appeals was required to independently determine the property's true value.

Board of Tax Appeals was permitted to supplement record transmitted from county board of revision with original conveyance-fee statement and deed in dispute over valuation of real property for tax purposes; conveyance-fee statement and deed had been submitted to board of revision, and board of revision was required to preserve and transmit the documents to the Board of Tax Appeals, but failed to satisfy its statutory duties.

A school board, as the proponent of using a reported sale price to value real property, makes a prima facie case when it submits basic documentation of the sale, the conveyance fee and deed; the conveyance fee and deed create a rebuttable presumption that the sale met the requirements that characterize true value.

Taxpayer bore the burden of demonstrating that the value of real property reported on its initial conveyance-fee statement did not reflect the property's true value for tax purposes; property had been purchased as part of a bulk sale, and, because conveyance fee and deed created a rebuttable presumption that they reflected the true value, taxpayer's burden was not to simply show that it made a mistake in allocating the bulk-purchase price or in completing the conveyance-fee statement.

Board of Tax Appeals was required to independently determine whether taxpayer had demonstrated that the value reported on its initial conveyance-fee statement for real property purchased as part of a bulk sale did not accurately reflect the property's true value for tax purposes, where taxpayer alleged and presented evidence that the fee statement's listed value was in error.

Spreadsheet offered by taxpayer purporting to show that value reported on its initial conveyance-fee statement for real property purchased as part of a bulk sale was incorrect was admissible under the business-record exception to the hearsay rule, in proceedings in front of Board of Tax Appeals relating to the property's value for tax purposes; taxpayer's property-tax manager testified that taxpayer's employees prepared the spreadsheet, that it was kept in the ordinary course of business, and that she was the custodian of the record, and any conflict between the spreadsheet and other evidence regarding the property's value went to the weight of the evidence, not its admissibility as a business record.

Board of Tax Appeals abused its discretion by rejecting taxpayer's appraiser's testimony and appraisal report as evidence that the allocation of a bulk sale price to a particular parcel of real property reported on taxpayer's initial conveyance-fee statement did not accurately reflect the parcel's true value for tax purposes; because taxpayer contended that its reported allocation was erroneous, the Board was required to determine the propriety of the allocation based on the totality of the evidence, including the appraiser's testimony.

Board of Tax Appeals abused its discretion in rejecting testimony regarding the value for tax purposes of property that was purchased as part of a bulk sale based on the witnesses lack of involvement prior to consummation of the bulk sale; taxpayer had engaged witnesses to allocate the bulk-purchase price among the assets it acquired for financial-reporting purposes, which they did guided by generally accepted valuation principles, and fact that the witnesses were not involved in the negotiations of the purchase contract, and instead became involved shortly thereafter, did not undermine their valuations.

In light of the conflicting evidence regarding the true value of real property for tax purposes, Board of Tax Appeals was required to independently determine the property's true value, and not simply value the property, which had been purchased as part of a bulk sale, based on taxpayer's initial conveyance-fee statement; taxpayer presented significant evidence that the conveyance-fee statement did not accurately reflect the parcel's true value for tax purposes.

Trump Puts Spotlight on Sports Tax Breaks.

WASHINGTON — President Donald Trump's attacks on protests by some National Football League players shifted to tax policy on Tuesday, as the president floated the possibility of pushing to change laws that benefit the league.

"Why is the NFL getting massive tax breaks while at the same time disrespecting our Anthem, Flag and Country?" the president asked on Twitter.

The comments marked his latest criticism of the league after some players have knelt rather than stood during the playing of the national anthem in recent weeks. The movement began more than a year ago to protest police actions toward African-Americans. Mr. Trump reignited the issue in a speech last month.

Mr. Trump didn't say exactly what he had in mind on taxes. Still, the comments shine a light on two tax advantages the NFL historically enjoyed: the claiming of nonprofit status, which the league renounced two years ago, and the issuance by cities and states of tax-free bonds to pay for new publicly financed stadiums to host NFL teams, which continues.

"While the NFL may have given up its tax exempt status a few years ago, it's been well documented that billions of taxpayer dollars continue to subsidize the construction and renovation of professional sports stadiums," White House press secretary Sarah Huckabee Sanders said Tuesday. "If this industry is going to use money from American taxpayers to build the very fields they play on, is it really too much to ask that they show respect for the American flag at the beginning of the game?"

Some of the protesting players have said they are trying to call attention to broader inequality, not disrespecting the flag or the anthem.

Many stadium tax subsidies happen on the state and local level, but some rely on the ability to issue municipal bonds that generate income that is exempt from federal taxes.

Ending the tax break for pro-sports stadiums has support in Congress. Rep. Steve Russell (R., Okla.) and Sen. Cory Booker (D., N.J.) are the primary sponsors of a bill that would prevent tax-exempt bonds from being used to finance the projects.

In a statement Tuesday, Mr. Russell said the issuance of tax-free bonds to pay for stadiums distorts the goal of helping municipalities pay for infrastructure projects. He said the issue has more urgency given the recent protests.

An Obama administration proposal to repeal the tax break for pro sports stadiums would have raised $542 million over a decade, according to a Treasury Department estimate in 2016.

A 2016 Brookings Institution study found that subsidies for pro stadiums had cost the federal government $3.7 billion since 2000.

"This is not the greatest fiscal problem that we face today," said Ted Gayer, a Brookings senior fellow and co-author of the study. Still, he added, the tax break "doesn't have any logical reason, economic or otherwise."

The other often-discussed change that would have a much narrower fiscal impact would be removing the ability for sports leagues to get tax-exempt status, akin to some business trade associations.

Reps. Matt Gaetz (R., Fla.) and Blake Farenthold (R., Texas) have proposals to prevent sports leagues from claiming tax-exempt status.

For the NFL, there would be no impact from the bill. The NFL's teams pay taxes on their profits, as well as on player salaries and merchandise sales. The NFL central office, which coordinates and manages the league's affairs, for years claimed tax-exempt status, meaning it didn't pay taxes on its income. But amid criticism of the practice, the league renounced the status in 2015, calling it a "distraction."

"The NFL gave up its tax-exempt status in 2015," said NFL spokesman Joe Lockhart on Tuesday. "The idea that we receive a tax break is not true."

The league said on Tuesday that its owners would discuss at meetings next week whether to unilaterally change league policy to require players to stand during the national anthem.

In reaction, the White House's Ms. Sanders said: "We would certainly support the NFL coming out and asking players to stand, just as the president has done." She added: "We're glad to see the NFL taking positive steps in that direction."

A 2014 estimate by the Joint Committee on Taxation found that removing the status for sports leagues that claimed the tax break would raise about $100 million in taxes over a decade.

It isn't clear yet whether GOP lawmakers would include the sports-team-related changes in the tax-code overhaul they are writing this year, but they will be looking for every dollar they can find to lower tax rates.

While ending the tax exemption for sports stadiums would be a blow to NFL franchise owners, Mr. Trump's broader tax proposals could mean a much bigger benefit for them.

For instance, Mr. Trump wants to set a top tax rate of 25% on so-called pass-through income of businesses, down from today's top rate of 39.6%. That is a structure that sports teams commonly use. Depending on how the rules are written, they could see smaller tax bills on their annual income.

Mr. Trump also wants to repeal the estate tax, which would help sports owners. The president has pointed to the one-year repeal of the estate tax in 2010 as helping the Steinbrenner family, owners of the New York Yankees.

"When George Steinbrenner died, like with the estate taxes, the estate paid nothing," Mr. Trump said in an interview with The Wall Street Journal in July. "And if he would have died like two weeks later, they would have paid 50% of the Yankees."

Mr. Steinbrenner died in July 2010, months before the repeal expired and a new 55% rate was scheduled to take effect on Jan. 1, 2011; that rate was later set by Congress at 35% for 2011. Forbes estimated his net worth at $1.1 billion when he died, meaning the lack of an estate tax potentially saved his heirs hundreds of millions of dollars.

The Wall Street Journal

By Richard Rubin

Updated Oct. 10, 2017 3:53 p.m. ET

—Andrew Beaton and Eli Stokols contributed to this article.

Write to Richard Rubin at richard.rubin@wsj.com

Factbox: Can Trump Kill NFL Stadium Tax Breaks? Five Facts to Consider.

NEW YORK (Reuters) – U.S. President Donald Trump on Tuesday stepped up his war of words over National Football League players' silent protests against racial injustice, saying the world's top-grossing sports league should not be given tax breaks while athletes kneel during the national anthem.

The NFL gave up its tax-free status two years ago, but new or renovated stadiums are often funded at least in part by tax-exempt municipal bonds issued by local governments or states. Team owners benefit from government financing via lower interest rate bonds backed by team lease payments, stadium-generated revenue and even tax dollars.

The administration could push for changes to the laws that allow professional sports teams to enjoy tax breaks normally aimed at city governments.

Below are five facts about the financing of sports stadiums.

1) Laws allowing teams to fund stadiums with tax-exempt bonds have cost the United States $3.7 billion in lost tax revenue from 2000 through 2014, according to a Brookings Institution paper released last year, a figure that reflects the lower interest rates paid on municipal debt and the tax exemption for bondholders.

2) Of the 16 NFL stadiums built or renovated from 2000 through 2014, 13 were financed in part by tax-exempt bonds with an average financing worth $360.2 million, according to Brookings, a Washington-based policy think tank.

3) Trump could propose tax reform legislation to remove the federal tax exemptions on debt financing for stadiums. However federal changes would not necessarily hinder any potential incentives offered by state and local authorities. The latest and largest subsidy offered to an NFL franchise is the $750 million Las Vegas is using to lure the Oakland Raiders to a $1.9 billion stadium. The money will come from public funds raised via a visitors' tax on Las Vegas strip hotel rooms.

4) There are two bipartisan bills, one in the Senate and one in the House, before the U.S. Congress that seek to remove federal tax exempt status for bonds tied to sports stadiums by treating them as private activity bonds.

5) Former U.S. President Barack Obama proposed in two previous budgets for 2015 and 2016 legislation to eliminate the tax exemptions on stadium financing, Brookings said.

by Daniel Bases

OCTOBER 10, 2017 / 2:20 PM / 5 DAYS AGO

Trump's NFL Tax Credit Tweet Raises Confusion Among Tax Pros.

One hundred forty characters, but a barrage of questions.

President Donald Trump's tweet questioning the legitimacy of the tax credits received by the National Football League had tax analysts scrambling to determine the potential hit for state and federal tax regimes.

"Why is the NFL getting massive tax breaks while at the same time disrespecting our Anthem, Flag and Country? Change tax law!" Trump tweeted Oct. 10. The tweet is partly a result of several weeks of national anthem kneeling protests by players, of which Trump has been a ferocious opponent. Vice President Mike Pence left the Oct. 8 game between the Indianapolis Colts and the San Francisco 49ers because of players kneeling.

The tweet is unclear, but it could be leading down only one of two paths, according to Matthew Gardner, senior fellow at the Institute on Taxation and Economic Policy.

Gardner told Bloomberg BNA that Trump could be referring to the NFL's federal tax-exempt status. However, the NFL ended its decades-long status as a nonprofit organization in 2015 and therefore is no longer federally exempt from taxes.

"The NFL's current status is something that would not change. Congress doesn't want to give a whole candy store to the NFL, and, policy-wise, there isn't a lever for Congress to pull on this," Gardner said.

“On the other hand, Trump could be talking about cutting state and local tax subsidies, which do provide teams with lavish incentives and could be worth exploring,” Garnder added. However, he noted that the president has no authoritative say over tax incentives at the state and local level.

‘Can’t Make Sense’

Richard Auxier, research associate at the Urban-Brookings Tax Policy Center at the Urban Institute, shared Gardner’s confusion over Trump’s message.

“If Trump is tweeting here about the federal exemption status of the NFL, he’s clearly mistaken,” Auxier said. “I really can’t make sense of the president’s tweet.”

The White House didn’t immediately respond to a request for clarification of Trump’s tweet.

Tax Breaks

Gardner and Auxier said that NFL teams do receive varying tax subsidies from their respective municipalities, ranging from incentives like free rent of a state-owned arena, or the ability to keep all profits from anything sold in stadiums—tax free. The subsidies act as incentives for NFL teams to stay in their jurisdictions.

Lawmakers in at least two states—Louisiana and Tennessee—are proposing to cut millions in state tax subsidies received by the New Orleans Saints and the Tennessee Titans in response to athletes kneeling during the national anthem. In New Orleans alone, the Saints and owner Tom Benson are estimated to rake in $392 million from state tax subsidies by 2025.

NFL teams are also able to take advantage of tax-exempt municipal bonds when it comes to building stadiums, many of which cost over $1 billion.

For example, the Minnesota Vikings were issued $392 million in tax-exempt municipal bonds for the construction of U.S. Bank Stadium, which opened in 2016. The Dallas Cowboys were issued $337 million in bonds to construct the team’s $1.32 billion dollar AT&T Stadium.

When investors buy municipal bonds, they lend a local or state government money for a fixed period of time, often to pay for roads, schools, and other construction projects. In exchange for an investment, the local or state governments pay the investor interest throughout the term of the bond. Currently, interest isn’t taxable.

In total, tax-exempt financing of sports stadiums has cut $3.7 billion from federal tax revenue since 2000.

Bloomberg BNA

By Ryan Prete

October 11, 2017

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IRS Tax Exempt & Government Entities FY 2018 Work Plan.

Read the Work Plan.

Surge in Multifamily Housing Bond Issuance Linked to Tax Incentives.

WASHINGTON – A surge in issuance of tax-exempt multifamily housing bonds in 2016 should continue for the foreseeable future, experts say.

The only major potential obstacle is Congress. Lawmakers could use tax reform to eliminate the tax exemption for multifamily housing bonds or other federal incentives being used by public housing agencies and private developers to help finance multifamily housing bond transactions.

In many cases, multifamily housing bonds are issued in connection with federal low-income tax credits and two programs operated by the Department of Housing and Urban Development — the Rental Assistance Development (RAD) program and Section 8 low income housing rental assistance vouchers.

Michael Bodaken, president of the nonprofit National Housing Trust, which is dedicated to housing preservation, said he thinks the future of housing tax provisions are "in jeopardy, a concern."

"I think it is very important for Congress, HUD and others to realize how important the housing credit, tax exempt bonds and Section 8 all are," said Garth Rieman, director of Housing Advocacy and Strategic Initiatives for the National Council of State Housing Agencies.

Republican leaders of Congress and the Trump administration have only issued a nine-page outline of their tax plan that proposes ending many tax breaks as a way of broadening the base and lowering rates.

It doesn't mention multifamily housing, nor has multifamily housing policy been part of the tax debate.

Senior administration officials recently told The Bond Buyer that the tax exemption for municipal bonds will be fully preserved under the Republican tax plan. That presumably would include tax exemption for PABs, but Republicans have not offered any written assurance.

The House and Senate committees with jurisdiction over tax policy will work out the details of the tax overhaul in the coming weeks.

Multifamily housing bond issuance more than doubled in 2016 to $14 billion from $6.61 billion in 2015, an increase of 112%, according to a recent survey by the Council of Development Finance Agencies.

The percentage of American households who are renters has reached a 50-year high and is driving the demand for multifamily housing, according to the National Housing Trust. The demand for rental housing, including the urgent need to rehabilitate public housing, is expected to continue for the foreseeable future.

Last year's $7.39 billion increase in issuance for multifamily housing bonds was helped by the federal low-income housing tax credit program, experts said.

This tax credit is “one of the federal government’s primary policy tools for encouraging the development and rehabilitation of affordable rental housing,” according to the nonpartisan Congressional Research Service, which estimates its annual cost at about $9 billion.

“These non-refundable federal housing tax credits are awarded to developers of qualified rental projects via a competitive application process administered by state housing finance authorities,’’ Mark Keightley, a specialist in economics wrote in a CRS report issued in May.

“Developers typically sell their tax credits to outside investors in exchange for equity. Selling the tax credits reduces the debt developers would otherwise have to incur and the equity they would otherwise have to contribute. With lower financing costs, tax credit properties can potentially offer lower, more affordable rents,” Keightley wrote.

The low-income housing tax credit is 4% for rehabilitation projects and 9% for new construction. Kansas, Kentucky, New Mexico and Wisconsin allocated 100% of their 4% credits to housing preservation projects in 2014, according to the nonprofit National Housing Trust. Not far behind were Michigan at 94% and Ohio and 92%.

Another federal program operated by the U.S. Department of Housing and Urban Development, the RAD program, is so popular that there’s a waiting list beyond the 225,000 housing units authorized by Congress.

The Trump administration supports RAD because it transitions public housing “to a more sustainable funding and rational regulatory environment that permits debt and promotes other non-federal leveraging,” HUD Secretary Ben Carson told lawmakers in June.

“The RAD program relies on significant leverage of every dollar of HUD funding,’’ Carson said in his written testimony. “It has leveraged more than $4 billion in capital investment in order to make critical repairs and improvements to this segment of the nation’s affordable housing stock.”

Ruth Anne Visnauskas, commissioner of New York State Homes and Community Renewal, said her agency has completed two RAD deals this year, has four or five in the works for the remainder of this year, and 10 more in the pipeline for next year.

“We are great fans of RAD and think it is key to investing in public housing which is often housing for the lowest income families, seniors and the disabled,” Visnauskas said. “It’s sort of an unprecedented way to invest in large swathes of housing across the country.’’

The $450 million rehabilitation of the Ocean Bay apartment complex in the Far Rockaway section of Queens in New York City, announced in June, used multifamily housing bonds and was the nation’s largest single RAD transaction.

The project included about $350 million for upgrades such as new bathrooms and new kitchens for the 1,395 apartments located in 24 buildings. The remaining $194.4 million came from a Federal Emergency Management Agency grant for storm resiliency to prevent a recurrence of the damage caused to the waterfront complex by Hurricane Sandy.

HUD has asked Congress to lift the ceiling on the number of multifamily units eligible for RAD, which currently in 225,000 and has a waiting list. The Senate committee has agreed to eliminate the cap, but House appropriators didn’t address that issue in their fiscal 2018 funding legislation for HUD.

It’s not clear whether the Senate and House will address RAD if they hold negotiations over the 2018 budget, according to Matt Dennis, spokesman for Rep. Nita Lowey of New York, the ranking Democrat on the House Appropriations Committee.

The government began fiscal 2018 on Oct.1 with a stopgap spending measure that expires after Dec. 8, which gives both chambers additional time to complete work on a long-term spending bill.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 10/03/17 07:01 PM EDT

Tax Battle Lines Shift in Cities and Suburbs.

Local income taxes were once blamed for causing businesses to flee to the suburbs. Not anymore.

For the past 30 years, local government finance has revolved around a simple, controversial idea known as the “suburban exploitation thesis.” As the theory goes, suburbs have prospered at the expense of central cities. They’ve stolen taxpayers and businesses, and left behind hollowed-out shells of once-great communities. They benefit from unique central city amenities like parks, museums, universities and downtown business districts, but contribute nothing in exchange.

Of course, suburbanites see it differently. They pay a bevy of taxes and fees to regional entities for transit, airports, sports stadiums and other infrastructure that mostly serves central cities. And that’s to say nothing about state and federal policies that redistribute resources — some of it coming from their pockets — toward struggling central cities.

The front line of this conflict has often been local income taxes. But now, for the first time in three decades, those battle lines are shifting.

Let’s take a quick look at the numbers. Roughly 1 in 7 local governments levies a tax on income earned within their boundaries. Sometimes the tax applies to income earned within the city limits. Sometimes employers pay it based on their number of employees (also known as a “head tax” or “commuter tax”). Sometimes it applies to income earned by city residents regardless of where they work. Local income taxes are designed to ensure that those who use city services, whether they live there or not, pay for those services.

The argument opponents of the tax make is that local income taxes have hastened the demise of central cities. Businesses are mobile and can easily relocate someplace without a local income tax. Moreover, cities have offered generous local income tax abatements and exemptions to keep employers within their borders. All this adds up to a vicious cycle where a tax meant to preserve and protect central cities has driven away jobs or lowered tax revenues. For evidence, opponents say, look no further than Cleveland, Detroit, Kansas City, Mo., and Philadelphia. All saw a huge outmigration of jobs roughly 30 years ago, shortly after they imposed a local income tax designed to keep jobs within their borders.

Yet local income taxes persist. In fact, they’re more popular than ever. Last year, voters in Kansas City and St. Louis overwhelmingly approved measures to renew their local income taxes. The Seattle City Council recently passed an income tax on the “One Percent” of residents who earn more than a half-million dollars annually. It’s also considering a modified commuter tax to fund badly needed investments in local transportation infrastructure. Los Angeles and San Francisco have both floated proposals for a local "millionaire's tax" to fund homeless services. Columbus, Ohio, is one of several cities to retool its local income tax rather than get rid of it. The city used a system of credits and differential rates to make their tax fairer by ensuring residents pay only slightly more than nonresidents.

Meanwhile, as my colleague Scott Allard points out in his new book Places in Need: The Changing Geography of Poverty, there are more poor people living in suburbs today than in cities. What's worse is that suburbs don't have the government and nonprofit infrastructure to deliver assistance to those in need. Without the appropriate fiscal policy tools, suburbs will continue to struggle just as central cities did 30 years ago.

In other words, in many regions today we're seeing the suburban exploitation thesis in reverse. Talent and capital are flowing back into central cities and leaving behind their suburban neighbors. That's also why it's no surprise that an unpopular tax like the local income tax is back in vogue. If the future is in cities, then the local income tax might become the go-to tax for the next 30 years.

Governing.com

By Justin Marlowe | Columnist

Endowed Professor of Public Finance and Civic Engagement at the Daniel J. Evans School of Public Policy & Governance at the University of Washington

Oct | 2017

TAX - OHIO

McNair v. City of Brecksville

Court of Appeals of Ohio, Eighth District, Cuyahoga County - August 31, 2017 - N.E.3d - 2017 WL 3774850 - 2017 -Ohio- 7401

Taxpayer brought action against city and Regional Income Tax Agency (RITA) challenging city tax ordinance reducing tax credit as unlawful.

The Court of Common Pleas granted city's and RITA's motion for judgment on the pleadings. Taxpayer appealed.

The Court of Appeals held that ordinance was validly enacted as nonemergency legislation.

City ordinance reducing tax credit for residents paying employment taxes on income earned in the city was validly enacted as nonemergency legislation, although ordinance stated that it was an emergency measure, where ordinance was read three times at three city council meetings and was approved by a vote of four council members in compliance with city charter's requirements for nonemergency legislation.

TAX - TENNESSEE

[Islamic Center of Nashville v. Tennessee]

United States Court of Appeals, Sixth Circuit - September 20, 2017 - F.3d - 2017 WL 4159484

Religious nonprofit organization brought action alleging that state board of equalization's denial of its application for retroactive property tax exemption violated Religious Freedom Restoration Act (RFRA), Religious Land Use and Institutionalized Persons Act (RLUIPA), Elementary and Secondary Education Act, Establishment Clause, and state law.

The United States District Court dismissed complaint, and organization appealed.

The Court of Appeals held that:

- Tax Injunction Act (TIA) barred action, and
- District court did not abuse its discretion in failing to grant organization leave to amend.

Tax Injunction Act (TIA) barred federal district court from considering religious nonprofit organization's action alleging that Tennessee Board of Equalization's assessment of property taxes while legal title to its property was being held by bank pursuant to ijara agreement violated Religious Freedom Restoration Act (RFRA), Religious Land Use and Institutionalized Persons Act (RLUIPA), Elementary and Secondary Education Act, Establishment Clause, and state law, even though organization had already paid assessed taxes, and sought only prospective injunctive and declaratory relief, where organization challenged validity of state tax statute, Tennessee law explicitly directed appeals of Board decisions to relevant chancery court, and procedures available to challenge tax in Tennessee were plain, speedy, and efficient.

District court did not abuse its discretion in failing to grant religious organization leave to amend its complaint following dismissal of its action challenging validity of state tax statute as barred by Tax Injunction Act (TIA), where organization never filed motion to amend or proposed amendment, and any anticipated amendment would likely be fruitless.

TAX - OREGON

[Wittemyer v. City of Portland]

Supreme Court of Oregon - September 21, 2017 - P.3d - 361 Or. 854 - 2017 WL 4173473

Taxpayer filed action alleging that city's so-called "arts tax," which imposed $35 tax on each income-earning city resident to support the arts in public schools, except for residents living in households at or below federal poverty line, violated constitutional provision prohibiting imposition of a "poll or head tax" and sought to enjoin city from collecting the tax

The Circuit Court granted summary judgment in favor of city. Taxpayer appealed. The Court of Appeals affirmed. The Supreme Court allowed review.

The Supreme Court of Oregon held that:

- Unconstitutional "poll or head tax" was one that applied uniformly, on per capita basis, without taking taxpayer's income, property, or other resources into account in any way, and
- City "arts tax" took income and household resources into account, and thus was not unconstitutional "poll or head tax."

City “arts tax,” imposing $35 tax on each resident of city who was at least 18 years old, had income of $1,000 or more per year, and did not reside in household that was at or below federal poverty guidelines, to support the arts in public schools took income and household resources into account, and thus was not unconstitutional “poll or head tax,” though income was not taken into account in determining amount of tax. Tax did not apply to individuals earning income of less than $1,000 per year, certain types of income did not count in determining income for purposes of tax, including Social Security benefits, and federal poverty guidelines, in turn, were graduated according to size of household.

“TEFRA is a Four-Letter Word”

The title of this post is taken from an observation that a client once made when the strictures of the notice, hearing, and approval requirements set forth in Internal Revenue Code Section 147(f), which with limited exceptions apply to all issues of tax-exempt private activity bonds, worked to prevent a hoped-for use of proceeds of a qualified private activity bond issue. These notice, hearing, and approval requirements were originally enacted as part of the Tax Equity and Fiscal Responsibility Tax Act of 1982, so the acronym “TEFRA” is commonly used in connection with these requirements. According to urban legend, the coarsest of the four-letter words is also an acronym, the components of which the esteemed etymologists Van Halen detailed in the title to the band’s triple platinum 1991 album.[1]

If the application of the bureaucratic acronym has ever exasperated you to the point that you’ve uttered the vulgar one, take heart – relief is at hand. On September 28, 2017, the Treasury Department issued proposed regulations (“Proposed Regulations”) that make the TEFRA rules much more manageable and that can be used before the Proposed Regulations become final. For a summary of the Proposed Regulations, hit the jump below (or, in keeping with the Van Halen references, go ahead and jump).

Continue Reading

The Public Finance Tax Blog

By Michael Cullers on October 2, 2017

Squire Patton Boggs

Proposed TEFRA Rules Get Positive Reception from Bond Attorneys.

CHICAGO — Bond attorneys are giving proposed Tax Equity and Fiscal Responsibility Act rules a positive reception, saying the update is long overdue while suggesting some tweaks before they are finalized.

The TEFRA rules proposed Sept. 28 by Treasury and the Internal Revenue Service would update public notice and approval requirements for private activity bonds from temporary rules that were issued back in 1983.

The proposed rules take into account tax law changes that have expanded the kinds of PABs that can be issued and technological changes that have occurred since 1983 such as the Internet and electronic communications.

“They are much more flexible than what’s out there now and should save issuers a lot of money because they won’t have to publish in newspapers, which in certain states can be very expensive,” Howard Zucker of Hawkins Delafield & Wood in New York City said at the National Association of Bond Lawyers’ Bond Attorneys’ Workshop here.

The proposed regulations reduce the burden of having to describe the projects to be financed with PABs in detail and also take into account the fact that mortgage revenue bonds and student loan bonds are portfolio loan financings or non-project based.

Practitioners attending the BAW said the proposed rules don’t provide enough specific advice on which websites will satisfy the public notice requirement. They also asked why Treasury didn’t defer to state law in covering other notice requirements.

Two senior Treasury Department attorneys who briefed practitioners on the new proposed TEFRA rules during three hot topics tax sessions advised them that posting the notice on the issuer’s website would satisfy the notice new requirement.

To the dismay of many attorneys who were encouraged by 2008 proposed rules that would have shortened the public notice requirement from 14 days to seven, the new proposed rules keep the 14 days.

Vicky Tsilas, supervisory general attorney at the IRS, one of the two principal authors of the new proposed rules, said 14 days for notice was retained because of criticism labor unions gave to the seven days.

“There were a lot of suspicions that this was a nefarious regulation,” Tsilas said, noting that the 2008 proposed rules came out at the end of the Bush administration. Several practitioners said that 14 days can be a difficult standard to meet. One suggested a compromise of 10 days.

Tsilas said Treasury officials welcome suggestions for improvements during the 90-day comment period.

Treasury also plans to hold a public hearing before the end of the comment period.
Issuers have the option of using the new proposed rules in the interim.

Several bond attorneys suggested that Treasury should allow issuers to use the new rules for “old bonds” with respect to insubstantial and substantial deviations.

The new proposed rules allow a change of up to 10% to be considered insubstantial.

An issuer can deal with a substantial change in a bond-financed project by issuing a second public notice that covers those changes and by holding another hearing.

Brian Organ of Hawkins Delafield & Wood in San Francisco said he was particularly happy to see “the post issuance ability to TEFRA for substantial deviations.”

“On occasion issuers issue their bonds for a particular project and that project’s scope changes,” said Organ. “Another project comes up that they would like to allocate bond proceeds to. So this will allow them to do that. Under the temporary regulations, that wasn’t possible.”

Tsilas said she believes the proposed rules "provide greater flexibility to state and local governments." She joked that her work on TEFRA dates back to the proposed 2008 rules that were issued when she was pregnant with her son, who is now 10 years old.

Christie Martin of Minz Levin in Boston, a panelist for the tax hot topic sessions, said the attorneys in the audience were "generally happy" about the update.

"I think there are some things that need to be ironed out," Martin said. "A couple of questions people have raised are ripe for comment projects. But on the whole I think they are a good step forward and a good modernization."

The new rules have been proposed to implement the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), which first imposed the public notice and approval requirements for PABs. At that time the only PABs existed were industrial development bonds.

The Tax Reform Act of 1986 greatly expanded the types of projects and financings for which PABs could be used to mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds.

BY SOURCEMEDIA | MUNICIPAL | 10/06/17 07:09 PM EDT

By Brian Tumulty

IRS Publishes Revised Proposed TEFRA Public Notice, Hearing and Approval Regulations: Hawkins Advisory

On September 28, 2017, revised proposed regulations addressing the guidelines for the TEFRA Public Notice, Hearing and Approval process were published in the Federal Register. Attached is a Hawkins Advisory discussing these revised proposed regulations.

Read the Advisory.

Treasury Department Formally Withdraws Political Subdivision Rule Proposal.

On October 4, the Treasury Department announced that it is formally withdrawing a rule proposal issued last year to redefine "political subdivision" for the purpose of determining eligibility to issue tax-exempt bonds. The withdrawal means that the current political subdivision definition will remain in effect. The action comes in response to President Trump's executive order, from earlier this year, directing Treasury to review tax regulations and identify regulatory initiatives that are overly burdensome and inefficient.
Michael Decker, managing director and co-head of SIFMA's municipal securities division said in a statement to The Bond Buyer, "SIFMA commends the Treasury Department for withdrawing its proposal related to the definition of political subdivision. That change would have excluded important local issuers from accessing the tax-exempt market, imposed undue requirements on issuers who would have remained eligible, and raised the cost of financing infrastructure."

Treasury Department Press Release

NABL: Treasury to Withdraw Political Subdivision Regs.

The Treasury Department released a report today with its planned actions concerning the eight tax regulations identified earlier this year as imposing an undue burden, including the proposed definition of political subdivisions. Treasury will withdraw the proposed political subdivision regulations in their entirety.

Treasury and the IRS now believe that because of the far-reaching impact on existing legal structures the proposed regulations would have had, they are not justified. However, the Treasury and IRS continue to believe that some enhanced standards for qualifying as a political subdivision may be appropriate. Thus while Treasury and the IRS will continue to study the legal issues relating to political subdivisions, Treasury and the IRS currently believe that the proposed regulations should be withdrawn in their entirety, and plan to publish a withdrawal of the proposed regulations shortly in the Federal Register. Treasury and the IRS may propose more targeted guidance in the future after further study of the relevant legal issues.

You may find the link to the report here and to Treasury's press release here.

The Future For the Municipal Bond Tax Exemption is Bright Following the Release of the Unified Framework For Tax Reform.

Efforts to overhaul the Internal Revenue Code have been spearheaded thus far by a group of Republicans referred to as the "Big Six."[1] Earlier today, the Big Six released a "unified framework to achieve pro-American, fiscally-responsible tax reform" (the "Framework"). The Framework proposes many changes to the U.S. tax system, but **does not propose any changes to the municipal bond tax exemption itself.**

Here is a link to the Framework, a 9-page document that provides an overview of the various measures that may be included in tax reform. The Framework was preceded by the blueprint for tax reform released by House Republicans on June 24, 2016 (discussed in a previous blog post). This post addresses a few of the highlights from the Framework.

Highlights

The Framework proposes wholesale reform of the US tax system. Specific to the municipal bond industry, the Framework includes the following proposals (or lack thereof):

- Like the blueprint, the Framework does not include any specific mention of the municipal bond tax exemption. The lack of any specific reference is not surprising in light of the brevity of the Framework.
- The Framework includes a catch-all statement that "[n]umerous other exemptions, deductions and credits" will be repealed (more on this below).
- The Framework proposes to eliminate all itemized deductions except the mortgage interest deduction and the charitable contribution deduction. Of course, this would not affect municipal bonds because the tax exemption for municipal bonds is not an itemized deduction (this was a test for our readers).
- The top income tax bracket will be reduced from 39.6% to 35% for individuals and to 20% for corporations (although the Framework holds out the possibility that an additional tax bracket

above the 35% bracket could be applied to the "highest-income taxpayers").
- Like the blueprint, the Framework proposes to eliminate the individual and corporate alternative minimum tax (AMT).

In the days leading up to the release of the Framework, senior legislative officials have provided assurances to members of our [Financial Services and Tax Policy group] that the municipal bond tax exemption will be retained. In light of their comments, the catch-all statement regarding the elimination of scattered exemptions, deductions, and credits should not be read to jeopardize the municipal bond exemption. Furthermore, although the reduced individual income tax rates would slightly diminish the value of the municipal bond subsidy, the repeal of the AMT could offset the diminution in value (as could an increased demand for municipal bonds if they remain one of the few tax-advantaged investments after the enactment of tax reform).

On the whole, the Framework is very positive for the municipal bond community and it suggests that lawmakers appreciate the value of the exemption to state and local governments and to qualified borrowers.

Important Disclaimer

Although the Framework represents the efforts of certain influential lawmakers, it is no more than a roadmap towards tax reform. In recent months, similar roadmaps unrelated to tax reform have failed in the face of significant opposition. The Framework's success is far from certain.

[1] The Big Six are Paul Ryan (House Speaker), Kevin Brady (House Ways and Means Committee Chairman), Mitch McConnell (Senate Majority Leader), Orrin Hatch (Senate Finance Committee Chair), Steven Mnuchin (Treasury Secretary), and Gary Cohn (White House chief economic adviser).

The Public Finance Tax Blog

By Joel Swearingen

September 29, 2017

Squire Patton Boggs

IRS Issues New Proposed Regulations on the TEFRA Public Approval Requirement: Greenberg Traurig

On Sept. 28, 2017, the Internal Revenue Service (IRS) issued a notice of proposed rulemaking (the 2017 Proposed Regulations) that would update and streamline public approval requirements under Section 147(f) of the Internal Revenue Code, as amended (the 1986 Code), applicable to state and local governments issuing tax-exempt private activity bonds. The 2017 Proposed Regulations withdraw two prior notices of proposed rulemaking on this topic, including the May 11, 1983, notice of proposed rulemaking released in conjunction with temporary regulations (the Existing Regulations) under the predecessor to Section 147(f), Section 103(k) of the Internal Revenue Code of 1954 (the 1954 Code), and the Sept.9, 2008, notice of proposed rulemaking (the 2008 Proposed Regulations) that proposed to amend and supplement, but not revoke, Existing Regulations, thereby allowing the Existing Regulations to continue to apply to the extent not modified by the 2008 Proposed Regulations. Needless to say this odd history created confusion. Once final, the 2017 Proposed Regulations will contain all of the TEFRA public approval requirements because they will incorporate the 2008 Proposed Regulations with modifications in response to public comments and recent developments, and consolidate those rules with rules in the Existing Regulations to the extent not modified.

Continue reading.

by Rebecca L. Caldwell-Harrigalk, Vanessa Albert Lowry and Linda L. D'Onofrio

USA September 29 2017

Greenberg Traurig LLP

IRS Issues New Proposed TEFRA Regulations: Nixon Peabody

Read the Nixon Peabody Public Law Alert.

CDFA Defending Development Finance Interests During Tax Reform.

On September 27, officials from the White House, the Senate Committee on Finance, and the House Committee on Ways and Means ended months of tax reform speculation by releasing a unified framework for tax reform. Over the coming weeks and months the Congressional tax-writing committees will begin writing legislation based on the unified framework, and we at CDFA will work to ensure that development finance interests are represented throughout this process.

CDFA's primary focus during the tax reform period will be on four key areas. Those areas are as follows:

- Preserving and Strengthening Tax-Exempt Bonds
- Reforming Manufacturing Bonds through the Modernizing American Manufacturing Bonds Act
- Permanently Authorizing and Funding the New Markets Tax Credit Program
- Launching a Federal Urban Tax Increment Finance Program

For additional information on the CDFA tax reform proposals, please contact Tim Fisher at 614-70--1309.

Groups Pleased White House to Keep Muni Exemption, But Want to See It In Writing.

WASHINGTON – Municipal market participants said Wednesday that while they are pleased that White House officials say the Republican tax reform plan will fully support the tax exemption for municipal bonds, they would rather see it in writing.

The nine-page framework for the tax reform plan does not mention either munis or the deduction for state and local taxes (SALT). But senior administration officials told The Bond Buyer Tuesday night that they would support the muni tax exemption and seek repeal of the SALT deduction.

“It’s good the White House is saying that, but it would be better if it were explicit in the documents,” said Bill Daly, director of governmental affairs for the National Association of Bond Lawyers.

He noted the plan talks about eliminating most exemptions, deductions and credits, with specific exceptions for only the deductions for mortgage interest and charitable contributions and the tax credits for research and development and low-income housing.

“We’ve heard indications that Congress does not intend to curtail the tax exemption, but the process will be fluid until a bill is signed into law,” said Michael Decker, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association. “We still perceive a risk to the tax-exemption.”

“We remain fully engaged with Congress to defend the value of the tax-exemption for municipal bonds to ensure that the benefits of the exemption to municipalities, U.S. infrastructure, and investors remains unaffected during the legislative process for tax reform,’’ said Justin Underwood ,director of the Municipal Bonds for America Coalition.

The nine-page framework for tax reform released Wednesday proposes to eliminate both the individual and corporate alternative minimum tax (AMT), which would be a boost for private activity bonds because most of them are subject to the AMT.

“We welcome the repeal of the AMT,” said Decker. “The individual AMT especially forces some municipal borrowers to pay higher interest rates — 25 to 50 basis points — with little or no revenue accruing to the federal government, since most taxpayers know when they make investment decisions whether they fall under the AMT.”

Daly said the repeal of the SALT deduction would hurt state and local governments’ finances and potentially their ability to issue tax exempt bonds because it would make it harder for many jurisdictions to raise taxes. Some bonds are backed by tax revenues.

State and local officials, meanwhile, said they are mobilizing to prevent the elimination of the federal tax deduction for SALT, which prevents double taxation.

Muni representatives and tax experts question whether the framework will ever be enacted, predicting Republicans will encounter the same obstacles that prevented them from passing partisan legislation to repeal and replace Obamacare.

Democrats blasted the tax reform plan, which the Republicans plan to consider though a partisan fiscal 2018 budget resolution and reconciliation bill that would enable the Senate to bypass its filibuster rule requiring a 60-vote supermajority for passage and enact tax reform with a simple majority vote.

“When Donald Trump was talking about this plan over the last few days he talked about focusing on the middle class,’’ said Senate Minority Leader Chuck Schumer, D-N.Y. “The plan is a major disappointment because it so deviates from everything the president said.’’

Schumer predicted Republicans will face opposition within their own party to repealing the SALT deduction as they did during the 1986 debate over tax reform. “My guess is, you’re going to have 30, 40, 50 Congress members, Republicans, who say they can’t vote for it because ‘It raises taxes on my core constituency,’” he said. “That’s the lesson they learned in ’86. I was part of it.’’

The tax reform framework calls for increasing the standard deduction for individuals to $12,000 and for couples to $24,000. This is the basis for simplification of the tax system, with Republicans hoping the standard deduction will be high enough that taxpayers won't miss itemizing deductions.

"Nine out of 10 Americans will be able to file their taxes using a simple postcard system,'' said House Ways and Means Committee Chairman Kevin Brady, R-Texas.

But John Buckley, former chief tax counsel of the House Ways and Means Committee, said that, with the higher standard deduction and repeal of the SALT deduction, the plan would be "a de facto repeal of the mortgage interest deduction'' which will put downward pressure on home values.

Realtors have already complained about this in congressional hearings, warning the plan will penalize homeowners and reward renters.

The plan would shrink the current seven tax brackets, which range from 10% to 39.6% to three brackets, with rates of 12%, 25% and 35%. There would be flexibility to add a fourth rate for the wealthiest taxpayers.

The corporate rate would be reduced to 20% from 35%. The maximum tax rate that could be applied to the business income of small and family owned businesses conducted by sole proprietorships, partnerships and S corporations would be 25%.

The proposed reduction in the corporate rate to 20% could hurt demand for munis from banks and property and casualty companies, said George Friedlander, a managing partner at Court Street Group Research.

"At 20% tax rate, corporations won't care nearly as much about munis," he said, adding, "But I can't see them ending up with a 20% rate."

The plan would allow businesses to immediately write off or expense the cost of new investments in depreciable assets other than structures made after Sept. 27, for at least five years. The deduction for net interest expense incurred by C corporations would also be partially limited, but rates were not provided.

The tax reform framework, Republicans say, is only an outline that will be fleshed out by the two tax-policy committees in Congress during the coming weeks.

Friedlander and others said there is still a lot of detail left out of the tax reform framework and that any bill that could be passed would have undergo a lot of changes.

"There are a lot of open questions," said Friedlander. "How are they going to pay for this? What will the tax rates end up looking like? Nobody I have talked to believes that the corporate rate will be 20%."

Market participants are relieved that the tax reform framework does not include a proposal that was in the Republican Blueprint that would have potentially made corporate bonds more attractive than munis. The proposal would have allowed families and individuals to deduct 50% of investment earnings such as capital gains, dividends and interest income.

"SIFMA supports favorable tax treatment for all investment income. However it is true that drastically lowered the tax rate for taxable investment income would have eroded the value of the tax exemption for municipal interest," said Decker.

Tax experts have warned lawmakers that a partisan tax plan would not provide the same kind of long-term economic boost as bipartisan legislation.

Trump already has traveled to several states with Senate Democrats who face re-election in 2018 in the hope of pressing them to support tax reform.

The U.S. Conference of Mayors sent a bipartisan letter Monday signed by 130 mayors urging Congress to not eliminate SALT.

"According to a recent report by the Government Finance Officers Association, if the SALT deduction is eliminated, almost 30% of taxpayers – including individuals in every state and in all income brackets – would be adversely impacted,'' the mayors wrote. "This would include over 43 million tax units representing well over 100 million Americans."

Americans Against Double Taxation echoed that concern. "This plan should concern all taxpayers who itemize, including those who claim the mortgage and charitable deductions, because the loss of SALT will mean fewer households will be able to claim any deductions in the future,'' the group said. "Taxpayers should not be lulled into a false sense of security as this proposal threatens all itemized deductions, even though its direct focus is on SALT."

By Brian Tumulty & Lynn Hume

BY SOURCEMEDIA | MUNICIPAL | 09/27/17 07:06 PM EDT

Good Jobs First Subsidy Tracker Makes GASB 77 Data Accessible.

View the Subsidy Tracker.

Good Jobs First | Sep. 28

TAX - ILLINOIS

In re County Collector

Appellate Court of Illinois, Second District - August 2, 2017 - N.E.3d - 2017 IL App (2d) 160483 - 2017 WL 3276440

Tax sale purchaser filed petition to vacate the tax sale, for a declaration of a sale in error, and for a refund, alleging that property had been classified as farmland but taxed as if it were subdivided residential land.

The Circuit Court denied the petition. Purchaser appealed, and the Appellate Court Reversed and remanded. On remand, town intervened, and the Circuit Court ordered that tax sale refund should be paid from the tax revenue collected for special service areas that had expired. Purchaser appealed. In separate action, second tax sale purchaser filed petition to vacate a sale on the basis that the assessor had improperly classified the property as farmland. The Circuit Court granted town's motion to intervene and ordered refund from tax revenue collected for expired special service areas. Second purchaser appealed, and appeals were consolidated.

The Appellate Court held that:

- Town had right to intervene;
- County collector was not required to issue refunds on demand but rather could issue refunds after

collecting funds from appropriate taxing bodies; and
- Purchasers were entitled to be paid refunds from town's general tax revenue, rather than from special service areas.

Town had right to intervene after tax sale purchaser's petition for sale in error was granted and refund was ordered, where town's interests were not at stake until the trial court granted the sale in error and petition was filed shortly after that order was entered, county collector was not protecting town's interests, as it had expressed no preference as to which taxing body was responsible for the refund, and town would be bound by the trial court's judgment as to whether refund would be paid from town's general tax revenue and/or special service area tax revenue.

County collector was not required to issue refunds on demand or up front to tax sale purchasers who successfully petitioned to vacate tax sales as sales in error, but rather county collector could issue refunds after collecting funds from appropriate taxing bodies. County collector did not have the funds on hand necessary to pay the refunds, and had a component of discretion in deciding the timing of the refunds.

Tax sale purchasers who successfully petitioned to vacate tax sales on basis that properties, which were in expired special service areas, had been improperly classified and assessed were entitled to be paid refunds from town's general tax revenue, rather than from special service areas which made up bulk of unpaid tax assessments. Town had established the special service areas and levied the taxes, and thus was the "taxing body" responsible for the refunds, public policy of encouraging tax sale bidders warranted payment of refunds from general tax revenue as opposed to having purchasers losing their investments, and potential to recover directly from property owners did not preclude recovery from town through county collector.

TAX - OHIO

State ex rel. Repeal Lorain County Permissive Sales Tax Committee v. Lorain County Board of Elections

Supreme Court of Ohio - September 15, 2017 - N.E.3d - 2017 WL 4183078 - 2017 -Ohio-7648

Voters sought writ of mandamus, seeking to compel board of elections to certify their petition for repeal of county sales and use tax.

The Supreme Court of Ohio held that:

- Court would not strike as scandalous an accusation that county auditor unlawfully refused to accept certified copy of petition, and
- As matter of first impression, voters did not have clear legal right to have petition placed on upcoming ballot, thus precluding mandamus relief.

Supreme Court would not strike as impertinent or scandalous an accusation in voter's affidavit, that county auditor wrongfully and unlawfully refused to accept a certified copy of referendum petition for repeal of county sales and use tax, in voters' mandamus proceeding against county board of elections seeking to compel board to certify the petition; every mandamus petition accused a government official of unlawful conduct, and the worst that could be said about the accusation was that it was immaterial to issue of board's obligation to certify the petition.

Voters did not have clear legal right to have their initiative petition for repeal of county sales and use tax placed on upcoming ballot under statute governing elections to repeal emergency permissive taxes and, thus, were not entitled to mandamus relief compelling board of elections to certify the petition. Statute set out procedures for repeal of emergency tax resolutions, while a separate statute governed nonemergency tax resolutions, and parties stipulated that the county board of commissioners did not adopt the tax on an emergency basis.

Fitch: U.S. Cannabis Legalization.

As acceptance for cannabis legalization expands, the widely varied regulation and tax structures at the state and local levels have led to a measurable – and in some cases substantial – revenue boost, according to a new Fitch Ratings report: US States Experiment with Cannabis Legalization.

Counties Fight for SALT Seduction, House GOP's Top 'Pay-For'

State and local governments, National Sheriffs' Association, National Association of Realtors and more are fighting for the SALT deduction

NACo and 20 partner organizations are mobilizing ahead of this week's planned release of details about a Congressional tax reform effort expected to target the state and local tax deduction (SALT). House Republicans will meet Sept. 27 to review the comprehensive tax reform framework developed by House Speaker Paul Ryan (R-Wisc.), House Ways and Means Chairman Kevin Brady (R-Texas), Senate Majority Leader Mitch McConnell (R-Ky.), Senate Finance Committee Chairman Orrin Hatch (R-Utah), Treasury Secretary Steven Mnuchin and National Economic Council Chairman Gary Cohn. The tax-exempt status of municipal bonds, also a county priority, is also a likely target.

Members of Americans Against Double Taxation oppose any proposal that repeals or modifies the deduction, which has been part of the federal tax code since 1913. Changes to the deduction would mean higher bills for taxpayers, even with a potential increase in the standard deduction, and consequently would reduce county and local government revenues and affect public service delivery.

Eliminating the deduction would net the federal government nearly $1.3 trillion over 10 years, giving Congressional Republicans room for federal tax cuts. Of taxpayers who claim the deduction, 87 percent of have incomes below $200,000.

"The elimination of the SALT deduction would hurt our residents, especially middle class homeowners, with a triple whammy of higher federal taxes, declines in property values and threats to essential state and local services, like K-12 schools, public safety and infrastructure improvements," NACo First Vice President Greg Cox said during a Sept. 21 media call on the coalition's effort.

"This is not a partisan issue, this about helping everyday American make ends meet. This is about allowing state and communities solve state and local problems."

Cox is a supervisor in San Diego County, Calif., where half of one million residents took the deduction in 2015, 44 percent of whom earned less than $200,000.

“This is nothing more than an assault on the middle class if this deduction is lost, it’s going to have a tremendous impact on families and households in San Diego County.”

The coalition includes 21 members representing levels of state and local governments, school boards and education associations and the National Association of Realtors, the National Sheriffs’ Association and the International Association of Fire Fighters. Organizations representing the same sectors successfully fought for the SALT deduction during the debate over the Tax Reform Act of 1986.

“We’re mobilizing because tax reform is real,” said NACo Executive Director Matt Chase. “The White House framework that was released hinted that SALT would be eliminated. We’re hearing that the House Republican blueprint will continue to eliminate SALT, that we are the number one pay-for,” to balance tax cuts.

He noted that the scope of details the coalition expected from Congress next week — a framework or full legislative text — wasn’t clear.

The coalition is fighting attempts to portray this as a benefit to the wealthy or a subsidy for state and local governments.

“If this goes through, instead of allowing working families to deduct the amount they pay in state and local taxes, the federal government will basically be forcing taxpayers, who make up backbone of our community, to pay taxes a second time on the same income,” said Elizabeth Kautz, mayor of Burnsville, Minn. “The loss in local revenues could result in a cut in local services. It will be a further erosion of the partnership that we have offered and continued to seek. Any changes will disrupt the ability of state and local government to raise the revenue they need to support critical public services.”

Little Rock, Ark. Mayor Mark Stodola said SALT repeal would put local governments in a difficult position, not only to fund essential services but to work with citizens.

“America’s cities would face enormous pressure to lower local tax rates to offset the decision,” he said. “Federal leaders would wash their hands of the tough decisions that we on the local level…need to make in order to keep our budgets in the black.”

Of the 20 Congressional districts with the most SALT deductions in 2015, 45 percent are represented by Republicans.

“SALT knows no color, there are significant numbers of itemizers in Congressional districts across the country held by Republicans and Democrats,” said Bob Chlopak, manager of Americans Against Double Taxation. “We are looking far and wide but we believe we have a rich pool from which we are going to target and get the votes we need to make it clear that tax reform cannot be passed if repeal of SALT is part of it.”

NATIONAL ASSOCIATION OF COUNTIES

By CHARLIE BAN Sep. 21, 2017

[GFOA - Now is the Time to Act on SALT Tax Reform]

What Can You Do?

Call Your Representative on the House Ways and Means Committee. Is your Congressional representative on the House Ways and Means Committee? Call them right away and urge them to voice their opposition to eliminating deductibility. The GFOA Report, [“The Impact of Eliminating the State and Local Tax Deduction,”]() shows the percentage of tax filers in their districts that use the deduction and the potential impact of eliminating it.

Call Your U.S. Senators and Representatives. Even if your Congressional representation is not on the committee, it is still important to let them know how important this issue is. It’s important to bring as much attention as possible to this threat. To make more of an impact, make an appointment to visit with or call their district staff directors.

Activate Your Community. Congress also needs to hear from voters, taxpayers, businesses, realtors, homebuilders, educators, and anyone else in your cities and counties who will be harmed by this proposal.

Share Feedback. Please let GFOA’s Federal Liaison Center know about any actions you take and commitments or feedback you receive by e-mailing Emily S. Brock or Michael Belarmino.

Talking Points

- If our taxpayers lose the federal deduction for their state and local income, property, and sales taxes, they will face “double taxation.”
- Simply put, this change would basically be forcing taxpayers – who make up the backbone of our economy – to pay taxes a second time on the same income instead of allowing working families in every one of our communities to deduct the amount they pay in state and local taxes.
- Research shows that 39% of taxpayers with annual earnings between $50,000 to $75,000 use this deduction, as do 70% of taxpayers with annual earnings between $100,000 and $200,000.
- The proposal to eliminate deductibility would have a drastic impact on home ownership and the value of current homes. Reducing or eliminating this deduction is a tax hike for homeowners.
- This deduction has existed for more 100 years, since the federal tax code was established.
- States and local governments use revenues from property, sales, and income taxes to help finance long-term infrastructure projects, local law enforcement, emergency services, education, and many other services.
- By eliminating the federal deductibility of these taxes, Congress would shift the intergovernmental balance of income taxation and force cuts in critical state and local services.
- Federal laws or regulations should not preempt, limit, or interfere with the constitutional or statutory rights of states and local governments to develop and operate our own tax systems.
- This is not just a fight over money and taxes. It is perhaps the most important debate about the proper balance and true partnership between local governments, states, and the federal government.

TAX - CALIFORNIA

[California Cannabis Coalition v. City of Upland]()

Supreme Court of California, California - August 28, 2017 - P.3d - 3 Cal.5th 924 - 2017 WL 3706533 - 17 Cal. Daily Op. Serv. 8392

Initiative sponsor petitioned for writ of mandate to compel city to hold a special election on an initiative imposing a charge on medical marijuana dispensaries.

The Superior Court denied petition, determining that the charge constituted a tax and had to be placed on the next general election ballot. Sponsor appealed. The Court of Appeal reversed and directed the trial court to issue writ of mandate compelling city to place initiative on special ballot. City petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Term “local government” in constitutional provision limiting power of local government to impose general tax did not encompass the electorate;
- Distinction between local government and its governing body in provision did not indicate that “local government” included electorate;
- Reference to voters’ initiative power in Proposition 218, which added constitutional provision, did not indicate intention to subsume tax-related initiatives within ambit of Proposition;
- Provision did not indirectly encompass imposition of taxes by electorate via initiative;
- Term “impose” in provision meant to establish, not to collect;
- Clear evidence of intended purpose to constrain exercise of voters’ initiative power was necessary to construe provision as imposing such limitations; and
- Determination that sponsor’s proposed initiative was governed by provision did not relieve city of its statutory duties with respect to initiatives whose proponents requested special election.

Supreme Court would exercise its discretion to address issue of whether constitutional provision that prohibited local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election restricted voters’ constitutional power to propose and adopt initiatives and whether initiative imposing a charge on medical marijuana dispensaries should be submitted to voters at special election, rather than general election, even though initiative had been submitted to and defeated by voters and issue was technically moot; issue presented important questions of continuing public interest that had potential to evade review.

Term “local government” in constitutional provision added by voter initiative that prohibited local government from imposing a general tax unless that tax was first submitted to and approved by voters during general election did not encompass the electorate, and thus provision did not require that voter initiatives pertaining to imposition of taxes be first submitted to electorate at general election, rather than special election. Construing “local government” as excluding electorate was consistent with common understanding of term, related provisions, and ballot materials for initiative that added provision, and interpreting term “local government” to include the electorate would give that term a broader meaning than adjoining specific term, “local or regional governmental entity.”

Existence of a distinction between a local government and its governing body in state constitutional provision limiting ability of local governments to impose, extend, or increase any general tax did not indicate that term “local government,” as used in provision, included the electorate and that provision would therefore apply to voter initiatives; separate references to government and its governing body did not imply the absence of a meaningful distinction between the government and the public it served, distinction between electorate and governmental entities was identified elsewhere in provision, and term “local government” plausibly referred to the entire organization constituting local or regional governmental entity, and not simply a locality’s elected officials.

Reference to voters’ initiative power in Proposition 218, which prohibited local government from imposing a general tax unless that tax was first submitted to and approved by voters during general election, did not demonstrate that voters knew initiative power could affect local taxes and that voters intended to subsume tax-related initiatives within ambit of Proposition, and thus reference to initiative power did not support restricting power by requiring that tax-related initiatives be first submitted to electorate at a general election, rather than special election; Proposition did not place any limitations on initiative power, and inferring a calculated decision to squelch voters' initiative rights would improperly embrace presumption against initiative power.

Constitutional provision added by voter initiative that limited ability of local governments to impose, extend, or increase any general tax did not indirectly encompass imposition of taxes by the electorate via initiative; fact that voters' approval acted as precondition to a tax measure becoming operative did not transform voters into "local government" referenced in constitutional provision, and there was no indication that requirement under provision that general taxes be submitted to voters at a regularly scheduled general election was intended to apply to electorate's initiative power.

Term "impose" in constitutional provision that prohibited local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election meant to establish, not to collect, and thus city was not precluded from collecting a general tax imposed via voter initiative unless and until tax was approved by voters at regularly scheduled election, rather than special election; ordinary meaning of "impose" was "to establish," and construing "impose" as meaning "to establish" was consistent with usage in relevant ballot materials.

Requirements of constitutional provision prohibiting local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election apply only when a local government seeks to impose, extend, or increase a general tax.

Requirement under constitutional provision limiting ability of local governments to impose, extend, or increase any general tax that a general tax be submitted to the voters at a general election does not apply to taxes that are imposed by initiative after securing the electorate's approval in a manner consistent with statute setting forth local government's duty with respect to voter initiatives whose proponents request a special election; a contrary conclusion would work an implied repeal of statute, something against which courts have a strong presumption.

Clear evidence that constraining exercise of voters' initiative power was intended purpose of constitutional provision limiting ability of local governments to impose general tax, rather than evidence that voters intended to exempt initiative power from provision as precondition for preserving that power in unencumbered form, was necessary to construe provision as applying to tax-related voter initiatives; court had obligation to protect and liberally construe initiative power and to narrowly construe provisions that would burden or limit its exercise, and clear statement rule was consistent with and appropriately advanced duty to safeguard exercise of initiative power.

City's unilateral determination that proposed voter initiative imposing a charge on medical marijuana dispensaries constituted a general tax and was therefore governed by constitutional provision that prohibited local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election did not relieve city of its obligation to adhere to statute setting forth local government's duty with respect to voter initiatives whose proponents requested a special election; deadlines under statute were mandatory, and proposed initiative was not a tax measure on its face, given that it purported to propose a fee.

TAX - VERMONT

[Rutland County Parent Child Center, Inc. v. City of Rutland]

Supreme Court of Vermont - September 1, 2017 - A.3d - 2017 WL 3821833 - 2017 VT 81

Privately owned parent-child centers sought review of city tax assessor's determination that centers did not qualify for the public-use exemption from property taxation.

After a bench trial, the Superior Court determined that centers qualified for the exemption. City appealed.

The Supreme Court of Vermont held that:

- Centers were wholly dedicated to public use;
- Centers directly benefited an indefinite class of persons; and
- Centers conferred a benefit on society as a result of the benefit conferred on the persons directly served, as required as part of the test for whether a property qualified for a public-use exemption from property taxation.

[Someone Left the Crayons Out, and Now the Tax Lawyers Are Drawing Pictures]

Timing, as they say, is everything. The tax-exempt bond rules are full of deadlines and sunsets, both before and after the issue date and before and after the project is finished. [Here is a diagram of how some of these rules work together.] It's by no means exhaustive, but certainly exhausting. Maybe you'll find it helpful; it's designed to be printed on 11 x 17 paper, for those who prefer the analog version, and it's suitable for framing for those who have empty space on their office walls. We'll update it from time to time. Enjoy.

The Public Finance Tax Blog

By Johnny Hutchinson on September 21, 2017

Squire Patton Boggs

TAX - OHIO

[NWD 300 Spring, L.L.C. v. Franklin County Board of Revision]

Supreme Court of Ohio - September 14, 2017 - N.E.3d - 2017 WL 4081818 - 2017 -Ohio-7579

Condominium unit owners filed complaints challenging an increase in the valuation of the land underlying the condominiums for tax purposes. The Franklin County Board of Revision adopted the county auditor's appraisal.

Unit owners appealed, and the Board of Tax Appeals adopted the land value in the city schools board of education's appraisal. Unit owners appealed.

The Supreme Court of Ohio held that the Board of Tax Appeals did not abuse its discretion in finding appraisal submitted by city schools board of education more probative of the value of the land.

Board of Tax Appeals did not abuse its discretion in finding appraisal of land underlying condominium complex submitted by city schools board of education more probative of the value of the land than that performed by appraiser hired by unit owners. Board's appraiser's use of comparables in central business district, despite fact that land at issue was outside of such district, reflected the appraiser's opinion that subject property's location was actually better than comparables' location, as appraiser noted that area surrounding subject property commanded higher rents than did those around comparables, and reference to mixed-use comparables comported with highest-and-best-use determination, despite fact that subject property had no commercial tenants.

South Dakota Supreme Court Rules in Favor of Remote Retailers; Next Step US Supreme Court?

Yesterday, the South Dakota Supreme Court released its much-anticipated opinion in the *Wayfair* litigation, affirming a March 2017 trial court decision granting the remote retailer's motion for summary judgment on the basis that the economic nexus law enacted in 2016 (SB 106) is unconstitutional and directly violates the US Supreme Court's dormant Commerce Clause precedent in *Quill Corp. v. North Dakota*.

The South Dakota litigation remains at the front of the pack of a host of state court cases challenging similar state economic nexus laws across the United States. The expedited review (and decision) by the South Dakota Supreme Court here is significant, and puts the litigation well within the range of cases that would be decided by the end of the October 2017 Term (*i.e.*, by July 2018), assuming cert is granted—which is by no means a guarantee. The state has 90 days to file a cert petition with the US Supreme Court, which can be extended upon request. Stay tuned, as this litigation is far from over and the sitting US Supreme Court will be tasked with deciding whether they will honor Justice Kennedy's request to bring a case before the Court in *DMA v. Brohl*.

The full South Dakota Supreme Court opinion is available here.

Last Updated: September 19 2017

Article by Stephen P. Kranz, Mark Yopp and Eric Carstens

McDermott Will & Emery

Atlantic City Casino Tax Appeal Settlements Covered Through Municipal Bonds.

Atlantic City reached property tax appeal settlements with numerous casinos last month, and the state government says it's funding the payments through the issuance of municipal bonds.

Bally's, Caesars, Golden Nugget, Harrah's, Tropicana, and the former Trump Taj Mahal and Trump Plaza all reached tax deals that totaled $68 million, a staggering sum, but also one that saved many millions for Atlantic City. New Jersey says it has already sold $68 million in state bonds to cover the disbursements, and even better, the debt investments were issued on relatively low interest rates.

State-appointed takeover leader Jeff Chiesa, a former US senator for New Jersey, revealed that the bonds have a 4.1 interest rate, which will save the city and state millions.

> **"The fact that the city obtained bond insurance and sold the bonds at a low-interest cost means it is well-positioned to responsibly pay down the tax refunds it owes to casinos while preserving critical public services," Chiesa explained in a statement. He went on to say that the fiscal turnaround is excellent considering the city "was contemplating bankruptcy before we stepped in to manage its finances."**

Under the current PILOT (Payment In Lieu of Taxes) program, casinos guarantee the city $120 million annually. In exchange, the town cannot increase property taxes on the resorts, but the resorts also cannot appeal the fee in the future.

Tax Refund

Beginning in 2009, as the US recession was firmly felt across the nation, Atlantic City casinos began appealing the valuations of their resorts. The local government, in desperate need of revenue as gaming and tourism plummeted, decided to instead increase the assessed values of the properties in order to gain additional taxes.

A legal fight ensued over the course of many years, with courts eventually siding with the resorts that they had indeed been paying far too much for several years.

> The Borgata, the city's biggest revenue earner, sent in $165 million more than it should have between 2009 and 2015, a court deemed. On the hook for the return, Chiesa's takeover office managed to swindle a sweet deal by settling with the MGM-owned resort for just $72 million.

Cleared for Recovery

The looming appeals was a leading reason New Jersey Governor Chris Christie (R) and the state legislature decided to take control of Atlantic City's finances. The former presidential candidate said Mayor Don Guardian's inability to settle the property tax disputes forced the state to intervene.

Uncertain as to just how much property tax money Atlantic City was going to be forced to return impeded the beachfront gambling town's financial future, Christie explained.

> **"The settlements reached with these casinos are the culmination of my administration's successful efforts to address one of the most significant and vexing challenges that had been facing the city," Christie said last month.**

Chiesa has the authority to govern the city's finances for up to five years. Both the state and Atlantic City government hope the recovery is executed much faster.

CASINO.ORG

SEPTEMBER 23, 2017 BY KATIE BARLOWE

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8 Ways Your Readers May Be Paying for Their Football Stadium.

The National Football League makes more money than any other pro sports league in the country. Over the past 20 years, NFL teams have raised billions of dollars to renovate stadiums and build new ones. The most expensive is New Jersey's MetLife Stadium, home to the Giants and Jets, which cost $1.6 billion. The cheapest is the Washington Redskins' FedExField, coming in at a mere $250 million.

The majority of these stadiums are primarily funded by the public, but without much public input. If your community is home to an NFL facility, readers will want to know how they're paying for the building, maintenance, or renovation of their mega stadium. Here are places to look.

Tax-exempt Municipal Bonds

Tax exempt municipal bonds are usually responsible for funding a big chunk of these stadiums. Local government leaders can issue revenue bonds to help finance the big projects, just as they fund bridges, airports, hospitals and subsidized housing. Two U.S. Senators, Corey Booker (D-NJ) and James Lankford (R-OK) introduced a bill in 2016 to ban the use of municipal bonds to pay for pro sports stadiums.

Private Funds

While the MetLife Stadium was 100 percent privately funded, according to a CBS Minnesota report, most stadium projects are not majority funded by private funds. Most teams in the NFL do use private funds, but they usually cover less than half of the total cost.

Food and Beverage Taxes

Ticket surcharges are obviously a large source of game-day revenue, but food and drink also contribute to the bottom line. Taxes on beverages and food go toward paying the lease on the stadium (teams don't fully own them) and paying for future costs. Now you know why a beer cost you over $10.

Rental Car and Hotel Taxes

This story from USA Today reveals a little-known fact about tourist fees: When you pay for a rental car or hotel, you are probably financing that city's future stadium project. Page eight of this State of Nevada Senate bill draft about stadium financing shows how the state plans on using the tourist fee to pay for parts of its new $2 billion facility for the Raiders.

Live Entertainment Taxes (LET)

Licensed gaming establishments (such as casinos) that host non-gaming events (such as concerts) usually will include a tax for live entertainment, often assessed during ticketing. The State of Nevada Department of Taxation outlines its state's live entertainment tax here. A portion of that tax may go to support the local NFL stadium.

Parking Fees

Parking fees and taxes are another significant source of stadium revenue. Chicago Bears fans know to expect to pay $50 dollars for parking. Even as Chicago Mayor Rahm Emmanuel talks about additional renovations, those funds can go toward anything stadium-related.

State Infrastructure Funding

Just like tax-free municipal bonds, state infrastructure grants are sometimes used to build stadiums instead of public facilities such as roads and schools. This document from Convention Sports & Leisure International, shows how State lottery money is used for stadiums. The Seattle Seahawks took this route when building Century Link field

Stadium Sales Tax

Some municipalities charge a stadium sales tax to generate money. For example, the Professional Football Stadium District of Brown County, Wisconsin, enacted a local sales tax for its stadiums when it sought to renovate Lambeau Field, originally built 1956 for a cost of $960,000 (covered equally by the Packers Corporation and bonds issued by the City of Green Bay). The stadium's most recent renovation, costing $312 million, used no public tax money.

Donald W. Reynolds National Center for Business Journalism

by Jimmie Jackson | September 13, 2017

Exposing Government Favoritism.

A new accounting rule will give taxpayers a better understanding of corporate handouts.

Every paycheck we receive lists the earnings taken away by various payroll taxes. But as aggravating as paying taxes may be, at least we have a partially transparent view of where the money goes. Now, thanks to a new accounting rule, we'll also have better information for how state and local governments provide corporate handouts.

For the first time, city and state governments are releasing financial reports covered by the new Government Accounting Standards Board's Statement 77, which requires governments following "Generally Accepted Accounting Principles" – the widely accepted industry standard – to report the value of tax abatements in their yearly financial statements.

Tax abatements are a common tool used by governments to stimulate economic development, but the taxpayer costs of such agreements are often hidden. This is a problem, because the cost of such corporate handouts from state and local governments is estimated to be as high as $70 billion per year.

The tax abatements that GASB 77, as it's also known, focuses on are part of the larger body of "targeted economic development incentives." Many of these tax breaks are high-profile and subject to vigorous public debate, since they offer large direct subsidies or tax abatements to major corporations, like the recent $3 billion in tax credits offered to Foxconn by Wisconsin.

However, many more are smaller and escape public notice. Regardless of the size of the subsidy, after the initial debate there's often little attention paid to the long-run effects of such subsidies on government budgets, let alone their actual economic impact.

One of the most recent and heavily publicized such examples was the $7 million in tax credits and grants that Indiana provided to Carrier Corporation to prevent it from relocating jobs to Mexico. The size of this deal is relatively small in relation to the $1.4 billion Nevada gave Tesla or the $8.7 billion Washington gave Boeing, and it's likely that few people would have known about the deal had it not been reported so heavily by the media because of President Donald Trump's involvement. The new reporting rule will help illuminate these kind of deals in thousands of local governments across the U.S.

This transparency is important because of the impact these targeted tax breaks can have on local government finances. Pearl, Mississippi offers a dramatic example: In 2005 Pearl provided $28 million in public funding for stadium construction to convince the Richmond Braves minor league baseball team to relocate there. Because the predicted increase in tax revenue from the team's presence has fallen short of expectations, the city has been forced to use taxpayer dollars from the city's general fund to make payments on the municipal bonds they issued to finance the stadium. These payments have consumed more than 5 percent of annual government spending, and led Moody's investment service in 2015 to downgrade Pearl's credit rating to junk bond status.

Furthermore, the new transparency rules will reveal the side-effects of such tax incentives by requiring public entities to report when they lose tax revenue because of abatements given by other governments. For example, school districts will now provide information on the amount of funding lost due to property tax abatements given by their municipal governments.

In addition, the indirect effect of these tax breaks – the influence they have on subsequent government policies and tax increases, and the broader economic impact of such changes – should also become clearer.

This means that that GASB 77-related information might be able to address a number of interesting policy questions. For example: Are tax abatements correlated with subsequent tax increases? And are schooling outcomes or emergency responder response times negatively affected by decreased funding due to tax abatements?

Perhaps more importantly, the fact that such breaks are "targeted" means that government officials are picking winners and losers. They provide a financial advantage to those who lobbied successfully for political favor, while making other firms – often the subsidized business's competitors – bear the burden through higher taxes.

State and local governments are effectively encouraging "rent-seeking" – the wasteful practice of devoting economic resources (time, money, talent, etc.) toward gaining government-granted privilege rather than focusing on increasing productivity or serving customers better. This skewing of business priorities leads to decreased economic growth.

Even worse, when government-granted privileges like these tax breaks are commonplace, ordinary people lose. Either the taxes they pay are correspondingly higher or the quality and quantity of public services are lower than would otherwise be the case.

In short, the new transparency rule will allow us to peek behind the curtain and better quantify the taxpayer money devoted to targeted economic development incentives. It will show taxpayers just how much of their money is being given away in the form of political favors and it will illuminate how government handouts contribute to municipal budget crises, higher taxes and reduced public services. This understanding could offer greater motivation for policy changes to address government favoritism.

U.S. News

By Michael Farren and Jared Mercadante | Sept. 11, 2017, at 11:35 a.m.

Michael Farren is a research fellow with the Mercatus Center at George Mason University.

Jared Mercadante was a summer research intern with Mercatus Center and is a student at Roanoke College.

The State and Local Tax Deduction Doesn't Benefit Only Blue State Households.

The red-blue divide on these deductions is less apparent at the congressional district level.

The Trump Administration and key congressional Republicans have proposed repealing the itemized deduction for state and local taxes as one way to help pay for tax rate cuts for businesses and individuals. Treasury Secretary Steven Mnuchin frequently offers it as an example of a tax break that primarily benefits high-income households and one that should be on the chopping block in a tax reform plan. An added political advantage for Republicans is that the deduction is most valuable in states with high taxes and high incomes, which tend to be "blue states."

But the red-blue divide is less apparent at the congressional district level. Enclaves of high-income Republicans live in the New York suburbs, for example. In three Northern New Jersey GOP districts, more than half of residents claim the deduction for taxes paid. All told, 45 percent of the top 20 districts ranked by percentage of residents claiming the deduction have Republican representatives.

The following map shows the national distribution of taxpayers claiming the state and local tax deduction by congressional district. A district's residents can benefit if they itemize deductions, but only about one-third of individual income tax filers do so. The most common factor that leads to itemizing is high state income or property taxes; and most high-income households who live in states with income taxes have large state tax deductions. Homeownership is also a key attribute since mortgage interest and property taxes are deductible expenses. And large charitable deductions can also make someone an itemizer (that is why low-tax Utah has an unusually high percentage of returns that itemize deductions).

Continue reading.

Tax Policy Center

by Leonard E. Burman & John Iselin

September 12, 2017

Effects of a Federal Value-Added Tax on State and Local Government Budgets.

Abstract

A longstanding concern of state and local governments is that a federal value-added tax (VAT) could severely limit their reliance on sales taxes as a major source of revenue. This concern is too narrowly focused; a federal VAT could affect revenues from other sources and spending more than sales tax receipts. These broader budgetary effects have received little attention, even though they are a direct consequence of how a VAT would affect incomes, relative prices, and the value of existing assets.

Download PDF.

The Urban Institute

by James R. Nunns & Eric Toder

September 8, 2017

Fitch Places 33 USPF Not-for-Profit Healthcare Ratings on Watch Upon Criteria Exposure Draft Release.

Link to Fitch Ratings' Report: Fitch Places 33 USPF Not-for-Profit Healthcare Credits on Ratings on Watch Upon; Criteria Exposure Draft Release

Fitch Ratings-Austin-08 September 2017: Fitch Ratings has taken action on 33 not-for-profit hospital and healthcare systems following the release of its 'Exposure Draft: U.S. Not-for-Profit Hospitals and Health Systems Rating Criteria' on Sept. 6, 2017. A total of 16 ratings have been placed on Rating Watch Positive and 17 on Rating Watch Negative. These actions impact approximately $16.7 billion of total debt outstanding.

In a related action, Fitch has also placed the 'A' rating assigned to Northwell Health on Rating Watch Negative. Please refer to Fitch's press release dated Sept. 8, 2017 for more details.

KEY RATING DRIVERS
CHANGE IN CRITERIA: The Rating Watches reflect those ratings with the greatest risk of transition under the upcoming criteria update. Following a six-week comment period, Fitch expects to publish final criteria on or about Nov. 6, 2017.

IDENTIFYING RATING WATCH CREDITS: The placement of the ratings on Watch reflects a preliminary, largely metric-based assessment of each hospital and health system's operating profile (revenue defensibility and operating risk) against its current financial profile (leverage and liquidity) to identify issuers whose ratings have a greater risk of transition once reviewed under the new criteria. Credits that significantly deviate from the net leverage expectations for their current rating category as outlined in the rating positioning table in the exposure draft are most subject to transition.

POSITIVE WATCHES: Rating upgrades will likely be tied to issuers that have been identified with midrange revenue defensibility characteristics and low relative leverage profiles.

NEGATIVE WATCHES: Likely downgrades will be associated with issuers demonstrating elevated leverage profiles, including pension liabilities, in the context of their operating profiles.

ADDITIONAL AFFECTED CREDITS: Fitch's regulatory policy requires all affected credits be reviewed within six-months of publication of final criteria. To this end, Fitch will review credits beyond the rating watch list that may have leverage profiles potentially inconsistent with their current rating given their operating profile.

FORWARD LOOKING & ASSYMTERIC RISK: Fitch's review to determine the affected credits, including those on Rating Watch, did not incorporate forward-looking base and rating case analysis presented in the Fitch Analytical Sensitivity Tool (FAST) or assessments of asymmetric risk factors, both of which will be key to determining the final rating outcome under the new criteria.

RATING SENSITIVITIES
RATING CHANGES RESOLVED WITHIN SIX MONTHS: Rating Watches will be resolved and affected credits reviewed within six months of the final publication and implementation of the 'Not-for-Profit Health Care Criteria'. The full rating review will be forward-looking and may reveal asymmetric risk factors or other characteristics supporting a different outcome for the key rating factor assessments (revenue defensibility, operating risk, and financial profile) and/or the ultimate rating than indicated by the Rating Watch.

For more information visit: https://www.fitchratings.com/site/uspf/comment

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Fitch U.S. Not-For-Profit Hospitals and Health Systems Criteria Revision.

Fitch Ratings has revised its US Not-For-Profit Hospitals and Health Systems rating criteria to enhance its traditional, through-the-cycle, analytical assessment of a provider's key strategic direction, operating performance and financial characteristics. Notable benefits of the revised criteria include:

Anticipated Rating Impact Limited

Fitch expects criteria-driven rating changes to affect less than 15% of the portfolio, with a roughly equal mix of upgrades and downgrades. Upgrades are likely for issuers with enhanced revenue defensibility characteristics or less volatility in Fitch's through-the-cycle analysis, while downgrades are likely for issuers with elevated operating risk and leverage, which expose them to greater volatility in a through-the-cycle analysis.

Rating Changes More Predictable

In a sector characterized by low default risk, insight into an issuer's vulnerability to adverse conditions and credit deterioration is of paramount importance. The revised criteria more clearly define and communicate Fitch's expectations of the range of performance within which a rating is expected to be stable, versus conditions which could prompt a rating change.

Continue reading.

MBFA Chair Contributes Op-Ed in The Hill.

Today, Steve Benjamin, Mayor of Columbia, S.C., and Chair of the Municipal Bonds for America (MBFA) Coalition, contributed an op-ed in The Hill, which can be read here. The article focuses on how those faced with the devastation left behind by Hurricanes Harvey and Irma can look to the traditional bond market to rebuild stronger, smarter and more resilient communities.

Specifically, the Op-Ed Highlights:

- How the city of Columbia, S.C., can be a blueprint for cities and communities to rebuild using tax-exempt municipal bonds after being faced with an historic flood in October 2015
- What the impact to state and local governments would be if the municipal tax-exemption is capped or removed altogether
- That members of Congress and the administration should support the tax-exemption of municipal bonds as they consider infrastructure and tax reform proposals in their upcoming debates

September 14, 2017

Florida Judge Refuses to Validate Poinciana CDD Bonds.

BRADENTON, Fla. – A Florida judge declined to validate bonds proposed by two community development districts, saying they failed to properly apportion special assessments they planned to charge homeowners.

Polk County Circuit Judge Randall McDonald found the Poinciana CDDs' assessment rate schedule to be "arbitrary and capricious."

In denying the districts' request to issue $102 million of tax-exempt bonds, McDonald said Friday there was no proof that homeowners paying a higher assessment fee would have greater access to the amenities being purchased than homeowners paying a lower fee.

Solivita is a retirement community in Polk County, about 25 miles south of Orlando.

“The court finds no testimony or record evidence of higher valued or additional special benefits, which the districts intended to retain or add of which there was a correlating higher cost and, consequently, justified the homeowners being specially assessed at different rates,” McDonald said in a 25 page decision.

The uneven assessment scheme was one of several arguments residents in the Solivita retirement community near Orlando, led by Brenda Taylor and Bill Mann, used to challenge the bond validation by the CDDs.

The judge rejected their other arguments, including their contention that the purchase price for existing amenities being bought with bond proceeds was inflated.

The CDDs planned to use $73.7 million of bond proceeds to purchase amenities such as pools and parks from the developer, Avatar Properties, and its parent AV Homes. AV Homes was also selected to build a new wellness center and a performing arts center for an additional $11.2 million.

The bonds would have been backed by assessments on homeowners’ tax bills over 30 years.

Taylor and Mann appreciated the ruling regarding the special assessments, said J. Carter Andersen, an attorney with Bush Ross PA.

“That is a victory for all Solivita residents and gives the CDD Supervisors a second chance to decide to not pay $73.7 million for community amenity properties – the same properties that the residents argue in the class action case the developer is required to turn over to the homeowners association in just a few years,” Andersen said.

The assessments were based on a schedule of “club fees” charged by AV Homes that varied depending on when homes were purchased.

“The only basis for the club fee scheme – and sole basis upon which the districts’ supervisor boards approved to specially assess the homeowners at different rates – is the developer’s original subjective decision to implement the club fee scheme,” McDonald wrote.

He cited testimony from a July 18-21 trial in which the chairmen of the Poinciana CDD boards said they did not recall consultants explaining how the club membership fees were set.

Michael Eckert, attorney for the CDDs, said the boards of supervisors will meet jointly on Sept. 20 to decide how they will respond to the ruling. The Florida Supreme Court would hear any appeal.

“Throughout the entire transaction, the district boards and developer have publicly stated their intent is for residents to pay no more in debt special assessments than they were paying in club fees,” said Eckert, with Hopping Green & Sams PA.

Homeowners are charged according to four different levels of club membership fees based on when homes were purchased, he said. To structure the bond transaction and make the special assessments no more than the club membership fee each owner paid, Eckert said the developer agreed to make an “assessment equalization payment via a reduction in the purchase price” to pay down assessments for certain owners prior to the issuance of the bonds.

“Since the amounts in club membership fees were different for various properties based on when residents bought, not everyone would receive the same credit and some would receive no credit from the assessment equalization payment,” he said.

Eckert also said an alternative to the assessment schedule that was employed would have required the developer to make the equalization payment after the bonds were issued, “but that would result in what the district believed to be unnecessary transaction costs.”

“Nevertheless, the court took exception to the structure because it concluded that although the methodology consultant found that all units benefited equally from the project there was no rational basis for having different assessments levied on the various properties pre-issuance,” he said. “This was the sole reason cited by the court for denial of the validation.”

On the various elements of the law necessary to validate the bonds, Eckert said the court found that the Poinciana districts had the legal authority to issue the bonds and levy special assessments to secure the bonds, and that the CDDs demonstrated a valid public purpose for issuing the debt.

“The court expressly rejected the notion that the developer improperly controlled, unduly influenced, or coerced the boards and their consultants,” he said.

Residents argued that emails and other communications showed evidence that the developer exerted improper control over the districts.

McDonald said he did not find evidence that the developer improperly controlled the district boards and consultants during negotiations “to secure their predetermined purchase price to maximize their profits.”

“Beyond the expectant negotiated give-and-take and intimate cooperation and communication between individuals and entities involved in a complex real estate purchase and bond issuance process, at best it appears to the court that the developer may have engaged in tactics of persuasion on its behalf to maximize profits,” McDonald said.

McDonald also said he found no harm in the fact that the private developer is a primary beneficiary by selling the existing amenities to the districts.

“The public purpose for purchasing and constructing the existing and prospective amenities is not overwhelmed by the districts’ boards’ acquiesce to the developer’s firm stance on its targeted purchase price,” he said.

On other points, Eckert said that McDonald rejected other arguments made by the residents, including an interpretation of Florida law as it pertains to “fair value” and an argument that existing club membership fees could not be valued as part of the transaction.

The residents contended that the “club plan scheme” is illegal, and as such could not support an income-based approach for purchasing the amenities.

McDonald said the legality of the club plan was collateral to the bond validation, and declined to rule on the issue.

A separate, class-action lawsuit has been filed by Bush Ross on behalf of Solivita residents challenging the club plan and the fees imposed by the developer for the use of amenities in the community.

“In their class-action lawsuit against Avatar Properties and AV Homes, [the residents] are seeking an order that the club fee scheme is illegal, and requiring that the property be turned over to the homeowners with no payment at all,” Andersen said.

Andersen said the suit contends that the club plan violates the Florida Homeowners Association Act.

In the validation case, Eckert said the judge upheld the districts’ use of the income-based approach to value the sale of existing amenities, saying it was not arbitrary or capricious.

Residents had claimed that the CDDs planned to use the inflated price of $73.7 million to buy 17 existing amenities by using the income approach to capitalize the developer’s club membership fees over three decades.

The residents hired Urban Economics Inc., a state certified real estate appraiser, which found the market value of the amenities to be $19.25 million.

McDonald said the income approach to valuing the amenities was not arbitrary or capricious.

“The court finds defendants’ objection of plaintiff’s using an income based valuation methodology, rather than an alternative valuation methodology such as market value based on cost approach, is not sufficient in and of itself to invalidate bond issuance,” McDonald said. “For the court, the dispute of valuation methodologies allowed for reasonable people’s different opinion thereon.”

Solivita resident Martin Kessler, who represented himself without an attorney in opposing the bond validation, said he may not have lost the case but he did not win, either.

“By that I mean the judge did not agree with my arguments on a particular section of Chapter 190,” he said, referring to the Florida law that governs community development districts.

Kessler, 93, had argued that his interpretation of Chapter 190 required the Poinciana CDD and similar districts to perform a “just value” analysis of any real estate or property to be purchased from a contractor, engineer or any person. The CDDs argued that the “fair value” clause of Chapter 190 had no bearing on the case.

McDonald agreed with the CDDs, and said that obtaining a licensed appraiser was not a legal requirement for the district boards to consider the choice of consultant and valuation method. He also said the developer is entitled to seek payment for its income stream when negotiating the sale of property.

“This case only serves to highlight the many reasons why I believe Chapter 190, Florida Statutes, needs to be revised to prevent cases like this one from coming to district courts in the future,” Kessler said.

Daniel Fleming, a shareholder at Gray Robinson and lead attorney in the class-action litigation for AV Homes and Avatar Properties, said they were pleased with McDonald’s ruling supporting the actions of the CDDs, even though the bonds were not validated because of the assessments.

“Our client, AV Homes, looks forward to working with the CDDs to address the court’s concern so that the transaction can proceed,” Fleming said in a statement. “Regarding the class-action litigation, we continue to believe that the claims raised in that matter are without merit and we plan to vigorously defend our client against them.”

Fleming also said that claims by Andersen that Avatar is required to turn over club assets to the homeowners are “highly misleading and inaccurate.”

“Mr. Anderson’s contentions have not been substantively ruled upon by any court and we contend that they are directly inconsistent with Florida law,” Fleming said.

The Bond Buyer

By Shelly Sigo

Published September 06 2017, 12:02pm EDT

SLGS! (For Now)

Treasury has re-opened the sale of SLGS, now that the debt limit has been lifted through December 8. The SLGS window likely will close again around December 8, unless Congress takes further action.

(Though the strictures of legal ethics and of logic would counsel us against insinuating that we had anything to do with it, we cannot help but notice the coincidence in timing between this announcement and Alexios’s post on Friday about #SLGSforever.)

The Public Finance Tax Blog

By Johnny Hutchinson on September 12, 2017

Squire Patton Boggs

SLGS Forever?

For those of you keeping track, the SLGS window has been closed since March 8, 2017. With the recent discussions in Washington regarding a three-month debt limit increase, it is possible that the SLGS window will soon reopen, at least for a short time. (For prior coverage of the history of the SLGS window opening and closing, see here)

Recent news reports from Washington suggest that a permanent fix may be in the works. President Trump, Senate Minority Leader Charles E. Schumer, and House Minority Leader Nancy Pelosi are in discussions to eliminate the need for future debt ceiling votes by Congress. These news reports should be read with a grain of salt, or better yet with an entire salt block.[1] Any such legislation would be a significant departure from historical practices. According to the Congressional Research Service, “Congress has always restricted federal debt.” Were the debt ceiling to be eliminated, Congress would presumably only have to pass appropriation bills. With no debt ceiling, it appears there would be no need ever to close the SLGS window. SLGS FOREVER!

[1] Don’t get the salt anywhere near the SLGS, though, because it can kill them.

The Public Finance Tax Blog

By Alexios Hadji on September 8, 2017

Squire Patton Boggs

[A Gift Idea for the Tax Advisor Who has Everything.]

Are you struggling with what to get your hard-to-buy-for tax advisor for an upcoming birthday or holiday? Struggle no more, as I have the perfect gift idea. A PTIN. Why? Every tax return preparer needs one, and best of all, they are currently *free*.

Continue Reading

The Public Finance Tax Blog

By Cynthia Mog on September 13, 2017

Squire Patton Boggs

TAX - MINNESOTA

[Phone Recovery Services, LLC on behalf of State v. Qwest Corporation]

Court of Appeals of Minnesota - August 7, 2017 - N.W.2d - 2017 WL 3378870

Plaintiff brought qui tam action under Minnesota False Claims Act (MFCA) against various telecommunications service providers, arising out of collection of charges assessed for 911 services, Telecommunications Access Minnesota (TAM), and Telephone Access Plan (TAP).

The District Court granted defendants' motion to dismiss, and plaintiff appealed.

As matter of first impression, the Court of Appeals held that:

- Charges assessed for 911 services, TAM, and TAP were "taxes," and thus, statutes that required defendants to collect and remit those funds were "Minnesota statutes relating to taxation" not subject to MFCA, and
- Application of statutory definition of "tax" to charges, resulting in bar against qui tam action, did not impermissibly nullify MFCA liability for reverse false claims.

Charges assessed for 911 services, Telecommunications Access Minnesota (TAM) that provided devices and services to persons with communication disabilities, and Telephone Access Plan (TAP) that provided telephone assistance to low income individuals, were "taxes," and thus, statutes that required telecommunications service providers to collect and remit those funds were "Minnesota statutes relating to taxation" not subject to Minnesota False Claims Act; "tax" was statutorily defined as "fee, charge, exaction, or assessment imposed by a governmental entity on an individual," "tax" did not include "prices voluntarily paid by customers in return for receipt of governmental goods or services," charges were collected by Department of Public Safety, they were broadly imposed on customers who purchased telecommunications access lines and were not to tied to individual's use of services funded by those charges, and funds from charges benefited general public.

Application of statutory definition of "tax" to charges assessed for 911 services, Telecommunications Access Minnesota (TAM) that provided devices and services to persons with communication disabilities, and Telephone Access Plan (TAP) that provided telephone assistance to low income individuals, resulting in bar against qui tam action against telecommunications service providers under Minnesota False Claims Act (MFCA) as claim brought under “Minnesota statutes relating to taxation” did not impermissibly nullify MFCA liability for “reverse false claims”; rather, reverse false claims provisions remained effective for alleged violations involving claims, records, or statements that were not made under Minnesota Statutes relating to taxation.

TAX - INDIANA

City of Fort Wayne v. Southwest Allen County Fire Protection District

Court of Appeals of Indiana - August 10, 2017 - N.E.3d - 2017 WL 3428770

City filed complaint for declaratory judgment against a fire protection district and State auditor seeking a declaration that city was entitled to receive property tax revenues from territories that were annexed by city.

The Superior Court dismissed for lack of subject matter jurisdiction, and city appealed.

The Court of Appeals held that declaratory judgment action was under jurisdiction of superior court.

Declaratory judgment action brought by city against a fire protection district and State auditor, in which city sought a declaration that it was entitled to receive property tax revenues from territories that city annexed, was under jurisdiction of superior court, rather than tax court; although annexation affected the allocation of tax revenue, there was no tax law that needed to be applied for court to declare whether city was entitled to property tax revenue derived from the annexed territories

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Will Trump Target Muni-Bond Tax Break? Market Sees Little Chance.

- President, Treasury Secretary have show support for subsidy
- Muni yields shows that tax-break most valuable since 2010

Donald Trump and Treasury Secretary Steven Mnuchin have expressed support for maintaining the tax break on municipal bonds. The market takes them at their word.

As the Republican president embarks on a push for tax cuts, top-rated state and local government bonds due in five years are yielding just 65 percent of comparable Treasuries, holding near a more than seven-year low, according to data compiled by Bloomberg. That shows that investors are still placing a high value on the tax exemption. If they expected the tax break to be eliminated — or chipped away at — municipal yields would rise closer Treasuries to compensate for that risk.

“We’re not pricing in any scenario for the tax exemption to go away or be limited,” said Matt Fabian, a partner at Municipal Market Analytics. “The statements out of the administration have been favorable.”

Last week, Mnuchin told the Wall Street Journal that the preferential tax treatment is a subsidy for local governments, not wealthy bondholders. That echoed the arguments of state treasurers and city finance officers, who argue that it allows them to borrow cheaply for public works given that investors are willing to accept lower yields because they don’t have to pay taxes on the interest they receive.

The Treasury Secretary and top White House economic adviser Gary Cohn left the tax-exemption out of a briefing on the broad outlines of the administration's tax plan in April. And Trump expressed support to U.S. mayors in a meeting before his inauguration.

Other factors have worked to hold up prices in the municipal market recently, too. The amount of new bond sales has dropped 15 percent this year, even though money has continued to flow into the market.

"It's very difficult to tease out the worries of tax reform and how it's going to affect municipal bonds," said Stephen Winterstein, chief municipal fixed-income strategist at Wilmington Trust Co. "Investors probably aren't putting a whole lot of weight to it."

But, based on what's known so far know, Trump's push to slash corporate and individual taxes won't have a dramatic impact on the market, Fabian said. Cutting the top personal rate to 35 percent from 39.6 percent, as previously proposed, would be too small to affect demand. And a corporate rate in the mid-to-low 20 percent range also "would not be overly negative for municipals, as banks and insurers would likely still find munis attractive at that tax rate," Barclays Plc municipal strategists led by Mikhail Foux wrote in a Sept. 8 note.

What's more, advocacy by state and local officials and Wall Street in support of the tax exemption has been strong. More than 150 members of Congress of both parties have signed a letter asking leadership to reject any proposal to cap or eliminate the exemption on municipal bonds. Such a change would also be at odds with another administration goal: channeling more money into infrastructure, which is financed by tax-exempt debt.

"There's enough people in Washington who get how important it is for state and local governments to have a low cost of capital particularly if our governments are going to be the ones funding a lot of the infrastructure initiatives," said Hugh McGuirk, who oversees $26 billion of municipal bonds at T. Rowe Price Group Inc. "If they're a part of your plan why are you going to do something to make it more disruptive to them to raise money to fund your initiatives?"

Bloomberg Politics

By Martin Z Braun

September 13, 2017, 2:00 AM PDT

Muni Bonds' Tax Break Looks Safe For Now.

Donald J. Trump and Treasury Secretary Steven Mnuchin have expressed support for maintaining the tax break on municipal bonds. The market takes them at their word.

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Bloomberg News

Sep 13, 2017 @ 5:06 pm

Cities to Congress and the Administration: Tax Reform Must Respect Local Authority.

WASHINGTON — August 30, 2017 — This afternoon, during a speech in Springfield, Missouri, President Donald Trump outlined his plan for tax reform. While the speech did not provide many details on specific measures the president hopes to advance, it did reinforce the president's intention to simplify the tax code through comprehensive reform. In response to today's speech, National League of Cities President Matt Zone, councilmember, Cleveland, released the following statement:

> "City leaders applaud any effort to streamline our tax code, and welcome the president's emphasis on Main Street in the tax reform process. The federal government, however, should not attempt to place the burden of reform on cities and the hundreds of millions of residents who call them home.
>
> "While the administration and Congress have yet to provide details, the president has reiterated his plan to broadly target key deductions for elimination. As local leaders, we remain deeply concerned that the tax exempt status of municipal bonds and the state and local tax deduction may be eliminated in a misguided attempt to offset the costs of lower tax rates for top income brackets and corporations.
>
> "Each day, state and local governments rely on these critical provisions of the current tax code to calibrate their own local tax rates and raise the revenues necessary to keep housing prices and markets stable, build and maintain infrastructure along main street, fund our schools and educate our children, and keep our communities and law enforcement officers safe. Eliminating these deductions would place tremendous pressure for cities to lower taxes and further strain local budgets already bracing for cuts to city funding in the Fiscal Year 2018 federal budget.
>
> "Cities, states and counties are not a special interest tax loophole. Rather, they are the bedrock of our federal democracy that expect the continued flexibility to raise the necessary funds to address the concerns and challenges unique to their communities. We urge Congress to respect local authority and include city leaders in their ongoing discussions on tax reform.

# # #

The National League of Cities (NLC) is dedicated to helping city leaders build better communities. NLC is a resource and advocate for 19,000 cities, towns and villages, representing more than 218 million Americans

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IRS Sets New Deadlines for Issuers to Recover Muni-Related Overpayments.

WASHINGTON – The Internal Revenue Service has extended the deadline for issuers of tax-exempt and tax-advantaged bonds that file claims for the recovery of excess arbitrage they may have inadvertently rebated to the federal government.

Revenue Procedure 2017-50, which takes effect on Aug. 25, also applies to claims for the recovery of excess yield reduction payments or penalties in lieu of arbitrage rebate that issuers made to the federal government.

The IRS extended the deadline to two years and sixty days from two years for issuers who make these three types of payments to the federal government in a timely manner, that is, within 60 days after the issuer's final computation date of whether it has earned arbitrage. The final computation date is when a bond matures or is redeemed.

The new revenue procedure also allows issuers for the first time to file claims for recovery of overpayments if they made late payments to the federal government. These would be payments made after 60 days from their final computation date. They would have within two years after the late payment to file the claim.

The IRS said the changes were made "in the interest of sound tax administration.''

The deadline extension for claims for recovery of overpayments when payments were made on time was made to include the 60-day grace period to the existing two-year period. And the new procedure establishes a program to recover overpayments for late payments made to the federal government, which previously did not exist.

The revision covers tax-exempt as well as direct-pay and tax credit bonds, the latter two of which include Build America Bonds, Qualified Zone Academy Bonds, Qualified School Construction Bonds, Qualified Energy Conservation Bonds, Clean Renewable Energy Bonds, and New Clean Renewable Energy Bonds. Even though direct pay and tax credit bonds are taxable, they must still comply with arbitrage requirements.

Arbitrage can be rebated to the federal government over many years that the bonds are outstanding. The tax law requires arbitrage to be rebated in installments of at least once every five years during the life of the bond issue.

Sixty days were added to the claim deadline for overpayments of timely payments because the previous two-year deadline had failed to take into account the 60-day grace period.

The new deadline gives issuers that made a final rebate payment 60 days after the final discharge a full two years and sixty days to determine if there was an overpayment and file a claim with the IRS.

In addition, in cases where a late excess rebate payment is made after the 60-day window for final rebate payments, the revenue procedure now allows claims for overpayments to be made during a two-year window.

Before this revenue procedure took effect, there was no way for a bond issuer who made a late final payment to file a claim if it later discovered it to be an overpayment.

Arbitrage occurs when an issuer invests its bond proceeds at a higher yield than the bond yield. Bond issuers frequently invest their bonds proceeds until the money is needed. For instance, bond proceeds may be used on an ongoing basis as a contractor sends invoices for completed parts of a project.

The arbitrage earnings from those from higher yielding investments must be rebated to the federal government. The tax law permits issuers of certain construction issues to pay a penalty in lieu of arbitrage rebate. Issuers are also permitted to make yield reduction payments.

Some bond issuers miscalculate the amount of amounts they owe and discover the overpayments at a later date.

The Bond Buyer

By Brian Tumulty

Published August 29 2017, 2:16pm EDT

NABL Proposes "Enhanced Infrastructure Bonds" (or Build America Bonds 2.0)

The National Association of Bond Lawyers submitted eight legislative proposals to Treasury on August 22 with the stated purpose of improving the efficiency of tax-advantaged financing of much-needed public infrastructure projects (here is a link to the proposals). The proposals would broaden the availability and simplify the existing forms of tax-exempt bonds as well as create new forms of tax-advantaged bonds. One of the new forms would be Enhanced Infrastructure Bonds ("EIBs"), which could just as easily be called new and improved Build America Bonds ("BABs"). EIBs and direct-pay BABs share many characteristics, including generating federal payments to the issuer while paying taxable interest to holders, with the differences intended to make EIBs an even more attractive financing option and to eliminate the shortcomings of BABs that were discovered over the course of issuing more than $185 billion of direct-pay BABs during the brief period they were available – April 2009 through December 2010. The similarities and differences in EIBs and BABs are identified and explained below.

Continue Reading

The Public Finance Tax Blog

By Bob Eidnier on August 31, 2017

Squire Patton Boggs

St. Louis City Hall Sides With the Blues in Scottrade Center Lawsuit.

St. Louis City Hall is standing by a deal with the Blues to renovate Scottrade Center as the pact faces a legal challenge, the city's top attorney said Friday.

City Counselor Michael Garvin said a lawsuit against the public financing agreement "has no merit." The city and the Blues hockey ownership are both named as defendants in the petition filed Aug. 11, but Friday was the first time the city weighed in on the merits of the case.

Also Friday, plaintiffs in the case sought to make additional claims against the renovation plan's constitutionality.

In an amendment motion, plaintiffs' attorneys say the $64 million deal relies in part on funding from a Community Improvement District they claim violates the Missouri Constitution. They say the terms of bonds to finance the project are also unconstitutional.

The CID, others of which are usually formed by land developers or other private entities with city approval, would include only Scottrade Center. Because the city owns Scottrade Center, the deal's opponents say the city is in effect imposing a sales tax without voter approval.

The Blues argue in court filings that there is no uncertainty about the city's standing as owner of

Scottrade Center, and opponents appear now to be using those words against them in the amended petition.

“To the extent that Hockey Ownership claims that the City is the owner of Scottrade Center, the CID fails for two reasons,” the amended petition states.

The second challenge to the CID is that such taxing districts need the signature of the comptroller, Darlene Green, to take effect. Green has not signed any of the documents needed for the financing agreement to take effect, which the Blues owners Kiel Center Partners are now challenging in court in a separate lawsuit.

In a news release, Kiel Center Partners said that the amendments “are as shallow and embarrassing to our city as the original lawsuit itself.”

The plaintiffs are Alderwoman Cara Spencer, former state Rep. Jeanette Oxford and former city counselor James Wilson.

Friday’s motion from the plaintiffs also adds an allegation that the amount of debt the city would incur for the Scottrade Center renovation, totaling $105 million with interest, is an unconstitutional proposal unless it gets voter approval.

They say the financial agreement between the city and the Blues constitutes “an unconditional promise to pay” the amounts without making them subject to annual appropriations. Without a public vote, that’s unconstitutional under state law, attorneys wrote.

Garvin said he had not reviewed the proposed amendments fully, but at first blush believed the plaintiffs were confusing different statutes when it comes to bonds.

“The language they’re suggesting is required for certain types of deals, but I don’t think it is for this kind,” Garvin said.

It’s unclear yet whether the new counts brought by the plaintiffs will be allowed to be added to their lawsuit. That decision is now up to a judge, who is likely to let the Blues weigh in before taking action.

Kiel Center Partners did not elaborate on the Blues’ qualms with the proposed amendments, but said, “It is clear the plaintiffs and their attorneys have either failed to read or are disregarding underlying documents and statutes.”

In court filings, the Blues argue that the financing agreement does not violate the law, and they allege that the plaintiffs have no standing because they aren’t part of the Blues’ lease with the city.

In court filings, attorneys for the Blues say the case hearkens back to a 2006 case involving public funds for the new Busch Stadium, *Moschenross v. St. Louis County. Oxford*, a longtime advocate against public funding for major sports venues, was one of the defendants in that case, losing both in trial court and on appeal.

Relevant to the current lawsuit is the judge in *Moschenross* said public financing for professional sports venues aren’t unconstitutional if private profits are incidental and the project ultimately serves economic development. Blues attorneys said the current financing agreement “furthers recognized public purposes.”

The result of the *Moschenross* case was the undoing of a county voter-approved proposition requiring voter approval for publicly financing professional sports venues. In February, Oxford was one of two plaintiffs in a lawsuit against the Scottrade Center renovations that was dropped less than 24 hours after it was filed.

Court hearings on motions in the Spencer case and the Blues' lawsuit against the comptroller are both set for Sept. 8.

By Mike Faulk

Sep 2, 2017

St. Louis Post-Dispatch

Recent United States Supreme Court Ruling Has Far-Reaching Ramifications for Bond Financing: Bryant Miller Olive

TAMPA, Fla., Aug. 28, 2017 /PRNewswire/ — A recent U.S. Supreme Court ruling has paved the way for religious entities to potentially use tax-exempt bonds for secular projects on their properties, leading to questions about how this will play out as organizations consider bond financing for new projects.

Many church leaders are wondering if bonds could be used for everything from playgrounds to buildings as legal experts determine exactly what is covered in the recent *Trinity Lutheran Church v. Comer* decision.

On June 26, the U.S. Supreme Court, in a 7-2 decision, held that the government cannot exclude religious institutions from generally available, secular government programs solely because of the institutions' religious character.

A key potential ramification of this ruling is that religious institutions are now on solid legal footing to apply for tax-exempt bonds for building projects that are unrelated to religious instruction or ministry.

Historically, religious entities – most often a church and adjoining school – struggled to obtain bond financing due to uncertainty surrounding the breadth of the U.S. Establishment Clause and Blaine Amendments. The U.S. Establishment Clause and the Blaine Amendments (enacted in more than 35 states) were enacted to further the separation of church and state, including prohibiting direct government aid to educational institutions whose religious mission cannot be separated from their purpose.

In *Trinity Lutheran Church v. Comer*, the U.S. Supreme Court opinion highlighted a distinction between the status of the applying entity and the actual use of the facility being financed. In essence, the ruling stated that the intended use of the facility carries significantly more weight than the religious status of the applying entity.

"Previously, even if religious entities were not explicitly ineligible for bonds, financiers would shy away from these potentially controversial projects," said Kareem Spratling, Bryant Miller

Olive shareholder and public finance expert. "With this decision, I am now confidently recommending bonding as a potential funding avenue for clients trying to fund secular projects such as playgrounds and gymnasiums."

Spratling says several things for religious institutions to consider include the specific use of the project, if the facility would be open and available to the public, and if the project, while not directly tied to religious instruction, may have some crossover with religious instruction – for example, a roof that covers both a church and gymnasium.

As with any landmark decision, Spratling advises there is a strong possibility of further clarifying litigation on this issue around the country as religious entities move to utilize tax-exempt bonding for their projects. Due to the complex nature of bonding and the legal uncertainty of the landscape, entities should seek legal advice from bonding experts to determine if their project qualifies.

About Bryant Miller Olive: With a distinguished 45-year history of serving its clients' needs, Bryant Miller Olive represents governments, businesses and agencies in legal matters relating to public finance, state and local government law, complex transactions, project finance, and litigation. The firm has served as Bond Counsel on more deals than any other firm in the Southeast over the past five years, and more than any other firm in Florida over the past decade. Members of the firm are often called upon to handle some of the most complex legal issues in the boardroom and in the courtroom. The firm has offices in Tampa, Tallahassee, Orlando, Miami, Jacksonville, Atlanta and Washington, D.C. For more information, visit http://www.bmolaw.com.

IRS Seeks Applications for Advisory Committee for the Tax Exempt and Government Entities Division.

The IRS is seeking applicants for vacancies on the Advisory Committee on Tax Exempt and Government Entities (ACT). The committee provides advice and public input on the various areas of tax administration served by the Tax Exempt and Government Entities Division (TE/GE). Applications will be accepted through September 18, 2017.

TAX - WASHINGTON

Watson v. City of Seattle

Supreme Court of Washington - August 10, 2017 - P.3d - 2017 WL 3428951

Various organizations brought action against city, alleging that an ordinance that purported to tax firearms and ammunition sold within city limits was a regulation preempted by state law.

The Superior Court granted city's motion for summary judgment. Organizations appealed. The Court of Appeals certified a question, and the Supreme Court accepted direct review.

The Supreme Court of Washington held that:

- Ordinance was a tax, rather than a regulatory fee, and thus ordinance was not facially preempted;
- Tax was not limited by statute regulating business and occupation tax;
- State did not impliedly preempt field of firearm and ammunition taxation; and
- Ordinance did not conflict with statute preempting local regulation of firearms.

City's ordinance purporting to tax firearms and ammunition sold within city limits was tax, rather than regulatory fee, and therefore ordinance was not facially preempted by state firearm statute. Even though revenue was segregated, purpose of ordinance was to raise general revenue to provide broad-based public benefits, including public health research and gun safety programs, funds were allocated to nonregulatory purpose, and there was no direct relationship between expected amount of revenue generated and economic burden of gun violence.

City's flat tax on firearms and ammunition sold within city limits was not limited by statute regulating business and occupation tax. Even though city's tax and business and occupation tax were both excise taxes, city's tax was calculated on per unit basis, rather than measured as percentage of retailer's income, and city's tax did not affect gun retailers' business and occupation tax rate, which was capped by statute.

State did not impliedly preempt field of firearm and ammunition taxation by expressly preempting field of firearms regulation; preemption statute made no mention of taxation, purpose of statute was to advance uniformity in firearms regulation, which was achievable without restricting municipal tax authority, and legislature was typically explicit when preempting taxation.

Ordinance taxing firearms and ammunition sold within city limits did not conflict with state statute preempting local regulation of firearms, which allowed cities to "enact only those laws and ordinances relating to firearms that are specifically authorized by state law," and thus conflict preemption did not apply. Argument that taxation of firearms was required to be specifically authorized by state statute would have exempted firearms sales from all forms of taxation, including basic sales tax, and, in context, statute only required specific authorization for regulatory laws and ordinances.

TAX - NEW YORK

Sprint Communications Co., L.P. v. City of New York Dept. of Finance

Supreme Court, Appellate Division, First Department, New York - June 27, 2017 - N.Y.S.3d - 152 A.D.3d 184 - 2017 WL 2743348 - 2017 N.Y. Slip Op. 05194

Telecommunications service provider commenced action against municipality's department of finance, seeking declaratory judgment that it was subject to supervision of New York State Department of Public Service and therefore was liable for municipal utility tax and not municipal unincorporated business income tax.

The Supreme Court, New York County, granted municipality's motion for summary judgment declaring that provider was not utility within meaning of municipal utility tax code and therefore was liable for both utility tax and unincorporated business income tax. Provider appealed.

The Supreme Court, Appellate Division, held that:

- Provider, an unincorporated business, had burden of proving that it was entitled to statutory exemption, and
- Provider was not "utility" exempt from municipality's unincorporated business income tax.

Telecommunications service provider, an unincorporated business, had burden of proving that it was entitled to statutory exemption, in its action seeking declaratory judgment that it was subject to supervision of New York State Department of Public Service and therefore was liable for municipal utility tax and not municipal unincorporated business income tax.

Telecommunications service provider was not “utility” exempt from municipality’s unincorporated business income tax; provider was competitive entity that did not enjoy monopoly status and light regulation by public services commission (PSC) to which it was subject did not rise to level of supervision necessary to classify it as utility.

[Tax Policy by Tweet: Squire Patton Boggs]

One of the many recent targets of Twitter criticism from President Trump has been the internet retailer Amazon. Presumably after being informed by his staff that jobs in the retail industry constitute a much more significant share of national employment than those in coal mining (or after hearing about it on CNN), Mr. Trump posted the following tweet on August 16:

Continue reading.

The Public Finance Tax Blog

By Michael Cullers on August 23, 2017

Squire Patton Boggs

IRS Focuses on Tax Exempt Financings Involving Developers: Orrick

For a number of years, the IRS Office of Tax-Exempt Bonds (“TEB”) has expressed concerns about potential tax abuses that may exist in what it has characterized as “developer-driven deals” involving the use of tax-exempt bonds. TEB has generally used this term to describe tax increment financings, assessment and special tax bonds, and PILOT (payment in lieu of tax) bonds, and has also used this nomenclature to challenge the tax exemption of certain financings issued by special governmental districts such as community development districts. While it is entirely appropriate for TEB to focus on topics and bond issues like these, TEB often sees abuses and technical problems where none exist. Based on audit activity in recent years, it appears that TEB has adopted an approach of identifying tax-exempt bond transactions with significant private developer involvement and advancing the view that interest on such bonds is taxable, even when those transactions meet all applicable tax requirements and also satisfy the public and tax policies behind those requirements. Simply stated, TEB seems to take the view that developers benefit too much from these transactions for the bonds to qualify for tax-exemption regardless of the supporting legal authority, clear and specific provisions of the Internal Revenue Code (“Code”) and applicable Treasury Regulations notwithstanding.

State, city, county and other local governmental entities that issue municipal bonds, investors and market professionals are increasingly concerned about these attacks, often based on novel arguments by the IRS that are inconsistent with established tax law and traditional types of financing practices by municipal governments. An additional concern is that there seems to be confusion within TEB as to the different tax rules that apply to these financing structures. It is important for market participants to be aware of TEB’s posture regarding these transactions, and we believe it is useful at this juncture to clearly set forth the federal tax law requirements that apply to these financings in order to bring clarity to the marketplace, governmental issuers, legal experts and even the regulators.

Basic Principles of Tax-Exempt Financing

Since the first federal income tax was enacted, interest on obligations of states and local governments has been excluded from tax. In the 1930s and 1940s, the Internal Revenue Service ("IRS") asserted that interest on assessment bonds issued by local governments did not qualify for this exemption because private property owners that were obligated to pay the assessments (and not the issuing municipalities) were the real obligors on the bonds. The courts uniformly rejected those early IRS attempts. See, e.g., *Commissioner v. Pontarelli*, 97 F.2d 793, 1938 (Acq.); *The Riverview State Bank v. Commissioner,* 1 T.C. 1147, 1943 (Acq.); *Independent Gravel Company v. Commission*, 56 T.C. 698, 1971; Rev. Rul. 56-159, 1956 C.B. 609.

In response to IRS' concerns that these judicial decisions unduly expanded the availability of tax-exempt bonds for private businesses, in 1968 and again in 1986 Congress revised the Code to provide specific limits on the tax-exemption for municipal bonds that finance facilities for private persons. But Congress recognized that tax-exempt municipal bonds should continue to be allowed as a tool to promote certain traditional economic development purposes. Thus, even if an issue of municipal bonds is used to solely to finance property that is to be owned and used by a private person, Congress has allowed the bonds to be tax-exempt so long as principal and interest on the bonds is not payable from or secured by property used by any private person. For example, Congress made clear that municipal bonds that are secured by and payable solely from generally applicable taxes are to be tax-exempt even if all bond proceeds are used to fund a grant to a private business to induce it to locate a new factory within the boundaries of the issuer.

Traditional Financing Structures for Economic Development

Fostering local economic development, usually real estate and infrastructure development or grants to assist local business development, is one of the oldest and most important uses of municipal bonds. It is an important and well-established function of state and local governments. In many jurisdictions, it is perhaps more important than ever before given the pressing needs for economic growth and infrastructure development. While many borrowing structures are used, most of the municipal bonds issued for these purposes are either some form of assessment bond or tax increment bond. For example, assessment bonds were authorized by statute as early as 1915. In Texas, special districts trace their roots back to 1917 and public improvement district bonds ("PIDs"), secured and payable from assessments, were authorized in 1987. Tax increment bond financings ("TIFs") are authorized by statute in 49 States. They began in California around 1950 and in Texas around 1989.

Assessment bonds, including PID bonds in Texas, are paid from assessments or special taxes (as opposed to general ad valorem property taxes) levied on parcels of land that benefit from the local infrastructure facilities financed by the bonds. For general federal income tax purposes, assessment bond proceeds are treated as being loaned to the property owner or owners who are obligated to pay the future assessments. Tax increment or TIF bonds are different as they are bonds payable from future incremental ad valorem property or sales taxes, including PILOTs. In many cases, the incremental tax payments are derived from a wide array of property owners or other taxpayers. However, in some cases, the incremental tax payments are attributable to a specific developer or business enterprise. Regardless of the source of the incremental tax payments, such tax payments are "taxes of general applicability," and the obligation to pay generally applicable taxes is fundamentally different than the obligation to repay a loan.

Quite different tax requirements apply to assessment bonds as compared to tax increment bonds. This is one area where there seems to be confusion within TEB.

Overview of Tax Requirements

Generally, except in the case of assessment bonds (and certain specified qualified private activity bonds), proceeds of tax-exempt bonds cannot be loaned to a private developer ("private loans"). Such private loans, with the exceptions noted below, violate the private loan bond restrictions in the Code. In addition, generally tax-exempt bonds cannot be issued if both (i) the assets financed by the proceeds are used by a private party ("private use") and (ii) the bonds are paid with, or secured by, payments or assets provided by a private party ("private payments"). As is true in many areas of the tax law, a number of exceptions and rules of special application result in specific definitions of private loans, private use and private payments.

Assessment Bonds

As noted above, for tax purposes, the proceeds of assessment bonds are treated as loaned to the assessed (for the most part, private) property owners. Section 141(c) of the Code sets forth a special exception to the private loan prohibition that allows the proceeds of assessment bonds to be loaned to private parties. This exception from taxable private loan status requires (i) an assessment regime to be established under state law, (ii) the requirements of that regime to be applied on an equal basis among assessed property owners and (iii) the bond proceeds to be used to finance "essential governmental function" (e.g., governmentally owned and publicly used) improvements. Bonds that meet these special requirements, relating to State and local governmental procedures and control, do not violate the private loan bond prohibition.

While assessment payments from business property owners, are deemed to be private payments, there is no private use of the bond financed assets as they are owned by local governments and used by the general public. Policy-wise, Congress has determined that this type of development financing is consistent with the general purposes of tax-exempt financing, even though it is often the real estate developer who is the initial beneficiary of the bond proceeds and uses the bond proceeds to pay for the infrastructure costs or is reimbursed with the bond proceeds for those costs. In other words, the tax rules essentially allow for private payments in this context, so long as the bonds finance public infrastructure, even though it is a private developer that uses the proceeds to pay, or get reimbursed for, its costs of providing the infrastructure.

Tax Increment Bonds

By comparison, tax increment financing, or TIF bonds have no special statutory rule relating to private loans, but also have no special limitation requiring bond proceeds to finance public infrastructure; i.e., the essential governmental function requirement discussed above does not apply to TIF bonds. Tax increment bonds qualify as tax-exempt because there is no creation of a private loan and because the bonds are not repaid from private payments or secured by privately-owned property. As the proceeds of tax increment bonds typically will be used by, or granted to, a private developer, these bonds avoid taxable private activity bond status by being secured and payable only from taxes of general applicability (ad valorem property taxes, general sales taxes, hotel occupancy taxes, etc.).

As is true for assessment bonds, long-standing principles and specific rules in the Treasury Regulations set forth the requirements for tax increment bonds to bear tax-exempt interest. These include rules dealing with the ability of a governmental entity to make grants of bond proceeds, rules for determining when bonds are secured by and payable from generally applicable taxes, including PILOTs, and a special rule relating to avoiding private loan status when a private party receiving a grant of bond proceeds is obligated to pay the generally applicable taxes that will repay the bonds. Given the long history of these types of financings and the regulatory effort put into framing how these transactions are compatible with tax-exempt financing, it is clear that these types of financings are an appropriate use of tax-exempt bonds. Yet TEB is proceeding against some of these transactions on a variety of theories that undermine or ignore the existing statute and regulations.

Are All TIF and Assessment Bonds Developer Driven?

In a number of recent bond audits, TEB is not applying the law to the facts in cases involving tax-exempt assessment bonds and tax increment bonds. Almost every real estate development transaction starts with an agreement, often called a "development agreement," between the developer and the local agency/issuer. The development agreement describes in some detail the facilities the developer is required to install or construct and how costs of those facilities will be paid or reimbursed to the developer. This is true in most assessment district transactions where, for example, the developer is obligated to construct specified infrastructure to accommodate future residential development. Similarly, in tax increment deals, the development agreement will specify the facilities (typically to be privately owned by the developer) that will be funded, in part, by the grant of the future tax increment. In both types of transactions, the development agreement will obligate the local agency/issuer to pay or reimburse the developer for all or a portion of the developer's costs either from future assessments or from future tax increment revenues. If bonds are issued instead, the specified assessments or tax increments will be used to pay debt service on the bonds. This is a standard and common type of tax-exempt financing transaction.

In at least one current audit, TEB has taken the position that where the developer had the right to receive future ad valorem property tax increment revenue as reimbursement for its infrastructure costs, the use of those revenues to pay debt service on tax increment bonds instead is to be treated as private payments. This position was taken by TEB despite the only source of debt service on the bonds being the future ad valorem property taxes. Apparently, TEB is of the view that a right by the developer to receive these tax payments which precedes the issuance of bonds, taints the property tax revenue stream and converts the generally applicable taxes into private payments when bonds are later issued. This TEB position has the potential to call into question the tax-exempt status of literally thousands of municipal bond transactions completed all over the country and to undermine a standard financing structure for tax increment bonds. Indeed, in many, if not most tax increment financings, the development agreement precedes the bond issuance, and specifies that the developer has the right to be reimbursed either from bond proceeds or from future tax increment payments.

Equally troubling is the TEB position being taken in an audit regarding the private loan financing test. The developer had been granted the right to receive future tax increment payments expected to be derived by a city from increases in ad valorem property taxes throughout a large redevelopment district. The city's grant was required to be allocated by the developer to the costs of its commercial project located within the redevelopment district. With the city's cooperation, approval and consent, a conduit issuer issued the tax increment bonds the proceeds of which were used by the developer for the specified purposes. The bonds were secured and payable only from the same future tax increment grant payments, the bond proceeds were paid to the developer, and the city retained the tax increment payments originally promised to the developer but not needed to repay the bonds (e.g., the excess debt service coverage). This is, in substance, the same as the city issuing the bonds. For reasons that are not at all clear, TEB has taken the position that the bond proceeds were treated as if loaned to the developer even though the developer has no payment obligation with respect to the bonds or right to any of the city retained tax increment payments.

Another recent example of TEB's antipathy towards developer driven tax-exempt bond deals is the well-publicized audits involving Florida Community Development Districts and the question of what constitutes a “political subdivision.” In those cases, the IRS examined a type of assessment bond transaction where it did not like the perceived developer benefit. TEB’s challenge, however, was one in which it stretched to find a problem and did so, contrary to century-old precedent regarding the definition of a “political subdivision.” In connection with this enforcement matter, the IRS literally created a new definition of “political subdivision” and attempted to apply it retroactively to reach a negative conclusion as to the tax-exempt status of the bonds. While those audits were resolved on other grounds, and the IRS has more or less withdrawn this position regarding political subdivisions, the case again demonstrates the degree to which TEB will stretch or ignore existing law to reach, apparently, a pre-conceived result.

In yet another well-publicized example, TEB has concluded that bonds secured and payable from PILOTs issued to finance a public school are taxable. In that case, TEB again strained to conclude there was a private loan problem based on PILOTs to be made by a developer on an unrelated project. To be sure, the recent history of tax rules relating to PILOT transactions is complicated. However, the bonds in question were issued under prior tax rules applicable to PILOTs and the bonds were structured to comply with those prior requirements as well as with the IRS analysis set forth in a pair of high profile private letter rulings applying those prior rules. TEB’s analysis apparently ignores the tax law that was in place at the time the bonds were issued and that actually applies to the bonds. Those same TEB arguments would have applied equally to the transactions approved in the two favorable private letter rulings.

Conclusion

Tax-exempt bond financing for economic and infrastructure development is an important and regularly used tool for local governments throughout the country. It can be easy to characterize any individual transaction as providing some sort of benefit to a private developer; after all, a grant of bond proceeds (or a loan in the assessment bond context) is essentially a contribution or benefit provided by the local government to a commercial enterprise. However, that is true in virtually every such transaction, and, in fact, that is the point, to provide benefit to the private developer. Fostering economic development requires the government to provide incentives to private business interests. The tax law has developed, and Congress has expressly permitted, specific rules for when tax-exempt bond financing is allowed in this context. The examples described above, indicate a willingness by TEB to ignore State and local decision making, long standing municipal bond structures and existing law and to look for new ways to attack development and infrastructure transactions. This is an inappropriate and disruptive path for TEB to be pursuing.

Orrick, Herrington & Sutcliffe LLP 2017

August 23, 2017

[Reforms May Be Needed to Better Track State PAB Volume Cap Allocations.]()

WASHINGTON – The difficulty of tracking how states are allocating private activity bonds under their volume caps begs the question of whether reforms are needed, a Council of Development Finance Agencies staffer said during a webinar on Tuesday.

“There is some question with regard to is it time for volume cap reform,” Pete Mathews, CDFA’s manager of research & resources, who puts together a PAB volume cap survey each year, said at a webinar on the group’s 2016 report, which will not be publicly released until next week.

“There are so many variations in volume cap management among states, that it makes it kind of hard to track the issuance of volume cap,” he said.

The issuance of PABs is subject to state volume caps, which are based on an Internal Revenue Service formula that takes into account population estimates and inflation. For states and territories in 2016, volume cap was the greater of $100 per capita or $302,875,000. The $302.88 million figure is used by states and territories with small populations

Mathews said that the Internal Revenue Service only keeps track of PABs on a per project basis. Issuers of tax-exempt PABs must file a Form 8038 with the IRS. But the IRS does not publicly provide any detailed aggregate information about the filings.

CDFA, like The Bond Buyer before it, tries to collect PAB information from the states each year. But as Mathews pointed out, “Each state has its own rules and procedures for allocating volume cap.”

Some states allocate volume cap by category. They provide certain amounts for each category of tax-exempt PABs.

The may provide one amount for exempt facility bonds, which include bonds for airport, water furnishing, sewage and other facilities, another amount for single family housing bonds, and a separate amount for small issue industrial development bonds.

Other states sub-allocate volume cap to local governments or authorities. These states often have no idea how their PAB volume cap is allocated and issued.

There is no requirement for states to keep track of their PAB volume cap allocations and issuances, Mathews said.

Add to that, confusion among the differing terms used by federal, state and local governments, he said.

States use the term multifamily housing while the federal government calls it residential rental property. Both are used in connection with bonds issued to finance the construction or rehabilitation of housing projects where a specified portion of the units will be rented to moderate- and low-income families.

Single family bonds and mortgage revenue bonds, or MRBs, are both used to refer to bonds issued to finance mortgage loans on single family homes of first-time homeowners meeting certain income and purchase price requirements.

Industrial development bonds, industrial revenue bonds, and manufacturing revenue bonds are all used synonymously. Qualified or tax-exempt small issue bonds can refer to IDBs, IRBs, MRBs, aggie bonds, or first-time farmer bonds. IDBs are small issues of bonds sold by state or local governments that lend the bond proceeds to private users such as manufacturing companies.

PAB allocations can be carried forward for three years if not immediately used. Mathew said that states have had a lot of extra carry forward since 2008 and that the extra capacity has made it easier for them to not have to worry about tracking their allocations.

Overall PAB issuance has been increasing since 2013, fueled by housing bonds, Mathew said. IDB volume has remained at roughly $250 million since 2013.

CDFA expects the 2016 report will show IDB volume at about $250 million, a slight increase from

2015 when it was $244 million, he said.

The Bond Buyer

By Lynn Hume

Published August 22 2017, 6?23pm EDT

TAX - CONNECTICUT

Town of Stratford v. LeBlanc

Appellate Court of Connecticut - August 8, 2017 - A.3d - 175 Conn.App. 362 - 2017 WL 3382328

Town brought action to foreclose municipal tax liens on real property.

Following entry of default, the Superior Court granted town's motions for judgment of strict foreclosure and rendered judgments of foreclosure by sale, and debtor moved to open the default judgments.

The Superior Court denied debtor's motions and rendered judgments of foreclosure by sale. Debtor appealed.

The Appellate Court held that debtor failed to establish reasonable cause to open default judgments.

Debtor failed to establish reasonable cause to open default judgments in municipal tax lien foreclosure action years after entry of judgments and years after fire that allegedly destroyed his relevant business records, where trial court extended foreclosure sale date, debtor did not provide sufficient reason for not filing appearance, and debtor had approximately five months after service of process before fire occurred to file appearance.

Treasury Clarifies Effective Date of Revised Definition of 'Available Amount.'

On July 18, 2016, the Treasury Department published final regulations on non-issue price arbitrage restrictions (the "**Final Regulations**"). A copy of the Final Regulations is available here. Since that time, the mid-afternoon naps of issuers, tax lawyers, and possibly Sean from *Portlandia* have been improved by reading my "comprehensive" blog post on the Final Regulations.

Among other things, the Final Regulations included substantial changes to the working capital financing rules. One such change is to the definition of "available amount" in Section 1.148-6(d)(3)(iii)(A). Very generally, tax-exempt bond proceeds can be used to finance working capital expenditures only to the extent that the working capital expenditures exceed the issuer's "available amounts." Under the prior rules, available amounts excluded proceeds of the bond issue that would finance working capital, but included proceeds from the issuer's other tax-exempt bond issues. Bob Eidnier pointed out an unintended consequence of the prior rules in his blog post on the Final Regulations:

Continue reading.

Florida CDDs Rebuke Residents Opposing Bond Deal.

BRADENTON, Fla. – Two central Florida community development districts contend their residents used “sophistry” in trying to persuade a judge not to approve the district’s bonds, attorneys said in final briefs.

Circuit Judge Randall McDonald is expected to decide in coming weeks whether to validate up to $102 million of bonds at the request of the Poinciana CDDs, created to finance infrastructure for the Solivita development near Orlando.

The ruling will follow a July 18-21 trial in which McDonald heard residents claim that most of the debt will be used to buy overvalued amenities in Solivita from developer AV Homes, which retained ownership of the amenities it wants to sell to the CDDs.

“The districts’ evidence at trial demonstrated that all elements required for validation were met,” said a closing brief filed Monday by the CDDs attorney, Douglas M. Smith with Hopping Green & Sams PA.

“The districts’ proposed amenity acquisition and the issuance of bonds and levy of assessments to repay the bonds is eminently reasonable under the circumstances.”

Smith said the bond issue complies with Florida law, even though the residents apparently wanted the supervisors of the two CDD boards to negotiate a different deal.

“But they [the residents] cannot point to anything legally wrong with the transaction,” Smith wrote. “So they employ sophistry to try to convince this honorable court to give them what they want.”

The elected CDD supervisors plan to use $73.7 million of bond proceeds to buy 17 existing amenities such as pools and parks. AV Homes charges Solivita residents a club fee annually to use the facilities, filings said.

Residents opposing the bond deal, who will be charged assessments on their tax bills to pay the debt service for 30 years, contend that the CDDs improperly inflated the values of the amenities, most of which are between 10 and 15 years old.

Opponents, in their Aug. 11 closing brief, contended that “a bond validation at the expense of residents should not be a vehicle to permit AV [Homes] to cash in on millions of dollars of illegal assessments.”

“It cannot be the law that this court is required to validate bonds that are not based on fair value but rather are based on an arbitrary target amount specifically intended to allow a developer to cash out 30 years’ worth of illegal fees it was never really entitled to collect,” said the residents’ attorney, J. Carter Andersen with Bush Ross PA.

Under Florida’s Homeowners’ Association Act, Andersen contended, AV Homes has illegally collected club membership fees from residents that exceeded the proportionate share of the expenses of owning and operating the amenities.

The purchase price of the existing facilities was set by calculating the present value of 30 years of fees the developer intended to collect from residents, he said.

“Through this bond validation proceeding, AV is attempting to monetize its illegal profit stream by selling the amenities facilities to the two community development districts that AV established for Solivita,” Andersen wrote.

Andersen also contended that AV Homes worked with bond underwriters, MBS Capital Markets, to calculate “an enormous target purchase price for the amenities – a price based not on fair market value but instead on the profit stream AV expected to receive” from the club fees.

“AV paid and controlled the consultants the districts’ boards of supervisors relied on when they agreed to AV’s target price,” Andersen said. “With the help of the districts’ counsel, the districts’ manager, and the districts’ engineer – whose fees relating to the amenities purchase were also paid by AV – MBS and AV were able to monitor the consultants’ work and control the conclusions of the consultants’ reports.”

At the same time, he said the districts’ boards “mistakenly” thought their consultants were independent from AV.

Andersen also said that at least one CDD supervisor, LeRue “Skip” Stellfox, was concerned about getting an independent property appraiser to value the price for the amenities, citing a 2009 article in The Bond Buyer about an Internal Revenue Service investigation into the purchase of overvalued amenities in the Village Center CDD, which is about 80 miles north of Solivita.

The IRS concluded that the Village CDD was not a political subdivision because its board was, and would always be, controlled by a developer rather than by residents or other publicly elected officials.

Andersen alleged that AV Homes “selected most of the residents who currently serve as supervisors” for the Poinciana CDDs.

The Village investigation ultimately led the IRS to propose a controversial new definition for political subdivisions that can issue tax-exempt bonds, a determination that remains unresolved today.

“The Internal Revenue Service’s dealings with the Villages in connection with an unrelated transaction has no bearing on this case,” argued Smith, Poinciana CDD’s attorney. “Suffice it to say, federal income tax law is not at issue in a bond validation, nor is another CDD’s dealings with the IRS relevant to whether state requirements for bonds and special assessments have been met.”

Smith said his final argument focused on four main points – the valid public purpose to the project; the “irrelevance of fair value” under Florida law; the validity of the district’s valuation; and the validity of the assessment allocation.

The public purpose, he said, is to construct new amenities and to acquire existing amenities for the benefit of the lands in the districts, giving the community control over the amenities and their upkeep, and providing funds for reserves and replacement.

“There is no doubt that the public purpose is valid,” Smith said, adding that the districts used “sound business judgment" and engaged independent professionals to evaluate the purchase proposal by AV Homes.

The district supervisors ultimately concluded the transaction was in the best interests of the districts and their residents, he said, noting that the court is not empowered to "second-guess" the legislative decisions of the CDD boards.

"This court's role is not to evaluate the viability of the project, its financial feasibility, or other collateral
matters," he said. "Its sole role is to assure itself that the actions of the boards comport with the modest legislative thresholds for validating bonds and special assessments, i.e., that the boards did not
act arbitrarily and capriciously."

In arguing against validation, Andersen said the CDD bonds did not meet the requirements of a lawful public purpose, compliance with Florida law, or the fair and reasonable apportionment of special assessments.

"Under the public-purpose requirement, if the primary beneficiary of a project is a private party, then the bonds may be validated only if the public interest is present and sufficiently strong," he said.

Smith said the closing arguments of the resident opponents failed to sum up evidence or testimony presented or testimony at trial.

"What their closing does exemplify, however, is four classic fallacies: contextomy (taking words out of context); proof by verbosity (barraging the reader with so many "facts" one cannot reasonably respond to all); shotgun argumentation (raising every issue under the sun to con the reader into thinking something must be wrong); and argument by repetition (repeating falsities so many times that the listener begins to believe they are true)," Smith said.

William Mann and Brenda Taylor are the lead defendants opposing the CDD bond validation, though other Solivita residents have donated funds for the legal challenge. Resident Martin Kessler is also an opponent, representing himself.

The judge may hand down a ruling in the validation case before Labor Day, according to participants in the trial.

The Florida Supreme Court would hear an appeal, if filed.

In a separate case, Solivita homeowners are suing AV Homes and its subsidiary, Avatar Properties Inc., for violating the state's Homeowners' Association Act for what they allege are the illegal collections of club membership fees.

Circuit Judge Andrea Teves Smith denied a motion to dismiss the class-action case on Aug. 4.

The Bond Buyer

By Shelly Sigo
Published August 16 2017, 11:26am EDT

When Will States Get Smart and Stop Subsidizing Movies?

In 2010, actor Ted Danson, filming ”The Big Miracle” in Alaska, set off a local ruckus when he urged federal regulators to block oil drilling off the state’s shores. The source of the controversy wasn’t so much that a Hollywood star was pontificating about a public issue; it was that the picture was receiving nearly $10 million in state tax incentives, and many Alaskans found Danson’s ingratitude shocking. Soon after, Alaska lawmakers reexamined the state’s subsidies for film and TV productions. Legislators first narrowed the program, and then, in 2015, as evidence mounted that the incentives didn’t pay off economically, they killed it.

Alaska is hardly alone in getting mixed up in the TV and movie biz. Starting in the early 2000s, states rushed to grab a piece of what they saw as a lucrative industry. By 2010, all but six were offering producers special deals. But a backlash has ensued, with seven states terminating the deals and a handful of others reining them in. In a sensible world, it would only be a matter of time before all local governments deep-sixed their film initiatives.

The rise of celluloid subsidies resulted from a sharp increase in the 1990s of so-called runaway productions— movies and TV shows filmed in foreign countries for cost savings. The number of U.S.-conceived movies and TV series shooting abroad rose to 285 in 1998, up from 100 in 1990, according to a study by the consulting firm Monitor Co. More than eight in 10 of those productions were in Canada, where a roughly 20% decline in the Canadian dollar, plus tax rebates that the government offered to American producers, slashed the cost of filming by about one-fifth compared with a similar production in the United States.

After the Monitor report, states took action. A few had launched modest incentive programs in the 1990s, but Louisiana changed the game in 2002 when it vastly expanded its effort, offering producers an exemption on sales taxes and an investment-tax rebate. Hollywood started shifting productions to the Bayou State, leading others to follow Louisiana’s lead. States were giving away about $1.5 billion to Hollywood annually by 2010, up from less than $100 million in 2002.

Tax deals have become so pervasive that projects ranging from massive summer blockbusters to the cheesiest TV reality shows get them. In 2015, all eight Oscar-nominated films, including the ultimate winner, “Birdman,” received state tax breaks. Sometimes the money goes to movies that would almost certainly be made in a state anyway. A 2014 best-picture nominee, “The Wolf of Wall Street,” is a tale of New York’s finance world, made by a director, Martin Scorsese, long based in New York; nonetheless, the production won $30 million in incentives to film in … New York!

One reason the incentives have spread so quickly is that they’re easy to get. States have long offered subsidies for industries like manufacturing, but typically these are long-term arrangements that involve firms building or renovating physical plants — binding employers to a site for years. By contrast, most celluloid incentives go to productions that shoot on location, which rarely requires investing long-term in infrastructure and generally produces only temporary employment. Being so mobile lets Hollywood executives shop for the best deal available on one film or season of a TV series and then go somewhere else if there’s an even better deal.

This mobility makes it possible for producers to hold a state hostage, economically speaking. The producers of the hit Netflix series “House of Cards” filmed the show’s first two seasons in Maryland, and then postponed production for Season 3, which was set to begin in early 2014, informing the state that they would move elsewhere if the subsidies weren’t improved. The legislature caved.

Even signature productions have fled their hometowns when inducements dried up. After financing for Florida's production tax-credit program ran out, the makers of "Ballers" (an HBO series about an ex-Miami Dolphin player-turned-agent that was filmed in that city) shifted production to Los Angeles. Incentives have turned skilled workers into nomads, struggling to follow the celluloid migration.

The ephemerality of these jobs helps explain why the film industry produces so little local economic impact. Following the state tax-revenue slump that the 2008 fiscal crisis caused, several states launched studies of the film industry's economic effects to see if the budget hit was worth it — and the results were disheartening. A Massachusetts Department of Revenue 2013 report estimated that the state spent $128,575 in incentives for every film job that went to a Massachusetts resident, and $68,000 per position when jobs taken by residents of other states were included.

Much of the production money leaves the state. A Michigan analysis of film subsidies estimated that nearly half the money that productions in the state expended went elsewhere almost immediately; producers, it turned out, hired experienced out-of-state firms that moved workers into Michigan for the filming and then quickly left. In 2009, Michigan spent $37.5 million in tax credits to create the equivalent of just 216 full-time film-production jobs.

A broad evaluation of film-incentive plans in 40 states by USC researcher Michael Thom found that they produced a small uptick in jobs but had virtually no impact on wages and gross state product.

Notwithstanding these numbers, advocates keep pushing for incentives, arguing that a local film industry glamorizes a location and thus attracts tourists and educated workers looking to live in stimulating environments.

Not only are these nebulous claims difficult to justify, but given modern viewing tastes, local filming is just as likely to result in ridicule of a place and its residents as it is to glorify them. Just ask New Jersey residents what they thought of the reality series "Jersey Shore."

And in some places, the negatives have amounted to more than bruised egos and disappointing job gains.

When Michigan enacted a rich film-incentives program during the nation's 2008 economic slowdown, investors formed Motown Motion Pictures, an effort to create a Hollywood-style studio in down-and-out Pontiac. On the site of a former General Motors plant, the investors parlayed federal tax credits, state incentives, and money borrowed through municipal bonds — backed by Michigan's public-employee pension funds — to develop an $80 million facility, which would, it was hoped, employ up to 3,600 people.

But the initiative attracted just one major production — Disney's "Oz," which wound up employing a few hundred people, many from out of state. Meantime, as the payoff from the film credits failed to generate the economic activity that boosters promised, investors began making only partial payments on their borrowed money, sticking the pension fund with the bill for the rest. After the state stopped the incentives in 2015, it had to allocate $19 million just to pay off bad debt from the studio.

Still, some states persist in trying to lure handout-seeking Hollywood producers. Last summer, Ohio doubled to $40 million annually the film tax credits it offers. Pennsylvania, which had begun shrinking its subsidies, reversed course last year to add more.

All these efforts face a massive counterattack from the two giants of the industry. Three years ago, California increased its tax credits from $100 million annually to $330 million. New York, long the

No. 2 spot for film and TV production, has gone further, dishing out $420 million a year.

Both California and New York are, then, now paying heavily to keep a business they once dominated without incentives. Indeed, one economist declared that states are in “perpetual competitive purgatory” for the film business — able to hold onto productions only as long as they pony up taxpayer dollars for them. The only way out of purgatory is all together, all at once.

The Los Angeles Times

by Steven Malanga

August 13, 2017

Steven Malanga is the senior editor of the Manhattan Institute’s City Journal, from which this essay was excerpted.

Throwing Money at Businesses Has Been a Bad Idea Since the Start.

It’s time to abandon corporate tax breaks. Just look at their history.

While spending public resources to lure private companies and the jobs they bring has mushroomed in recent years, the idea is actually pretty old. In his book *City Power: Urban Governance in a Global Age*, published last year, law professor Richard Schragger cites a passage from the September 1890 issue of Scribner’s Magazine: “A curious outgrowth of the rivalries of American cities, is the practice that obtains so generally of offering bonuses and pecuniary inducements to manufacturers to move their plant.”

It was a bad idea then. It contributed to a municipal bond default crisis when promised returns did not materialize and cities could not pay off the debts they had incurred. And as the evidence densely piled up in Schragger’s book demonstrates, it remains a bad idea today.

Yet the practice continues to grow. This March, the Upjohn Institute published the most comprehensive study of economic development incentives yet produced, analyzing data from 1990 to 2015. The researchers found that although the average amount of incentives tripled over that period, increasing from 9 percent of business taxes to 30 percent, they were largely ineffective and governments would have experienced the same results without the incentives 94 percent of the time.

Governments looking for a more effective way to spur economic development ought to take a look at what’s going on in Richmond, Va. In 2014, then-Mayor Dwight C. Jones created the Office of Community Wealth Building, which was charged with reducing overall poverty by 40 percent and child poverty by 50 percent by 2030. The program’s integrated strategy focuses on expanded workforce development, targeted job creation, improved educational outcomes and development of a regional transportation system.

Unlike a lot of innovative government programs, the Office of Community Wealth Building has not only survived a change of administration but has been strengthened and expanded. The current mayor, Levar Stoney, lauded the program during his campaign. A quarter of Richmond’s residents live below the federal poverty level and, as Stoney says, “You can’t be a AAA bond-rated city without reducing poverty.”

Richmond hasn't entirely abandoned the idea of incentives. While cash incentives that Stoney proposed didn't survive the budget process, two business developments in Richmond each received major tax breaks from the state. In each case the city provided customized workforce training, which the Upjohn study says research suggests "might be 10 times more effective than tax incentives in encouraging local business growth." But states typically spend only $1 on customized job training for every $20 in tax incentives, the researchers found.

In *City Power*, Schragger writes that while abandoning economic development policies that rely on tax breaks and other giveaways is practically impossible politically, "it is the right thing to do." Perhaps as the evidence piles up and experiments like Richmond's are seen as successful, more public leaders will be able to actually do the right thing.

GOVERNING.COM

By Mark Funkhouser | Publisher
Former mayor of Kansas City, Mo.

AUGUST 2017

[Lawsuit Says Seattle's 'Tax-the-Rich' Measure Violates State Constitution.]

A new tax-the-rich measure in Seattle was hit with its first legal challenge Wednesday.

The new Seattle measure, passed by the city council in July, would impose a 2.25% tax on any income over $250,000 or above $500,000 for couples filing jointly. It is expected to impact about 9,000, or 2%, of the city's taxpayers.

A lawsuit filed by the Freedom Foundation, a conservative think tank, on behalf of 19 Seattle citizens, alleges the measure violates the state constitution as well as restrictions on cities to impose such taxes. A separate group called the Opportunity for All Coalition, founded by Seattle venture capitalist Matt McIlwain, filed a lawsuit later in the day.

Backers of the tax welcome the suits, because they believe a court ruling in favor of the tax will pave the way for a statewide income tax.

The battle in the state courts could lead to a fundamental change to the unique politics of Washington state, a liberal-leaning state with a longstanding aversion to taxing income.

A similar measure lost in the capital city of Olympia last year, and a tax-the-rich statewide initiative was voted down in 2010.

Washington is one of seven states in the country, including Florida, Texas and Wyoming, without an income tax.

The last time voters passed a graduated statewide income tax in Washington it was struck down by the state Supreme Court in 1933 as unconstitutional. The state constitution requires property be taxed at a uniform rate, which the court said applied to income in turning down the tax.

"This tax is illegal and we are confident an independent judiciary is going to uphold the law, is going to uphold 100 years of precedent," said David Dewhirst, litigation counsel for the Freedom

Foundation.

Seattle City Attorney Pete Holmes said he believes city will be able to persuade the state's top court that the 1930s decision was in error. The state Supreme Court's attention to current events in recent years, including a ruling that the state was failing to adequately to fund public schools, means the court could be more receptive to taking another look at the income tax issue, he said.

"We've acknowledged that this a tenuous legal path forward, but we nonetheless believe it's viable," said Mr. Holmes.

David DeWolf, a Gonzaga University School of Law professor emeritus, said the state's highest court would now be more open to an income tax measure, provided it was statewide and applied to a broader swath of the population, not just a few wealthy residents.

But Mr. DeWolf predicted courts would be skeptical of the Seattle tax because of the restrictions on cities imposing taxes and because of how many people are exempted from paying.

"When you impose a tax it needs to be uniform," he said.

The Seattle economy is booming with unemployment hovering around 3%, and the city has a balanced budget. Yet as housing prices have soared, homelessness has too.

The tax would bring in about $140 million every year for the city. The money would be used to fund affordable housing, education and transit services, and replace federal funding that might be lost because of federal budget cuts.

Backers of the tax say they want the rich to pay their fair share. The state has the most regressive tax system in the nation as it raises revenue from sales, property and other taxes, according to the Institute on Taxation and Economic Policy, a nonpartisan research group.

The state's poorest 20% of residents, or those making less than $21,000 a year, pay 16.8% of their income. The richest 1%, or those making $507,000 or more, pay 2.4% of their income, according to the group.

"Seattle is challenging this state's antiquated and unsustainable tax structure by passing a progressive income tax," said Seattle Mayor Ed Murray when the measure passed.

The Wall Street Journal

By Zusha Elinson

Updated Aug. 9, 2017 6:30 p.m. ET

Write to Zusha Elinson at zusha.elinson@wsj.com

NYC Mayor Promotes Millionaires' Tax to Help Fix Transit Woes.

NEW YORK — Mayor Bill de Blasio, flanked Monday by community activists, labor leaders and fellow Democratic politicians, officially rolled out a proposal for a millionaires' tax to help fix the subways and aid low-income commuters.

“People do not want to see this madness continue,” de Blasio declared, citing people getting work reprimands, picking their kids up late and missing doctor appointments because of subway delays.

Henry Garrido, executive director of District Council 37, the municipal labor union, said that sometimes even the people tasked with fixing the subway can’t get to work on time.

The number of subway delays has tripled in the past five years to 70,000 per month, and trains are overcrowded on some lines. About 5.7 million people take the subway on an average work day.

At the mayor’s press conference, speakers stressed that the tax would affect only a handful of taxpayers — an estimated 30,000 to 35,000 — all of them in New York City. The tax, which would generate about $800 million annually, would increase the top income tax rate from about 3.9 percent to 4.4 percent for married couples who make more than $1 million and individuals making more than $500,000.

In turn, they said, the improvements would fuel the economy, benefiting rich and poor alike.

The proposal includes $250 million for half-priced Metrocards for 800,000 New Yorkers at or below the poverty level.

The tax, spearheaded in Albany by Democratic state Sen. Michael Gianaris of Queens and Assemblyman Daniel O’Donnell of Manhattan, must be approved by state lawmakers.

It faces significant challenges. Cuomo and the Republicans who control the state Senate have strongly resisted efforts to raise taxes on the wealthy in recent years. Assembly Speaker Carl Heastie, a Bronx Democrat, has repeatedly proposed higher taxes on millionaires to no avail.

The often frosty relationship between de Blasio and the Senate’s Republican leaders won’t help.

“I’m pleased Mayor de Blasio recognizes that additional funds contributed by the city would further that goal, but raising taxes is not the answer,” said Senate leader John Flanagan, a Long Island Republican. Flanagan added that the city has a $4.2 billion surplus, “and therefore has the ability to do so with existing resources. Mayor de Blasio doesn’t need to reach into the wallets of city residents to make that happen.”

Gianaris said opponents “may posture in the beginning,” he but predicted they’ll come around.

O’Donnell agreed. “Public sentiment … drives a lot of this. The public is paying attention to what the MTA is, who runs it … and what they’re doing with the money.”

And the mayor’s proposal doesn’t address the need for emergency funding to fix the ailing system, transit officials and the governor said. Joseph Llota, chairman of the Metropolitan Transportation Authority, recently unveiled an emergency plan to stabilize the system at a cost of about $836 million. The governor offered to split the cost of the plan with the city, but the mayor refused to commit money to support it.

Associated Press

Updated Aug. 7, 2017 4:09 p.m. ET

BDA Submits Comment Letter: Urges the Secretary of the Treasury to Withdraw the Proposed IRS Political Subdivision Rule.

BDA Comment Letter: BDA Urges Withdrawal of IRS Political Subdivision Rule

- Please review the BDA's comment letter, which urges the Secretary of the Treasury to recommend to the President, per the process required by Executive Order 13789 (outlined below), that the IRS proposed political subdivision rule be rescinded.
- BDA reiterates the arguments it made in previous comment letters, including that the rule is a burdensome and inappropriate "one-size-fits-all" federal standard.
- Additionally, the proposed rule's definitions would add unnecessary complexity to tax law and hamper economic growth by denying many communities of the ability to issue tax-exempt bonds to finance beneficial public projects.

Proposed Political Subdivision Rule Targeted for Potential Modification or Withdrawal

Treasury has released a report focused on implementing Executive Order 13789 (Identifying and Reducing Tax Regulatory Burdens) that directed Treasury to review temporary, proposed, or final IRS regulations issued between January 1, 2016 and April 21, 2017 (the date of the executive order). (Please see the Bond Buyer story here.)

Specifically, Treasury was directed to identify regulations that:

- Impose an undue financial burden on U.S. taxpayers
- Add undue complexity to the Federal tax law
- Exceed the statutory authority of the IRS

The Executive Order instructs the Treasury to submit a report to the President by September 18, 2017 recommending specific actions to mitigate the burden imposed by the regulations identified.

Political Subdivision Proposed Rule Targeted

- The political subdivision proposed rule was one of eight regulatory actions identified as burdensome, complex, or outside the statutory authority of the IRS to be reviewed further

Bond Dealers of America

August 8, 2017

NASACT: Questions Surround Tax Reform and Maintenance of the Tax Exemption for Municipal Bonds.

Congress is gearing up to tackle tax reform this fall, and it appears almost anything is on the table. For most state and local governments, concern surrounds loss of the deduction for state and local taxes and more importantly the maintenance of the tax exemption for municipal bonds.

The exemption of tax on municipal bonds has existed since the Sixteenth Amendment to the Constitution in 1913, which developed the structure for our federal tax system. The exemption allows states and municipalities to finance public projects at a lower finance rate than borrowing on the open market. Lower financing rates mean savings for local taxpayers while offering interest free of federal tax, and in many cases, state tax, for investors. This financing vehicle is one that is efficient, low-cost and that assists in creating essential jobs. It should be recognized for its importance for building and maintaining the infrastructure in our country.

There are real and tangible benefits that the tax exemption for municipal bonds affords our governments and its citizens. NASACT members are engaged in a variety of programs to manage taxpayer dollars and finance public infrastructure in the most efficient and effective manner possible. The tax exemption for municipal bonds is one such vehicle that allows our governments to successfully finance important and needed public projects. Such projects include the construction and maintenance of schools, streets, highways, hospitals, bridges, low-income housing, water and sewer systems, ports, airports and other public works.

Any repeal or limitation of the tax exemption would drive up the costs of building infrastructure, which in turn could cause state and local governments to scale back or eliminate important public projects. If investors see less of a tax break, they could demand higher interest to make up for the loss or move their funds to other investments where they would receive favorable tax treatment. Such changes will result in higher borrowing costs for governments.

As fiscal stewards of taxpayer dollars, your input to your congressional representatives is paramount. Should you have an opportunity to visit your representatives at home or if you are in Washington, we urge you to stress the importance that the tax exemption by highlighting the infrastructure financed by municipal bonds in your state. You may also wish to call or contact your congressional delegation as efforts to reform the nation’s tax system unfold.

NASACT is involved in several initiatives and coalitions regarding the tax exemption and our local government partners at National Association of Counties (NACo) and the Government Finance Officers Association (GFOA) have developed a myriad of tools to help stress the importance of the tax exemption. These tools are available at:

http://www.naco.org/advocacy/action-centers/municipal-bonds
http://www.gfoa.org/products-and-services/resources/federal-government-relations/federal-tax-exemption-municipal-bond

Thursday, August 10, 2017

NABL: IRS Clarifies Effective Date in Non-Issue Price Arbitrage Regs.

The IRS has sent to the Federal Register for publication on Monday, August, 14, 2017, a correction to clarify the effective date in the non-issue price arbitrage regulations published in the Federal Register July 18, 2016. The correction adds regulation section 1.148-6(d)(3)(iii)(A) to the list of provisions that are effective for bonds sold on and after October 17, 2016.

The correction is available here.

Hatch Interview Raises Concern about Municipal Bond Tax Exemption, SALT Deduction.

WASHINGTON — The continuing concern that the tax exemption for municipal bonds or the federal deduction for state and local taxes may be curbed or eliminated under a Republican tax reform plan was reinforced Sunday by the chairman of the Senate Finance Committee.

Charitable donations and mortgage interest are the only two federal tax deductions that Sen. Orrin Hatch, R-Utah, said he can guarantee will survive under tax reform.

“Everything in the code it going to be looked at,’’ Hatch said during an interview on the Fox News program “Sunday Morning Futures.’’

Hatch’s comment highlights why mayors, governors and local officials around the nation are continuing to lobby congressional lawmakers on these issues.

Last week New Orleans Mayor Mitch Landrieu, the president of the U.S. Conference of Mayors, led a bipartisan delegation of five other mayors who met with five U.S. senators the day before senators began their August recess.

“I think that we know it’s fair to say that we know that it’s in play,’’ Landrieu told reporters after the meetings, referring to the SALT deduction. “Any time there’s a jump ball we want to make sure that we get it. So that’s why we’re here.’’

Mayors also stressed the importance of maintaining the tax-exempt status of municipal bonds. “If you take away the tax exempt status of municipal bonds you will cost us 28% more than you used to,’’ he said.

Hatch, who was not among the senators who met with the mayors, said Sunday that he’s hoping to work on tax reform with his Democratic counterpart on the finance committee, Sen. Ron Wyden of Oregon.

Republicans are eyeing the elimination of most tax deductions in order to broaden the tax base and lower rates, but Hatch expressed doubts during Sunday’s interview that President Trump’s goal of lowering the corporate rate to 15% is achievable.

“I think it’s more likely it will come down around somewhere between 20% and 25%,’’ he said.

Nor did Hatch support presidential adviser Steve Bannon’s suggestion for a top individual tax rate of 44.5%.

“I’m not for that,’’ Hatch said. “We’re certainly going to hit the rich. There’s no question they’re not going to get anything, hardly anything out of any tax reform that we do. But the fact of the matter is, you know almost 60% of all taxes is paid by the upper 5%.’’

Hatch also expressed doubt that tax reform can achieve a revamp of individual rate to only three rates of 15%, 25% and 35%. “If we can get those rates it’d be miraculous,’’ he said.

The Bond Buyer

By Brian Tumulty

Published August 07 2017, 1:03pm EDT

Why Main Street Doesn't See More Historic Tax Credit Financing and What Can Be Done About It.

Both Houses of Congress have promised to produce draft legislation to overhaul the federal tax code in September 2017. On the table for possible elimination is the federal historic tax credit (HTC). As one strategy to meet this threat, legislators in both houses have introduced legislation, the Historic Tax Credit Improvement Act (HTCIA), which would modernize the HTC in the context of a reformed tax code. As described in the following article, the HTCIA would address many of the barriers to the use of the HTC for small Main Street transactions. Main Street organizations are urged to contact their Congressional delegations to co-sponsor this bill and protect the HTC from elimination under tax reform. Consider signing the National Trust's advocacy letter and hosting a site visit for your Members of Congress during the August recess. For help, contact Shaw Sprague at ssprague@savingplaces.org.

On July 30, 2016, after six inches of torrential rain, a flash flood roared down Main Street in Ellicott City, Maryland, a vibrant 18th century commercial district. Located at the confluence of Tiber Creek and the Patapsco River, this popular destination for Baltimore and Washington residents has been plagued many times over the years with damaging floods. This time, tragically, two people died, hundreds of cars were damaged or destroyed and scores of businesses were shuttered. Just under one year later, in a remarkable turnaround, 90 percent of the commercial properties are now back in service. Ellicott City is a certified Main Street Maryland community.

In the midst of this human and cultural disaster, the Main Street program, managed by the Ellicott City Partnership, collaborated with Preservation Maryland to provide a variety of disaster relief financing that helped expedite the recovery. Preservation Maryland set up a field office to provide technical assistance to property owners who qualified for the federal and state historic tax credits (HTC). The Main Street program focused on short-term emergency grants to defray the costs of immediate health, transportation and safety concerns. Main Street's programs, described in more detail below, were a hit. But in the end, only a few buildings utilized the federal credits to help finance damage repair. (See below for a refresher on 20 percent and 10 percent HTC basics.)

Continue reading.

Main Street America

July 25, 2017 | John Leith-Tetrault,

Public Funding for Scottrade Center Faces Lawsuit, Comptroller's Opposition.

ST. LOUIS – Opponents of the publicly funded $64 million renovation to Scottrade Center filed suit Friday to keep the city from paying for the project, alleging the plan is unconstitutional in Missouri.

And on the same day, a spokesman for St. Louis Comptroller Darlene Green said she had no intention of signing the financial agreement that would fund the city's commitment to the arena.

"The Comptroller has not approved the transaction to issue bonds for the renovation of Scottrade Center, as it would incur debt to the city's general fund for nonessential services and negatively impact the city's credit," Green spokesman Tyson Pruitt said.

In a statement, Kiel Center Partners, the Blues ownership group, called the lawsuit “frivolous” and said Green has a legal obligation to sign the finance agreement.

Pruitt said the comptroller was asking other city officials to find a new way to fund the project. Her refusal to approve the bond transaction raises legal questions about the comptroller’s ability to impede proposals passed by the Board of Aldermen.

Green has apparently refused to sign the documents since February when the financial agreement was approved by the Board of Aldermen and the Board of Estimate and Apportionment. Now, her argument could be bolstered by the fact that litigation is pending to stop the agreement.

The city of St. Louis, the St. Louis Blues, and the leaseholders Kiel Center Partners are among the defendants named in the lawsuit filed Friday. It was filed on behalf of Alderman Cara Spencer, former state Rep. Jeanette Oxford and former city counselor James Wilson.

The lawsuit alleges the ordinance is unenforceable under Article VI of the Missouri Constitution, “in that it permanently grants substantial public money to a for-profit corporation for the purpose of assisting that corporation to make further profits for itself.” The city owns Scottrade Center through a public-private partnership signed in 1992, which the lawsuit alleges the ordinance also violates.

In a prepared statement, Deputy City Counselor Michael Garvin said the city would not comment on the litigation, but noted the ordinance and financing agreement were approved properly by the city.

“We will vigorously defend the City, its ordinances and agreements,” Garvin wrote.

Mayor’s spokesman Koran Addo did not comment in response to questions on the comptroller’s statement.

Kiel Center Partners specifically attacked Spencer’s intentions for filing suit.

“This lawsuit, spearheaded by one member of the Board of Aldermen in a clear attempt to counter the consensus of her fellow elected officials, is frivolous, disappointing and embarrassing to our city,” read the statement, issued under Scottrade Center letterhead. “It also has the potential to be extremely costly, not only to taxpayers, but to the regional and national reputation of St. Louis.”

In response, Spencer said, “We’re exploring the legality of the ordinance. I would think the Blues would want to welcome that.”

Under the 1992 agreement, the plaintiffs argue the city’s ownership of the building is limited to what is called a “bare legal title” where the Blues have exclusive control over the property for 50 years. Aldermen who supported public financing for the renovations argued earlier this year the city is obligated to pay because the city owns the building, but opponents say the lease essentially grants the building to the Blues through 2042.

The original ordinance passed by the Board of Aldermen in 1992 also notes the city was entering the agreement because it did not have the funds to pay to renovate the former Kiel Auditorium.

The Board of Aldermen approved the new renovations funding in a contentious meeting in February by a 15-12 vote. Coupled with interest on the bonds, the city is expected to pay $105 million on the project over 30 years.

Erich Vieth, attorney for two of the plaintiffs, said the original lease also stipulates that if the city were to pay for renovations, the owners would be obliged to pay it back in the form of increased rent. The Blues owners currently pay $1 a year in rent.

Work already has begun on the three-year renovation project, but how it's currently being financed isn't clear.

The suit was filed in the 22nd Circuit Court in St. Louis. It has been assigned to Judge Robert Dierker Jr.

Aug 11, 2017

By Mike Faulk

St. Louis Post-Dispatch

Prospects of Sports Stadium Financing in the U.S.

The use of tax-exempt municipal debt for the construction of sporting facilities has been a very common practice amongst many government entities. The commonly held belief amongst many politicians (who often decide on the governmental subsidies for these infrastructures) and their constituents is that big sporting infrastructure construction has a substantial positive impact on local economies.

However, there have been many counter-arguments stating the opposite and arguing against the governmental subsidies to construct sporting venues. In the Tax Reform Act of 1986, there were propositions introduced to limit the use of public funding for sporting stadiums, because unlike other publicly funded infrastructures (roads, water and wastewater infrastructures, bridges, and so on,) sporting facilities provide benefit to a small number of people. Even under President Obama's administration, there were proposals that were brought forward on the use of tax-exempt bonds for stadium construction – eventually they were rejected by the Congress.

In this article, we'll take a closer look at the governmental subsidies for the construction of sports stadiums, their net impact on local economies and whether this type of municipal debt is worth holding or adding on to your investment portfolio.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jul 27, 2017

S&P: Overview Of Request For Comment On U.S. & Canadian Not-For-Profit Transportation Infrastructure Enterprises.

In this CreditMatters TV Segment, Director Joe Pezzimenti and Managing Director Kurt Forsgren briefly discuss the proposed changes in the approach for determining the ratings for U.S. and Canadian not-for-profit transportation infrastructure enterprises and the potential rating implications, if adopted.

Watch Video

Aug. 8, 2017

TAX - OHIO

Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision

Supreme Court of Ohio - July 18, 2017 - N.E.3d - 2017 WL 3085080 - 2017 -Ohio- 5823

City schools board of education appealed decision of the Board of Tax Appeals that retained reduced values that county board of revision had adopted for condominium parcels.

The Supreme Court of Ohio held that:

- In reviewing valuation of property for tax purposes, Board of Tax Appeals (BTA) was to perform its own weighing of evidence in record rather than giving presumption of validity to value assigned by county board of revision; and
- A board of revision may, when reviewing complaints seeking a decrease in the assessed value of taxable property, elicit evidence from consultants and staff appraisers.

TAX - NEVADA

Southern California Edison v. State Department of Taxation

Supreme Court of Nevada - July 27, 2017 - P.3d - 2017 WL 3221310

Taxpayer, which was electrical utility company, brought action against Department of Taxation seeking refund of use tax paid on out-of-state coal purchases.

Following bench trial, the District Court entered final judgment finding that taxpayer was not entitled to tax refund. Taxpayer appealed.

The Supreme Court of Nevada held that:

- Taxpayer’s out-of-state coal purchases were subject to use tax;
- Taxpayer was not entitled to refund of use taxes as remedy for dormant commerce clause violation; and
- Taxpayer was not entitled to tax credit toward use tax.

Out-of-state purchases of Arizona coal by Nevada taxpayer, which was electrical utility company, were subject to Nevada use tax, even if purchases would have been exempt from sales and use tax if coal had been from Nevada mine, since use tax applied with respect to all personal property acquired out of state in a transaction that would have been taxable if it had occurred within Nevada, determining whether coal sales would have been taxable if they had occurred in Nevada depended on location of sale, not location of mine, Nevada-based sales of Arizona-mined coal were taxable in Nevada, and allowing sales and use tax exemption for proceeds from in-state mines to apply in order to avoid dormant commerce clause violation would allow taxpayer to avoid use, sales, and net proceeds taxation.

Absent any favored competitors that benefited from use tax exemption for proceeds of in-state mines that violated dormant commerce clause, taxpayer, which was electric utility company, was not entitled to refund of use taxes it paid on out-of-state coal purchases as remedy for dormant commerce clause violation, where other coal-based power companies did not use coal mined in state, in that there were not large enough coal deposits in state to justify commercial operations, and energy producers using other in-state input material, such as oil, geothermal, and natural gas, were not substantially similar competitors to taxpayer, despite output of electricity being same.

Arizona transaction privilege tax (TPT) paid by Nevada taxpayer, which was electric utility company, as part of purchase price for coal did not constitute sales tax, and, thus, taxpayer was not entitled to tax credit toward use tax it paid on same out-of-state purchases, since TPT was tax upon privilege or right to engage in business in Arizona, not upon sales, and TPT tax was borne by Arizona seller of coal, despite being passed on to taxpayer as part of purchase price.

Arizona's mining transaction privilege tax (TPT), as a tax levied for the privilege of conducting nonmetalliferous mining business in Arizona, is not rendered a sales tax simply because it uses gross proceeds of sales to determine the value of the tax owed upon severance from the ground.

TAX - MISSOURI

St. Louis Rams LLC v. Director of Revenue

Supreme Court of Missouri, en banc - August 1, 2017 - S.W.3d - 2017 WL 3259771

Director of Revenue sought judicial review of decision of Administrative Hearing Commission determining that professional sports franchise was entitled to a refund of state sales tax paid, plus statutory interest, for a certain period and that franchise was not liable for state sales tax and interest assessed by the Director for another period.

The Supreme Court of Missouri held that entertainment license tax (ELT), which franchise was obligated to pay to city based upon the gross receipts derived from admission charges and which professional sports franchise passed directly onto ticket buyers, was included in "the amount paid for admission," for purposes of sales tax statute, and thus the total amount franchise received from ticket buyers, including the ELT, was subject to sales tax and did not constitute a tax upon a tax.

The IRS Isn't The Only One Monitoring Your Exempt Hospital.

As discussed in my previous blog post, the IRS is ramping up compliance audits of governmental hospitals who are exempt under 501(c)3. However, the IRS isn't the only one monitoring your tax-exempt hospital. Other organizations have started policing these requirements.

As a refresher, at the end of 2014, the IRS released the final regulations under Section 501(r) for charitable hospitals exempt under Section 501(c)3. These regulations are in response to requirements enacted under the Affordable Care Act, and they finalize regulations first proposed in June 2012 to hold tax-exempt hospitals to a higher standard.

The final regulations discussed requirements for what must be included in the written Financial Assistance Policies, along with information detailing requirements for Amounts Generally Billed, Limitations on Charges, Extraordinary Collection Actions, and Community Health Needs

Assessments.

At the time regulations were issued, many wondered how the IRS would ensure tax-exempt hospitals were following all of these new requirements. In time, the IRS updated Schedule H of Form 990 to include general questions regarding these requirements. The form instructs hospitals to include website links for financial assistance policies and CHNAs.

However, the IRS isn't the only one looking at your policies for compliance under 501(r). Specifically, the Southern Poverty Law Center (SPLC) has started issuing letters to tax-exempt hospitals detailing their potential failures under 501(r). In particular, the SPLC is closely examining tax-exempt hospitals' Financial Assistance Policies (FAPs). For example, the SPLC is examining policies to:

- Ensure FAPs are being made widely available to the public, including the plain language summary;
- Make sure that the policies are available in other languages if the area has a certain number of non-English speaking residents;
- Verify that the FAPs include the basis for calculating the amounts actually charged or billed to patients; and
- Confirm that the policies list any Extraordinary Collection Actions that the hospital may take against patients.

These SPLC letters ask that the hospitals return proof of correction to them within a short time frame. If a hospital does not respond to them in a timely fashion, they will file a formal complaint against the hospital to the IRS. And trust me, you don't want to be put on the IRS' noncompliance "radar," as this significantly increase your chances of an IRS audit.

Last Updated: August 3 2017

Article by Amie Whittington

Horne LLP

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Moving On Down – In the Right Direction.

In contrast to the theme song, "Movin' on Up", from the 1970s sitcom The Jeffersons, sometimes "moving on down" is better in certain circumstances. For example, it is preferable when discussing the sequestration rate for direct pay bonds. Since sequestration began during the fiscal year ending September 30, 2013, the sequestration rate (i.e., the portion that the Federal government will not pay) has generally been going down. The IRS just announced that the 6.6% haircut for the fiscal year ending September 30, 2018, will apply to all subsidy payments made by the Treasury Department that are processed on or after October 1, 2017. The 6.6% sequestration rate is lower than the current 6.9% sequestration rate.

Continue Reading

By Cynthia Mog on August 9, 2017

SIFMA Submits Comments to IRS on Implementation of Executive Order 13789: Identifying and Reducing Tax Regulatory Burdens.

On August 7, SIFMA's Municipal Securities Division provided comments to the Internal Revenue Service (IRS) on IRS Notice 2017-38, "Implementation of Executive Order 13789 (Identifying and Reducing Tax Regulatory Burdens)" and the pending 2016 IRS proposal to redefine "political subdivision" for the purpose of determining issuers who are eligible to issue tax-exempt bonds. SIFMA reiterated our previous position in opposition to the proposed change and urged the Treasury Department to withdraw the proposal.

SIFMA Comment Letter

Rays Can Learn from Oakland A's New Privately Funded Stadium.

The Oakland Athletics, whose Coliseum is the one MLB stadium that gets as much grief as Tropicana Field, are moving closer to a new home.

The team recently launched a website that provides some information about their process, and also includes a survey to help guide site selection and stadium design. (The Rays also have a similar site.) What caught our attention when perusing the Oakland website was this line:

> Our new ballpark will be privately financed.

At a time when even the wealthiest franchises are turning to taxpayers for construction funds — $615 million of the $850 million for Citi Field and $1.2 billion of the $2.3 billion for new Yankee Stadium was publicly financed — are there teams that really pay their own way?

If anything, the Athletics should have had a strong negotiating position. Oakland is losing the Raiders to Las Vegas, and the Warriors are moving to San Francisco. The team ought to have some leverage with a city government seeking to hold on to its last major professional team. Instead, they claim to be taking no taxpayer dollars.

From an MLB perspective, this changes everything.

Continue reading.

by Mister Lizzie @ElizabethStrom

Aug 11, 2017

TAX - WISCONSIN

Milewski v. Town of Dover

Supreme Court of Wisconsin - July 7, 2017 - N.W.2d - 2017 WL 2883925 - 2017 WI 79

Property owners brought action against municipality, alleging excessive property tax assessment and raising as-applied constitutional challenges to statutes governing procedure to be followed in challenging tax assessor's property valuation.

The Circuit Court granted municipality summary judgment. Property owners appealed. The Court of Appeals affirmed. Property owners petitioned for review, which petition was granted.

The Supreme Court of Wisconsin held that:

- Property owners had due process right to contest tax assessor's valuation of their real property as excessive;
- Tax assessor who enters home to conduct an "interior view" occupies private property for the purpose of obtaining information and is therefore conducting a Fourth Amendment search; and
- Statutory scheme governing process for challenging tax assessor's property valuation was unconstitutional as applied to property owners.

Warrantless home search, conducted by tax assessor in conformance with requirements of statutory scheme governing valuation of homes for tax purposes, was not, as matter of law, reasonable. While useful in ensuring compliance with state constitution's uniformity clause, by statute, real property could also be valued from best information the assessor could practicably obtain, such search was not minor intrusion, and not every application for an administrative warrant would result in issuance of a warrant.

Statutory scheme governing process for challenging tax assessor's property valuation, which scheme conditioned property owners' right to contest tax assessor's valuation of their real property as excessive on their granting of assessor's request to view property, was unconstitutional as applied to property owners who exercised their Fourth Amendment right to deny assessor's request to inspect home's interior, and who were thereafter denied their Fourteenth Amendment due process right to contest their increased tax burden.

NABL Submits Comments on Proposed Political Subdivision Regs.

Today NABL submitted comments in response to Notice 2017-38 that, pursuant to Executive Order 13789, identified significant tax regulations issued on or after January 1, 2016 that (i) impose an undue financial burden on U.S. taxpayers, (ii) add undue complexity to the Federal tax laws, or (iii) exceed the IRS' authority. Eight regulations were identified, including the proposed regulation on the definition of political subdivision. Under Executive Order 13789, the Treasury Department must submit a report to the President by September 18, 2017 specifying the actions it will take to mitigate the burdens identified in Notice 2017-38. Notice 2017-38 requested public comment on what steps the Treasury Department should take.

NABL reaffirmed its position that that the proposed political subdivision regulations should be withdrawn and that the Treasury Department should affirm the applicability of the Shamberg rule as the sole standard for evaluating a governmental entity's status as a political subdivision under section 103(c)(1) of the Code.

NABL's comments can be found here.

TAX - OHIO

Image Group of Toledo, Inc. v. Holland-Springfield Township Joint Economic Development Zone

Court of Appeals of Ohio, Sixth District, Lucas County - June 23, 2017 - N.E.3d - 2017 WL 2709811 - 2017 -Ohio- 4470

Taxpayers, which were businesses and an individual in a joint economic development zone formed by a township and village, brought action against zone, zone's board of directors, and township that had joined with a village to form the zone, challenging the zone's implementation of 1.5% income tax and seeking a declaratory judgment that the contract creating the zone was void.

The Court of Common Pleas found that taxpayers had standing, found that zone's creation met statutory requirements, and, in a second judgment upon reconsideration, found that the income tax imposed by the zone was invalid. Taxpayers appealed, and zone, zone's board of directors, and township cross-appealed.

The Court of Appeals held that:

- Taxpayers had standing to challenge zone's legality;
- Township and village agreed in their contract forming the zone to share the costs of improvements for the zone, as required by statute governing the formation of joint economic development zones;
- Zone complied with statutory requirements concerning the selection of its review council;
- Failure by township and village to provide for public inspection the addendum to zone's formation contract and zone's economic development plan for 30 days prior to a public hearing did not void zone's creation;
- Township's submission to county board of elections of a copy of the resolution that approved the formation of the zone satisfied statute governing the formation of joint economic development zones; and
- Township provided valid consideration to support the contract with village to form the zone.

Taxpayers, which were businesses and an individual in a joint economic development zone that had imposed a 1.5% income tax, had standing to challenge the zone's legality. The limited applicability of the zone's income tax was a discreet and particularized injury to taxpayers and others located within the zone that was different from that suffered by the public at large.

Township and village agreed in their contract that formed a joint economic development zone to share the costs of improvements for the zone, as required by the statute governing the formation of such zones, despite argument that it was acknowledged at a meeting of the township trustees that the village was only a partner for legislative purposes. Statute at issue defined "contributions" broadly to be any form to which the contracting parties agreed, and township and village agreed to the village's nominal contribution to engage in activities to promote, compliment, and benefit economic development in the zone as determined in the sole discretion of the village and agreed to village's possible contribution to maintenance and improvements to rights of way.

Under the statute allowing for the formation joint economic development zones, if new, expanded, or additional services, facilities, or improvements are part of the zone's economic development plan, a schedule for them must be included in the plan.

Any decision by the Court of Appeals as to taxpayers' appeal of the trial court's conclusion that the lack of scheduled new, expanded, or additional services, facilities, or improvements in a joint economic development zone, whose existence taxpayers were challenging, meant that none of the zone's income tax revenue had to be spent in the zone would have been purely advisory, and thus the Court of Appeals would decline to address the issue, where no income tax revenue had yet been collected.

Joint economic development zone between township and village complied with statutory requirements concerning the selection of its review council, where township administrator accessed publicly available information, consulted with the county auditor, and used her own experience from living in the area to ascertain the four largest employers, which had first chance at representation on the council under the statute governing joint economic development zones, one of the employers declined appointment to the council, another employer was unavailable to attend the meeting and failed to respond to future requests, the purportedly next largest employer failed to timely respond as to how many people it employed, and the next two employers in line accepted appointments.

Failure by township and village, which had formed a joint economic development zone, to provide for public inspection the addendum to zone's formation contract and zone's economic development plan for 30 days prior to a public hearing did not void the creation of the zone. Statute governing the formation of joint economic development zones did not require an additional 30 days of public inspection every time a change was made to the proposed contract forming a zone, and the formation contract, a description of the zone's boundaries of the zone, and the zone's economic development plan were available for public inspection for 30 days prior to a public hearing.

Township's submission to county board of elections of a copy of the resolution that approved the formation of a joint economic development zone with village satisfied statute that required each party to the formation of a zone to submit a copy of the ordinance or resolution approving the contract forming the zone to the county board of elections, despite argument that township did not submit with the resolution a copy of the contract with the village forming the zone; submission of a copy of the resolution was all that the statute required.

Township provided valid consideration to support the contract with village that formed a joint economic development zone with township, where township agreed under the contract to provide expanded public services beyond those that it was already providing and to provide for the construction and improvement of such roads in the township it deemed appropriate to provide an improved transportation network to benefit the zone.

Taxpayers, which were business and an individual located in a joint economic development zone that township and village had formed, lacked standing to challenge the adequacy of consideration of the township and village's contract forming the zone, where taxpayers were incidental beneficiaries to the contract.

Oh Great; More Issue Price Talk.

Various industry groups and issuers from around the country have re-submitted comments applauding Treasury for including the proposed political subdivision regulations among those on the chopping block, following the President's Executive Order 13789 to eliminate burdensome tax regulations. Not surprisingly, the style of most of those submissions has been simple and thematically consistent: "Good Job. Keep Going."

There appears to be no appetite, though, for telling Treasury that it should have included the new issue price regulations as a "significant" regulatory project that deserved a second look. You'll recall that Treasury did not even examine the new issue price regulations to see whether they meet the President's criteria in the Executive Order. (In other words, the issue price regulations didn't just escape the executioner's blade; they were never captured.) Instead, everyone seems to be of the view that it's better to live with the "devil that we know" rather than staring into the abyss of what might be proposed and adopted next.[1]

Continue reading.

The Public Finance Tax Blog

By Johnny Hutchinson on August 3, 2017

Squire Patton Boggs

IRS: Bonds Tax Exempt after Hospital Contract with Pharmacy School.

WASHINGTON – A recent Internal Revenue Service private letter ruling is being greeted by tax lawyers as confirmation that the tax-exempt status of bonds issued by public teaching hospitals isn't jeopardized under most agreements with medical schools, nursing schools and pharmacy schools.

IRS private letter ruling 2017226007 dated July 13 addressed the case of an unnamed county hospital with tax-exempt bonds outstanding that signed a five-year contract with a pharmacy school. The contract does not involve money. It allows pharmacy students to perform clinical rotations but the school creates the curriculum, takes attendance and provides instructors.

The hospital, meanwhile, has the right to immediately remove any student or faculty member who jeopardizes the hospital's license or the health and safety of patients, visitors or staff.

The IRS concluded the agreement is a management contract, but found that it did not meet the safe harbor conditions under the new Revenue Procedure 2017-13. That procedure clarified certain types of arrangements and compensation that would not be treated as providing a share of net profits.

Even so, the IRS concluded that the agreement did not result in a private business use that would jeopardize the tax exempt status of its bonds.

Under the tax code, bonds are private activity bonds if more than 10% of the proceeds are used for private use and more than 10% of debt service payments are from or secured by private parties.

"All big state teaching schools are going to have arrangements like this,'' said Elizabeth Walker, bond and tax attorney at the Indianapolis office of Hall, Render, Killian, Heath & Lyman, the nation's largest health care-focused law firm.

Walker, who says 90% of her work deals with hospitals and health care systems, described the agreements as "the norm around the country.''

Alexios Hadji, an attorney for Squire Patton Boggs in Columbus, Ohio who posted a commentary on the IRS letter on his law firm's public finance blog last week, said the letter ruling was the first involving hospital management contracts since IRS Revenue Procedure 2017-13 took effect.

"If those students are coming from a school there has to be an agreement to allow them access to the facilities of the hospital," Hadji said on Monday, emphasizing the importance of the agreements to teaching hospitals.

Walker said she is reassured that agreements in which no money is exchanged are still considered management contacts by the IRS.

Walker advises clients that agreements with for-profit medical schools, which are often based in the Caribbean, constitute a private use when the school makes a payment to the hospital to place a graduate into the hospital's clinical rotation.

"A plumber doesn't pay me to come do my plumbing,'' Walker said, making an analogy. "That's where I have come across this issue a lot.''

Hadji said the private use issue comes up when a hospital shares profits with a private business, such as an on-site cafeteria run by a vendor that has an incentive measure in the contract.

The IRS cautions that PLRs cannot be relied on by other parties.

The Bond Buyer

By Brian Tumulty

Published July 31 2017, 4:08pm EDT

[IRS FY2018 Update: Effect of Sequestration on State & Local Government Filers of Form 8038-CP.]()

Pursuant to the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, refund payments to certain state and local government filers claiming refundable credits under section 6431 of the Internal Revenue Code applicable to certain qualified bonds are subject to sequestration.

Refund payments processed on or after October 1, 2017 and on or before September 30, 2018 are reduced by the fiscal year 2018 sequestration rate of 6.6 percent, regardless of when the amounts claimed by an issuer on any Form 8038-CP was filed with the IRS. The sequestration reduction rate will be applied until a law is enacted that cancels or otherwise impacts sequestration.

These reductions apply to Build America Bonds, Qualified School Construction Bonds, Qualified Zone Academy Bonds, New Clean Renewable Energy Bonds, and Qualified Energy Conservation Bonds for which the issuer elected to receive a direct credit subsidy pursuant to section 6431.
Issuers should complete Form 8038-CP in the manner provided by the Form 8038-CP Instructions, and will be notified through correspondence that a portion of their requested payment was subject to the sequester reduction.

Issuers with any questions about the status of refunds claimed on Form 8038-CP, including any sequester reduction, should contact IRS Customer Account Services at 1-877-829-5500.

Yearly Sequestration Rate Reduction

Fiscal Year (October 1 thru September 30) Sequestration Rate Reduction

2018 6.6%
2017 6.9%
2016 6.8%
2015 7.3%
2014 7.2%
2013 8.7%

IRS Says $26.5M of Bonds for Statler Hilton Redevelopment Project in Dallas are Taxable.

WASHINGTON – The Internal Revenue Service has preliminarily concluded that $26.5 million of zero coupon bonds issued by a Wisconsin authority for a project to redevelop the old Statler Hilton Hotel in Dallas are taxable.

A material event notice posted on the Municipal Securities Rulemaking Board's EMMA website says the issuer — the Public Finance Authority in Wisconsin — received a Notice of Proposed Issue from the IRS on July 17 stating its initial finding is that the bonds are taxable.

The notice doesn't give the basis for the IRS finding, but says the issuer "disagrees with the legal conclusion set forth in the Notice and intends to engage in discussions with the IRS."

The IRS began auditing the bonds in January, less than five months after they were issued. Local newspapers in Dallas published articles quoting sources raising questions about the unusually complex financing and the incentives being provided to the developer – Commerce Statler Development, LLC, according to the official statements for the bonds. That company was created by Mehrdad Moayedi, an Iranian who reportedly came to the U.S. in the late 1970's and became a U.S. citizen n the early 1980's.

"For the IRS to jump into something that quickly is unusual," said Mark Scott, former head of the tax-exempt bond office at the IRS.

The quick action on the audit seems to suggest that the IRS had problems with the structure of the deal, rather than post-issuance compliance.

There are some curious aspects about the financing. First, the bonds were issued by the Public Finance Authority in Wisconsin, which can sometimes mean that transaction participants are trying to avoid state or local restrictions where the project is located.

The event notice said the IRS is not calling into question whether the issuer can issue tax exempt debt inside or outside the state of Wisconsin. The PFA is a governmental entity established under Wisconsin law and authorized to issue tax-exempt, taxable and tax credit conduit bonds for public and private entities throughout all 50 states, according to its website.

Also, questions have been raised about the developer. According to the OS, Moayedi's company

Centurion American and various subsidiaries are involved in roughly 70 master planned residential community projects in Texas valued at about $2 billion (at build out). Roughly 40% of those projects have been developed using funding by various entities associated with United Development Funding, a large sponsor of real estate investment trusts based in Grapevine, Texas.

UDF's headquarters was raided by the FBI in February 2016 following allegations by Kyle Bass, who runs Dallas-based hedge fund Hayman Capital Management and bet against one of UDF's fund's shares, that that UDF involved in a Ponzi scheme. Bass alleged that UDF was using new investor money to repay earlier investors.

UDF claimed in May 2016 that a law firm it hired to investigate the allegations found no evidence of fraud or misconduct.

The OS for the Statler Hilton bonds says UDF is not associated with the funding of the project.

But it also says the developer and authority cannot predict the results of the FBI investigation and its effect, if any, on the developer or its ability to continue or complete project funding.

Finally, the structure of the financing is very complex and difficult to grasp, but it shows a lot of money flowing to Moayedi from both the city of Dallas and the bond financing. The structure involves a slew of companies connected to Moaydei.

And the public offering for the project consisted entirely of capital appreciation or zero coupon bonds, which pay no interest until maturity.

Moaydei's plan was to develop the former Statler Hilton Hotel, which has been vacant since 2001 as well as the old Dallas Central Library on Main Street into a luxury residential tower with restaurants, offices and a move theatre, according to the website of the development company, Centurion American, for which Moayedi is president and CEO, and statements Moayedi made back in April 2014.

Construction of the project was slated to start in 2015 and to be completed in 2017.

In 2014, the Dallas city council approved $46.5 million in tax increment financing for the project.

The $26.5 million of tax increment finance grant revenue bonds were issued August 2016 "to provide funds to finance the cost of the acquisition of a portion of the Economic Development Tax Increment Financing Grant" made by the city of Dallas, according to the official statement for the offering.

The OS says the developer planned to transfer the TIF grant funds to Ctmgt, LLC, another company owned by Moayedi, "on behalf of the developer to be treated as a non-shareholder contribution to capital."

A detailed description of the funding plan in the OS says that initial funding for the project was to be comprised of loans and contributions.

Statler 1900 Commerce, LLC, owned by Moayedi, committed to up to $85 million pursuant to a loan agreement secured by a deed of trust on the property and by a personal guarantee from Moayedi.

According to the OS, $50 million of the loan was released and $35 million was put into escrow.

Another equity contribution of $10.7 million was made to the developer by 1914 Commerce GM, LLC, also owned by Moayedi.

In addition, 1914 Commerce Investments, Inc., a company registered by Moayedi, received a $29.13 million state housing tax credit bridge loan from Octagon, a company not described in the OS.

And loans were to be made to 1914 Commerce Investments in connection with two federal housing tax credit bridge loans from Octagon, one for $15 million and one for $7.5 million.

The OS says the developer was to receive a fee of more than $17 million, but deferred it. That's almost 8% of the estimated project cost in the OS of $221.59 million.

The OS, which was dated Aug. 16, 2016, then states that as of July 31, 2016, the supplemental budget is anticipated to be funded by several modified or additional amounts, including a deferred developer fee of $4.4 million.

A sources and uses table in the OS shows that of the almost $221.59 million cost of the project, almost $22.9 million is for land costs, $135.6 million is for construction and hard costs, and $63.1 million is for soft costs.

The OS states the bonds are to be paid in part by the Economic Development Tax Increment Financing Grant that was provided to the developer by the city and interest and other income from investments.

The bonds were underwritten by Jefferies. Orrick, Herrington & Sutcliffe was bond counsel and counsel to the authority. Underwriter's council was Winstead PC.

Sarah Dodd, a spokeswoman for Centurion American, one of Moayedi's companies, which she said is developer of he project, said: "We sold our rights to a portion of the TIFF. The Wisconsin Public Finance Authority and its legal counsel Orrick made determinations on all tax matters. We will follow whatever ruling is ultimately decided by the IRS. But, at this time the WPFA and Orrick are protesting the preliminary ruling of the IRS on this matter. They expect this to be a six to twelve month process to reach resolution."

Neither Orrick's lawyers, a spokeswoman for one of Moayedi companies, or staff of the Public Finance Authority could be reached for comment.

The Bond Buyer

By Lynn Hume

Published July 25 2017, 1:21pm EDT

Audits Of Multifamily Housing Bonds Triggered By Failure To File Form 8703: Orrick

IRC Section 142(d) requires operators of qualified residential rental properties to file Form 8703, Annual Certification of a Residential Rental Project annually. A number of recent audits of multifamily housing bonds appear to have been triggered by missing or incorrectly filed Form 8703s.

In discussions regarding those audits, the IRS has highlighted the importance of filing Form 8703 to demonstrate that the project continues to meet the qualified residential rental project requirements. While the statutory penalty for non-filing is only $100, the real cost may be much greater in the event of an audit triggered by failure to make timely, complete and accurate filings. Borrowers are therefore encouraged to take special care in preparing and filing Form 8703 as required by the Code.

Last Updated: July 24 2017

Article by Justin S. Cooper and Richard J. Moore

Orrick

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

PLR 201726007 – Insights into the Facts & Circumstances Test for Private Business Use after Rev. Proc. 2017-13.

The IRS recently released PLR 201726007, the first private letter ruling to interpret the revised management contract safe harbor in Rev. Proc. 2017-13. On one level, the PLR is quite straightforward – it concludes that a teaching agreement between a hospital and a school to provide clinical practice for pharmacy students does not result in private business use. On another level, it's somewhat surprising that such a PLR was issued and the analysis takes some interesting turns. Read below for more information.

Continue Reading

The Public Finance Tax Blog

By Alexios Hadji on July 28, 2017

Squire Patton Boggs

IRS PLR 201726007 - Revised Management Contract Safe Harbor in Rev. Proc. 2017-13.

The IRS recently released PLR 201726007, the first private letter ruling to interpret the revised management contract safe harbor in Rev. Proc. 2017-13.

TAX - MAINE

Roque Island Gardner Homestead Corporation v. Town of Jonesport

Supreme Judicial Court of Maine - July 11, 2017 - A.3d - 2017 WL 2951692 - 2017 ME 152

Taxpayer, a nonprofit homestead entity that owned a 1,242-acre island with five houses and numerous outbuildings, sought review of town board of appeals' denial of its request for a municipal property tax abatement.

The Superior Court affirmed. Taxpayer appealed.

The Supreme Judicial Court of Maine held that application of a 200% economic obsolescence factor to taxpayer's property, which had the effect of raising its valuation, was not unjust discrimination.

Application of a 200% economic obsolescence factor to taxpayer's property, a 1,242-acre island with five houses and numerous outbuildings, which had the effect of raising its valuation, was treatment given to similarly situated properties, and thus it did not amount to unjust discrimination by town, as prohibited by the equal protection clause of the U.S. Constitution and the equal apportionment and assessment clause of the state constitution, despite argument that island structures were similarly situated to those on mainland property, to which the obsolescence factor was not applied. Structures on all developed islands in the town were subject to the obsolescence factor, and the higher assessment of island structures was due to their higher building costs.

TAX - MICHIGAN

Baruch SLS, Inc. v. Tittabawassee Township

Supreme Court of Michigan - June 28, 2017 - N.W.2d - 2017 WL 2818133

Taxpayer, which was nonprofit corporation that operated adult foster care facility, appealed decision of Tax Tribunal denying taxpayer charitable exemption from real and personal property taxes.

Court of Appeals affirmed in part and reversed in part. Taxpayer appealed.

The Supreme Court of Michigan held that taxpayer was not required to offer its services for free or to select its recipients using only arbitrary criteria to satisfy charitable institution test for real and personal property tax exemption.

Taxpayer, which was nonprofit corporation that operated adult foster care facility, was not required to offer its services for free or to select its recipients using only arbitrary criteria to satisfy charitable institution test for real and personal property tax exemptions, since excluding taxpayer from exemptions simply because it charged fees for its services conflicted with factor of charitable institution test that allowed taxpayer to charge amount for its services that was necessary to remain financially stable, requiring taxpayer to provide its charitable services entirely for free was unrealistic and unsustainable, and taxpayer could have restrictions that limited or selected who was entitled to receive its services, if such restrictions reasonably related to its charitable goal.

IRS Rules Against $26.5 Million Bond Sale for Downtown Dallas' Historic Statler Hotel.

An IRS ruling could imperil a move to fund part of the historic Statler Hotel renovations with a special bond sale.

Developers revamping the historic downtown Dallas hotel sold the city financial incentives for the project that were used to back tax-exempt municipal bonds.

The deal allowed builder Centurion American Group to access the funds years before they would normally have been paid.

The city of Dallas agreed to provide the developers $46.5 million in city incentives that would be paid through tax increment finance district funds. Those TIF funds were used to finance the sale of $26.5 million in bonds.

In a preliminary ruling, the IRS said that the bonds don't meet its requirements to be "excluded from gross income for federal income tax purposes."

The Wisconsin Public Finance Authority, which issued the bonds last August, said it will appeal the decision and will continue to negotiate with the IRS.

If the ruling stands, it could affect not only the Statler project but also dozens of other real estate developments that were contemplating a similar sale of their incentives.

The IRS decision is unlikely to affect the completion of the Statler redevelopment.

The Statler developers said it could be some time before the issue is resolved.

"We sold our rights to a portion of the TIF," Centurion American's spokeswoman said in a statement. "The Wisconsin Public Finance Authority (WPFA) and its legal counsel (Orrick, Herrington & Sutcliffe LLP) made determinations on all tax matters.

"We will follow whatever ruling is ultimately decided by the IRS," the company said. "But, at this time the WPFA and Orrick are protesting the preliminary ruling of the IRS on this matter. They expect this to be a six- to 12-month process to reach resolution."

The sale of the bonds is just part of the mix of funding developer Centurion American is using for the $230 million renovation of the 61-year-old Commerce Street hotel and the adjoining former Dallas Public Library building.

The 19-story midcentury modern hotel is being converted into a combination of apartments, hotel rooms and retail space.

Tenants have already begun moving into the rental units. And the Hilton Curio Hotel is scheduled to open in early 2018.

The Dallas Morning News is relocating its downtown offices to the former library this fall.

When the sale of the Statler bonds was disclosed last year, it was considered a creative way to provide funding for one of downtown Dallas' largest historic renovation projects.

Since then, developers of other local real estate projects have said they plan to explore similar bond sales to help fund their deals. The IRS ruling, if it stands, could quash those efforts.

Investors who bought the bonds were motivated by the tax-free treatment of the income. Those bondholders could be required to pay back taxes on that income if the exemption is withheld.
The IRS did not contest the Wisconsin authority's sale of the bonds, just the tax-free provision.

Tax increment finance grants are a popular way for cities to help developers pay for projects. The incentives designate funds from property taxes in the neighborhood to pay the builders for part of the construction.

The TIF grants are always paid after the development is complete and are typically given in payments over several years.

By selling the TIF incentive for bonds, the developers would be able to access needed upfront money for their projects.

Redevelopment of the landmark Statler Hotel is being financed with a combination of loans, funding from foreign investors and the sale of historic tax credits for the project.

Dallas News

By Steve Brown

Local Opposition Halts Planned Minor League Stadium Subsidy.

Another win for taxpayers as $35 million minor league ballpark proposal is canned by Prince William County.

County officials in Virginia have cancelled plans to build a minor league baseball stadium that could have ended up costing taxpayers as much as $35 billion, but the team might soon be looking for a hand-out somewhere else.

Art Silber, owner of the single-A Potomac Nationals, a minor league affiliate of the nearby Washington Nationals, asked Prince William County officials to withdraw the stadium proposal last week. A planned vote on the stadium deal never materialized in the face of opposition from local taxpayers and two members of the county board of supervisors, according to Inside NoVa, a regional online news platform.

Continue reading.

Reason.com

Eric Boehm | Jul. 29, 2017 11:01 am

TAX - PENNSYLVANIA

Green Acres Contracting Company, Inc. v. Commonwealth

Commonwealth Court of Pennsylvania - June 13, 2017 - A.3d - 2017 WL 2544298

Taxpayer sought judicial review of decision of the Board of Finance and Revenue (BFR) that rejected taxpayer’s challenges to an assessment of state use taxes on certain items purchased and used by taxpayer in its business.

The Commonwealth Court affirmed in part and reversed in part. Taxpayer filed exceptions.

The Commonwealth Court held that nuts, bolts, washers, and guardrail blocks were guardrails exempt from sales and use taxes as building machinery and equipment (BME).

Term “guardrails” referred to the entire guardrail system, with the exception of guardrail posts, which were specifically excluded, and, as such, nuts, bolts, washers, and guardrail blocks, which were necessary for the construction of the guardrails, constituted building machinery and equipment (BME) exempt from sales and use taxes. Definitions and common usage of the term "guardrails" referred to more than the horizontal elements and included the entire guardrail system as it was constructed and installed along a road and/or highway.

Why a Border Adjustment Tax Would Be a Bad Deal for States and Localities.

It would slam the insurance industry, bringing downturns in the bond market and tax revenues.

State and local governments are no strangers to dealing with the unintended side effects of federal policies. This year's congressional tax-reform efforts could leave them scrambling again.

That's because a central part of the House Republicans' expected proposal, a "border-adjustment tax" (BAT), would deal a heavy financial blow to states' and localities' single largest source of municipal bond and other long-term debt funding as well as to one of their most substantial sources of tax revenue: the insurance industry.

It isn't that a BAT would directly force financial hardship on state and local governments. Rather, it would raise the cost and constrict the supply of insurance products in ways that would be expected to lead to downturns in the muni bond market, real-estate investments and tax revenue while adding to pressure for increased spending on social services.

According to a recent study by the R Street Institute, the costs of typical life insurance and annuity policies would rise by $59 billion, which would lead to a $24.6 billion drop in sales of these products over the next two decades. Separate research by the Brattle Group finds similarly large effects for the property and casualty insurance industry, with a $5 billion increase in the cost of insurance and an annual reduction in sales of $9.3 billion.

The trouble with the BAT comes from the way in which it is likely to be structured. It's a system that taxes imports but not exports, in a fashion designed to favor domestic production and supply. Yet when it comes to risk, international diversification is a vital tool to keep insurance prices down and policy coverage broad.

If financial services like insurance were subject to a BAT, the supply of international capital available to U.S. insurers in the form of reinsurance — essentially insurance for insurance companies — would become more limited and therefore more expensive. The immediate effects would be higher premiums for the 60 percent of Americans who hold life insurance policies.

But for states and municipalities, even more significant effects would follow. U.S. life insurers invest about 75 percent of every new premium dollar in fixed-income debt markets, and often are the only buyers for some kinds of bonds, particularly long-term debt. In fact, municipal bonds are among insurers' most significant long-term investments: Property and casualty insurers held $326.8 billion in municipal bonds at the end of 2012, according to the National Association of Insurance Commissioners, while life insurers tripled their muni holdings from $47.1 billion in 2008 to $131.2 billion in 2012.

By driving down insurers' bond investments, a BAT would harm the ability of state and municipal governments to borrow long-term. Other budget problems could stem from how reliant states are on the gross premium taxes paid by insurers, which totaled $19.2 billion in 2016. These taxes are among some states' top five sources of revenue and are often levied as an alternative to income taxes.

Finally, a BAT would further stretch limited state and local resources because it would push financial-planning products such as insurance beyond the reach of many of those teetering on the brink of public assistance. While the federal government might be called upon to support some of those needs, most of that extra load would need to be carried by state and local authorities.

While the political destiny of tax reform in Congress is uncertain, the policy effects of a BAT are already known. State and local governments have a stake in this debate because they have lots to lose.

Governing.com

By Ian Adams | Contributor
Associate vice president of the R Street Institute

JULY 17, 2017

TAX - WISCONSIN

Voters with Facts v. City of Eau Claire

Court of Appeals of Wisconsin - May 31, 2017 - N.W.2d - 2017 WL 2349163 - 2017 WI App 35

Taxpayers brought declaratory judgment action against city, seeking declaratory judgment invalidating city's creation and amendment of tax increment districts (TID) to finance redevelopment.

The Circuit Court granted city's motion to dismiss on the basis that taxpayers lacked standing. Taxpayers appealed.

The Court of Appeals held that:

- Taxpayers failed to sufficiently allege that city failed to follow statutory requirements when approving creation and amendment of TID;
- Statute governing creation of TID precluded taxpayers' claim that TID area was not blighted;
- Taxpayer's challenge was cognizable on certiorari, rather than as a declaratory judgment claim;
- Taxpayers failed to sufficiently allege that city funds related to TID were used to pay for demolition of historic buildings;
- Taxpayers failed to sufficiently allege that reimbursements to developer violated uniformity clause of Wisconsin constitution; and
- Taxpayers failed to sufficiently allege that city's resolutions violated the public purpose doctrine.

Taxpayers failed to sufficiently allege that city failed to follow statutory requirements when approving creation and amendment of tax increment districts (TID) to allow tax increment financing (TIF) for redevelopment, as required to establish standing to assert declaratory judgment claim against city. While taxpayers alleged that city was incorrect in finding blight to support of creation of TID, statutory language merely imposed procedural hurdles to TIF use, which included approval of a TID by a democratically-accountable body who asserts the requisite findings.

Statute governing creation of tax increment districts (TID) by municipalities precluded taxpayers' declaratory judgment claim against city, based upon taxpayers' allegation that area city established as a TID was not blighted. City's determination as to whether area was blighted was a matter of its legislative discretion, a challenge to this finding in a declaratory judgment action would have resulted in factfinder substituting its judgment for that of city, and even if "blight" had been defined by an objective standard, language used in tax increment financing (TIF) statute did not require court to determine whether area was in fact blighted.

City's decision to establish tax increment district (TID) in area it concluded was affected by blight was cognizable on certiorari, rather than as a declaratory judgment claim. While city asserted that its legislative acts were immune from judicial review, statute governing creation of a TID did not expressly bar review, and certiorari review would have prevented lengthy and detailed discovery, constituted a speedy alternative to a declaratory judgment action, and would have prevented improper transfer of legislative power from city to courts.

Taxpayers failed to sufficiently allege that city funds related to tax increment district (TID) were used to pay for demolition of historic buildings, which was prohibited by statute, as required to establish that they had standing to bring declaratory judgment claim against city. Taxpayers' complaint did not allege anything unlawful had occurred, or was likely to occur, and alleged no facts connecting any past or future payment to the developer's action in demolishing historic buildings.

Taxpayers failed to sufficiently allege that city's reimbursements to developer performing project in tax increment district (TID) constituted an advance tax rebate or credit in violation of the Wisconsin constitution's uniformity clause, as required to establish standing on their declaratory judgment claim that city's expenditures were unlawful. Statute under which payments were made limited them to reimbursement for "project costs," which were defined to be those associated with a public work or improvement, so reimbursements did not require taxpayers to pay disproportionate amounts of taxes, nor did it change individual tax burden by granting a partial exemption, as taxpayers' allegations did not support characterizations of payments to developer as unlawful tax rebates or credits.

Taxpayers failed to sufficiently allege that city's resolutions, establishing and amending tax increment districts (TID), violated the public purpose doctrine, and thus taxpayers lacked standing to prosecute that constitutional claim in declaratory judgment action. While taxpayers asserted that establishment of TIDs did not serve to eliminate blight so they served a private rather than public purpose, tax increment law, and city's resolutions on their face, had a valid public purpose.

SIFMA Submits Tax Reform Recommendations to Senate Finance Committee .

Washington, DC, July 18, 2017 – SIFMA submitted recommendations for tax reform to the Senate Finance Committee in response to Chairman Orrin Hatch's (R-UT) request for comments issued on June 16, 2017.

"SIFMA strongly supports tax legislation that will enhance economic opportunities for individual Americans, promote savings and encourage investment, and lower the tax rate for American businesses that compete in a global marketplace," said Kenneth E. Bentsen, Jr., SIFMA president and CEO. "SIFMA commends Chairman Hatch, his staff, and the members of the Senate Finance Committee for making tax reform a priority. We look forward to working with the Committee to improve the climate for economic growth and prosperity for all Americans,"

SIFMA's recommendations include:

SIFMA Supports Pro-Growth, Comprehensive Tax Reform:
SIFMA supports movement to a territorial tax system that recognizes the unique characteristics of the financial services industry, that is fair and equitable for U.S. financial services companies and investors, and has tax rules for inbound investment that encourage foreign investment in the U.S. and does not discriminate against non-U.S. financial services companies seeking to compete in U.S. markets.

International Tax Reform:
The U.S. is one of the only remaining countries that continue to tax its residents on income derived from the active conduct of a foreign business. Most of our trading partners have moved toward a more competitive exemption or partial exemption system, under which business income earned by foreign subsidiaries is taxed primarily in the country where it is earned and anti-base erosion regimes serve to protect the home country tax base. SIFMA believes that a well-crafted exemption system, with appropriate safeguards against base erosion, would be strongly beneficial to the United States economy.

Federal Tax Exemption for Municipal Bond Interest:
State and local governments benefit from the tax exemption through significantly lower borrowing costs. Municipal bonds are used to finance a wide variety of infrastructure like schools, roads, bridges, airports, water and sewer systems, hospitals and many others. The tax exemption lowers the cost of financing these projects and encourages more infrastructure investment. The tax exemption is better than direct subsidies for infrastructure investment because bonds must be repaid, forcing a market test of the project's viability.

Tax Incentives for Retirement Savings:
Because of their tax-deferred status, retirement plans may come under scrutiny as a way to reduce the deficit. SIFMA participates in a coalition of service providers, plan sponsors and HR professionals – the Coalition to Protect Retirement – with the goal of preserving the tax incentives that are critical to encouraging Americans to save for retirement and to businesses sponsoring plans for employees.

Capital Gains and Dividends:
SIFMA and its members consistently have advocated for low federal income tax rates on savings and investment and supports low capital gains rates and parity between the rates for capital gains and qualified dividends. We believe that these preferential rates provide a necessary and powerful incentive for investments that benefits retail investors and strengthens the U.S. economy, and that Congress and the Committee should be mindful of preserving these incentives as discussions about tax reform unfold.

Financial Transaction Tax:
SIFMA is opposed to the imposition of any financial transaction and encourages lawmakers to consider the lessons of past efforts to implement FTT laws in other nations. SIFMA believes an FTT would raise the cost of capital needed by businesses and would amount to a new sales tax on retirees and middle-class investors.

The full document submitted to the Senate Finance Committee can be read here.

Release Date: July 18, 2017
Contact: Carol Danko, 202-962-7390, cdanko@sifma.org

MBFA Submits Comment Letter to SFC Chair Hatch on Tax Reform.

On Monday, July 17th, the Municipal Bonds For America Coalition submitted its comment letter and policy recommendations in response to Senate Finance Chairman Orrin Hatch's (R-UT) request for expert and stakeholder input on tax reform. You can view MBFA's letter here.

The comments that the MBFA submitted were endorsed by local leaders from Utah including, Mayor Ben McAdams (Salt Lake County), Deputy Mayor Darrin Casper (Salt Lake County), and Amy Rowland (Utah Director – National Development Council).

CDFA Submits Tax Reform Recommendations to U.S. Senate.

—Submission Defends Development Finance Industry Interests —

Columbus, OH – The Council of Development Finance Agencies (CDFA) has submitted tax policy recommendations to the Senate Committee on Finance as the Committee takes its initial steps toward comprehensive tax reform. The submission of recommendations comes following a request from Committee on Finance Chairman Orrin Hatch for advice and suggestions on ways to improve the U.S. tax code from tax policy stakeholders.

"We're thankful that the Finance Committee offered national organizations like CDFA a chance to weigh in on tax reform," stated Toby Rittner, President & CEO of CDFA. "It's been more than 30 years since the last major tax overhaul, and we need to ensure that any future tax system enables the development finance industry to flourish."

Senator Hatch (R-UT) requested in a June 16 release that interested stakeholders and policy experts submit recommendations that address any or all of four key issue areas. The issue areas outlined by Senator Hatch are:

1. Providing much-needed tax relief to middle-class individuals and families through reforms to the individual income tax system.
2. Strengthening businesses – both large and small – by lowering tax rates and broadening the relevant tax base in order to put the economy on a better growth path and create jobs.
3. Removing impediments and disincentives for savings and investment that exist in the current tax system.
4. Updating our international tax system in order to make our nation more competitive in the global economy and preserve our tax base.

The recommendations submitted by CDFA follow the proposals outlined in the Administration Transition Paper, and the 2017 CDFA Policy Agenda. The recommendations consist of four carefully crafted, actionable items that are borne out of CDFA's 35 years as a leader in the development finance industry. The recommendations are:

1. Preserve and Protect Tax-Exempt Bonds
2. Reform Manufacturing Bonds through the Modernizing American Manufacturing Bonds Act
3. Permanently Authorize and Fund the New Markets Tax Credit Program
4. Launch a Federal Urban Tax Increment Finance Program

CDFA wishes to thank Senator Hatch for the opportunity to submit recommendations for comprehensive tax reform. CDFA will be working hard over the coming months to protect development finance industry interests as the tax reform debate continues in Congress. Development finance agencies are encouraged to let their voice be heard on tax reform by working with CDFA. To get engaged and learn more about CDFA's work, contact Tim Fisher.

The Council of Development Finance Agencies is a national association dedicated to the advancement of development finance concerns and interests. CDFA is comprised of the nation's leading and most knowledgeable members of the development finance community representing public, private and non-profit entities alike. For more information about CDFA, visit www.cdfa.net.

July 20, 2017

The Latest Attack on Stadium Financing – Keeping the Debate Honest.

On June 13, 2017, U.S. Senators Cory Booker (D-NJ) and James Lankford (R-OK) introduced the latest bill (S. 1342) ("Senate Bill") intended to end tax-exempt financing of professional sports stadiums. The Senate Bill mirrors the bill (H.R. 811) introduced by Rep. Steve Russell (R-OK) on February 1, 2017, reported in this blog by Johnny Hutchinson (link). Tax-exempt financing of professional sports stadiums has long been a controversial subject and was the subject of my post on April 14, 2016 (link). The debate prompted by the introduction of legislative bills is a healthy exercise. However, arguments that are misleading or inaccurate don't further but impede that debate. When the bills' advocates get off track of a productive and thoughtful debate, the misleading arguments need to be called out. That is the subject of today's post.

Continue Reading

The Public Finance Tax Blog

By Bob Eidnier on July 18, 2017

Squire Patton Boggs

Reverse Property Assessment Appeals: Commercial Properties Owners Have A Friend In The Pennsylvania Supreme Court.

In a landmark case titled Valley Forge Towers Apartments N, LP, et al. v. Upper Merion Area School District & Keystone Realty Advisors, LLC, No. 49 MAP 2016, issued July 5, 2017, the Pennsylvania Supreme Court (the "Court") constitutionally curbed the rights of taxing jurisdictions to file selective appeals often called reverse tax appeals under Pennsylvania's Consolidated County Assessment Law. This law is applicable to all counties in the commonwealth except Allegheny and Philadelphia Counties. At issue in Valley Forge was the practice of a number of Pennsylvania school districts to exercise their tax assessment appellate rights solely against large commercial properties, while excluding from reverse appeal all residential properties within the same jurisdiction. Typically under this practice, the school districts employ a third-party tax consultant who selects the commercial property targets and receives compensation based on a percentage of the increased tax revenue gained under the reverse appeal.

In Valley Forge, a group of apartment owners filed a declaratory judgment action seeking to establish that the Upper Merion Area School District's practice of exclusively targeting high-value, commercial properties selected by their tax consultant, Keystone Realty Advisors, LLC, violated the Uniformity Clause of the Pennsylvania Constitution. The trial court dismissed their complaint. The apartment owners saw another setback in the Pennsylvania Commonwealth Court. That court reasoning that the school district's economic desire to increase taxes provided a rational and lawful basis for exercising its appellate rights selectively against commercial taxpayers.

The apartment ownership group then appealed to the Pennsylvania Supreme Court. In Court, both sides sought out other interested parties to file briefs in support of their positions. Reed Smith represented a client supporting the apartment owners.

The Court unanimously reversed, finding that under the Uniformity Clause, all real property within a taxing jurisdiction of the commonwealth of Pennsylvania is a single class, and the Uniformity Clause does not permit the taxing jurisdictions, including school districts, to treat different real property sub-classifications within their jurisdictions in a disparate manner. The Court found that the Commonwealth Court misapplied the law in allowing taxing jurisdictions to disparately treat sub-classifications of real property if a rational basis for such treatment existed. The Court clarified that prohibition against disparate treatment of any sub-class of real property applies to any intentional or systematic enforcement of the tax laws and is not limited to wrongful conduct, as the Commonwealth Court had previously suggested. The Court agreed with the apartment owners that a Uniformity Clause violation exists if the taxing jurisdiction intentionally or systematically subjects only commercial property within its jurisdiction to a reverse tax assessment appeal. The Court also held that a taxpayer aggrieved by such conduct is not limited to raising the constitutional violation as a defense to an appeal. Rather, a taxpayer may bring an affirmative action to curb the unlawful conduct of a taxing jurisdiction.

This is big. Under this decision, a number of taxing jurisdictions in Pennsylvania are in violation of the Uniformity Clause, as they have also targeted large commercial properties for reverse appeals. For property owners in Allegheny and Philadelphia Counties, it is likely that the rationale of Valley Forge will be equally applicable.

This decision doesn't mean that taxing jurisdictions are giving up their efforts to raise tax revenue from commercial properties. The Court left open the possibility that a taxing jurisdiction may set a monetary threshold applicable to all classes of real estate for filing a reverse appeal. That said, a monetary threshold that disparately impacts a sub-classification of real property, such as large commercial properties, may be equally suspect under the Uniformity Clause. Still, the decision reached by the Pennsylvania Supreme Court is a victory for fairness in assessments, an area where that term is often found lacking.

Last Updated: July 7 2017

Article by Jeffrey G. Wilhelm and Brittney Wozniak

Reed Smith

Seattle Passes Municipal Income Tax; It is Almost Certainly Illegal.

Washington is one of the seven states that goes without an individual income tax, and most residents are pretty proud of that. In fact, voters in the state have voted down a constitutional amendment to allow a graduated income tax five times.

That could change though, as the Seattle City Council this week passed a local ordinance to enact an income tax on Seattle residents. The tax, which is 2.25 percent on income above $250,000 for single filers and above $500,000 for married filers, was unanimously adopted by the council on Monday.

The only problem is that the tax is almost certainly illegal under the state constitution and under state statute. As my colleagues Jared Walczak and Kari Jahnsen wrote in June, the tax would face some "serious legal hurdles":

1. ***The Constitutional Uniformity Clause.*** Article VII of the Washington constitution stipulates that all taxes must be "uniform upon the same class of property," and adopts an unusually broad definition of property that has been held to include income. The constitution also imposes a maximum combined rate of 1 percent. Seattle officials do not deny that their ordinance conflicts with current caselaw; the municipal income tax is seen as a test case to challenge the current interpretation of the uniformity clause.
2. ***A Ban on Local Net Income Taxes.*** Further compounding the city's challenges, there is a statutory prohibition against Washington localities adopting taxes on net income. The "net income" terminology was likely to exclude the local B&O gross receipts tax from the prohibition. But advocates of a Seattle municipal income tax argue that by imposing the tax on gross income rather than adjusted gross income, it cannot be said to fall on net income. This is arguably a strained interpretation of the statute. Net income is undeniably a subset of gross income, and thus subject to tax under the proposed ordinance.
3. ***Restrictions on Creating Local Taxes Not Expressly Authorized.*** The courts have held that localities must have an express grant of authority to levy a given tax, and of course, no statutes specifically authorize a local income tax. The Seattle City Council justifies the proposed income tax under statutory authority to establish licenses and permits, which may be too novel for the courts, not least because it is unclear that a right of residency could be subject to a licensing process.

For now, this tax looks to be a signaling stunt, as the Seattle Times reports that "proponents say the measure was intended to open a broader discussion about tax fairness." Councilmember Kshama Sawant even seems to recognize the unsteady legal footing of the measure, telling supporters, "If we need to pack the courts, will you be there with me?"

It of course goes without saying that purposefully enacting an illegal tax is poor policy. But as the Washington Policy Center notes, it is also likely to be an expensive exercise as the city will have to spend revenue defending the policy in court.

So, in the textbook sense, enacting an illegal tax violates the public finance principle of stability because you are creating business uncertainty about future tax burdens. But even on a more basic level, this charade invites some head-slapper questions like: if you say you need more revenue for government programs, why would you willfully set yourself up to spend revenue on a legal battle?

Tax Foundation

by Scott Drenkard

July 14, 2017

2017 NMTC Progress Report.

Below find the NMTC Coalition's 2017 NMTC Progress Report, our annual report documenting the impact of the NMTC program.

WASHINGTON, June 7, 2017 — The New Markets Tax Credit Coalition today released its 2017 New Markets Tax Credit (NMTC) Progress Report the thirteenth edition of the report—providing a survey of NMTC activities in 2016. As in the past, the report documents the flexibility and impact of the NMTC in meeting the needs of the distressed communities where it is deployed and helping to create jobs and grow business opportunities, from more traditional industry and community sectors to new and cutting-edge technology. Projects which benefitted from the Credit in the past year include rural and urban incubators, small business loan funds, main street tourism, health clinics, manufacturing, schools and even robotics.

“Maybe it was the breathing room provided by the five-year NMTC extension enacted in December of 2015, or maybe it is the stiff competition for NMTC allocation,” said Robert W. Davenport, NMTC Coalition president and special advisor at National Development Council, “but last year's crop of NMTC projects bests any previous year.”

The report was prepared for the NMTC Coalition, a national membership organization of Community Development Entities (CDEs) and investors organized to advocate on behalf of the NMTC. Every year since 2005, the NMTC Coalition surveys CDEs on their work delivering billions of dollars to businesses, creating jobs, and rejuvenating the parts of the country that have been left behind. The annual NMTC Progress Report presents the findings of the CDE survey and provides policymakers and practitioners with the latest trends and successes of the NMTC.

“The Coalition's annual survey asks CDEs to report on the deployment of their allocation, investor trends, and a variety of community impact metrics,” said Coalition spokesperson Bob Rapoza. “The findings clearly demonstrate that the NMTC continues to deliver capital to the communities left behind by the changing economy, with 76 percent of projects in severely distressed communities in the last year—far exceeding statutory requirements. Moreover, the program is delivering a significant ‘bang for the buck’ for taxpayers in terms of the jobs, amenities, community facilities, and tax revenue it generates.”

Eighty-seven CDEs participated in the 2017 survey and provided data on their progress raising capital, lending, and investing in 2016 with the NMTC. Survey participants ranged from large, mission-driven national nonprofits to locally-focused community development organizations. The survey findings show that competition for credits continues to drive gains in efficiency. The data collected shows that CDEs used $1.8 billion in NMTC allocation in 2016 to financed 171 NMTC projects, amounting to $3 billion in total project costs, which created over 36,000 jobs in areas with high rates of poverty and unemployment.

“When Congress enacted the NMTC back in 2000, the purpose of the program was simple: to deliver private sector investment to low income communities,” added Rapoza. “Nearly two decades later, the NMTC has unleashed an unprecedented amount of investment in areas struggling with high unemployment and poverty, but more than that, it has created economic opportunity in every corner of the nation.”

Further demonstrating support for the NMTC, some 2,000 businesses, nonprofit organizations, banks and community leaders signed a letter in support of the NMTC that was delivered to the House and Senate tax-writing committees in early February of this year. A week later, Senators Roy Blunt (R-MO) and Ben Cardin (D-MD) introduced legislation in the Senate (S. 384), and Representatives Pat Tiberi (R-OH), Richard Neal (D-MA), and Tom Reed (R-NY) introduced a companion bill the House (H.R. 1098). The legislation provides a permanent authorization for NMTC, increases annual credit authority with inflation adjustments in future years, and exempts NMTC investments from the Alternative Minimum Tax. For examples of how the NMTC is making an impact in each state, see the NMTC Coalition's NMTC at Work in Communities report or check out its Project Profile Map.

About New Markets Tax Credit Program
The New Markets Tax Credit was enacted in 2000 in an effort to stimulate private investment and economic growth in low income urban neighborhoods and rural communities that lack access to the patient capital needed to support and grow businesses, create jobs, and sustain healthy local economies. The NMTC is a 39 percent federal tax credit, taken over seven years, on investments made in economically distressed communities. Today due to NMTC, more than $75 billion is hard at work in underserved communities in all 50 states, the District of Columbia, and Puerto Rico.

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TAX - CALIFORNIA

Jacks v. City of Santa Barbara

Supreme Court of California, California - June 29, 2017 - P.3d - 2017 WL 2805638

Utility consumers, who incurred one percent surcharge on their electricity bills collected by electric company and remitted to city, filed class action complaint against city, seeking order declaring that surcharge was invalid as a tax imposed without voter approval, enjoining city from further collection of surcharge, and requiring city to repay revenues already collected.

The Superior Court granted city summary judgment. Consumers appealed. The Court of Appeal reversed and remanded with directions. City petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that city's surcharge on electric company's gross receipts was compensation for use of government property rather than a tax subject to voter approval, if it bore a reasonable relationship to the value of the property interest.

Sums paid for the right to use a jurisdiction's rights-of-way are fees rather than taxes under the Right to Vote on Taxes Act, but to constitute compensation for the value received, the fees must reflect a reasonable estimate of the value of the franchise, and fees are taxes to the extent the fees exceed a reasonable amount in relation to the benefits or costs underlying their imposition.

City's surcharge on electric company's gross receipts was compensation for use of government property rather than a tax subject to voter approval under the Right to Vote on Taxes Act, if it bore a reasonable relationship to the value of the property interest, even though the electric company passed the surcharge on to customers by including part of it in the rates paid by customers and separately stating the rest on the bill, since the surcharge was a payment made in exchange for a property interest that was needed to provide electricity to city residents.

TAX - CALIFORNIA

926 North Ardmore Avenue, LLC v. County of Los Angeles

Supreme Court of California - June 29, 2017 - P.3d - 2017 WL 2806261

Single member limited liability company (LLC) apartment building owner brought action for tax refund after it was required to pay a documentary transfer tax, based on the value of the apartment building, when its single member partnership sold approximately 90% of its partnership interests to two trusts.

The Superior Court entered judgment for county. LLC appealed, and the Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Transfer tax is not a fee paid in connection with the recordation of deeds or other documents evidencing transfers of ownership of real property, but rather is an excise tax on the privilege of conveying real property by means of a written instrument, disapproving *City of Cathedral City v. County of Riverside*, 163 Cal.App.3d 960, 210 Cal.Rptr. 60;
- Written instrument conveying an interest in a legal entity that owns real property may be taxable under the Documentary Transfer Tax Act, even if the instrument does not directly reference the real property and is not recorded; and
- Transfer was subject to documentary transfer tax.

Apartment building owned by limited liability company (LLC) had changed ownership when partnership interest were transferred and thus was subject to documentary transfer tax. Building initially was owned by trust beneficiary, who maintained beneficial interest when building was transferred to trust, trustees established LLC, with trust as sole member, to acquire and hold building, trust transferred its membership interest in LLC to partnership and divided partnership interest among four subtrusts established for beneficiary’s benefit such that beneficiary maintained beneficial interest, but three of those four subtrusts subsequently transferred their interests to trusts maintained for beneficiaries sons such that they obtained an interest in building.

SIFMA Submits Comments to the IRS on Proposed Regulations Defining Political Subdivisions.

SIFMA provides comments to the Internal Revenue Service (IRS) on proposed regulations defining political subdivisions. The Proposed Regulations provide guidance re-defining the definition of political subdivision for purposes of entities that may qualify as issuers of tax-exempt bonds under section 103 of the Internal Revenue Code of 1986.

Read the comments.

May 23, 2016

Market Groups Likely to Urge Agencies to Scrap Political Subdivision Rules.

WASHINGTON – Municipal market participants will most likely recommend the Treasury Department and the Internal Revenue Service scrap their controversial proposed rules that seek to redefine which political subdivisions can issue tax-exempt bonds, several attorneys said on Monday.

The rules were listed among eight tax regulations that were either proposed, issued as temporary, or finalized between Jan. 1, 2016 and April 21, 2017 and found by Treasury to be significant and to warrant abandonment or major modifications under an executive order President Trump issued on April 21.

The list of eight was announced by the IRS on Friday in Notice 2017-38, which is to be published in the Internal Revenue Bulletin on July 24. Treasury asked market participants to submit public comments to it by Aug. 7 on whether the regulations "should be rescinded or modified."

The political subdivision rules were proposed in February 2016 by Treasury and the IRS to redefine what constitutes a political subdivision that can issue tax-exempt bonds.

Under longstanding federal law and rules, an entity is a political subdivision that can issue tax-exempt bonds if it has the ability to exercise a substantial amount of at least one of three sovereign powers – taxation, eminent domain and policing.

But Treasury and the IRS, which became concerned that some political subdivisions were controlled by private developers, proposed adding two more requirements to that definition. They said a political subdivision must also be governmentally controlled and serve a governmental purpose "with no more than an incidental private benefit."

"I think that practitioners will be happy to see that rule withdrawn," said Dee Wisor, a lawyer at Butler Snow in Denver. "Practitioners would prefer to go back to what the rule was."

Both the National Association of Bond Lawyers and the American Bar Association's Taxation Section have urged Treasury and the IRS to withdraw the proposed rules. The ABA group warned the proposed rules are over-reaching, ignore congressional intent, run counter to decades of practice, and cast doubt on many legitimate entities that currently issue tax-exempt bonds.

Tom Vander Molen, a lawyer with Dorsey & Whitney in Minneapolis who heads NABL's tax law committee, said the notice on the eight regulations was "a positive development" and that he expects NABL to reiterate its call for Treasury and the IRS to withdraw the proposed rules on political subdivisions. But he cautioned that NABL has not made any decision yet.

John Vahey, managing director of federal policy for Bond Dealers of America, said, "BDA agrees with Treasury's assessment that the proposed political subdivision rule represents an undue increase in both complexity and regulatory burdens. The rule, as proposed, is overly broad and would result in government entities being unnecessarily denied the ability to finance economically beneficial public projects in the tax-free municipal market and BDA looks forward to submitting additional comments in August."

The Securities Industry and Financial Markets Association also urged the IRS in previous comments to withdraw the proposed rules.

Emily Brock, director of the federal government liaison center for the Government Finance Officers

Association, said the group previously recommended withdrawal of the proposed regulations due to the far-reaching scope and potential impact to political subdivisions and the essential public services they provide across the US.

She said also that a coalition of issuers joined together to explain to Treasury and IRS officials that the determination of a subdivision's governmental purpose is made during the consideration of state legislation that authorizes the creation of the political subdivision. The group noted that if a political subdivision does not serve the purpose of the authorizing legislation, it is operating ostensibly against the law of that state and that this is an issue for the state, not the U.S. Treasury.

The list of eight regulations stem from Trump's Executive Order 13789, which was issued on April 21 and directed the Treasury secretary and administrator of the Office of Information and Regulatory Affairs to identify regulations issued as temporary, proposed, or finalized during the almost 16 months that: impose undue financial burdens on U.S. taxpayers; add undue complexity to federal tax laws; or exceed the statutory authority of the IRS.

Treasury said it found 105 regulations during that period, 52 of which were considered to be potentially significant, and identified eight of them as needing a reduction of tax burdens.

The IRS notice asked any commenters that want the rules to be modified rather than withdrawn, to describe the modifications that would "reduce burdens and complexity."

The IRS said that in opposing the proposed political subdivision rules, the "commenters stated that the longstanding 'sovereign powers' standard was settled law and had been endorsed by Congress, and additional limitations were unnecessary."

"Commenters also stated that the proposed regulations would disrupt the status of numerous existing entities and that it would be burdensome and costly for issuers to revise their organizational structures to meet the new requirements of the proposed regulations," the agency said.

The Bond Buyer

By Lynn Hume

Tens of Billions in 'Corporate Welfare' Tax Deals About to be Exposed Like Never Before.

- Special deals given by states to companies, including Apple, Google, Facebook, Microsoft and Amazon, can cost as much as $2 million per job.
- One analysis of Mississippi's deal to land a Nissan auto plant found it four times more expensive as was known, and the costliest deal ever to bring in a foreign manufacturer.
- A new accounting rule, GASB 77, will reveal to taxpayers tens of billions of dollars in spending never before disclosed and should result in a new debate about "corporate welfare."

Continue reading.

CNBC

by Greg LeRoy, director of Good Jobs First

Tuesday, 11 Jul 2017 | 4:40 PM ET

[The Constitution Prevails as the Political Subdivision Regulatory Project Gets Trumped.]

July 7, 2017 witnessed a once-in-a-career moment for any tax practitioner. On that date, the Treasury Department released [Notice 2017-38], which acknowledged that eight regulatory projects are unduly burdensome and should be reconsidered for modification or repeal – a rare display of administrative modesty. Included in the list of burdensome regulations are the proposed regulations that would re-define the term "political subdivision" for purposes of which entities can issue tax-exempt bonds under Section 103 of the Internal Revenue Code (the "Political Subdivision Proposed Regulations," which we have previously analyzed here, here, here, here, here, and here).

The Political Subdivision Proposed Regulations are indeed unduly burdensome and therefore merited inclusion in Notice 2017-38. As discussed below, the Political Subdivision Proposed Regulations are also of dubious constitutionality.

[Continue reading.]

The Public Finance Tax Blog

by Michael Cullers

July 12 2017

Squire Patton Boggs

[Treasury: Proposed Political Subdivision Regulations are "Burdensome," Issue Price Regulations are "Insignificant."]

The noise that you just heard may be another blessed nail in the coffin of Treasury's proposed regulations that would have made it more difficult for an entity to qualify as a political subdivision so that it can issue tax-exempt bonds on its own behalf. Treasury just issued Notice 2017-38, which sends 8 regulatory projects, including the proposed political subdivision regulations, to the President in response to his order to identify and pare back or eliminate regulations that add undue financial burden or undue complexity.

Issue Price Regulations Sneak Past the Guards

The fact that Treasury included the proposed political subdivision regulations among the list of burdensome regulations that are now on the chopping block will get all of the headlines, but there's another story here, too. Treasury somehow concluded that the issue price regulations were not a "significant" tax regulation (apparently they aren't regular readers of this blog). **In other words, Treasury didn't even consider whether the new issue price regulations might be burdensome.** In fact, Treasury says that the issue price regulations were "minor or technical in nature," and – you'll love this – "generated minimal public comment."

[Continue reading.](#)

The Public Finance Tax Blog

by John W. Hutchinson

July 7 2017

Squire Patton Boggs

[The Impact of Eliminating the State and Local Tax (SALT) Deduction.](#)

As part of its tax reform efforts, Congress has discussed whether to eliminate the ability for taxpayers to deduct state and local taxes (SALT). On July 11, 2017, Government Finance Officers Association's (GFOA) Executive Director, Chris Morrill, will moderate a panel discussion with The Big Seven before Congress about state and local tax (SALT) deduction.

The SALT deduction reflects a partnership between the federal government and state and local governments. The deduction is fundamental to the way states and localities budget for and provide critical public services, and a cornerstone of the U.S. system of fiscal federalism. It reflects a collaborative relationship between levels of government that has existed for over 100 years. Currently, the SALT deduction is an accepted part of the tax structure that is critical to the stability of state and local government finance.

[Download Report – The Impact of Eliminating the State and Local Tax Deduction Report](#)

What is the SALT Deduction
Taxpayers in the United States are granted a range of tax preferences from the federal government. The Revenue Act of 1913, which introduced the federal income tax, states that "all national, state, county, school, and municipal taxes paid within the year, not including those assessed against local benefits," can be deducted. The Revenue Act of 1964 later named specific state and local taxes that could be deducted, which included: real and personal property, income, and general sales taxes. These tax preferences serve two important goals. First, by allowing taxpayers the ability to deduct state and local taxes (SALT), taxpayers avoid being taxed twice on the same income. Additionally, the deduction on property taxes, along with deduction on mortgage interest, provides a strong incentive for homeownership. The sales tax deduction provides similar incentives for encouraging spending — which facilitates economic growth.

Compared with other common deductions, the state and local tax deduction has a larger impact than the deductions for both charitable giving and mortgage interest. In recent years, 29.5% of tax units used the SALT deduction. Only 21% used the SALT deduction for mortgage interest, and 15% used the deduction for charitable donations.

How Do Taxpayers Benefit from the SALT Deduction?
Everyone in the United States benefits from SALT, but the SALT deduction is used directly by around 30% of all taxpayers. Currently, taxpayers are given the option of deducting real estate taxes as well as either income taxes orsales taxes paid to state and local governments. While the SALT deduction is used across all income levels, the actual amount of property versus income versus sales tax deducted by lower, middle, and upper income taxpayers provides insight into how those taxpayers benefit. For example, while over 70% of SALT deductions for tax units with an AGI of more

than $200,000 are from income taxes, over 60% of deductions from taxpayers with less than $50,000 in income come from property tax. This highlights how important the property tax deduction is for middle class homeownership.

In addition to its effect on taxpayers who itemize, regardless of adjusted gross income, the SALT deduction also benefits taxpayers in all 50 states. **The tax deduction is used by Americans living in urban, suburban, and rural locations and across all congressional districts.** The states with the highest percentage of taxpayers using the SALT deduction are in the East and Northeast regions. However, states in the West and Midwest also take advantage of the deduction. Overall, use of the SALT deduction is widespread among all states. The average deduction per tax unit in Connecticut, New York, and New Jersey are all over $7,000, and close to $6,000 in California. If the SALT deduction were eliminated, assuming a 25% marginal tax rate, an average taxpayer in New York who currently itemizes SALT would face a tax increase of almost $1,800.

Click Here to View State and Local Tax Deduction by Congressional District.

Government Finance Officers of America

July 11, 2017

California's Tax Board of Confusion.

The state has more tax agencies than most — and one in particular is badly mismanaged.

No other state has a tax collection system like California's. No other state would want one.

Rather than a single revenue department, California uses three separate agencies to manage different taxes. One of those agencies, the Board of Equalization (BOE), collects sales and property taxes, along with many smaller revenue sources such as levies on jet fuel. Now it's taking on the new role of collecting marijuana taxes. But even as its mission continues to expand, the BOE appears to be badly mismanaged.

A recent audit from the state Finance Department found that the BOE's elected board members have been directing civil servants to work on pet political projects. It also found that those board members, who aren't supposed to receive political contributions exceeding $250, have been known to accept thousands in bundled donations of $249 from companies who have business before them. And although the BOE is supposed to meet in open, quasi-judicial hearings, recent legislative testimony revealed members have met privately with parties who were appealing their tax assessments, never reporting the content of those conversations. "The testimony indicated that board members were inappropriately influencing staff members in the performance of their duties," says state Sen. Steven Glazer.

The audit prompted Gov. Jerry Brown to temporarily block the board's ability to hire or make large purchases. He's also requested a fresh investigation from the state's Justice Department, and called on legislators to find a way to overhaul the BOE. Meanwhile, members of the board have joined with outsiders in putting forward their own proposals to revamp parts of the agency. "Clearly it needs to be run significantly better," says state Rep. Phil Ting. "They have trouble answering even the most basic budget and systems questions."

For all its faults, however, no one in Sacramento is convinced that big changes are about to hit the agency. Many powerful interests in the state like things the way they are. Those with inroads to the board are able to wheedle favorable opinions on behalf of their clients. Board members enjoy pretty good perks, including sizable staffs. The state controller sits on the board, but other members, who are elected directly by voters in four separate districts, include ex-legislators who have chummy relations with their former colleagues. "It's those relationships, I believe, that have kept reforms from happening," says state Sen. Jerry Hill.

The Board of Equalization was set up back in the 19th century as a way of dealing with problems caused by county assessors. Back in those days, taxes were proportionately higher in mining counties than grazing counties. Hence the need to "equalize" taxes.

That function long ago ceased to be important, but the board kept taking on more work. Collection of income taxes, for example, falls under the Franchise Tax Board, but the BOE still adjudicates disputes about those taxes. "With this elected tax board, you've got a group of people with really very little knowledge or expertise about taxes, who don't create any useful body of precedent for people to understand taxation," says Daniel Simmons, an emeritus law professor at the University of California, Davis. "There's really no way to fully know how the law will be interpreted and applied."

Over the years, countless commissions and studies have recommended that state tax collection be consolidated into a single revenue department accountable to the governor — which is how most states do it. But killing off the BOE would require a constitutional revision approved by voters. That isn't likely.

Still, a summoning of political will could create some meaningful changes to the agency. The board, if it were so inclined, could even fix things, says Sen. Glazer. "This could be resolved with better board policies and a CEO who insists on respect for the chain of command of his office," he says. "But it's a big question."

GOVERNING.COM

BY ALAN GREENBLATT | JULY 2017

Tax Court Strains to Disallow Charitable Contribution Deduction.

Not unlike the American Broadcasting Company's Wide World of Sports, our blog attempts to provide you the reader with blogs covering a wide variety of topics directly and indirectly related to tax-exempt bonds. In the category of topics indirectly related to tax-exempt bonds, this blog will address a recent Tax Court Memorandum (*Fakiris, George v. Commissioner*; No. 18292-12; T.C. Memo 2017-126) in which the Tax Court upheld an IRS notice of deficiency based on a disallowed charitable contribution deduction. The Memorandum isn't the topic of this week's blog because it is rare for a charitable contribution deduction to be disallowed in full or in part; rather, the Tax Court's decision is noteworthy because of the incredible effort that the Tax Court went through to reach its conclusion!

Continue Reading

The Public Finance Tax Blog

By Joel Swearingen on July 7, 2017

Squire Patton Boggs

TAX - WYOMING

[Thomas Gilcrease Foundation v. Cavallaro]

Supreme Court of Wyoming - June 7, 2017 - P.3d - 2017 WL 2464949 - 2017 WY 67

Taxpayer, which was trustee of trusts that owned eight parcels of property, brought action against county assessor seeking declaratory judgment that trusts were charitable trusts exempt from property taxation.

The District Court dismissed complaint on basis of primary jurisdiction. Taxpayer appealed.

The Supreme Court of Wyoming held that:

- Taxpayer was required to exhaust administrative remedies prior to bringing action, and
- Primary jurisdiction doctrine warranted dismissal in favor of review through administrative process.

Taxpayer, which was trustee of trusts that owned eight parcels of property, was required to exhaust administrative remedies prior to bringing action against county assessor seeking declaratory judgment that trusts were charitable trusts exempt from property taxation, since taxpayer was not asking court to interpret statutes defining charitable trusts and setting forth charitable trust exemption, but was asking court to determine whether trust was charitable trust exempt from taxation, and such determination was precise function of county assessor and administrative process.

Primary jurisdiction doctrine warranted dismissal in favor of review through administrative process of action by taxpayer, which was trustee of trusts that owned eight parcels of property, against county assessor seeking declaratory judgment that trusts were charitable trusts exempt from property taxation, even if taxpayer was seeking interpretation of phrase “directly beneficial” in statute setting forth charitable trust exemption, since such interpretation did not simply require answer to legal question, but involved significant questions of fact, and determining whether factual situation of trust fell within exemption was best left to expertise of county assessor.

[Scoreboard: What If Congress Nixed Federal Stadium Subsidy?]

What would happen if Congress eliminated a popular federal tax break used to build sports stadiums?

A bipartisan group of House and Senate lawmakers want Congress to take a second look at recently reintroduced legislation that would eliminate the tax exemption for municipal bonds used to finance construction of professional sports stadiums. The issue has been a hot topic of late, with Nevada embarking on a $1.9 billion stadium in Las Vegas for the National Football League’s Raiders—funded in part with the largest public subsidy for a stadium in the league’s history.

The bills—introduced in the House (H.R. 811) by Rep. Steve Russell (R-Okla.) and the Senate (S. 1342) by Sens. Cory Booker (D-N.J.) and James Lankford (R-Okla.)—would eliminate the subsidy by creating a special rule under tax code Section 141(b).

“If a community wants to vote and tax themselves to improve their city or to do something to bring a sports team in, that is up to those local citizens,” Russell told Bloomberg BNA. “But you shouldn’t have people in Nevada asking for Oklahoma or New York tax dollars to fund their stadium,” he said.

A September 2016 report from the Brookings Institution found that 36 NFL, National Basketball Association, National Hockey League, and Major League Baseball stadiums that were newly built, extensively renovated, or under construction from 2000 through September 2016 were—at least in part—funded with tax-exempt municipal bonds, costing the federal government $3.2 billion when calculated using a 3 percent discount rate.

Russell, who has met with House Ways and Means Committee Chairman Kevin Brady (R-Texas) about the bill, said the measure is designed to be included in the tax reform package currently being crafted by Republican lawmakers and the White House. Booker told Bloomberg BNA he would rather see the measure enacted on its own.

The NFL is monitoring the legislation, said Jocelyn Moore, the league’s senior vice president of public policy and government affairs. But a similar bill introduced by Russell last session (H.R. 4838) failed to gain traction, she noted. As far as the new legislation is concerned, “I don’t think that either bill has garnered a significant amount of bipartisan cosponsors,” Moore told Bloomberg BNA.

The bill’s passage may be a long shot, but just how valuable are tax-exempt municipal bonds to the state and local governments and teams that rely on them to build new stadiums?

Costs Shifted to States

The average cost of debt service on the state and local level would increase 25 percent if stadiums lost the ability to use the bonds, said Dennis Zimmerman, director of projects at the American Tax Policy Institute and a former Congressional Research Service analyst who wrote a series of frequently cited reports on tax-exempt stadium financing in the 1990s. “That’s generally the value of the tax subsidy.”

The amount local taxpayers currently pay for the stadiums is equal to the total principal of tax-exempt bonds issued, which was $13 billion for the 36 stadiums surveyed in the Brookings report, said co-author Austin J. Drukker, a project coordinator and research assistant at the think tank.

“Assuming localities would switch from tax-exempt bonds to taxable bonds with the same principal value and other characteristics, the additional cost to local taxpayers would be equal to the federal subsidy”—$3.2 billion total—Drukker said in an email. Dividing $3.2 billion by $13 billion roughly equals a 24.6 percent increase in debt service, very close to Zimmerman’s estimate.

“However, if localities used other financing options that were cheaper than taxable bonds (which have to pay interest to investors at the expense of the local taxpayers), the expense to the local taxpayer might be lower,” he said.

Worth the Investment?

The NFL’s Moore said stadiums shouldn’t be treated differently than opera houses, cultural centers, or education facilities that states and localities vote to build.

Federal investment in infrastructure is designed to bring in private dollars for local projects that will lead to economic development, “which our stadiums certainly do,” Moore said.

Brett Bolton, principal associate for finance and intergovernmental relations at the advocacy group National League of Cities, echoed Moore's comments about flexibility in an emailed statement. "If a referendum passes or a council votes to build a large public project, we believe the city should be able to use every tool in the tool chest to finance and advance the project," he said. "That would include tax-exempt municipal bonds."

But the Brookings study, citing several research papers, said: "Academic studies consistently find no discernible positive relationship between sports facility construction and local economic development, income growth, or job creation." Among other explanations, the report said the money people spend attending a game at a newly constructed stadium is largely offset by reduced spending at other local venues.

The NFL provided Bloomberg BNA with reports from the late 2000s that projected stadiums recently built in California, Minnesota, and Georgia—for the 49ers, the Vikings and the Falcons, respectively—would generate hundreds of millions in economic output. The league referred Bloomberg BNA to the individual cities to obtain the actual economic figures now that the first two stadiums are in service and the last one is nearing completion.

The mayor's office in Santa Clara County, Calif., didn't return requests for comment; the mayor's office in Minneapolis referred Bloomberg BNA to the Minnesota Sports Facilities Authority, which didn't respond; and the mayor's office in Atlanta said the city uses the Bureau of Economic Analysis for information on economic growth but hadn't verified the projected numbers.

In general, the tax exemption "has been a cost-effective way for state and local governments to finance infrastructure, and if the tax exemption broadly for municipal bonds were to be eliminated, it would likely result in less infrastructure investment," said Robin Prunty, a managing director in the Public Finance Ratings Group at S&P Global Ratings. "I think that would follow through for stadiums."

Demand Exceeds Supply

If legislation eliminating the tax exemption becomes law, "[w]ill it have an effect on the amount of sports economic activity?" Zimmerman asked. "I think we can say with great assurance, it will not."

The federal subsidy isn't the main driver for states and localities looking to finance professional sports stadiums, said Ted Gayer, vice president and director of Brookings' economic studies program and a co-author of the 2016 report. Other factors play a role, including a local community's desire to have a team and local politicians who want to bring in a team as part of their legacy, he said. And "most importantly, if you want a football team, you can't create a football team, you have to go to the NFL," he said.

The demand for franchises far exceeds the supply, Zimmerman said. "It's that excess demand that gives them the leverage to extract subsidies from the local and state governments."

Moore, at the NFL, disagreed with the assessment that the league would be unharmed by the stadium bills. "I think it's a concern for all sports leagues that build stadiums," she said, adding that the public financing is used not only for stadium construction, but also for security and technology upgrades.

The NHL, NBA, and MLB didn't return requests for comment.

Controversial Corner

The tax-exempt bond market probably would fare well if the stadium bills were enacted, according to Matt Fabian, a partner at Municipal Market Analytics Inc.

Tax-exempt stadium financing is a controversial corner of the municipal market. “It accounts for less than 1 percent of the bond market and yet it probably draws 25 percent of the criticism,” Fabian said. Eliminating that small, problematic corner would legitimize the remainder of the market and reduce the risk of other areas losing their tax exemption, he said.

Any negative effects of killing the stadium-bond exemption would likely be felt by public finance bankers, he said.

Cutting stadium financing out of the tax-exempt space would mean that those bankers could no longer charge fees for their underwriting services on stadium bond issues. And while there aren’t a lot of these bond issues in the market, they are generally lucrative for banks to bring in, Fabian said.

Stadium bond issues are complex and tend to be controversial, so an investment bank can generally get a larger spread for selling those bonds than general obligation bonds, he said. “These are harder transactions to structure and complete, which is a welcome change from the low-spread world of GO bond issuance.”

Bloomberg BNA

By Allyson Versprille

July 3, 2017

With assistance from Kaustuv Basu in Washington.

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NABL: Political Subdivision Regs on List of Burdensome Regs.

The IRS has issued Notice 2017-38 which responds to Executive Order 13789 that required the IRS and Treasury to review significant tax regulations issued on or after January 1, 2016 and report on those regulations that (i) impose an undue financial burden on U.S. taxpayers; (ii) add undue complexity to the Federal tax laws; or (iii) exceed the statutory authority of the Internal Revenue Service (IRS).

Eight regulations were identified, including the proposed regulation on the definition of political subdivisions. In discussing that regulation, the Notice states: “Commenters stated that the longstanding ‘sovereign powers’ standard was settled law and had been endorsed by Congress, and additional limitations were unnecessary. Commenters also stated that the proposed regulations would disrupt the status of numerous existing entities and that it would be burdensome and costly for issuers to revise their organizational structures to meet the new requirements of the proposed regulations.”

Comments are requested on whether the regulations identified in the report, including the proposed regulation on political subdivisions, should be rescinded or modified. Comments are due by August

7, 2017. Treasury must submit a report to the President by September 18, 2017 recommending specific actions to mitigate the burdens identified.

The proposed regulations are available here.

NABL's comments on the proposed regulations are available here.

TAX - PENNSYLVANIA

Valley Forge Towers Apartments N, LP v. Upper Merion Area School District

Supreme Court of Pennsylvania - July 5, 2017 - A.3d - 2017 WL 2859007

Taxpayers brought action against school district, as a taxing district, seeking declaratory and injunctive relief on the theory that the district violated the Uniformity Clause of the Pennsylvania Constitution by systematically appealing only assessments of commercial properties.

The Court of Common Pleas sustained district's preliminary objections and dismissed the complaint with prejudice. Taxpayers appealed. The Commonwealth Court affirmed. Taxpayers appealed.

The Supreme Court of Pennsylvania held that:

- Taxpayers could invoke equity jurisdiction of Court of Common Pleas to seek declaratory and injunctive relief based on theory that school district violated Uniformity Clause, and
- Uniformity Clause did not permit school district to selectively appeal only assessments of commercial properties, such as apartment complexes, while choosing not to appeal assessments of other types of property, such as single-family residential homes.

Taxpayers could invoke equity jurisdiction of Common Pleas Court to seek declaratory and injunctive relief based on theory that school district, as taxing district, violated the Uniformity Clause of the Pennsylvania Constitution by systematically appealing only assessments of commercial properties. Statutory appeals process was not designed to provide declaratory or injunctive relief, strict adherence to the process would implicate concerns relating to piecemeal litigation and inadequacy of statutory remedy, and adjudicatory process by board of assessment appeals was solely directed at ascertaining the subject property's value and applying ratio to that value.

Uniformity Clause of the Pennsylvania Constitution did not permit school district, as taxing district, to selectively appeal only assessments of commercial properties, such as apartment complexes, while choosing not to appeal assessments of other types of property, such as single-family residential homes. All property in taxing district was single class, Uniformity Clause did not permit government to treat different property sub-classifications in disparate manner, and nondiscriminatory methods of deciding which properties to appeal existed.

Who Pays the Local Tax Bill?

There's disagreement over who bears the biggest burden: the poor or the wealthy.

For the past 15 years, cities have focused on attracting the creative class. The idea is that if you build a thriving creative culture — vibrant communities of artists, writers, musicians and so on — a thriving economy will follow. It’s a strategy that’s worked well, especially in places like Asheville, N.C.; Denver; and Seattle.

In many cities, it’s worked too well. Some creative-class cities have become victims of their own success, unable to keep up with demand for housing, local public services and livable-wage jobs for the lower-middle class. The result is a crisis of affordability driven by huge spikes in home prices, rents and homelessness.

Local leaders have taken steps to respond. In the past 18 months, Los Angeles, San Francisco, Seattle, Silicon Valley in Santa Clara County, Calif., and other localities have proposed new local taxes to expand affordable housing and bolster services for the homeless. As they grapple with this new challenge of affordability, they must also confront an old question at the heart of local public finance: Who actually pays local taxes?

There are two ways to think about who pays. One is the “statutory incidence,” or who is required to remit a tax to the government. The other is the “economic incidence,” or who pays a tax because they’re unable to avoid it. The former is easy to measure. The latter is not.

Most local governments have access to the sales tax and the property tax. There’s good evidence that the economic incidence of the sales tax is on consumers. Merchants collect and remit the tax, but consumers pay it because there’s really no way around buying basic items like clothing. If the goal is for tourists to help pay for local affordability, then the sales tax makes sense. However, for that same reason poor and middle-income people also pay a larger share of their incomes in sales taxes compared to the rich because the sales tax is regressive. For many affordability advocates, that’s unacceptable. Why pay for affordability with a tax that falls disproportionately on the poor?

That’s why affordability advocates have warmed to the property tax. Middle- and upper-income people are more likely to own property and pay property taxes, so the statutory incidence is inherently less regressive. But if we care about economic incidence, the reality is unclear at best. In fact, for more than 50 years public finance experts have argued over who actually pays the property tax.

One school of thought says it’s really a tax on wealth. But higher property taxes might work against affordability by reducing the demand for housing and discouraging density. Why? It’s easy to imagine a homeowner who decides not to add on a new guest room because that will increase property value and the subsequent property tax bill. The same might apply to a landlord who opts against building a new rental property.

Another view says local property taxes are what you pay for the services your local government delivers. This is especially true for zoning, public safety and other services that benefit all property owners in roughly the same way. If that’s true, then property taxes are neither progressive nor regressive. Everyone pays a proportional amount for a proportional share of benefits.

Yet another view says the property tax is a tax on the service called housing. In that case, the property tax is like the sales tax. Since lower-income people cannot escape paying for housing (usually as renters) then property owners can send much of the property tax burden down the income ladder.

We’re not likely to settle this question any time soon. So for now, the question of who should pay for affordability will be about perceptions, priorities and politics, and not about public finance.

GOVERNING.COM

BY JUSTIN MARLOWE | JUNE 2017

Tax-Exempt Financing of Churches, Parochial Schools and Other Sectarian Institutions After Trinity Lutheran Church: Permitted? Required? Let us Pray for Answers.

The U.S. Supreme Court's June 26 opinion in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, precluding states from discriminating against churches in at least some state financing programs, raises anew the question of whether states may, or are required to, provide tax-exempt conduit bond financing to churches and other sectarian institutions. The Supreme Court's decision further complicates an already complicated analysis of that question by bond counsel, and in some instances may tip bond counsel's answer in favor of green-lighting tax-exempt financing of some capital projects of sectarian institutions.

The First Amendment to the U.S. Constitution precludes Congress and, via the Fourteenth Amendment, states from legislating the establishment of religion (the "Establishment Clause"), or prohibiting the free exercise thereof (the "Free Exercise Clause"). Under a line of Supreme Court cases that has been cast into doubt but never expressly repudiated by a majority of the U.S. Supreme Court, the Establishment Clause has been held to prohibit state financing of "pervasively sectarian" institutions, i.e. institutions that "are so 'pervasively sectarian' that secular activities cannot be separated from sectarian ones." *Roemer v. Board of Publ. Works of Maryland* (1976).

Continue Reading.

By Len Weiser-Varon on June 27, 2017

Mintz Levin

TAX - FLORIDA

Treasure Coast Marina, LC v. City of Fort Pierce

Supreme Court of Florida - June 15, 2017 - So.3d - 2017 WL 2590803

After city was granted exemption from ad valorem taxes on two marinas it owned and operated, owner of private marina, which was not exempted, brought suit seeking declaratory and injunctive relief against application of exemption to city's marinas.

Parties moved for summary judgment. The Circuit Court granted summary judgment to owner. City appealed. The District Court of Appeal reversed and certified question.

The Supreme Court of Florida held that marinas were exempt from ad valorem taxation as property owned and used exclusively by municipality for municipal or public purposes.

Marinas that were owned by municipality were exempt from ad valorem taxation as property owned and used exclusively by municipality for municipal or public purposes, even though locks were placed on some of the docks. Protection of boats and other property from vandalism and crime was entirely consistent with operation of a marina, marinas were open to public, and marinas did not charge any fee for boaters who wished to dock for the day.

TAX - NEW HAMPSHIRE

Appeal of Public Service Company of New Hampshire

Supreme Court of New Hampshire - June 2, 2017 - A.3d - 2017 WL 2392541

Taxpayer appealed order of Board of Tax and Land Appeals denying 77 of its 86 individual tax abatement appeals on its property.

The Supreme Court of New Hampshire held that:

- Taxpayer failed to meet burden of providing evidence that utility regulatory environment in which it operated impacted market value of property to such degree to make assessments disproportional;
- Findings by Board that appraisals of property presented by taxpayer did not result in credible opinions of market value were supported by record;
- Judicial estoppel did not apply to bar municipalities from assessing property at value greater than
- Department of Revenue Administration's assessed value; and
  Board's decision did not violate state constitutional requirement that taxation be uniform and proportional.

Taxpayer failed to meet its burden of providing sufficient probative evidence that utility regulatory environment in which it operated impacted market value of its utility property to such degree as to make municipal assessments disproportional in Board of Tax and Land Appeals' denial of 77 of its 86 individual tax abatement appeals. While taxpayer relied upon impact that regulation had upon its ability to set rates and impact that regulation would have upon sale of utility, as, in such sale, Public Utilities Commission approval was required, fact that Commission disfavored passing on acquisition costs to customers did not mean practice was forbidden, as it could approve sale and pass costs to customers provided that it found such sale to be for public good, and identifying regulation that might impact market value of property was insufficient.

Findings by Board of Tax and Land Appeals that appraisals of utility property presented by taxpayer did not result in credible opinions of market value were supported by record in its denial of 77 of taxpayer's 86 individual tax abatement appeals on property. First appraiser did not consider possibility of sale of any of key components of property, but Public Utilities Commission concluded that taxpayer's hydroelectric plants could be sold separately and for higher value, first appraiser used flawed income approach, as he did not have specific revenue or expense information, second appraiser shifted how much weight he placed upon his approach for differing years but provided no support for deduction for what he called non-taxable, pollution control items, and second appraiser did not provide independent opinion of market value of property in individual towns.

Judicial estoppel did not apply to bar municipalities from assessing taxpayer's utility property at value greater than Department of Revenue Administration's assessed value, even though municipalities did not challenge Department's assessment before Board of Tax and Land Appeals denied 77 of taxpayer's 86 individual tax abatement appeals. Department's equalization process was not legal proceeding in which municipalities were litigants, and taxpayer did not show that municipalities took inconsistent positions, as municipalities submitted their local assessed values to Department, which unilaterally substituted allocated values from its appraisal for local assessed values supplied by municipalities and, thus, position municipalities were asserting was that their local assessed values represented correct market value of property, which was consistent with assessing taxes based upon those values.

Board of Tax and Land Appeals' decision to deny 77 of taxpayer's 86 individual tax abatement appeals on its utility property did not violate state constitutional requirement that taxation be uniform and proportional, despite claim that it allowed local municipal assessments to be significantly greater than Department of Revenue Administration's assessments used to determine municipality's share of county taxes. Taxpayer paid same proportion of local taxes, regardless of value of county taxes owed by municipality, and, thus, it was not being taxed disproportionately compared to other municipal residents, and taxpayer could not show that it was harmed, as Department's valuations of property did not yield accurate opinion of market value and, thus, property was effectively being value disproportionately lower at county level.

TAX - NEW HAMPSHIRE

SegTEL, Inc. v. City of Nashua

Supreme Court of New Hampshire - June 9, 2017 - A.3d - 2017 WL 2511319

Telecommunications provider, which used poles and conduits on city's right of way pursuant to pole attachment agreements with utility providers, brought action against city seeking declaratory judgment that city was not entitled to impose property taxes and seeking to strike city's tax assessment.

The Superior Court granted summary judgment to provider. City appealed.

The Supreme Court of New Hampshire held that city lacked authority to tax telecommunications company for use of poles and conduits over rights of way owned by city, where company did not own any poles or conduits within city, did not have its own license from city authorizing its occupation of city's rights of way, and used poles and conduits pursuant to pole attachment agreements with utility providers that did not require company to pay property taxes assessed by city.

Will It Soon Be Game over for Tax-Exempt Financing of Professional Sports Stadiums?

Public financing, including tax-exempt bond financing, of facilities used by professional sport teams has long been a controversial topic, with advocates and opponents disagreeing over whether the public benefits sufficiently to justify public subsidies. Since 2000, over $3.2 billion of tax exempt bonds have been issued to finance the construction and renovation of 36 sports stadiums.

A bill has been introduced that would eliminate the availability of federally tax-exempt bonds for stadium financings. Under existing tax law, use of a stadium by the applicable professional sports team constitutes "private use," but taxable "private activity bond" status, which is triggered by "private use" of the financed facility combined with the presence of "private security or payment" for the applicable bonds, can be avoided by structuring the bonds to be payable from tax or other revenues unrelated to the financed stadium.

The bill would amend the Internal Revenue Code to treat bonds used to finance a "professional sports stadium" as automatically meeting the "private security or payment" test, thus rendering any such bonds taxable irrespective of the source of payment.

This bill is identical to a version introduced in the House of Representatives in February and a slight departure from prior versions in the House that extended the exclusion from tax-exempt financing to a broader category of "entertainment" facilities.

What's new this time? There are versions of legislation intended to terminate tax-exempt financing of professional sports stadiums in both the House and Senate, arguably evidencing an increased likelihood of advancement.

The National Law Review

Wednesday, June 21, 2017

S&P Credit FAQ: Proposed Criteria For U.S. And Canadian Not-For-Profit Acute Care Health Care Organizations.

On June 8, 2017, S&P Global Ratings published a request for comment (RFC) on revised criteria for U.S. not-for-profit health care organizations ("U.S. And Canadian Not-For-Profit Acute Care Health Care Organizations").

Continue Reading

Jun. 8, 2017

Issue Price: Notes from the Field.

We are two weeks into the new issue price regulations. Here are a few more observations from the field. As expected, most of the action flows from the hold the offering price rule.

Continue Reading

The Public Finance Tax Blog

By Johnny Hutchinson on June 22, 2017

Squire Patton Boggs

TAX - CALIFORNIA

Williams & Fickett v. County of Fresno

Supreme Court of California, California - June 5, 2017 - 2017 WL 2417300 - 17 Cal. Daily Op. Serv. 5224

Taxpayer brought action against county for refund of personal property taxes.

The Superior Court sustained demurrer without leave to amend and dismissed the complaint.

Taxpayer appealed. The Court of Appeal reversed.

The Supreme Court of California held that:

- Administrative exhaustion of a claim for refund on the basis that the taxpayer does not own the affected property requires the taxpayer to file an application for assessment reduction, overruling *Parr-Richmond Industrial Corp. v. Boyd*, 43 Cal.2d 157, 272 P.2d 16;
- Administrative exhaustion of a claim for refund on the basis that the taxpayer does not own the affected property requires the taxpayer to certify under penalty of perjury that the taxpayer is the "owner" of the property; and
- Supreme Court's holding requiring administrative exhaustion would apply prospectively only.

To satisfy the exhaustion of administrative remedies requirement for a court action for a refund of tax on nonexempt assessed property based on the taxpayer's nonownership of the property, a taxpayer must seek an assessment reduction through the assessment appeal process before the county board of equalization or a county assessment appeals board, or obtain a stipulation that such proceedings are unnecessary, since such an action seeks a "reduction in an assessment" on the local roll; overruling *Parr-Richmond Industrial Corp. v. Boyd*, 43 Cal.2d 157, 272 P.2d 16.

A taxpayer who erroneously has been assessed tax on nonexempt property the taxpayer does not own may certify or declare under penalty of perjury that the taxpayer is the "owner" of the property within the meaning of the Revenue and Taxation Code, as required to satisfy the exhaustion of administrative remedies requirement for a court action for a refund of tax based on the taxpayer's nonownership of the property, since the taxpayer is a "person having a direct economic interest in the payment of the taxes on that property."

Supreme Court would apply its holding in the present case, that administrative exhaustion of a claim for refund on the basis that the taxpayer does not own the affected property requires the taxpayer to file an application for assessment reduction, prospectively only, since taxpayers like the plaintiff in the present case might have reasonably relied on a prior Supreme Court decision to believe it was unnecessary to timely exhaust administrative remedies through the assessment appeal process.

TAX - NEW HAMPSHIRE

Appeal of New Hampshire Electric Cooperative, Inc.

Supreme Court of New Hampshire - June 2, 2017 - A.3d - 2017 WL 2407213

Electric cooperative appealed an order of the Board of Tax and Land Appeals (BTLA) denying 16 of cooperative's 23 individual tax abatement appeals regarding its property located in 11 municipalities for one tax year and 12 municipalities for the subsequent tax year.

The Supreme Court of New Hampshire held that:

- BTLA was not required to find that market value equaled net book value;
- BTLA had sufficient evidence to properly reject Department of Revenue Administration (DRA) appraisals;
- Evidence was sufficient to support BTLA determination that cooperative's appraisals were not credible;
- Cooperative did not present sufficient credible evidence to prove disproportionality;
- Doctrine of judicial estoppel did not apply to prevent municipalities from using local assessment values; and

- BTLA did not violate requirements that taxation be uniform and proportional.

Board of Tax and Land Appeals (BTLA) had sufficient specific evidence in electric cooperative's tax abatement claim that, notwithstanding impact of regulation, market value of cooperative's property was not limited to its net book value, and thus BTLA was not required to find that market value equaled net book value, despite contention that Public Utilities Commission (PUC) would limit any utility purchaser to return based on net book value. Even though PUC disfavored passing acquisition costs to customers, PUC had approved sales above net book value, regulations on cooperative provided benefits, and BTLA heard expert testimony that cooperative's market value exceeded its net book value.

Board of Tax and Land Appeals (BTLA) had sufficient evidence from which it could properly reject Department of Revenue Administration (DRA) appraisals and allocated values in electric cooperative's tax abatement claim. BTLA examined DRA's appraisals, heard testimony from DRA's appraiser, and heard testimony from municipalities' experts that criticized DRA's procedures, assumptions, calculations, and conclusions, and BTLA was not required to accept testimony from DRA's appraiser that his allocation procedure based on original cost was proper.

Evidence was sufficient to support Board of Tax and Land Appeals (BTLA) determination in electric cooperative's tax abatement claim that cooperative's appraisals did not result in a credible opinion of market value. Appraiser limited his income analysis to simple arithmetic average of previous three years of expenses, and appraiser's opinion that buyer would not pay more for utility property than rate base was contradicted by seven of 11 sales that appraiser cited.

Board of Tax and Land Appeals (BTLA) made specific factual findings that supported its conclusion that electric cooperative had not presented sufficient credible evidence to meet its burden of proving disproportionality in its tax abatement claim, and thus there was no error in BTLA's statement that cooperative's remaining criticisms of municipal assessors' appraisal methods could not, standing alone, carry cooperative's burden; BTLA's explanations for why it rejected cooperative's testimony and appraisals were supported by record, and evidence upon which cooperative relied to challenge other appraisals was primarily methodological.

Doctrine of judicial estoppel did not apply to prevent municipalities from assessing electric cooperative's property at local assessment values that were greater than Department of Revenue Administration's (DRA) assessed values; DRA equalization process was not legal proceeding, and municipalities did not take inconsistent positions, as they submitted local assessed values as correct market value of property to DRA.

Board of Tax and Land Appeals (BTLA) did not violate principles of uniform and proportional taxation by refusing to apply doctrine of judicial estoppel to prevent municipalities from assessing electric cooperative's property at local assessment values that were greater than Department of Revenue Administration's (DRA) assessed values. Purpose of doctrine was to protect integrity of judicial process by prohibiting parties from deliberately changing positions according to exigencies of moment, and purpose was not implicated.

The Professor and the Madman on Bonds.

This post is for those of you who like reading dictionaries (or about the making of dictionaries). Have you ever wondered why bonds are called bonds? To (try) to answer this question, let's review what the Professor and the Madman have to say.

Continue reading.

By Alexios Hadji on June 14, 2017

The Public Finance Tax Blog

Squire Patton Boggs

Early Tax Abatement Disclosures Under GASB 77: Incomplete, Mislabeled - and Occasionally Spectacular.

Tax Policy

The Government Accounting Standards Board establishes accounting rules used by state and local governments. In this article, Greg LeRoy of Good Jobs First discusses state and local disclosures under the Board's new accounting rule.

As of early June, more than a dozen local governments have issued Comprehensive Annual Financial Reports (CAFRs) reporting for the first time how much revenue they lost to economic development tax break programs. Some of these early disclosures are overly narrow, others are needlessly difficult to decipher—and a few go far beyond the basic requirements, providing taxpayers and investors outstanding new information.

The new reporting is pursuant to GASB Statement No. 77 on Tax Abatement Disclosures (see Weekly State Tax Report, January 27, 2017: "2017: A Landmark Year for Transparency on State and Local 'Corporate Welfare'"). This is the first time GASB has ever set forth a Statement on any kind of tax expenditure. The 2014 Exposure Draft for what became Statement 77 in 2015 drew almost 300 comments, making it one of GASB's most heavily-debated proposals ever.

Tale of Two Cities: Columbus and Birmingham

Emblematic of the two extremes seen so far under Statement 77 are two big cities, each confounding our expectations.

Columbus is Ohio's biggest city and capital of the state that was by years the first to disclose company-specific tax abatement records online— in 1999! Columbus is also home to State Auditor David Yost, who fought publicly several years ago with fellow Republican Gov. John Kasich over his office's right to audit Kasich's privatized JobsOhio agency.

Yet when it came to complying with GASB 77, Yost's office overruled Columbus City Auditor Hugh Dorrian (D), ordering a degraded Note that failed to capture the city's three largest economic development tax abatements. Courageously, Dorrian (an iconic figure in Ohio auditing circles who is soon to retire at age 81 after winning election 12 times) pushed back by inserting a second passage in the CAFR, also labeled "Tax Abatements." It references Statement 77, directs readers to the degraded Note, and then proceeds to disclose three abatement program payments totaling $14.6 million (mostly rebates of municipal personal income taxes to downtown employers).

Birmingham is Alabama's largest city and that state has been both exceedingly generous and quite opaque in its economic development spending, only recently issuing its first state tax expenditure report, for example. It has also been far behind other states in failing to disclose company-specific incentive records (ranking 44th in Good Jobs First's most recent "report card" study on transparency).

Yet in its FY 2016 CAFR issued in November 2016, for which it was not yet subject to Statement 77, the "Pittsburgh of the South" published an astoundingly complete set of data. Taking up six pages, Birmingham's Note does not just state the aggregate cost of each abatement program. It also names every corporate recipient of more than $1 million, details the cost of each such deal, and even includes the projected future-year costs of each agreement.

None of these additional records is required by GASB 77, and the future-year liabilities are not even mentioned by GASB as an optional possibility (although some commenters argued that if public employee pension and health care future liabilities are to be disclosed, so should future abatement charges).

New Mexico: Most-Advanced Disclosure Plan Will Facilitate Analysis

New Mexico State Auditor Tim Keller (D) has ambitious plans for putting GASB 77 on steroids. He has considerable statutory authority and is using it aggressively. (His zeal may reflect the fact that as a state senator, his two incentive disclosure bills passed the legislature unanimously only to be vetoed by Gov. Bill Richardson (D) and Gov. Susanna Martinez (R)).

Keller has issued electronic reporting templates to every locality and state body, instructing them to provide the names of every abatement recipient, as well as the cost of every deal. His office will then collect all of the spreadsheets, combine them, and publish all of the data online in a downloadable form. No other state official has moved to make GASB 77 data so unified, comprehensive and accessible.

Keller's office is also ensuring that governments faithfully report the inter-governmental revenue harms caused by abatements. For example, a $1,000 property tax abatement by Bernalillo County (which includes and surrounds Albuquerque) will trigger GASB 77 reporting obligations by six governments (see chart).

GASB Seeks to Clarify Tax Increment Financing Coverage

Close observers of the Statement 77 process have long predicted that one very large kind of tax abatement—tax increment financing, or "TIF"—would become embroiled in controversy. That prediction proved accurate and GASB finally moved to rectify the matter in late April.

The nub problem is that TIF—and some other kinds of abatements—involve tax *diversion*s or tax *rebates* rather than tax *exemptions* or tax *reductions*. By every other measure, they meet GASB's definition of an abatement: they occur pursuant to an agreement between a government and a taxpayer; government agrees to receive less revenue; and the taxpayer agrees to perform a quid pro quo (e.g., hiring or capital investment).

TIF effectively works three ways when a new development results in higher property values and therefore higher property-value assessments and taxes owed. Either the increase—the so-called "tax increment"—is applied to debt service on bonds that directly benefit the development; or the increment is simply rebated; or it is refunded to the company on a "pay as you go" reimbursement basis as the company builds public or private structures as agreed per the terms of the deal.

Some states and localities use variations of this scheme to divert, rebate or refund various incremental sales, admissions or even personal income taxes. Many commenters on GASB's original Exposure Draft explained such programs, arguing that they belonged "inside the fence."

But some public officials disagreed, and even the American Institute of Certified Public Accountants challenged TIF's inclusion in a formal comment to GASB. Essentially, it argued that since taxpayers remit the increment, the tax isn't abated (even if it is soon returned). In the same vein, when Ohio State Auditor Yost advised Columbus and other Ohio localities, his initial written advice indicated TIF likely wouldn't be covered.

However, GASB in late April resolved the matter, issuing its 2017 Implementation Guide (its annual Q & A document to answer unresolved interpretation questions about its Statements). In lucid, decisive language, it ruled (answering a hypothetical example):

> The developer is promising to take the specific action of constructing a building for purposes of economic development, and the government is forgoing tax revenues to which it is otherwise entitled by providing some or all of the additional property tax revenues above the baseline to the developer. **Although many tax abatements directly reduce the amount of taxes paid and do not involve the actual collection and return of taxes, the mechanism used to conduct the transaction is not relevant to determining whether a transaction meets the definition of an abatement.** Therefore, the fact that the developer pays property taxes and subsequently receives amounts from the government related to the additional property tax revenues means that the government did, in substance, forgo tax revenues. [Emphasis added]

In other words, if incremental tax revenues are repaid or rebated, and not used for debt service, they are covered by Statement 77. (TIF debt service payments, GASB has always held, are already discernible in CAFRs, and therefore don't need further disclosure.)

Unfortunately, the Implementation Guide only applies to CAFRs whose budget years start July 1, 2017 and beyond. So it does not apply to any of the first year's records. Hence it will sometimes be difficult or even impossible to compare the first and second year of data in some jurisdictions.

Denver's Incomplete Disclosure Suggests TIF Issue May Be Unresolved

As noted above, GASB has maintained that debt-based TIFs are not subject to Statement 77 because the debt service paid for by these tax diversions can be found in existing CAFR passages covering municipal debts. But one early disclosure suggests that this may result in undisclosed revenue losses. Denver lost $96 million in revenue to TIF in 2015, but this information was not found in its recently-issued CAFR. Instead, that figure appears in the CAFR of the Denver Urban Renewal Authority (DURA), a separate governmental body jointly controlled by the City and County of Denver.

If under Statement 77, DURA is to be treated as the actively abating government (because it technically creates and manages the TIF districts), then the revenue loss suffered passively by the City of Denver should have appeared in its Statement 77 Note (as in the New Mexico examples cited above). However, it does not, so taxpayers seeking to determine the impact of TIF on Denver's tax base would have to read the DURA CAFR and then impute the city's loss, as we do here.

The use of redevelopment agencies or other special authorities to administer TIF is not unusual, so this Denver-DURA disclosure problem may foreshadow more Statement 77 compliance problems.

Compliance Snags Not Surprising; Resistance Would Be Disappointing

Based on our experience with past Statements, we expect that the first year of Statement 77 data will be uneven. GASB's Implementation Guide clarification should improve TIF and other disclosures. Private accounting firms will hopefully propagate best practices among their clients; indeed, by mid-2018, we expect to be able to discern which accounting firms are taking Statement 77 seriously and which are not. They and governments will likely copy each other and develop more standardized reporting formats. Hopefully, some state officials will follow New Mexico's lead to make the data downloadable. And to promote the use and analysis of the new data, Good Jobs First will soon unveil Subsidy Tracker 2, designed to compile Statement 77 data nationally.

However, to the extent any public officials intentionally resist Statement 77, we are reminded of some localities' condescending and exclusionary histories against public participation. Gone are the days of economic development dockets "announced" only in six-point type in the Legal Notices of the Saturday newspaper. Gone are "public hearings" held with no public in attendance, no advance release of the hearings' content, and active government resistance to the disclosure of project details.

Gone now too, thanks to Statement 77, are financial reports that fail to clearly report the costs: how much revenue is lost to tax-break programs. Politicians have and always will tout their benefits; now the debate is gaining sorely-needed balance.

Bloomberg BNA

By Greg LeRoy

June 14, 2017

Greg LeRoy is executive director for Good Jobs First, a national policy resource center in Washington, D.C.

Fitch: Slow US State Tax Revenue Growth Pressuring Budgets.

Fitch Ratings-New York-14 June 2017: Tepid revenue growth is pressuring state budgets, leading to mid-year budget cuts and reserve draws, which is unusual eight years into a national economic expansion, Fitch Ratings says.

This may become a more significant issue for state governments if tax revenue growth continues to lag economic growth and continued divergence could pose long-term credit challenges for states. States have used the growing revenue typically accompanying economic expansions to restore structural budget balance, fund new priorities and build-up reserves. A permanent decoupling of this link could gradually pressure the typically robust revenue frameworks for states.

The median year-over-year (YoY) revenue growth for the 35 states reviewed by Fitch – those states that have reported monthly revenue data through April – was just 1.8%. April is typically a large month for income tax collections. This was below the 2.2% annual rate of inflation in April. Revenue growth also trailed growth in personal income at 3.7% and wages and salaries at 3.8%, which were both up solidly on an annual basis through March, the most recent month available.

Median sales tax collections grew at just 1.8%. The shift to online sales could be one cause as sales taxes are not always collected on those transactions. State and local governments may have missed out on as much as $26 billion in sales tax revenue from e-commerce and other remote sales in 2015 alone, according to the National Conference of State Legislatures and the International Council of Shopping Centers.

Personal income tax (PIT) revenues were somewhat better at a median growth rate of 2.7% YoY through April. PIT includes both paycheck-withholding revenues, which continue to generally track economic performance, and non-withholding revenues which tend to be linked to capital gains and are much more volatile.

In the limited states where non-withholding data is available, Fitch noted widespread sharp YoY declines as of April. The steepest declines were in Connecticut, which posted a nearly 14% decline and Massachusetts reporting a more than 6% drop off. Connecticut's shortfall contributed to the state's revision of its projection to a nearly $400 million operating deficit in the current year.

Pennsylvania's relatively smaller 4% decline in non-withholding revenues added to pressure from steep declines in business tax collections and softness in sales tax collections, leading the state to project an approximately $1 billion overall general fund shortfall for the current fiscal year.

States reported one possible driver of the declines in non-withholding personal income tax revenue could be taxpayers who shifted income to the 2017 tax year in anticipation of large federal tax cuts. If that is a key driver, states may see a rebound in revenues in the next fiscal year.

A closer look at historical data indicates a more fundamental shift may be underway. Based on a review of quarterly state and local tax receipt data from the US Bureau of Economic Analysis, Fitch notes a recently widening gap between growth rates for tax collections versus key economic indicators including personal income and wages and salaries.

Between third-quarter 2015 and first-quarter 2017, annual growth in quarterly state and local tax receipts averaged 1.9% while growth in quarterly personal income averaged 3.6% and growth in wages and salaries averaged 4.2%. Behavioral changes or ongoing consumer shifts to untaxed activity as described above may be factors. In the preceding decade, average growth rates in quarterly tax receipts, wages and salaries, and personal income were much closer.

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Asian Insurers Developing Appetite for Taxable Munis.

A growing number of insurance companies in Tokyo, Seoul and Taipei are doing their part this year to make American infrastructure great again.

Their investment vehicle of choice: U.S. taxable municipal bonds, growing but still less than 15% of the $3.8 trillion U.S. muni market. That market — a focus for U.S. retail investors — remains dominated by tax-exempt bonds state and local governments issue for public-interest-related infrastructure investments.

Taxable muni bonds, by contrast, help fund projects with a private-interest element, such as retail concessions at airports. They typically offer healthy spreads over the yields on tax-exempt bonds, which could be used to fund the construction of runways, for example.

In a March interview, Atsushi Tachibana, Japan Post Insurance's managing executive officer in charge of investments, said his team invested in taxable U.S. munis in the fiscal year ended March 31, favoring them over lower yielding tax-exempt munis. Mr. Tachibana declined to comment on talk that Kampo, as his organization is known, issued $1 billion in taxable muni mandates.

At Dongbu Insurance, a fixed-income representative confirmed in April that Eaton Vance (EV) Management (EV) was awarded a $100 million taxable municipal bond mandate.

Other insurers in Asia — including Korean Reinsurance Co. and Kyobo Life Insurance Co. Ltd, both of Seoul — have issued RFPs for U.S. taxable munis in recent months, according to money management executives who declined to be identified. A Korean Reinsurance spokesman declined comment. And a source familiar with Kyobo Life, who declined to be identified, said the insurer is looking to award U.S. taxable muni mandates to two managers at the end of June. He didn't offer details on the size of the mandates.

A spokeswoman for Standish Mellon Asset Management said the firm recently won a taxable muni bond mandate from a Korean institution but declined to elabo details.

Growth predictions

Executives with global money management firms predict continued interest in taxable U.S. muni allocations from insurance companies and other long-term investors in Europe and Asia, even as the latest U.S. Federal Reserve data showed outflows of $17.2 billion for the first quarter, leaving outstanding foreign holdings of U.S. taxable munis at $90.4 billion. The outflows largely offset combined inflows of $19.3 billion over the prior two quarters.

Thomas McLoughlin, New York-based managing director and head of fixed income, Americas, with UBS Financial Services, said the case remains intact for expected increases in foreign investor flows to taxable munis. The latest quarter's data might reflect an apparent bout of profit-taking on the back of a powerful recent market rally, which saw valuations swing quickly to rich in the months following the U.S. presidential election, he said.

Bernhard Fischer, New York-based senior fixed-income analyst (municipal bonds) with Principal Global Investors, said despite first quarter outflows, "we can say with certainty that interest has increased significantly," judging by international RFP inquiries. Interest from Asian investors, which was focused in Japan last year, broadened to the rest of Asia in 2017, said Mr. Fischer. Plus, European insurers also set out several RFPs, and PGI's sales team in Australia is likewise seeing growing prospects, he said.

James Welch, a New York-based taxable muni portfolio manager with PGI, tied the prospect of continued growth by foreign investors to their efforts to familiarize themselves with the asset class since yields went negative for large swaths of developed market sovereign bonds.

Over the past 12 to 18 months, institutional investors outside of the U.S. have been putting considerable time and effort into learning about the taxable muni market, and now a growing number are ready to take advantage of opportunities the market presents, agreed Cynthia Clemson, Boston-based co-director of municipal investments with Eaton Vance (EV) Management (EV).

A combination of factors — including superior yields, high credit quality and relatively low correlations with other major asset classes — is coming together now to make taxable U.S. muni bonds a viable asset class for institutional investors around the globe, Ms. Clemson said. And with annual issuance of more than $30 billion a year, the taxable market, at roughly $470 billion today, is fast approaching the $500 billion mark, a scale that should provide further psychological comfort, she said.

Long duration

Another charm of the taxable muni market for insurers in Asia is the securities' relatively long duration, which helps the insurers immunize their liabilities, noted Jeffrey Burger, a Boston-based senior portfolio manager on Standish Mellon's taxable muni team.

Data from Barclays Capital show the average maturity of the bonds in the Barclays Taxable Municipal index is 17.7 years, while the corresponding figure for the tax-exempt index is 12.8 years.

While being able to tap bonds with maturities that extend well beyond other credit alternatives is an attraction for insurers across the region, recent changes to regulations in Korea could add further incentives for insurers there.

Stella Ng, a Hong Kong-based analyst with Moody's Investors Service, said amended risk-based capital requirements for Korean insurers announced May 31 by the country's regulators will raise the maturity cap on insurance liabilities to 30 years from 20 by the end of 2018. That will leave insurers under pressure to better match their assets and liabilities or risk weakening their risk-based capital ratios. "We expect the trend of increasing overseas investments" — including investments in U.S. municipal bonds — "will continue because insurers are seeking more long-dated securities to match their insurance liabilities," said Ms. Ng, in an email.

Mr. Burger, who was in Asia the week of May 29 to visit clients in Japan, Korea, Hong Kong and Australia, said still another advantage of taxable muni bonds now is their more defensive nature in a rising rate environment. The yield for the benchmark Bloomberg Barclays Taxable Municipal Bond index ended 2016 at 3.78%, besting the tax-exempt Bloomberg Barclays Municipal Bond index's 2.65% and the benchmark 10-year Treasury's yield of 2.48%.

PENSIONS & INVESTMENTS

BY DOUGLAS APPELL · JUNE 12, 2017

TAX - NEW HAMPSHIRE

DirecTV, Inc. v. Town of New Hampton

Supreme Court of New Hampshire - May 26, 2017 - A.3d - 2017 WL 2323088

Taxpayer, a provider of satellite television service, filed petition for property tax abatement for satellite antennas and batteries used by taxpayer at its satellite uplink facility.

The Superior Court denied the petition.

The Supreme Court of New Hampshire held that:

- In determining whether personalty constituted a fixture subject to property tax, proper focus was relationship of the personalty to the realty itself, abrogating *Despatch Line of Packets v. Bellamy Man. Co.*, 12 N.H. 205, *Automatic Sprinkler Corp. v. Marston*, 94 N.H. 375, and *Lathrop v. Blake*, 23 N.H. 46;
- Satellite antennas were personalty, rather than fixtures; and
- Batteries were personalty, rather than fixtures.

Satellite antennas used by taxpayer at its satellite uplink facility in connection with its satellite television service were personalty, rather than fixtures, and, thus, were not subject to property tax. Antennas were readily removable and transportable without affecting the utility of the underlying land or buildings, nothing about the land rendered the antennas unfit for other commercial or professional uses if they were removed, and, had the antennas been removed, the only articles associated with the antennas that would have remained on the land would have been concrete pads and underground wiring, neither of which would have detracted from the fitness of the property for other uses.

Batteries used by taxpayer to provide backup power at its satellite uplink facility in connection with its satellite television service were personalty, rather than fixtures, and, thus, were not subject to property tax. Batteries were not affixed to a building, but were stored in steel racks and were easy to install and remove, removal of batteries would not have impaired function of building on the property, and batteries could be used at other facilities

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TAX - NEW HAMPSHIRE

Carr v. Town of New London

Supreme Court of New Hampshire - May 17, 2017 - A.3d - 2017 WL 2193454

Taxpayers sought review of town’s denial of their application for an abatement of the tax assessment on property on which the house burned down.

The Superior Court granted summary judgment to taxpayers. Town appealed.

The Supreme Court of New Hampshire held that fire-related building loss occurring after April 1 may constitute “good cause” under tax abatement statute.

Fire-related building loss occurring after April 1 may constitute “good cause” under tax abatement statute allowing a taxpayer to seek relief under that statute as an alternative to relief under statute that governs prorated assessments for damaged buildings and that sets forth a 60-day window for seeking relief following the destruction of property.

TAX - PENNSYLVANIA

Upper Moreland Township v. 7 Eleven, Inc.

Commonwealth Court of Pennsylvania - April 13, 2017 - A.3d - 2017 WL 1365591

Taxpayer, a Texas corporation that maintained a regional corporate office in the township for division of its franchise convenience stores that operated inside and outside of Pennsylvania, appealed township's assessment of business privilege tax.

Following a bench trial, the Court of Common Pleas invalidated assessment. Township appealed.

The Commonwealth Court held that:

- Taxpayer demonstrated that charges paid by Pennsylvania franchise stores resulted from interstate activities, and thus were subject to apportionment under Commerce Clause;
- Trial court acted within its discretion in admitting taxpayer's organizational chart; and
- Proper remedy was remand to township for constitutional assessment of business privilege tax, rather than invalidation of assessment.

Taxpayer, which was Texas corporation that maintained regional office in township for division of franchise and corporate convenience stores, demonstrated that charges Pennsylvania franchise stores paid to taxpayer in exchange for various services resulted from interstate activities, and thus were subject to apportionment under Commerce Clause in township's assessment of business privilege tax. Taxpayer presented evidence that many services provided to Pennsylvania franchise stores were product of interstate commerce, including that marketing department which managed nationwide advertising and information systems department were located in Texas and that employee in Massachusetts was responsible for providing technology to all stores in division, including Pennsylvania stores.

Trial court acted within its discretion in admitting organizational chart of taxpayer, which was Texas corporation that maintained regional office in Pennsylvania for corporate and franchised convenience stores, in taxpayer's appeal challenging township's assessment of business privilege tax on charges paid by franchise stores, though chart was not identified in discovery or produced until after pre-trial conference; trial court admitted chart to aid in understanding of testimony by taxpayer's division vice president regarding company's operations, and vice president was subject to cross-examination about chart by township.

Proper remedy following trial court's determination that township violated Commerce Clause in its assessment of business privilege tax by failing to apportion charges paid to taxpayer, which was Texas corporation that maintained regional office in township for division of franchise and corporate convenience stores, by franchise stores in Pennsylvania that resulted from interstate commerce, was remand to township for constitutional recalculation of the assessment, rather than invalidation of assessment. Township could constitutionally tax the charges, provided that the taxed receipts were validly apportioned, taxpayer had not paid those taxes, and remand for recalculation was in interest of fairness to other taxpayers in township.

Hartford's Finances Spotlight Property-Tax Quandary.

Despite top property-tax rate in Connecticut, the state's capital teeters on bankruptcy

For capital cities like Hartford, much of the real estate is held by nontax paying government departments.

Hartford, Connecticut's capital city and hub of the state's insurance industry, is edging closer to joining a small club of American municipalities: those that have sought bankruptcy protection.

The city's $49.6 million budget hole and the impending departure of one of its biggest employers, Aetna Inc., have shined a light on its unusual predicament: Half of the city's properties are excluded from paying taxes because they are government entities, hospitals and universities.

It has less taxable property than the neighboring suburban community of West Hartford, which has less than half of the population than its urban neighbor. And Hartford's total property-tax receipts are about 25% below that of the tony community of Greenwich.

"The root of the problem is you have a city built on a tax base of a suburb," said Mayor Luke Bronin.

The mayor said the small tax base along with growing fixed costs produced structural budget deficits that prior administrations sought to deal with through asset sales, short-term debt restructuring and property-tax increases.

Mr. Bronin is now asking for financial help from the state. "My goal and my hope is that legislators from around the state of Connecticut will recognize that Hartford cannot responsibly solve a crisis of this magnitude at the local level alone," he said.

Around the U.S. the main source of funding generated by municipalities is property-tax revenue, contributing 47% of the money raised by local governments, according to the Lincoln Institute of Land Policy.

For capital cities such as Hartford, much of the real estate is held by government departments that don't pay taxes. Hartford, with a population of about 125,000, is home to the University of Connecticut School of Law, Trinity College, Hartford Seminary and the state Supreme Court.

Other cities in similar situations include Boston, where just over half of the property in the city is tax exempt. In Baltimore, about 32% of the property is tax exempt, and in Philadelphia it's 27%.

While most U.S. cities are reporting healthy budget reserves that have returned to prerecession levels, Hartford is among a small but growing group of municipalities that are confronting rising levels of fiscal stress, according to Moody's Investors Service.

Other areas grappling with long-term financial problems driven by poor revenue growth and rising fixed costs include Jackson, Miss., and Wayne County, Mich.

Only 64 bankruptcies have been filed by cities, counties, towns and villages since 1954, according to James Spiotto, an attorney who tracks municipalities' bankruptcies. In 2013, Detroit became the largest-ever U.S. municipal bankruptcy case.

Victor Medeiros, a public-finance ratings analyst with S&P Global Ratings, which downgraded Hartford last month, said the city could face additional downgrades of several notches.

The credit-ratings firm will be watching whether Connecticut can reach a timely budget agreement and what level of financial assistance the state will be able to offer the city, he said.

Aetna and the other four biggest taxpayers in the city contribute nearly one-fifth of the city's $280 million of property-tax revenue. Property-tax receipts make up nearly half of the city's general-fund revenues.

Aetna, Hartford Financial Services Group Inc. and Travelers Cos. Inc., also Hartford's biggest employers, have said they would collectively give the city a voluntary payout of $10 million annually over the next five years to help avoid bankruptcy. But the companies have said they want to see comprehensive changes that allows the city to stabilize its finances.

The bigger concerns "are getting the city turned around where we can attract private-sector investment here to ultimately begin to drive" property taxes down, said Oz Griebel, chief executive of MetroHartford Alliance, a regional business group.

Since 2000, Hartford has increased its property-tax, or millage, rate seven times. The rate is now more than 50% higher than it was in 1998.

At the current level, a Hartford resident who owns a home with an assessed value of $300,000 currently pays an annual tax bill of $22,287, at rate of 7.43%. A West Hartford homeowner with a similar house pays $11,853 at a rate of 3.95%.

The city must pay nearly $180 million on debt service, health care, pensions and other fixed costs in the coming fiscal year beginning July 1. That is more than half of the city's budget, excluding education.

Mr. Bronin said one-time budget fixes and tax increases won't cut it anymore. After cutting 15% of the city's nonuniformed workforce, he said he won't reduce the number of police officers or firefighters and added that further trimming of city services would be irresponsible.

Democratic Gov. Dannel Malloy last week said Hartford and the state Legislature would have to accept more oversight of the city's finances in exchange for state assistance. "I do not support additional moneys going to our challenged urban environments without a review process," Mr. Malloy said.

Connecticut House Majority Leader Matt Ritter, a Hartford Democrat, said everyone in the capital understands that it is in the state's best interest to make sure the city has a sustainable future.

Bankruptcy "doesn't just affect Hartford," Mr. Ritter said. "It would affect neighboring communities, it would affect the state, it would probably affect our credit ratings."

The Wall Street Journal

By Joseph De Avila

Updated June 6, 2017 4:18 p.m. ET

Write to Joseph De Avila at joseph.deavila@wsj.com

SIFMA Statement on 'Move America Act of 2017'

Washington, DC, June 2, 2017 — SIFMA today issued the following statement from Michael Decker, SIFMA Managing Director, Co-Head of the Municipal Securities Division on the Move

America Act of 2017, introduced by Senators Ron Wyden (D-OR) and John Hoeven (R-ND), which would expand tax-exempt private activity bonds and create a new infrastructure tax credit:

> "We commend Senators Wyden and Hoeven for seeking a bipartisan path to bridge the gap between infrastructure funding needs and available resources. The Move America Act leverages the existing and well-proven tax-exempt bond market, which we believe will be the most crucial funding pillar in the upcoming infrastructure package. Congress should seriously consider proposals like this one that help our cities and states secure funding for projects that create jobs and drive economic growth."

IMMUNITY - TEXAS

Jamro Ltd. v. City of San Antonio

Court of Appeals of Texas, San Antonio - March 15, 2017 - Not Reported in S.W.3d - 2017 WL 993473

On September 8, 2005, the City of San Antonio adopted a resolution expressing an intent to consider the creation of a tax increment reinvestment zone ("TIRZ") to finance public improvements in the Palo Alto Trails Development (the "Project").

On May 18, 2006, the City adopted an ordinance designating the Project area as a TIRZ, noting the City's desire to support revitalization activities for the Project. On June 20, 2013, the City adopted an ordinance terminating the TIRZ.

On December 30, 2015, JAMRO, Ltd. filed the underlying lawsuit against the City alleging claims for breach of contract, quantum meruit, promissory estoppel, fraud, negligent misrepresentation, and negligence. JAMRO alleged it was in the process of developing property when City officials and agents approached JAMRO and asked it to apply to have the area being developed declared a reinvestment zone. JAMRO further alleged it complied with the request and made changes to JAMRO's plans and specifications at the City's request and completed the construction but was never notified the TIRZ had been terminated. JAMRO sought compensatory and punitive damages.

The City filed a plea to the jurisdiction asserting it was immune from the lawsuit because it never entered into a contract with JAMRO and immunity is only waived for contractual claims not for quasi-contractual claims like quantum meruit and promissory estoppel. The City further asserted immunity is not waived for intentional torts like fraud, and immunity is only waived for negligence claims for damages arising from an employee's use of a motor vehicle.

JAMRO responded to the City's plea, asserting the City was not entitled to immunity because the City was performing a proprietary function. JAMRO asserted "the City was acting as a Developer and private citizen seeking to finance for one company and individual a portion of their construction" and the City's actions "could not be more proprietary in nature."

After a hearing, the trial court signed an order granting the City's plea. JAMRO appealed.

In its brief, JAMRO argued that the City's actions were proprietary because it sought out a specific private developer "to spur development in a specific area of town for the benefit of only those inhabitants and the City itself." JAMRO asserted the City "asked [JAMRO] to alter an existing subdivision plan to meet the City's guidelines and [in] return promised tax benefits to [JAMRO]." The

City responded that its actions were governmental functions.

The Court of Appeals affirmed the trial court's order granting the City's plea to the jurisdiction, finding that the City's actions with regard to the TIRZ were governmental functions.

The Court noted that the City's actions with regard to the TIRZ met the definition of a governmental function because Chapter 311 enjoined on the City the authority to create the TIRZ to serve a public purpose in the interest of the general public. The City's actions with regard to the TIRZ were directed at financing public improvements which meet the definition of governmental functions.

TAX - MISSOURI

Armstrong-Trotwood, LLC v. State Tax Commission

Supreme Court of Missouri, en banc. - May 16, 2017 - S.W.3d - 2017 WL 2118656

Taxpayers sought review of State Tax Commission's dismissal of their challenge to the property tax assessments on their residential properties, which were part of multi-county taxing districts, and sought a declaratory judgment that their assessments were discriminatory and that the State Tax Commission failed to carry out its duty to equalize property assessments as between counties.

The Circuit Court dismissed. Taxpayers appealed.

On transfer from the Court of Appeals, the Supreme Court of Missouri held that:

- Taxpayers failed to state a claim that their tax assessments violated the uniformity clause of the state constitution, and
- State Tax Commission lacked jurisdiction to hear taxpayers' appeal.

Taxpayers' challenge to their property tax assessments on the grounds that their assessments were discriminatory and that the State Tax Commission failed to carry out its duty to equalize property assessments as between counties did not concern the "construction of the revenue laws of this state," and thus the Supreme Court did not have exclusive appellate jurisdiction; the constitutional and statutory provisions at issue did not impose, amend, or abolish a tax or fee, and the taxes at issue were paid to a multi-county taxing district rather than the state treasury.

Taxpayers' challenge to their property tax assessments on the grounds that their assessments were discriminatory and that the State Tax Commission failed to carry out its duty to equalize property assessments as between counties presented important questions regarding the application of sections on state constitution concerning the levying of taxes, and thus the Supreme Court could transfer the case on its own motion, even through the Court did not have exclusive appellate jurisdiction; the Court could take transfer of a case before its disposition by the Court of Appeals if it presented a question of general interest or importance.

Taxpayers who alleged that other counties in multi-county taxing districts undervalued properties such that the tax assessments on taxpayers' residential properties caused taxpayers to bear a disproportionate share of the cost of operating the multi-county taxing districts failed to state a claim that their tax assessments violated the uniformity clause of the state constitution; the uniformity clause did not pertain to the valuation of property, and each multi-county taxing district at issue levied a tax rate that was uniformly applied to the same class or subclass of property within the territorial limits of the taxing authority.

State Tax Commission lacked jurisdiction to hear taxpayers' appeal of county board of equalization's denial of their claim that other counties in multi-county taxing districts undervalued properties such that the tax assessments on taxpayers' residential properties caused taxpayers to bear a disproportionate share of the cost of operating the multi-county taxing districts in violation of the uniformity clause of the state constitution; county board did not have the power to conduct intercounty equalization, and the Commission's jurisdiction was derivative of the county board when it reviewed appeals from the county board.

State Tax Commission's intercounty equalization orders affect counties and classes of taxpayers, not the individual rights and interests of specific parties, and, consequently, are not subject to review in either a contested or non-contested case before the Commission on appeal from a county board's decision.

TAX - MONTANA

Mountain Water Company v. State , Department of Revenue

Supreme Court of Montana - May 16, 2017 - P.3d - 2017 WL 2123151 - 2017 MT 117

Property owner brought declaratory judgment action seeking determination that city was responsible for property taxes accruing on property during pendency of city's condemnation action.

The District Court granted summary judgment in favor of property owner. Department of Revenue appealed.

The Supreme Court of Montana held that city was not statutorily responsible for property taxes accruing on property during pendency of city's condemnation action. Statute at issue provided that property taxes were prorated once condemnor actually took possession of property, and property owner continued to possess property during pendency of condemnation action.

Mnuchin: Administration Wants to Preserve Muni Bond Tax Exemption.

WASHINGTON – The administration "strongly" supports the preservation of the tax exemption for municipal bonds, Treasury Secretary Steven Mnuchin said during a Senate Finance Committee hearing on Thursday.

At a hearing on the fiscal 2018 budget and tax reform, committee member Sen. Sherrod Brown, D-Ohio, on tax reform, asked Mnuchin a series of questions on tax reform, including whether the administration supports the tax exemption for municipal bonds.

"Our preference is strongly to keep the interest deductibility of state and local bonds," Mnuchin said.

The administration wants to maintain the mortgage interest deduction, he also said in response to Brown's rapid fire questions. But he declined to answer several other specific questions about what the tax reform plan would or would not include, saying negotiations are still ongoing.

During the hearing, committee Democrats accused the administration of "double counting … Bernie Madoff math … anomalies … and fuzzy math" in its budget, which shows $2 trillion of revenues from

3% economic growth being used to pay down the deficit when administration officials have said those revenues are going to help pay for tax cuts in the forthcoming tax reform plan.

"Your budget assumes 3% growth, which you claim adds $2 trillion to revenues. That's kind of a dubious proposition to me," said Sen. Ron Wyden from Oregon, the top committee Democrat. "You told us last week that this economic growth is what pays for tax reform, but the Trump budget doesn't include tax reform. So, unless you make this clear to us, aren't you double counting the same $2 trillion to pay down deficits that you claim will pay for tax reform? I mean this is kind of Bernie Madoff math, but maybe I'm missing something. Tell me how it works."

Mnuchin said, "We're absolutely not double-counting. When the president's budget was done, we were not ready to have a full-blown tax reform plan that we could model into the budget."

Later Sen. Claire McCaskill, D-Mo., made the same point. "You can't have tax reform paid for by growth and then count that growth against the deficit," she said. "You can't have both. That's beyond fuzzy math, that's double counting," she said.

Mnuchin said economic growth comes from lots of things besides just tax cuts, such as regulatory reforms.

"It just defies understanding that you're going to project what the growth is going to be based on a tax cut but you can't put anything in the budget about what the lack of revenues are going to be because of the tax cut," she said. "That doesn't even make sense. How can this document even be taken seriously?"

Sen Mark Warner, D-Va., said the proposed fiscal 2018 budget would take discretionary funding down to 3% of gross domestic product -- the lowest it has ever been.

He also noted that the bipartisan Committee for a Responsible Federal Budget has projected the tax plan will result in a revenue loss of $5.5 trillion over a decade. If that's the case, the administration will have to go after most of the big tax preferences, including the deductibility of employer health care plans.

Mnuchin said it is absurd for groups to score the revenue impacts of the tax reform plan since they have no details about it yet.

The Bond Buyer

By Lynn Hume

Published May 25 2017, 12:32pm EDT

Federal Infrastructure Tax Credit Legislation Makes Key Changes from 2015 Proposal.

Sens. John Hoeven, R-N.D., and Ron Wyden, D-Ore., reintroduced bipartisan legislation May 25 to establish a program to spur infrastructure investment through the creation of Move America Bonds and Move America Credits. The major benefit of the Move America Act of 2017 is that it includes the use of public-private partnerships, or P3s, to assist in financing infrastructure. The primary benefits of using P3s include:

- Private equity providers will generally be sophisticated institutional investors exercising a high level of asset management.
- In-depth financial underwriting of projects before development.
- Construction and/or reconstruction risk borne by private equity investors.
- The performance risk transfers to private parties.

The two concepts behind the bill include expanding the available tax-exempt financing for infrastructure and creating credits to harness additional private sector investment. In this bill (revised from a 2015 version), the Move America Bond volume cap will be 50 percent of the state ceiling under cap for tax-exempt private activity bonds. In order to receive Move America Credits, states may elect to trade in all or a portion of their Move America Bonds for Move America Credits at a 25 percent rate. In other words, the credit limitation for each state for each calendar year is a dollar amount equal to 25 percent of the Move America Bond volume cap. For example, if a state has $100 in Move America Bonds, it may trade that $100 for $25 in Move America Credits. According to Sen. Hoeven, about $226 billion would be the annual volume cap for Move America Bonds over the next 10 years. That means that up to $56 billion, or 25 percent of the Move America bond cap, would be available annually for Move America Credits over the next 10 years.

This bill was first introduced by Sen. Wyden in 2015 as the Move America Act of 2015. With the reintroduction, there are a number of changes to the bill, discussed below.

The overall structure borrows heavily from both the Low-Income Housing Tax Credit (LIHTC) program and the New Markets Tax Credits (NMTC) program. Permitting these alternative structures provides greater flexibility in matching the right financing mechanism with the needs of individual infrastructure project.

Summary of Revisions

Expanding a List of Qualifying Infrastructure Projects

The previous version of the bill included airports, mass transit, freight and passenger rail, roads, bridges, flood projects, and inland and costal waterway improvements. The new version includes everything that was previously included, as well as water and sewage projects and rural broadband.

Traditional Investment Credit Structure

The revised provision dealing with Move America Credits would follow a structure similar to the LIHTC for equity investments in infrastructure projects. Investors would be able to directly invest in a qualified project, meaning that the investor's credit would equal the percentage of the direct investment in a qualified project, subject to limitation discussed below. The investors would receive tax credits equal to 10 percent of their equity investment each year over a 10-year tax credit period.

Credit Levels

The credits available for equity investments in an infrastructure project cannot exceed 20 percent of the qualified project's total costs, which is retained from the previous version. However, the cap related to private investment would be eliminated. In the revised draft, designated state agencies are also required to set the credits allocated to each project at the minimum amount for the project to achieve financial viability.

Capitalizing Infrastructure Funds

The 2017 Move America Act also provides that if states wanted to set up a structure that mirrors the

NMTC, states would be permitted to use the credits to capitalize a state infrastructure bank or other infrastructure loan funds. States would be permitted to allocate credits to entities (e.g., state infrastructure banks, which are typically difficult to capitalize) and the entities could offer the credits to investors in order raise capital necessary to fund qualified projects. This is similar to the structure of community development entities (CDEs) in the NMTC program, and indeed, if designated by the state, CDEs could receive Move America credits to establish infrastructure funds. Under this option, the investors would be eligible to claim a tax credit equal to 5 percent of their equity investment in the Infrastructure Fund. There would be compliance requirements that share similarities to the NMTC compliance requirements.

Conclusion

This bill provides a mechanism to encourage more P3s to be used for infrastructure investment. President Donald Trump campaigned on using a federal infrastructure tax credit and this bill may also gain additional traction with White House support.

Novogradac & Company LLP is working on a white paper exploring the various design specifics of a federal infrastructure tax program. We have also authored posts related to the reasons to hope for a federal infrastructure tax credit and the benefits of a federal infrastructure tax credit. Additionally, please be sure to keep an eye on our infrastructure credit page.

Novogradac & Company LLP

Published by Owen P. Gray on Thursday, May 25, 2017 – 12:00am

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MBA to House Tax Panel Members: Support Tax-Exempt Bonds.

WASHINGTON – The Municipal Bonds for America coalition is urging members of the House Ways and Means Committee to support tax-exempt bonds, including private activity bonds.

"The investments financed with these bonds have a proven track record to help our economy grow and create jobs," 12 state, local, investor and other MBA groups told committee members in a letter sent to them on Monday after the start of their tax reform hearings.

The groups said that while some have suggested that a surtax or cap on bond interest could raise revenue for the federal government without increasing the interest rates demanded by investors, such a tax or cap, would actually reduce the value of all bonds in the secondary market by as much as $200 billion.

"It would also disproportionately hurt seniors," they wrote. "About three-fifths of bond interest paid to individuals is paid to those aged 65 years and older and 84 percent is paid to those aged 55 and older."

In addition, they wrote, investors would demand higher rates of return to: accommodate the surtax; reflect the bond's loss of value in the secondary market; and compensate for the risk that Congress will expand the tax to hit more bondholders, increase the tax rate imposed, or both.

One need look no further than qualified private activity bonds, most of which are subject to the alternative minimum tax, to see an example of this. The AMT "is effectively a surtax beyond the regular income tax that is paid by taxpayers above a certain minimum income level," the coalition said, and it costs issuers as much as 50 basis points more in interest rates than another non-AMT similarly rated tax-exempt bond.

The groups pointed to the Dallas/Fort Worth International Airport, which used tax-exempt PABs subject to the AMT to help finance $3.1 billion of its massive terminal improvement project. The airport paid $268 million more than if it had used fully tax-exempt bonds, they said.

During the last decade state and local governments made about $2 trillion in bond-financed infrastructure investments and they are expected to invest $2 trillion to $3 trillion in infrastructure over the next decade, the groups wrote. States and localities build nearly three-quarters of the nation's core infrastructure, using tax-exempt bonds for most of the financing, they added.

"It is vital that [tax reform] not impose an unprecedented federal tax – in any form – on these investments," the groups told the lawmakers.

State and local governments issued about $400 billion of muni bonds in 2015. Of those, about $85 billion were used for primary and secondary schools, $39 billion financed investments in colleges and universities, $50 billion were used for roads, bridges, ports, airports, mass transit and other transportation facilities, $38 billion financed water and sewer projects, $27 were used for hospitals and clinics and $18 billion financed electric utility projects, the groups said.

"These are investments that make commerce possible and our communities strong and livable," they added.

The groups said that private activity bonds were also used to finance public-private projects. In 2015, they said, about $8 billion were used to finance transportation-related projects such as airport terminals and port facilities. Another $6.7 billion was used for rental housing and $4.6 billion for affordable mortgages. In addition $700 million of PABs helped finance state and local student loan programs, and $250 million was used for industrial development projects and farm facilities.

The groups told the lawmakers that while alternatives to tax exempt bonds exist, each has substantial shortcomings — primarily increased borrowing costs, added complexity, and a lack of access for smaller issuers. Public-private partnerships may supplement tax-exempt bonds, but these and other alternatives can't replace them, they said.

The Bond Buyer

By Lynn Hume

Published May 24 2017, 4:00pm EDT

Municipalities Grapple With Whether Nursing Homes Should Be Taxpayer-Funded.

NANTUCKET, Mass.—The 11,000 year-round residents of this summer colony off Cape Cod are confronting an emotional question: whether the island is a place where they can grow old.

Nantucket, a ritzy vacation destination whose permanent community is of more modest means, has one nursing home: Our Island Home, a 45-bed facility that is owned and run by the town and with a history that goes back to 1822. It sits on prime town-owned real-estate where its residents can watch boats on Nantucket Harbor. But it runs an annual deficit of about $3 million, needs major repairs and is pressuring the town's coffers at a time when Nantucket needs other infrastructure to accommodate growth.

"The town is getting to the point where it's just taking on way too much," said Donna Hamel, chairwoman of the Nantucket Republican Town Committee. "Should the town be in the nursing-home business? No. They don't know anything about it."

Our Island Home is one of roughly 1,100 of the U.S.'s 15,600 nursing homes that are government-owned, a vestige of an era when municipalities ran sanitariums and homes for the indigent. Nantucket now joins cities and towns from New Jersey to Tennessee in wondering whether nursing homes are an essential municipal service like fire, sewers and schools.

As baby boomers turn 65 at an estimated pace of 10,000 people a day, communities are increasingly confronting the questions of how and where to care for the elderly.Some are deciding they don't expect nursing homes to befinancially independent.

Over the past five years, most New Hampshire counties have rolled their publicly owned nursing homes from the "enterprise" budget column, where services are supported by user fees, to the general fund, said Nicholas Lehman, an analyst with Moody's Investors Service. In these places, "residents want a nursing-home option for themselves in the future, and they're willing to pay taxes to support that," he said.

In these places, "residents want a nursing-home option for themselves in the future, and they're willing to pay taxes to support that," he said.

But government-owned and -run facilities often have deficits and have outdated institutional styles that don't attract the wealthier private-pay customers that offset Medicaid patients, said Jeff Binder, managing director of Senior Living Investment Brokerage Inc. Medicaid payments also face uncertainty, with the new White House budget proposing heavy cuts to the federal-state health program for the poor.

Financial pressures led New Jersey counties to sell their nursing homes to private companies, a move that saved some facilities, according to John Donnadio, executive director of the New Jersey Association of Counties. Only seven New Jersey counties still run nursing homes, down from 14 about five years ago, and "that number is going to drop more," he said.

But privatizing doesn't always go smoothly. Three years ago, Nashville began to shift two city-owned long-term-care facilities to private operators after deciding it couldn't continue chipping in $10.5 million annually for their operation.

The plan hit snags. Local elected officials heard complaints about the conditions and food, and the city cut ties with the for-profit operator that ran one complex. In January, the city brought in an emergency operator to run the assisted-living center. Officials say that despite challenges, conditions have improved and the shift to private operators ultimately saved millions.

For Nantucket, the debate has extra resonance because without a nursing home on the island, residents might have to move.

While the island has swanky shops lining cobblestone streets and multimillion-dollar vacation homes that sit empty for many months of the year, Nantucket Town Manager Elizabeth Gibson says there are year-round residents who are "really struggling," in part because of the high cost of living.

Elderly year-rounders tend to live at home for as long as possible, but they complain that home-health workers are costly and in short supply. There are fewer options for assisted living or services like memory care. Some seniors move to the mainland, but most don't want to leave their spouses or community. That leads the elderly who need skilled nursing care to seek out the island's only nursing home. Even some well-to-do year-round residents find that Our Island Home is their only option.

When Yvonne DuMont Stelle decided she could no longer care for her husband, Donald, who suffers from dementia, the painful decision was made easier knowing that he would be a five-minute drive away.

"It's a horrible thought to think we wouldn't have this here," said Ms. Stelle, who regularly checks in on Donald, 90, and is part of a local group that bring extras, from art classes to live music, to the nursing home.

Ms. Gibson, the town manager, said she doubts many residents would say the nursing home doesn't belong in the community, but the tension is taxpayers are being asked to support a service that is bleeding money while the community pays heavily for other services.

"It's probably going to come down to, Can we keep affording it?" Ms. Gibson said.

A nearly completed school was a $40 million-plus project, Ms. Gibson said, and the town has appropriated another $40 million toward sewers and $17 million for a fire station. Town officials also are discussing whether they may have to subsidize housing to recruit employees who can't afford Nantucket's high housing prices.

At the annual town meeting in April, taxpayers voted 264-253 against a $30 million proposal to construct a new, modern campus for Our Island Home. Concerns ranged from the cost to the new location to suspicion about a march toward privatization.

But local residents cherish the care that the elderly get at Our Island Home—such as when two staff members drove 91-year-old resident Gladys Soverino and her husband, Malcolm, last October to renew their vows at the Nantucket church where the couple had married 70 years earlier.

"We're an island," said Allison Forsgren, a local real-estate broker whose late father lived in the town-owned nursing home. "You have to sort of watch out for people and not let them fall through the cracks."

The Wall Street Journal

by Jennifer Levitz

May 28, 2017 7:00 a.m. ET

Write to Jennifer Levitz at jennifer.levitz@wsj.com

TAX - COLORADO

Colorado Department of Revenue v. Creager Mercantile Co., Inc.

Supreme Court of Colorado - May 15, 2017 - P.3d - 2017 WL 2106241 - 2017 CO 41

Corporate taxpayer that distributed tobacco and other products to convenience stores sought judicial review of the decision of the Department of Revenue to impose a tobacco products tax on wrappers consisting of pulverized, homogenized tobacco leaves that contained 30% to 48% tobacco.

The District Court affirmed. Taxpayer appealed. The Court of Appeals reversed and remanded. Department petitioned for a writ of certiorari, which was granted.

The Supreme Court of Colorado held that wrappers were a "kind" or "form" of tobacco and were "prepared in such manner as to be suitable … for smoking," and thus wrappers were a taxable "tobacco product."

Wrappers consisting of pulverized, homogenized tobacco leaves that contained 30% to 48% tobacco were a "kind" or "form" of tobacco and were "prepared in such manner as to be suitable … for smoking," and thus wrappers were "tobacco products" that were taxable under statute defining "tobacco products" as "other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a pipe or otherwise"; wrappers were designed and intended to be filled with tobacco, marijuana, or other smoking material and smoked, wrappers were consumed as they were smoked, and each inhalation from a wrapper burned and delivered additional tobacco in the wrap itself to the user.

[When Should an Issuer of Tax-Advantaged Bonds Use the Hold-the-Offering-Price Method to Establish the Issue Price of the Bonds?]

Three score and thirteen years (and one day) after D-Day (June 7, 2017, for the non-history-buffs), the new regulations that prescribe the methods for determining the issue price of tax-advantaged bonds take effect. Of the various methods for determining the issue price of tax-advantaged bonds, the hold-the-offering-price method is the only one that allows an issuer of such bonds in an underwritten transaction to know with certainty in advance of the sale date of the bonds that the issue price of the bonds will be established on the sale date. As discussed below, however, this method will come at a cost to issuers of tax-advantaged bonds.

The question thus becomes, which federal tax circumstances warrant the increased cost of the hold-the-offering-price method to be assured that the issue price of the bonds will be established on the sale date? For the answer, read on.

Continue reading.

The Public Finance Tax Blog

By Michael Cullers on May 24, 2017

Squire Patton Boggs

TAX - OREGON

Boardman Acquisition, LLC v. Department of Revenue

Supreme Court of Oregon - May 11, 2017 - P.3d - 361 Or. 440 - 2017 WL 1957144

Taxpayer, a port, sought review of county assessor's denial of its request for a refund of additional taxes paid per sales agreement on land that port sold to a private entity after port and tenant agreed to end a lease on the land and the land was accordingly disqualified from the special assessment as nonexclusive farm use zone farmland.

The Tax Court, Regular Division, granted summary judgment for the Department of Revenue. Port appealed.

The Supreme Court of Oregon held that:

- The date the disqualification from special assessment is "taken into account on the assessment and tax roll" means the date the disqualification becomes effective on the assessment and tax roll, and
- Land was subject to additional taxes, which were based on prior years' taxes avoided via the then-ended special assessment.

As used in the statute governing the assessment of additional taxes on land that has been disqualified from special assessment, the date the disqualification from special assessment is "taken into account on the assessment and tax roll" means the date the disqualification becomes effective on the assessment and tax roll, such that a disqualification that occurs between January 1 and June 30 becomes effective on the assessment and tax roll as of July 1, and a disqualification that occurs between July 1 and December 31 will not affect the taxes due until the following July 1.

Land that had been specially assessed as nonexclusive-farm-use-zone farmland and that taxpayer, a port, sold to a private entity on August 10 after taxpayer and tenant had agreed to end tenant's lease on land a few days prior, was subject to additional taxes, which were based on prior years' taxes avoided via the then-ended special assessment, and thus taxpayer was not entitled to a refund of the additional taxes that it paid via the sales agreement with the private entity. The disqualification from special assessment became effective on the assessment roll on the following January 1, and on that date the land was not "public property that was leased or rented to a taxable owner," as required by statute imposing additional taxes on land disqualified from special assessments.

Trump Tax Reform Unlikely to Impact Municipal Bonds, BofA Says.

- **'Price independently of the top federal income tax rates'**
- **Political turmoil in administration may derail tax reform**

Tax reform will have little impact on the value of municipal bonds, according to Bank of America Merrill Lynch strategists Philip Fischer and Celena Chan.

Looming tax reform has some investors worried that slashing the nation's top individual tax rates may send demand for the securities tumbling. Municipal bonds are often purchased by wealthy investors seeking to lessen their tax burdens.

The trend has reversed recently as political turmoil has derailed President Trump's legislative agenda, including tax reform. Yields on state and local bonds hit a 2017 low last week.

An analysis shows that municipal bonds "price independently of the top federal income tax rates and have done so for decades." The strategists said the reason for this is that state and local bonds are not well connected to other capital markets.

Corporate tax reform may happen by year-end, according to the analysts, but it's unlikely "P&C and bank taxes will fall sufficiently to distort muni pricing and flows."

Bloomberg

by Rebecca Spalding

May 22, 2017, 8:38 AM PDT

TAX - WYOMING

[Brock v. State ex rel. Wyoming Workforce Services, Unemployment Insurance Division]()

Supreme Court of Wyoming - May 3, 2017 - P.3d - 2017 WL 1710610 - 2017 WY 47

Lien holders, who had a lien on property created by a certificate of purchase for delinquent taxes, filed an action against the Department of Workforce Services and the Internal Revenue Service (IRS) that sought to foreclose on their lien and a declaration that their lien was superior to all other encumbrances against the property.

The IRS removed the case to federal district court. The United States District Court certified a question to the state Supreme Court.

The Supreme Court of Wyoming held that lien held by lien holders, who had a lien on property created by a certificate of purchase for delinquent taxes, was superior to lien held by the Department of Workforce Services for unpaid contributions to the unemployment compensation fund.

Lien holders obtained a certificate of purchase on the property by purchasing the property for the delinquent taxes assessed against the property, after passage of the required time, "Holders of certificates of purchase of real property sold for delinquent taxes" may apply for a tax deed, and thus lien holders' lien was a claim for taxes, which would give it priority over a claim for contributions to the unemployment compensation fund pursuant to statute.

TAX - NEW JERSEY

[White Oaks Country Club, Inc. v. Township of Franklin]()

Tax Court of New Jersey - March 7, 2017 - 2017 WL 931393

State Department of Environmental Protection ("DEP") alleged that its property – on which a for-profit entity operated a golf course and related amenities – was exempt from local property taxes.

The Tax Court concluded that the statutory requirements for an exemption set forth in N.J.S.A. 54:4–3.3 were satisfied for the subject property for tax year 2012.

"The exemption at issue here is established in N.J.S.A. 54:4–3.3, and does not require charitable use of the subject property. It is, instead, a public use, consistent with the statutory mandate of the agency that owns the property, that determines whether an exemption applies. The fact that plaintiff does not engage in charitable activity—indeed, there is no dispute that plaintiff is a for-profit business enterprise—does not defeat the exemption in this case. Plaintiff's use of the property furthers the public purpose of the DEP by providing recreational opportunities to the public on land purchased with Green Acres funds."

The Countdown to June 7, 2017….. Are You Ready?

On June 7, 2017, the Final Issue Price Regulations (the "**Final Regulations**") become effective. More specifically, the Final Regulations apply to bonds sold on or after June 7, 2017 and without regard to the bonds' issuance date. Suffice it to say, if you have read our blog or been practicing in the area of municipal finance for any period of time, you know that June 7, 2017 is a date that is YEARS in the making.

Continue reading.

The Public Finance Tax Blog

By Joel Swearingen on May 19, 2017

Squire Patton Boggs

Tax-Exempt Financing For Waste Disposal/Recovery And Wastewater Treatment.

Introduction

Tax-exempt bond financing is available for certain water and sewage, solid waste disposal/recovery project, waste-to-energy projects, and wastewater treatment projects. Bond financing may be available for public, private and public-private partnership projects. Bonds might be issued directly by a city or a county for government-owned project pursuant to Georgia's Revenue Bond Law. A privately owned and operated project might be financeable through Georgia's Development Authorities Law. A government-owned project or a public-private partnership project might be financed with Georgia's Resource Recovery Development Authorities Law or Georgia's Regional Solid Waste Management Authorities Law. In order for the bonds to be issued to qualify for tax-exemption, additional requirements will apply. This memorandum provides a brief overview.

Revenue Bond Law

The Revenue Bond Law authorizes every city and county to issue revenue bonds for the purpose of financing various government-owned undertakings, including projects for the collection, treatment and distribution of water, the collection, treatment, re-use or disposal of solid waste, and for the collection, treatment and disposal of sewage, waste and storm water. Such projects are to be operated by the city, county or authority on a revenue-producing basis, and bonds issued for such purpose may be secured only by revenues of such a project, or other revenue-producing undertakings of the city, county or authority.

Development Authorities Law

The Development Authorities Law creates a development authority that can be activated for any city or county to issue revenue bonds for projects including water pollution control facilities and solid waste disposal facilities. A water pollution control facility is any property used to abate or control water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes or heat, including the necessary pumping, power and other equipment, sewers, holding ponds, lagoons and related facilities, if such facilities are in furtherance of applicable federal, state or local standards for the abatement or control of water pollution or contamination. A solid waste disposal facility is any property used for the collection, storage, treatment, utilization, processing or final disposal of solid waste, including garbage, refuse, or other discarded solid materials, and also solid waste materials resulting from industrial and agricultural operations and from community activities, but excluding domestic sewage.

No project financed under the Development Authorities law may be operated by a development authority or by any city, county or other governmental subdivision, but must be leased or sold to one or more persons, firms or private corporations. The lessee or purchaser must be required to pay all costs of operating and maintaining the lease or purchased property and pay rentals or installments in amounts sufficient to pay the principal and interest and premium, if any, on all bonds and other obligations issued for the project.

Resource Recovery Development Authorities Law and Regional Solid Waste Management Authorities Law

The Resource Recovery Development Authorities Law and the Regional Solid Waste Management Authorities Law are two similar pieces of legislation creating in each city or county authorities denominated either a resource recovery development authority or a solid waste management authority. Such authorities have power to issue revenue bonds to finance projects for the collection, transportation, management, storage, treatment, utilization, processing or final disposal of solid waste, or the conversion of solid waste or resources contained therein into steam, electricity, oil, charcoal, gas or other products or energy sources, including any property used in connection with the facility for the extraction, collection, storage, treatment, processing, utilization or final disposal of resources contained in solid waste. Such authorities also have power to finance any property used in the extraction, collection, storage, treatment, processing or utilization of water resources and the conversion of such resources into any useful form of energy. A resource recovery development authority expressly authorizes projects similar to those described above for the sewage sledge. A solid waste management authority or a resource recovery development authority can be activated jointly or on a regional basis by any number of cities or counties.

Distinctive to resource recovery development authorities and solid waste management authorities are their ability to enter into intergovernmental contracts with cities and counties, and thus engage in contract revenue bond obligation financing. One or more cities and counties and one of these authorities can finance a project and avoid the requirement for the holding of a voter referendum to authorize general obligation bonds and the requirement that city or county revenue bonds be secured only by revenue-producing undertakings by engaging in a contract revenue bond financing. The intergovernmental contracts provision of the Georgia Constitution permits two or more public bodies to contract for a term up to 50 years for the provision of services which the contracting parties are authorized by law to undertake or provide. Consequently, one of these authorities can issue its revenue bonds for a project and enter into a contract to provide the use of the project to the city or county, and the city or county can pledge its full faith and credit to that contract. That contract can be pledged to the payment of the authority’s revenue bonds, which are treated in the financial marketplace, in effect, as the general obligations of the city or county.

Resource recovery department authorities also have power to enter into leases of project or contracts with respect to the use of project with private persons, firms and corporation. Thus, all or any part of the use of a project may be transferred to private parties, enabling private-public partnerships for solid waste disposal and reclamation facilities.

Governmental Projects versus Private Activity Projects

If a waste or wastewater project is owned and operated by a government unit, or owned by a government unit and operated by a private company under a qualifying management contract, tax –exempt governmental bonds may be utilized for the financing. For more information on governmental bonds see our "Overview of Governmental Bond Financing." Such financings are not subject to narrow constraints on the types and amounts of property that can be financed, the necessity to obtain an allocation of a limited amount of bond issuing authority (volume cap) available to the State, the need to publish and conduct a public hearing, the limitation on the amount of issuance costs, the applicability of alternative minimum tax to interest earned on the bonds and, in some cases, the tax disadvantages placed on the purchase of such bonds by banks and other financial institutions. However, if the project is to be owned or substantially utilized by private parties, bonds issued will be treated as "private activity bonds" and subject to these restrictions (except that the need to obtain an allocation of volume cap does not apply to a solid waste facility that is government-owned but used by private parties).

If a facility is privately owned, any bonds issued would be treated as private activity bonds. Also, bonds are private activity bonds if the project financed is to be used more than 10%, directly or indirectly, in a private trade or business and if payments from or property of a private business are to secure or repay, directly or indirectly, 10% or more of the bonds. For example, if a government-owned facility is contracted on a long-term basis to process waste from private companies that would utilize more than 10% of the capacity of the facility, this private use satisfies the "use" portion of the test, and the revenues to be paid under the contract probably satisfy the "security" portion of the test, and bonds issued for the project would be private activity bonds.

Requirements for Private Activity Solid Waste Projects

A solid waste facility must comply with several specific requirements to utilize tax-exempt private activity bonds. Such a facility or portion thereof must be used for the collection, storage, treatment, utilization, processing or final disposal of solid waste. "Solid waste" for this purpose is defined as garbage, refuse, and other discarded solid materials including solid waste materials resulting from industrial, commercial and agricultural operations and from communities activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows or other common water pollutants. The solid waste must be useless, unused, unwanted or discarded solid material that has no market or other value at the place where it is located. If a person is willing to remove such property at his own expense, but is not willing to purchase such property at its location at any price, such material is treated as waste. The material may be valuable in the hands of the recycler, but retains its classification as waste if it was valueless in its original location, taking collection and transportation costs in account.

Although any governmental recycling and waste-to-energy project may be financeable with tax-exempt bonds, there are limitation on the types of private activity projects that qualify for tax-exempt financing. A facility that disposes of solid waste by reconstituting, converting or otherwise recycling it into material which is not waste is financeable on a tax-exempt basis as a solid waste disposal facility only so long as the solid waste constitutes at least 65% by weight or volume of the total materials introduced into the recycling process. A recycling facility will not fail to qualify for tax-exempt financing only because it operates at a profit. However, private activity facilities that further process saleable waste-derived products into finished products are not financeable with tax-exempt solid waste bonds (although they might be financeable as tax-exempt manufacturing bonds — See our "Overview of Private Activity Bonds and Incentives). If the facility has both a solid waste disposal function and another function, only the portion of the cost of the property allocable to the solid waste disposal function may be financed with tax-exempt solid waste bonds. For example, metals and glass can be separated from solid waste and then further sorted, sized, cleaned and pulverized. The private activity solid waste bonds cannot be used, however, to finance facilities that would further process the saleable metal or glass into a finished product.

If materials or head are recovered from the solid waste disposal process, the waste disposal function includes processing of such materials or heat into saleable or useable form, but does not include further processing which converts the materials or heat into other products.

Financing for Private Activity Wastewater Projects

A private activity wastewater, pretreatment facility may be financed with tax-exempt bonds only if it is deemed functionally related and subordinate to a government-owned sewage system. Sewage disposal facilities are defined as property used for the collection, storage, treatment, utilization, processing or final disposal of sewage. Facilities tied directly to sewage facilities that pretreat waste, if the waste is required to be treated prior to release into the sewage system, may constitute a functionally related and subordinate facility that is financeable with tax-exempt bonds. Property is not a functionally related and subordinate to a sewage facility if it is not a character size commensurate with the character and size of the sewage facility.

Summary

Georgia law provides a number of issues and methods for issuing tax-exempt bonds for solid waste disposal, recovery, recycling and waste-to-energy projects, and sewage and wastewater treatment and pretreatment projects. However, if the facility is to be privately owned or substantially used in a private trade or business, special federal tax rules come into play to determine whether and to the extent the facility can be financed with tax-exempt bonds. With the proper legal structuring, however, many privately-utilized waste projects, as well as governmental projects, can be financed on a tax-exempt basis.

Article by James P. Monacell

Last Updated: May 4 2017

Smith Gambrell & Russell LLP

U.S. Conference of Mayors to Stress Importance of Tax-Exempt Municipal

Bonds During Infrastructure Week.

WASHINGTON, DC–(Marketwired – May 16, 2017) – On the heels of President Trump reaching 100 days in office, U.S. Conference of Mayors (USCM) President Oklahoma City Mayor Mick Cornett will add his voice to the need for additional infrastructure investment and the preservation of the tax exemption on municipal bonds at events in the nation's capital during Infrastructure Week (May 15-19).

On Wednesday, May 17, Mayor Cornett will join other local as well as state leaders at two events to emphasize the vital importance of protecting tax-exempt bonds as the key tool in supporting local infrastructure investment. In the morning, at 10 am, he will participate in a joint forum of the National Association of Counties, National League of Cities and The United States Conference of Mayors to discuss infrastructure investment and the pressing need to protect tax-exempt bonds. In the afternoon, at 2 pm, Mayor Cornett will join a "Big 7" state and local government organizations briefing on Capitol Hill, where he will further emphasize the importance of tax-exempt bonds for cities. See schedule below.

For more than a century, municipal bonds have enjoyed tax-exempt status and have been the primary method by which state and local governments finance public capital improvements, mostly infrastructure. These projects are engines of job creation and economic growth.

Over the last decade, tax-exempt municipal bonds have been used to finance critical infrastructure including the construction of schools, hospitals, airports, affordable housing, water and sewer facilities, public power and gas utilities, roads and public transit. According to USCM data, local and state governments financed nearly $1.7 trillion in infrastructure projects through tax-exempt municipal bonds from 2003 to 2012. In the absence of such financing, it would have cost cities up to $500 billion more — dramatically increasing the costs borne by taxpayers for critical infrastructure projects.

"As Congress discusses tax reform measures in the coming months, mayors across the country will fight to preserve the tax exemption on municipal bonds so that we can continue to repair crumbling roads, bridges, water systems, and schools," said Mayor Cornett. "If Congress repeals the exemption, it will strangle infrastructure investment causing economic growth to slow, the elimination of hundreds of thousands of jobs and further deterioration of our national infrastructure. When mayors met with President-elect Trump this past December, he assured us that he supported maintaining the exemption. We were encouraged by that assurance and hope that this successful and irreplaceable financing mechanism remains in place."

Throughout Infrastructure Week, Mayors will challenge Washington to accept the fact that Mayors work with the private sector and the federal government to build infrastructure projects from start to finish faster, with more cost efficiencies than other governments. To prove the point, The U.S. Conference of Mayors has released its "On Task, On Time, On Budget" report. The report features city infrastructure projects, including transportation, water, energy, ports and public buildings, citing their financial structures and the many benefits that resulted from them.

As a national infrastructure package is developed, this new report is intended to inform Administration and Congressional leaders on why more infrastructure dollars should be directed to mayors and other leaders who ensure that such projects are implemented more efficiently, with greater economic impact and timeliness.

Mayors participating in Infrastructure Week Activities in Washington, D.C.:

May 17

Oklahoma City Mayor Mick Cornett, USCM President — "Built to Last: A Discussion on the Importance of Local Infrastructure Investment" | A joint forum of the National Association of Counties, National League of Cities and The United States Conference of Mayors where USCM President Mayor Mick Cornett will emphasize the vital importance of protecting tax-exempt bonds as the key tool in supporting local infrastructure investment | NACo Conference Center: 660 North Capitol Street, NW, Washington, DC (10:00 – 11:00 am)

Oklahoma City Mayor Mick Cornett, USCM President — "State and Local Governments Drive America — A Discussion for the Future of Infrastructure Policy" | A "Big 7" state and local government organizations briefing where USCM President Mayor Mick Cornett will further emphasize the importance of protecting tax-exempt bonds for cities, counties and states | 2154 Rayburn House Office Building, Washington, DC (2:00 – 3:15 pm)

May 18

South Bend Mayor Pete Buttigeg — House Transportation & Infrastructure Subcommittee on Water and the Environment hearing on "Building a 21st Century Infrastructure for America: Improving Water Quality Through Integrated Planning" | 2167 Rayburn House Office Building | Washington, DC (10:00 am)

The U.S. Conference of Mayors is the official nonpartisan organization of cities with populations of 30,000 or more. There are nearly 1,400 such cities in the country today, and each city is represented in the Conference by its chief elected official, the mayor. Like us on Facebook at facebook.com/usmayors, or follow us on Twitter at twitter.com/usmayors.

U.S. Conference Of Mayors To Stress Importance Of Tax-Exempt Municipal Bonds During Infrastructure Week.

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Fitch: Not-for-Profit Children's Hospitals Medians High; Medicaid Exposure Presents Risk.

Fitch Ratings-Chicago-10 May 2017: Children’s hospitals’ strong ‘AA-‘ median rating reflects their unique credit profile characterized by robust liquidity, solid operating profitability, unique market positions, strong philanthropic support, and specialized clinical services, according to a new Fitch Ratings report. However, operating pressures have resulted in some mild profitability contraction in fiscal 2016.

“Children’s hospitals’ high exposure to Medicaid and supplemental funding, and their inherent vulnerability to governmental funding cuts, constitutes the primary credit concern for this sub-sector of the industry,” said Emily Wadhwani, Director.

“Proposed reductions to Medicaid and other supplemental healthcare funding cuts currently contemplated in Congress are likely to pressure these hospital providers over the longer term if enacted.”

Median operating EBITDA margin was 12.6 percent against 14.1 percent the prior year. Median debt service coverage by EBITDA also declined to 6.5x against a more robust 7.8x the prior year.

The year-over-year fluctuation is due to a tapering off of volume and funding growth following Medicaid expansion, weaker investment returns in fiscal 2016 and continued capital outlays that have generally outpaced the broader acute care sector.

Despite tightening cash flow, median days cash on hand improved for the fourth consecutive year to 334 days in fiscal 2016, as did median cash to debt, to 269%. Both remain substantially stronger than the respective median ratios for Fitch’s general not-for-profit hospitals.

For more information, a special report titled “2017 Median Ratios for Not-for-Profit Children’s Hospitals” is available on the Fitch Ratings web site at www.fitchratings.com.

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TAX - LOUISIANA

[Jazz Casino Company, L.L.C. v. Bridges]

Supreme Court of Louisiana - May 3, 2017 - So.3d - 2017 WL 1787821 - 2016-1663 (La. 5/3/17)

Taxpayer, a casino, petitioned for a writ of mandamus to the Secretary of the state Department of Revenue to compel satisfaction of a judgment by the state Board of Tax Appeals granting it a refund for hotel occupancy taxes paid.

The District Court granted writ. Department appealed. The Court of Appeal reversed and recalled writ. Taxpayer appealed.

The Supreme Court of Louisiana held that:

- Duty of the Secretary of the state Department of Revenue to refund the overpaid taxes was ministerial;
- Taxpayer did not have to show that relief was not available by ordinary means or that the delay involved in obtaining ordinary relief could cause injustice; and
- Writ of mandamus ordering the Secretary to use current collections of hotel occupancy taxes to refund taxpayer did not violate the constitutional prohibition of seizing public funds.

Duty of the Secretary of the state Department of Revenue to refund overpaid hotel taxes to taxpayer in accordance with a judgment of the state Board of Tax Appeals was ministerial, and thus a writ of mandamus ordering the Secretary to refund the taxes was proper. The refund of overpaid taxes was mandatory, and state law expressly authorized the use of mandamus relief to compel the Secretary to promptly make the refund.

Taxpayer, a casino, that was seeking a writ of mandamus to order the Secretary of the state Department of Revenue to refund overpaid hotel occupancy taxes in accordance with a judgment of the state Board of Tax Appeals did not have to show that relief was not available by ordinary means or that the delay involved in obtaining ordinary relief could cause injustice; state law afforded the judiciary authority to issue a writ of mandamus in such a case, and when a writ of mandamus was specifically provided as a remedy by statute, the general rules for a mandamus action did not apply.

The issuance of a writ of mandamus ordering the Secretary of the state Department of Revenue to use current collections of hotel occupancy taxes to refund taxpayer, a casino, for overpaid hotel occupancy taxes in accordance with judgment of the Board of Tax Appeals did not violate the constitutional prohibition of seizing public funds; the legislature specifically authorized a refund procedure out of the current tax collections to provide for the satisfaction of a final judgment against the Secretary to effect the return of money belonging to a taxpayer, and to hold otherwise would have rendered meaningless the constitutional guarantee of a complete and adequate remedy for the prompt recovery of an illegal tax paid by a taxpayer.

TAX - NEBRASKA

[County of Douglas v. Nebraska Tax Equalization and Review Commission]

Supreme Court of Nebraska - April 27, 2017 - N.W.2d - 296 Neb. 501 - 2017 WL 1532713

County sought review of the decision of the Tax Equalization and Review Commission (TERC) that adjusted the valuation of three areas of residential real property in the county and denied county's motion for reconsideration.

The Supreme Court of Nebraska held that:

- Reappraisal, and not an 8% decrease in area's valuation, was the proper remedy to the lack of uniformity and regressive vertical inequity in one area's property value assessments;
- Sufficient evidence supported TERC's order of a 7% increase in valuations of other two areas;
- As matter of apparent first impression, the abuse-of-discretion standard applies to the Supreme Court's review of the grant or denial of a motion to reconsider by an administrative body; and
- TERC did not abuse its discretion by denying county's motion to reconsider.

Reappraisal, rather than Tax Equalization and Review Commission's (TERC) order of an 8% decrease in valuation, was the proper remedy for the lack of uniformity and regressive vertical inequity in property value assessments in valuation area, and thus TERC's order was arbitrary, capricious, and unreasonable. The median assessment-to-sales ratio for the area of 104.82% and the coefficient of dispersion of 48.43%, which was outside the acceptable range of 15%, meant that a blanket equalization order would not solve the area's lack of assessment uniformity, but would only shift the problem, and the price-related differential of 1.22 showed that the lower-value properties in the area were significantly overassessed while higher-value properties were significantly under-assessed.

Sufficient evidence supported Tax Equalization and Review Commission's (TERC) order of a 7% increase to valuations of areas with median assessment-to-sales ratios of 89.77% and 90.08%, which fell outside the statutory range of 92% to 100%. The quality statistics showed that the median was a reliable indicator of central tendency, the coefficients of dispersion of 15.27% and 12.49% for the areas were within or at the top of the acceptable range of 15%, the price-related differentials for the areas of 1.0571 and 1.0347 were at or slightly above the top of the acceptable range of 0.98 to 1.03, and minor regressive vertical inequity was minimal.

The abuse-of-discretion standard applies to the Supreme Court's review of the grant or denial of a motion to reconsider by an administrative body.

Tax Equalization and Review Commission (TERC) did not abuse its discretion by denying county's motion to reconsider TERC's decision to order the adjustment of three valuation areas of residential real property, despite argument that state Property Tax Administrator's report improperly included sales that county categorized as non-arm's-length transactions and matched sales data to the wrong areas, where county did not allege that the Administrator's report improperly included sales that the county designated in the sales worksheets as non-usable, county could have raised allegations in the show-cause hearing that sales data was matched to the wrong areas, and county provided no information as to the impact of the alleged errors with the mismatched data.

The Growing Threat to Municipal Bonds.

Proposals to cap or eliminate their tax deductibility would be a serious blow to efforts to improve our infrastructure.

Buildings, roads and bridges: These are the Legos that, when snapped together, create the communities we all call home. President Donald Trump has promised to make improving our infrastructure a centerpiece of his administration, and we are eager to work with him to promote infrastructure investment, job growth and community prosperity. This includes defending a key financing tool that for the past several years has faced growing uncertainty.

For more than a century, tax-exempt municipal bonds have been the single most important means for financing new roads, bridges, schools and hospitals. These are a lifeline without which state and local municipalities would find it far more expensive to finance capital improvements and other infrastructure that benefit everyone.

In Maryland's Baltimore County, for example, municipal bonds have financed capital projects ranging from the restoration of a library after a fire to the expansion of several public parks. In Illinois' Will County, the future of a new courthouse and law-enforcement complex hinges on the bonds' tax-exempt status. Nationwide, the National League of Cities estimates that municipal bonds have financed more than four million miles of roads, 500,000 bridges, 16,000 airports and 900,000 miles of water pipes. In all, municipal bonds support more than 1.5 million civic projects.

But in recent years this bipartisan tool has been under attack, with proposals being floated in Washington to cap the bonds' tax deductibility or eliminate it entirely. Then-President Barack Obama's fiscal 2017 budget proposal would have capped the tax deduction at 28 percent. We believe this would devastate municipalities that rely on the tax exemption, especially amid uncertain state budgeting. Reducing the tax benefits of these bonds would be bad for jobs and for taxpayers; higher project costs would shift to taxpayers through increased property taxes, fees and other means.

The American Society of Civil Engineers estimates that state and local governments have about $3.6 trillion in unmet infrastructure needs through the year 2020. In Illinois, a cap like the one proposed by Obama would have cost the state $6.2 billion if it had been implemented in 2012; for Maryland, the figure would have been $2 billion. For states facing steep budget deficits and rising costs, we can't afford to let precious funding go to waste.

The city of St. Charles, Ill., is a prime example. St. Charles' annual interest payment for its debt currently exceeds $3 million, but it could be far more without the tax exemption for municipal bonds, which has saved the city 25 percent, including $619,000 in interest costs when it built the Red Gate Bridge over the Fox River in 2011. This is real money that makes a real difference to local taxpayers — money that could be used to maintain basic services and programs otherwise on the verge of shuttering.

With tax reform and infrastructure legislation now on the table in Washington, the debate over how to best restore our country's aging infrastructure is in full swing. State and local governments' ability to issue tax-exempt debt is now more important than ever. That is why we have sent a letter to the House leadership asking them to reject any proposal to cap or eliminate the deduction on tax-exempt municipal bonds. More than 150 of our colleagues from both sides of the aisle have joined us. We urge President Trump to similarly reject any such proposal.

We have also launched the bipartisan Municipal Finance Caucus to continue promoting the importance of this tax exemption with our colleagues in Congress. The caucus is a valuable platform that ensures any discussion of comprehensive tax reform includes the needs of municipalities throughout this nation. Answering the call for reliable, proven infrastructure financing means we must protect this vital tool for job growth and economic development in our communities.

GOVERNING.COM

BY RANDY HULTGREN, DUTCH RUPPERSBERGER | MAY 11, 2017

Why Tax Credit Bonds Should Be A Key Part Of Any Federal Infrastructure Policy Initiative.

Major infrastructure investments—especially projects and programs of regional and national significance—can generate major "spillover" benefits to the general public—some, like locks and dams, literally so. This article explains why tax credit bonds should be in the mix of federal infrastructure policy initiatives. Previous generations of tax credit bonds, such as Build America Bonds, were highly successful in broadening the market for infrastructure debt but their authority has expired. We propose creating a new generation of qualified tax credit bonds. A separate article in this issue of Public Works Financing outlines a specific proposal to create "Infrastructure Credit Bonds" (page 12).

While some proposals have focused on the role that equity capital can play in advancing infrastructure projects, it is worth noting that P3 projects have represented just a small fraction of total investment in public infrastructure. For example, CBO reports that in 2014, federal, state and local capital outlays for public infra- structure totalled $181 billion. That same year, according to Public Works Financing, P3 project outlays totalled just $4.2 billion—about 2 percent of the market.

Within the P3 sector, financial equity represents, on average, about 15 percent of the capital sources for P3 projects. Debt capital, on the other hand, represents 60 percent of sources on P3 deals—and for governmental projects debt may fund 90 percent or more of the "capital stack." So clearly, the cost of borrowing has a major impact on project feasibility and financial capacity.

Historically, infrastructure project sponsors have raised debt capital from the following sources:

- Tax-exempt financing (both "governmental" and "private activity" bonds);
- Federal credit assistance (such as TIFIA, RRIF and WIFIA, with loans generally made at the U.S. Treasury rate);
- Bank and other taxable rate debt (especially suitable for P3 project financings);
- State-capitalized loan funds (such as Water Revolving Loan Funds and State Infrastructure Banks)

In more recent years, federal legislation has authorized other forms of tax-advantaged debt:

- Partially-subsidized taxable rate bonds (Build America Bonds) designed to replicate the tax-exempt borrowing rate by offsetting a portion of the interest cost (recently proposed to be 28%) through a refund- able (cash) tax credit for the issuer ("direct-pay" tax credit bonds); and
- Fully-subsidized taxable rate bonds designed to have most or all of the annual interest return provided through an annual (non refundable) tax credit for the investor, which can apply the credit against other tax liability ("investor pay" tax credit bonds).

These programs have been either time-limited (Build America Bonds issuable only in 2009 and 2010) or volume-capped (five separate classes of "qualified tax-credit bonds" totaling about $35 billion for specific purposes such as school construction, energy conservation and clean renewable energy projects.)

Of all the existing and proposed debt instruments, the qualified tax credit bonds offer the greatest present value benefit to the project sponsor per dollar of "scored" federal budgetary cost.

This is not to suggest that other debt instruments aren't helpful. PABs level the playing field between P3 and governmental projects, but their purpose is simply to match the municipal bond market rates available to governmental sponsors. Similarly, "direct pay" tax credit bond programs like Build America Bonds can broaden the market by attracting taxable fixed-income investors, but are designed to replicate (but not beat) tax-exempt rates. Federal credit can provide greater structuring flexibility in terms of deferrals and prepayments, but may only reduce the effective borrowing cost by ½% or so for investment grade issuers—a savings to be sure, but not enough to dramatically increase a project's debt capacity. And SRF and SIB loans, while potentially offering very low rates, are severely size-constrained by limits on state capitalization grants.

In contrast, qualified tax credit bonds can more than double an issuer's debt capacity. Stated differently, a given local revenue stream pledged for debt service can support twice the amount of tax credit bond principal as tax-exempt financing or federal credit.

From a federal policy viewpoint, tax credit bonds offer additional advantages. Unlike federal grant spending or credit assistance, tax code measures do not require growing the size of the federal government to administer them. Tax incentives also have the advantage over grants of harnessing the market discipline of private capital (bond investors) to ensure that the pro ject's repayment plan is feasible. Unlike federal credit, a tax credit bond does not require the federal government to take any credit exposure on the borrower or the project.

Tax credits attached to bonds can be simpler and more efficient to market than equity-based investment tax credits, provided liquidity concerns are meaning- fully addressed (as discussed in the follow-on article on "Investment Credit Bonds"). And tax credits attached to bonds are "budget-efficient," since they stretch out the fiscal impact over a longer period of time more commensurate with the economic lives of the assets being financed. The scored cost of the program (effectively the first 10 years of tax expenditures under budget rules) relative to the financial benefit to the project sponsor offers the highest "return on fiscal investment."

For these reasons, a tax credit bond proposal should be a key component of any new federal policy initiative.

Article by Elaine Buckberg

Last Updated: May 11 2017

The Brattle Group, Inc.

Taxing Muni Bonds: Excuses, Excuses, and More Excuses.

In politics and policy there are reasons and there are excuses.

The American Public Power Association and other stakeholders have been fighting for several years now to explain the reasons why an unprecedented tax on municipal bonds would be bad. There is ample evidence to indicate that:

- The tax exclusion of municipal bonds is far more efficient than opponents suggest;

- Taxing municipal bonds would be hugely harmful to U.S. infrastructure investment; and
- Proposed alternatives to tax-exempt municipal bond financing would increase the cost of financing core infrastructure investments — and state and local residents will pay the price

I also believe a federal tax on municipal bond interest would be unconstitutional.

What we've spent less time discussing are the excuses – implicit and explicit – for imposing a new tax on municipal bonds. These include dire warnings of tidal waves of municipal bankruptcies, breathless tales of state and local financial struggles, hoary anecdotes implying endless abuses, and pat solutions that fail to address the problems.

I discuss the excuses in a recent article for Tax Notes magazine, [Logical Fallacies in the Debate of Municipal Bonds].

For example, in Washington, it's common to cite a handful of municipal bankruptcies to imply that many more have happened or are about to. This alleged symptom of fiscal negligence is taken as an excuse to "rein in" state and local spending by imposing a federal tax on infrastructure investments.

As the article explains, though, in the last three decades there have been just 47 municipal bankruptcies or attempted bankruptcies – from a population of 39,000 municipal governments. In the early nineties the rate averaged roughly one per year, and in the last two decades it has averaged roughly two per year. That's not "nothing," but it's also not a tsunami, and it certainly doesn't justify upending more than a century of tax policy by repealing the federal tax exclusion for municipal bond interest.

If anything, economic data shows that state and local governments are doing a far better job of tackling fiscal challenges than the federal government. There are exceptions — again, two bankruptcies a year is not nothing. However, headlines screaming of budget wars may actually be a good sign that state and local governments are actually fighting to make tough budget choices, rather than simply fiddling while their fiscal houses burn down.

My article also debunks the idea that debate over tax-exempt bonds is somehow a debate over tax-exempt bond financing of sports stadiums (or that the debate over private activity bonds has something to do with private activity bond financing of a Corvette museum).

By John Godfrey, Senior Government Relations Director, American Public Power Association

Posted on May 11, 2017 by John Godfrey

A Requiem for Reasonable Expectations: Squire Patton Bogs

The "reasonable expectations" approach to determining the issue price of a tax-advantaged bond[1] has been the law since 1989. On June 7, it is scheduled to join Betamax tapes and parachute pants as another relic of that bygone decade. Barring intervention (either Divine or as part of the President's executive order to undo recent regulations that "add undue complexity to the Federal tax laws"), the new issue price regulations will take effect for tax-advantaged bonds sold on or after June 7. Though we don't often have to rely on reasonable expectations because underwriters usually actually sell at least 10% of each bond maturity at the initial offering price to the public on the sale date, the reasonable expectations rule has been a useful tool and a dear friend. As it prepares to ride off into the sunset,[2] a eulogy is in order. And bittersweet that eulogy shall be, for the death of the reasonable expectations standard seems senseless.

Continue reading.

By Johnny Hutchinson on May 11, 2017

The Public Finance Tax Blog

Squire Patton Boggs

New IRS Arbitrage Publication and TEB Training Texts Now Available.

Publication 5271, Complying with Arbitrage Requirements: A Guide for Issuers of Tax-Exempt Bonds
This new publication is a basic guide to the yield restriction and rebate requirements (arbitrage requirements) of Internal Revenue Code Section 148 and related regulations. Information in the guide can help issuers and conduit borrowers comply with their obligations and prevent violations of the arbitrage requirements.

Tax Exempt Bonds Phase I Training Text
Basic lessons that examine the rules applicable to tax-advantaged bonds, discuss the appropriate use of bond proceeds and introduce the arbitrage, yield restriction and rebate concepts.

Tax Exempt Bonds Phase II Training Text
Intermediate lessons supplement the basic lessons in Phase I, including advanced topics in arbitrage and rebate.

Tax Exempt Bonds Phase III Training Text
Advanced lessons that examine the rules applicable to refundings, reissuances, pooled financing issues and IRC Section 6700 penalties.

IRS Teeing Up More Flexible Rules for Public Approval of PABs.

WASHINGTON Rules increasing the flexibility of the public approval process for tax-exempt private activity bonds will probably be the next released for municipal bonds by tax regulators, an Internal Revenue Service official recently told lawyers.

"The 2008 regulations permitted quite a bit of flexibility," IRS Branch 5 chief Vicky Tsilas said during a conference sponsored by Georgetown University Law Center, according to Tax Notes. "I would argue these regulations – as they get finalized or re-proposed, whatever it is – will permit even greater flexibility in response to comments received over the years."

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On the same panel with Tsilas, Mike Bailey, a lawyer at Foley & Lardner in Chicago, noted that the new issue price rules provide no guidance about whether they are to be applied to many tax requirements that bond lawyers have historically complied with using issue price rules. These include the 2% limitation on issuance costs for private activity bonds, the requirement that at least 95% of the net proceeds of qualified exempt-facility bonds be spent on a project's capital costs, and the 5% limit on private use for 501(c)(3) bonds for nonprofits.

Tsilas told Bailey that those issues will be addressed by another regulatory project, according to Tax Notes.

The public approval requirements for PABs are in the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. The act said that for PABs, including 501(c)(3) bonds for nonprofits, to be tax-exempt the state or local government issuing the bonds or the borrower of the proceeds would have to approve them. The PABs would be treated as approved if either residents voted for them in a referendum or an elected representative approved them after a public hearing was announced and held. The Treasury and IRS published temporary rules in 1983 to implement the TEFRA provisions.

The tax-writing agencies then proposed rules in September 2008 to update, streamline and simplify those temporary rules. The proposed rules were generally supported at the time and Treasury officials expected them to be quickly finalized. Whereas the existing rules had required a very specific and detailed description of the facility to be bond-financed, the proposed rules would allow a general reference to the type of facility for which bonds were being issued.

The proposed rules also would allow a government or its authority to cancel a hearing if, after timely notice of the hearing, no one had asked to participate in it. They allowed the government to post notice of the hearing on its website. Some community and labor groups claimed the proposed rules claiming they would come close to removing public input from the process of issuing PABs. Nine years later, the proposed rules have still not been finalized.

The National Association of Bond Lawyers in June 2015 submitted recommendations to Treasury and the IRS on ways to further streamline, modernize and clarify the public approval requirements from those proposed in 2008.

"The TEFRA public approval requirement is arguably one of the more burdensome requirements for tax exemption," NABL said in the letter. "NABL believes that ways in which the requirement may be made less burdensome to issuers and conduit borrowers, while still achieving the underlying objectives of the requirement, should continually be reassessed, with deference given to how state and local governments carry out their day-to-day operations and with recognition of technological advances as tools for implementation."

NABL made several specific recommendations including that the final rules allow PAB proceeds to be used for working capital without the public notice specifically mentioning that. It also said that the issuer should be allowed to provide a notice of cancellation of a hearing on its website in the same manner that it posts other public notices.

The Bond Buyer

By Lynn Hume

Published May 04 2017, 11:20am EDT

Munis Could Be Hurt by Plan to Slash Corporate Tax Rates.

Banks and insurance companies own about a quarter of all municipal debt.

While President Trump's plans to reform individual income taxes could result in an increase in demand for some munis, his plans to slash the corporate tax rate could be a negative, points out Wells Fargo in a new research report from its Investment Institute.

That's because companies — mostly banks and insurance companies — own a big chunk of munis. Their demand for tax-free income would likely fall if their rates go to 15% from the 35% maximum in place now.

In Q&A form, here's how Wells Fargo puts it:

> **What is the potential impact to the municipal market from the proposed cut in business taxes?**
>
> A lower corporate tax rate may impact demand in the municipal market as close to 26 percent of municipal debt ownership has historically come from banks and insurance companies. It is important to keep in mind that we would not expect the demand for municipal bonds to decline dramatically as a result of reduced tax-driven demand from banks or insurance companies, because municipal securities also offer diversification, quality, and yields close to those of Treasury securities.

Muni investors can also take solace because it is unlikely that corporate tax rates will be slashed to the extent Trump has proposed.

John Miller, who runs municipal bond investing at Nuveen Investments, told Barron's Monday that he thought the corporate tax rate would ultimately only be cut to the high-20th percentile, after negotiations with Congress.

Of tax reform in general, he said, "It's going to take longer and be smaller."

So far, munis have shown little reaction to the tax reform proposal. The iShares S&P National AMT-Free Municipal Bond Fund (MUB) has stayed right around $109 since news of the plan started to trickle out exactly a week ago. It was 109.01 at 1 p.m. ET on Tuesday.

Barron's

By Amey Stone May 2, 2017 1:37 p.m. ET
